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Rules and Regulations

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DEPARTMENT OF ENERGY

10 CFR Part 431

[EERE–2019–BT–TP–0025]

RIN 1904–AE55

Energy Conservation Program: Test Procedure for Commercial Prerinse Spray Valves

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: This final rule incorporates by reference the current version of the industry testing standard for commercial prerinse spray valves, which will not substantively change the current test procedure. The Department of Energy (''DOE'') also amends the definition of commercial prerinse spray valve to codify existing guidance on how to apply the definition. This amended definition do not change the current scope of the test procedure.

DATES: The effective date of this rule is April 11, 2022. The final rule changes will be mandatory for product testing starting September 7, 2022. The incorporation by reference of certain material listed in this rule is approved by the Director of the Federal Register on April 11, 2022.

ADDRESSES: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *www.regulations.gov*. All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

A link to the docket web page can be found at *www.regulations.gov/docket/EERE-2019-BT-TP-0025*. The docket web page contains instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–2J, 1000 Independence Avenue SW, Washington, DC, 20585–0121. Telephone: (202) 586–0371. Email: *ApplianceStandardsQuestions@ee.doe.gov*.

Ms. Kathryn McIntosh, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC, 20585–0121. Telephone: (202) 586–2002. Email: *Kathryn.McIntosh@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: DOE incorporates by reference the following industry standard into 10 Code of Federal Regulations (''CFR'') part 431:

ASTM F2324–13 (R2019), ''Standard Test Method for Prerinse Spray Valves;'' Approved May 1, 2019 (''ASTM F2324–13'').

Copies of ASTM F2324–13 (R2019) can be obtained from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428–2959, (610) 832–9585 or by going to *www.astm.org*.

For a further discussion of this standard, see section IV.N of this document.

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I. Authority and Background

Commercial prerinse spray valves (''CPSVs'') are included among the ''covered products'' for which the U.S. Department of Energy (''DOE'') is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6291(33); 42 U.S.C. 6293(b)(14); 42 U.S.C. 6295(dd)) DOE's energy conservation standards and test procedures for commercial prerinse spray valves are currently prescribed at 10 CFR part 431, subpart O.[1] The following sections discuss DOE's authority to establish test procedures for CPSVs and relevant background information regarding DOE's consideration of test procedures for this product.

A. Authority

The Energy Policy and Conservation Act, as amended (''EPCA''),[2] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B [3] of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency. EPCA

[1] Because Congress included commercial prerinse spray valves in Part B of Title III of EPCA, the consumer product provisions of Part B (rather than the industrial equipment provisions of Part C) apply to commercial prerinse spray valves. However, because commercial prerinse spray valves are commonly considered to be commercial equipment, as a matter of administrative convenience and to minimize confusion among interested parties, DOE codified the requirements for commercial prerinse spray valves into subpart O of 10 CFR part 431. Part 431 contains DOE regulations for commercial and industrial equipment. DOE refers to commercial prerinse spray valves as either ''products'' or ''equipment.''

[2] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020).

[3] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

provides definitions for commercial prerinse spray valves under 42 U.S.C. 6291(33), the test procedure under 42 U.S.C. 6293(b)(14), and energy conservation standards for flow rate under 42 U.S.C. 6295(dd).

The energy conservation program under EPCA consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

The testing requirements consist of test procedures that manufacturers of covered products must use as the basis for (1) certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA (42 U.S.C. 6295(s)), and (2) making representations about the efficiency of those products (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the products comply with any relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

Federal energy efficiency requirements for covered products established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6297(d))

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA requires that any test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle (as determined by the Secretary) or period of use and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

With respect to CPSVs, EPCA requires DOE to use ASTM International (''ASTM'') F2324 (''ASTM F2324'') as the basis for the test procedure for measuring flow rate. (42 U.S.C. 6293(b)(14))

EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered product, including CPSVs, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle or period of use. (42 U.S.C. 6293(b)(1)(A))

If the Secretary determines, on her own behalf or in response to a petition by any interested person, that a test procedure should be prescribed or amended, the Secretary shall promptly publish in the **Federal Register** proposed test procedures and afford interested persons an opportunity to present oral and written data, views, and arguments with respect to such procedures. The comment period on a proposed rule to amend a test procedure shall be at least 60 days and may not exceed 270 days. In prescribing or amending a test procedure, the Secretary shall take into account such information as the Secretary determines relevant to such procedure, including technological developments relating to energy use or energy efficiency of the type (or class) of covered products involved. (42 U.S.C. 6293(b)(2)). If DOE determines that test procedure revisions are not appropriate, DOE must publish its determination not to amend the test procedures. DOE is publishing this final rule in satisfaction of the 7-year review requirement specified in EPCA. (42 U.S.C. 6293(b)(1)(A))

B. Background

DOE's existing test procedures for CPSVs appear at 10 CFR 431.264. DOE most recently amended the test procedure for CPSVs in a final rule published December 30, 2015, in which DOE incorporated by reference the 2013 version of ASTM F2324 (''ASTM F2324–13''). 80 FR 81441 (''December 2015 Final Rule'').

On June 5, 2020, DOE published a request for information soliciting public comment and data on all aspects of the existing DOE test procedure for CPSVs. 85 FR 34541 (''June 2020 RFI''). DOE published a notice of proposed rulemaking (''NOPR'') for the test procedure on May 20, 2021, presenting DOE's proposals to amend the CPSV test procedure. 86 FR 27298 (''May 2021 NOPR''). DOE held a public meeting related to this NOPR on June 9, 2021.

DOE received comments in response to the May 2021 NOPR from the interested parties listed in Table I.1.

TABLE I.1—WRITTEN COMMENTS RECEIVED IN RESPONSE TO MAY 2021 NOPR

Commenter(s)	Reference in this final rule	Commenter type
Appliance Standards Awareness Project and Natural Resources Defense Council.	ASAP and NRDC	Efficiency Organizations.
Northwest Energy Efficiency Alliance	NEEA	Efficiency Organization.
Pacific Gas and Electric Company, Southern California Edison, and San Diego Gas and Electric Company; collectively, the California Investor-Owned Utilities.	CA IOUs	Utilities.
Plumbing Manufacturers International	PMI	Trade Organization.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[4]

II. Synopsis of the Final Rule

In this final rule, DOE amends 10 CFR 431.264, ''Uniform test method for the measurement of flow rate for commercial prerinse spray valves,'' as follows:

- Amends the definition of ''commercial prerinse spray valve'' to codify existing guidance on how to apply the definition; and

[4] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop test procedures for CPSVs. (Docket No. EERE–2019–BT–TP–0025, which is maintained at *www.regulations.gov*). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

• Incorporates by reference the current industry standard—ASTM F2324–13 (R2019), ''Standard Test Method for Prerinse Spray Valves.''

• Explicitly permits voluntary testing using a test pressure other than the test pressure required for determining compliance with the standards at 10 CFR part 431.

The adopted amendments are summarized in Table II.1, including a comparison to the test procedure before amendment, as well as the reason for the adopted change.

TABLE II.1—SUMMARY OF CHANGES IN THE AMENDED TEST PROCEDURE

DOE test procedure prior to amendment	Amended test procedure	Attribution
A ''commercial prerinse spray valve'' is defined as ''a handheld device that has a release-to-close valve and is suitable for removing food residue from food service items before cleaning them in commercial dishwashing or ware washing equipment.''.	A ''commercial prerinse spray valve'' is defined as ''a handheld device that has a release-to-close valve and is suitable for removing food residue from food service items before cleaning them in commercial dishwashing or ware washing equipment based on any or all of the following: (1) Equipment design and representations (for example, whether equipment is represented as being capable of rinsing dishes as compared to equipment that is represented exclusively for washing walls and floors or animal washing); (2) Channels of marketing and sales (for example, whether equipment is marketed or sold through outlets that market or sell to food service entities); (3) Actual sales (including whether the end-users are restaurants or commercial or institutional kitchens, even if those sales are indirectly through an entity such as a distributor).	Codify existing guidance regarding scope of definition.
References industry standard ASTM F2324–13.	References reaffirmed industry standard ASTM F2324–13 (2019)	Harmonize with current industry standard.
Requires testing at 60 pounds per square inch (''psi'').	Requires testing at 60 psi and explicitly permits voluntary testing at other water pressures.	Response to stakeholder comment.

DOE has determined that the amendments described in section III of this document and adopted in this document will not alter the measured efficiency of CPSVs or require retesting or recertification solely as a result of DOE's adoption of the amendments to the test procedures. Additionally, DOE has determined that the amendments will not increase the cost of testing. Discussion of DOE's actions are addressed in detail in section III of this document.

The effective date for the amended test procedures adopted in this final rule is 30 days after publication of this document in the **Federal Register**. Representations of energy use or energy efficiency must be based on testing in accordance with the amended test procedures beginning 180 days after the publication of this final rule.

III. Discussion

A. Scope and Definition

''Commercial prerinse spray valve'' is defined at 10 CFR 431.262 as ''a handheld device that has a release-to-close valve and is suitable for removing food residue from food service items before cleaning them in commercial dishwashing or ware washing equipment.'' DOE notes that EPCA defines ''commercial prerinse spray valve'' as ''a handheld device designed and marketed for use with commercial dishwashing and ware washing equipment that sprays water on dishes, flatware, and other food service items for the purpose of removing food residue before cleaning the items.'' 42 U.S.C. 6291(33)(A) In the December 2015 Final Rule, DOE observed that some products were being designed by the manufacturer for other specific applications but were marketed to rinse dishes before washing. 80 FR 81441, 81443. Accordingly, DOE amended the definition of commercial prerinse spray valve to provide more explicit direction that any spray valve ''suitable'' for prerinsing purposes is subject to energy conservation standards in order to ensure a level and fair playing field for all products serving commercial prerinse spray valve applications. 80 FR 81441, 81443–81444.

In the preamble of the December 2015 Final Rule, DOE provided additional guidance on the various factors that DOE would consider in determining whether a spray valve model is ''suitable'' for removing food residue from food service items before cleaning them in commercial dishwashing or ware washing equipment. *Id.* at 80 FR 81444. Specifically, DOE would consider factors including (1) product design and descriptions (including how the product is identified and described in product catalogs, brochures, specification sheets, and communications with prospective purchasers); (2) channels of marketing and sales (for example, a product marketed or sold through outlets that market or sell to food service entities such as restaurants or commercial or institutional kitchens is more likely to be used as a commercial prerinse spray valve than one marketed or sold through outlets catering to pet care. Similarly, a product marketed outside of the United States as a commercial prerinse spray valve, or for similar use in a kitchen-type setting, would be considered suitable for use as a commercial prerinse spray valve); and (3) actual sales (including whether the end-users are restaurants or commercial or institutional kitchens, even if those sales are indirectly through an entity such as a distributor, to determine whether the spray valve is used extensively in conjunction with commercial dishwashing and ware washing equipment). *Id.*

In response to the June 2020 RFI, NEEA commented that there were valves on the market that appeared to meet the definition of commercial prerinse spray valve and either had marketed flow rates above the energy conservation standard and/or were not being certified to DOE. (NEEA, No. 6 at p. 1) To provide further certainty as to the definition of ''commercial prerinse spray valve,'' in the May 2021 NOPR DOE proposed to amend the definition of ''commercial prerinse spray valve'' to codify the guidance that had been provided in the December 2015 Final Rule for determining whether equipment is suitable for removing food

residue from food service items before cleaning them in commercial dishwashing or ware washing equipment. 86 FR 27298, 27301–27302. Specifically, DOE proposed to define a ''commercial prerinse spray valve'' as a handheld device that has a release-to-close valve and is suitable for removing food residue from food service items before cleaning them in commercial dishwashing or ware washing equipment. DOE may determine that a device is suitable for removing food residue from food service items before cleaning them in commercial dishwashing or ware washing equipment based on any or all of the following: (1) Equipment design and representations (for example, whether equipment is represented as being capable of rinsing dishes as compared to equipment that is represented exclusively for washing walls and floors); (2) Channels of marketing and sales (for example, whether equipment is marketed or sold through outlets that market or sell to food service entities); (3) Actual sales.'' 86 FR 27298, 27302. DOE tentatively determined that the proposed definition would not change the scope of coverage. *Id.* Rather, the proposal would only codify in the CFR the existing guidance on how to apply the definition.

ASAP, NRDC and NEEA commented that the proposed definition adds clarity and reduces the risk of misclassification of commercial prerinse spray valves. (ASAP and NRDC, No. 10 at p. 1; NEEA, No. 12 at pp. 1–2) ASAP and NRDC commented that there are many CPSV models that appear to meet the current definition of a CPSV, yet do not meet the efficiency standards that DOE previously prescribed. These commenters believe that considerable water savings are likely being lost due to non-compliant products and believe that the definition DOE proposed in the NOPR encompasses the CPSV models in violation and will help close loopholes in the current standards. (ASAP and NRDC, No. 10 at p. 1; Webinar Transcript, No. 9 at p. 14)

NEEA stated that the first two criteria provide clarity that products marketed for use as a prerinse valve (no matter where they are sold) and valves sold via commercial kitchen retailers (even if they are marketed as ''utility'' valves) meet the definition of a CPSV and therefore must meet the CPSV regulated flow rates; and the third criteria clarifies that valves sold and installed in CPSV applications also meet the criteria of a CPSV no matter where they were sold or how they were marketed. (NEEA, No. 12 at p. 2)

The CA IOUs generally supported the proposed definition for CPSVs, stating that it is likely to reduce the risk of misclassification of higher flow valves not intended for food service prerinse applications. (CA IOUs, No. 11 at p. 4) The CA IOUS also stated that some ambiguity could still exist under DOE's proposed definition for certain products meant for other applications like washing walls. The CA IOUs recommended adding that CPSVs are ''intended to be installed in fixtures with a faucet or overhead pull-down hose over a multi-compartment sink, wash-down trough, or a scrapping device.'' (CA IOUs, No. 11 at p. 5)

PMI opposed the proposed definition, claiming that manufacturers would no longer have a clear definition by which to produce and sell CPSVs, and would instead rely on a subjective set of requirements that would be left up to the discretion of DOE to apply and enforce, leading to confusion. (PMI, No. 13 at pp. 1–2; Webinar Transcript, No. 9 at pp. 12–13) PMI commented that NEEA's comment in response to the June 2020 RFI demonstrates that use of the word ''suitable'' has led to confusion in the market and scrutiny of products that were never intended for food service applications. *Id.* PMI asserted that manufacturers submitted comment during the previous rulemaking recommending that DOE define the term ''suitable'' in order to ensure only products intended to be used as CPSVs are regulated as such. *Id.* PMI recommended modifying the current definition by replacing the phrase ''is suitable for removing'' with the phrase ''intended by the manufacturer to remove.'' *Id.*

PMI further asserted that manufacturers provide clear statements on their websites, and within their product literature, regarding which products are intended to meet DOE's current CPSV regulations. (PMI, No. 13 at p. 2; Webinar Transcript, No. 9 at p. 13) PMI provided four examples of product literature: (1) A product with a represented 1.15 gallon per minute (''gpm'') flow rate marketed as ''SUITABLE for removing food residue from food service items before cleaning them in commercial dishwashing or ware washing equipment''; (2) a product with a represented 2.45 gpm flow rate marketed as ''NOT SUITABLE for removing food residue from food service items before cleaning them in commercial dishwashing or ware washing equipment''; (3) a product with a represented 1.07 gpm flow rate marketed as ''EPAct/DOE Compliant'' and ''2019 DOE PRSV—Class II compliant''; and (4) a product represented with a 5.6 gpm flow rate marketed as ''Not Intended for USA Pre-Rinse.'' *Id.*

PMI additionally commented that manufacturers will incur additional costs if they are required to meet energy conservation standards for products not intended for removing food residue, such as washdown equipment or pet grooming equipment. (*Id.;* Webinar Transcript, No. 9 at p. 13)

Regarding the CA IOUs' suggestion to base the CPSV definition on the intended location for installing the fixture, intent suggests subjectivity, which not only reduces regulatory transparency but also creates challenges for enforcement. DOE has previously rejected such an approach. 80 FR 81441, 81443. As discussed in the notice of proposed rulemaking to the December 2015 Final Rule, DOE has also observed products marketed as ''pull-down kitchen faucet'' or ''commercial style prerinse,'' which generally are handheld devices that can be used for commercial dishwashing or ware washing regardless of intended installation location. 80 FR 35874, 35876 (Jun. 23, 2015). DOE notes that these categories of products typically do not have a release-to-close valve and therefore generally do not meet the definition of commercial prerinse spray valve. However, if such a product does have a release-to-close valve, it would meet the definition of commercial prerinse spray valve regardless of intended installation location, provided it were being sold through channels of marketing that sell to food service entities.

In response to comments regarding lack of clarity around the term ''suitable,'' DOE notes that neither DOE nor manufacturers have identified any physical characteristics that would distinguish valves suitable for removing food residue from food service items before cleaning them in commercial dishwashing or ware washing equipment from other valves. In the absence of any physical identifying characteristics that could be used to distinguish a CPSV, DOE articulated in the December 2015 Final Rule the means by which DOE would consider a spray valve to be ''suitable'' for removing food residue from food service items before cleaning them in commercial dishwashing or ware washing equipment. 80 FR 81441, 81443–81445 The intent of DOE's proposal in the May 2021 NOPR to codify this guidance as part of the CPSV definition is to provide manufacturers with greater certainty as to how DOE would determine whether a particular spray valve model is covered by the scope of DOE's CPSV test procedure and

energy conservation standards. As stated, the intent is not to amend the scope of the definition. 86 FR 27298, 27302.

In response to the suggestion by PMI that the definition of CPSV reference the use of the equipment as intended by the manufacturer, DOE notes that the definition of CPSV as defined by EPCA references how the device is ''designed and marketed for use'' without limiting consideration of the marketed use to that of the manufacturer. (42 U.S.C. 6291(33)(A)) As discussed in the December 2015 Final Rule, DOE observed instances in which products designed by the manufacturer for other specific applications were marketed on retailer websites for commercial dishwashing and ware washing. 80 FR 81441, 81443. This, in part, prompted DOE to codify a definition of CPSV that replaces the term ''designed and marketed for use'' with the phrase ''suitable for use.'' *Id.* 80 FR 81444. DOE's prior observations of the market have demonstrated that statements of manufacturer intent may not correspond to how such products are marketed by third-party distributors, or how such products would be used by the consumer. DOE research indicates that a large majority of CPSVs are sold through third-party distributors. Without any physical features that would distinguish between types of potential end uses, a definition that is limited to manufacturer intent, as suggested by PMI, would ignore the marketing practice of third-party distributors that likely influences how many of these products are used. As noted in the preamble of the December 2015 Final Rule and May 2021 NOPR, DOE also may consider actual sales, including whether the end-users are restaurants or commercial or institutional kitchens, even if those sales are indirectly through an entity such as a distributor. 86 FR 27298, 27301–27302 and 80 FR 81441, 81444. The amended definition explicitly provides, consistent with the discussion in the May 2021 NOPR, that spray valves with actual sales to commercial prerinse applications may be considered suitable even if those sales are through a third-party distributor.

With regard to the concern expressed by PMI that manufacturers would incur additional costs if products not intended for removing food residue (such as washdown equipment or pet grooming products) are required to meet the CPSV energy conservation standards—the revised definition proposed by DOE and adopted in this final rule does not change the scope of the definition. The amendment to the definition of CPSV adopted in this final rule codifies the guidance DOE has previously provided on the factors to consider when determining whether a valve is suitable for removing food residue from food service items before cleaning them in commercial dishwashing or ware washing equipment. If a spray valve model is not represented as being capable of rinsing dishes, is not marketed or sold through outlets that market or sell to food service entities, and is not sold to end-users that are restaurants or commercial or institutional kitchens, is not a CPSV. A spray valve that a manufacturer markets exclusively for wall washing and floors (*i.e.,* washdown equipment) is an example of a device that would not be a CPSV because it is not represented as being capable of rinsing dishes and therefore would not be considered suitable for removing food residue from food service items before cleaning them in commercial dishwashing or ware washing equipment). Similarly, the amended definition includes spray valves represented exclusively for animal washing as an example of valves that are not CPSVs.

For the reasons described in the May 2021 NOPR and reiterated in this final rule, and in consideration of comments from interested parties, DOE is amending the definition of ''commercial prerinse spray valve'' to mean ''a handheld device that has a release-to-close valve and is suitable for removing food residue from food service items before cleaning them in commercial dishwashing or ware washing equipment. DOE may determine that a device is suitable for removing food residue from food service items before cleaning them in commercial dishwashing or ware washing equipment based on any or all of the following: (1) Equipment design and representations (for example, whether equipment is represented as being capable of rinsing dishes as compared to equipment that is represented exclusively for washing walls and floors or for animal washing); (2) Channels of marketing and sales (for example, whether equipment is marketed or sold through outlets that market or sell to food service entities); (3) Actual sales (including whether the end-users are restaurants or commercial or institutional kitchens, even if those sales are indirectly through an entity such as a distributor).''

B. Updates to Industry Standards

The CPSV test procedure incorporates by reference ASTM F2324–13 at 10 CFR 431.263. The specific sections of ASTM F2324–13 that are specified in the test method in 10 CFR 431.264 are the test methods for measuring flow rate at Sections 6.1 through 6.9 (except 6.4 and 6.7), 9.1 through 9.4, and 10.1 through 10.2.5 of ASTM F2324–13. 10 CFR 431.264(b)(1). The DOE test procedure incorporates the corresponding calculations in Section 11.3.1 of ASTM F2343–13. For the spray force test method, the DOE test procedure references Sections 6.2, 6.4 through 6.9, 9.1 through 9.5.3.2, and 10.3.1 through 10.3.8 of ASTM F2324–13. 10 CFR 431.264(b)(2).

In the May 2021 NOPR, DOE proposed to update the DOE test procedure to reference the reaffirmed industry testing standard, ASTM F2324–13 (R2019), and tentatively determined that such a change would not result in any substantive changes to the existing CPSV test procedure. 86 FR 27298, 27302.

The CA IOUs and PMI both commented that they support DOE incorporating the reaffirmed industry test standard. (CA IOUs, No. 11 at p. 5; PMI, No. 13 at p. 2; Webinar Transcript, No. 9 at p. 15) PMI commented that incorporating the reaffirmed industry standard would not lead to any additional costs. (PMI, No. 23 at p. 2) DOE did not receive any comments opposing incorporation of the reaffirmed industry standard ASTM F2324–13 (2019). For the reasons discussed in the May 2021 NOPR, DOE is updating the incorporation by reference in the CPSV test procedure to reference the reaffirmed industry standard, ASTM F2324–13 (R2019).

C. Water Pressure

ASTM F2324–13 specifies testing CPSVs at a water pressure of 60 ± 2 pounds per square inch (''psi'').[5]

In the May 2021 NOPR, DOE stated that it did not receive any data suggesting that a different test pressure would be more representative and noted that the DOE test pressure aligns with the industry-consensus standard. 86 FR 27298, 27302–27303. Therefore, DOE proposed maintaining testing with a dynamic water pressure[6] of 60 ± 2 psi.

DOE received several comments suggesting a different water pressure may be appropriate and one suggesting an additional labeling requirement. NEEA encouraged DOE to review

[5] The latest version of the industry standard, ASTM F2324–13 (R2019), that DOE is incorporating by reference in this document also specifies testing with a water pressure at 60 ± 2 psi.

[6] Dynamic water pressure refers to the water pressure when water is flowing. For the DOE test procedure, this is measured upstream of the CPSV. In this notice, dynamic water pressure can be assumed when referencing water pressure unless explicitly stated to be ''static'' pressure.

available data to ensure that 60 psi is not higher than the average water pressure. (NEEA, No. 12 at p. 3) The CA IOUs commented that its investigation of four field studies indicates an average dynamic water pressure of 52 psi, and that their analysis of these field studies indicates that more than one third of the sites with CPSVs with flow rates of 1.28 gpm had pressures less than 50 psi, while only 16 percent had flow pressures over 60 psi. (CA IOUs, No. 11 at pp. 2–3) The CA IOUs further commented that model plumbing codes adopted by most states limit the maximum static pressure [7] at the meter at 80 psi. The CA IOUs estimated that this would result in a dynamic pressure of around 66 psi. (CA IOUs, No. 11 at p. 3) The CA IOUs further commented that several cities require a minimum static pressure of 30 psi, which the CA IOUs estimate would result in a minimum dynamic pressure of 25 psi. *Id.* Based on these estimates of the maximum and minimum expected water pressures, the CA IOUs suggested, at least for Class 1 products, that testing CPSVs at 40 psi would provide a good indication of water use at the low end of pressures. (CA IOUs, No. 11 at pp. 3–4) The CA IOUs commented that although 50 psi would be more representative of an average pressure in commercial kitchens, given that current standards are based on testing at 60 psi, an additional test at 40 psi should be added to represent the lower end of pressures experienced in commercial kitchens. *Id.* at p. 4 The CA IOUs asserted that an additional test at 40 psi would not be unduly burdensome for manufacturers to conduct. *Id.* Finally, the CA IOUs recommended that DOE consider requiring a label on CPSVs denoting the tested flow rate at 40 psi in addition to labeling with the tested flow rate at 60 psi, to enable consumers to purchase products best suited for their operational needs and building constraints, while maximizing energy and water savings. *Id.*

NEEA commented that low water pressure is an important consideration when installing a CPSV, as dissatisfied CPSV users are known to replace low-flow valves with higher flow valves in order to achieve the performance they need. (NEEA, No. 12 at pp. 2–3) NEEA stated that with the current test pressure of 60 psi, consumers with lower water pressure do not have the information they need to know if a valve will perform as they need it to before purchasing and installing it. *Id.* at p. 3 NEEA recommended that DOE adopt an optional informational test pressure of 40 psi that would provide a consistent point of comparison for products looking to highlight and differentiate performance at lower pressures and would provide a foundation for voluntary labeling programs at the state or national level. *Id.*

As an accompaniment to the December 2015 Final Rule, DOE provided a separate report titled ''Analysis of Water Pressure for Testing Commercial Prerinse Spray Valves Final Report,'' [8] in which DOE collected data from studies that reported pressures and flow rates for typical CPSV applications to determine the representative water pressure for testing commercial prerinse spray valves. The report concluded that the flow rate of CPSVs can vary by almost 40 percent when the water pressure changes from 40 psi to 80 psi. Based on the data, the weighted average dynamic water pressure was estimated to be around 55 psi, which resulted in a 4-percent decrease in flow rate as compared to the flow rate of a CPSV installed with a water pressure of 60 psi. (Docket No. EERE–2014–BT–TP–0055–0008 at p. 4–5) Thus, the weighted average pressure of the available data is sufficiently similar to the prescribed test pressure in the industry test procedure. Accordingly, DOE determined that 60 psi is sufficiently representative of the water pressures CPSVs will experience in the field. 80 FR 81441, 81447.

In the December 2015 Final Rule, DOE acknowledged that water pressure will affect the flow rate of a CPSV once installed. 80 FR 81441, 81446. Typically, lower pressures result in lower flow rates and higher pressures result in higher flow rates. Nevertheless, DOE noted that testing at a single specific water pressure to demonstrate compliance with the maximum allowable flow rate would create a consistent and standardized reference that would be comparable across all models *Id.* DOE also noted that requiring testing at multiple water pressures would increase the test burden. *Id.* Additionally, a review of industry testing standards indicated that testing at lower water pressures was typically for the purpose of determining a minimum flow rate. *Id.*

As discussed, the requirement in 10 CFR 431.264 to test at 60 ± 2 psi is based on ASTM F2324, which is an industry consensus standard that includes input from a wide variety of national stakeholders and was corroborated with the data compiled for the December 2015 Final Rule. The data cited by the CA IOUs are largely consistent with the data previously presented by DOE in support of the December 2015 Final Rule. DOE has not received any new data indicating that an alternative test pressure would be more representative. Because the weighted average pressure of the available data is sufficiently similar to the prescribed test pressure in the industry test procedure, DOE reaffirms its prior conclusion that a 60-psi test pressure is sufficiently representative of the water pressures CPSVs will experience in the field. Moreover, testing at a single test pressure is appropriate for measuring flowrate for determination of compliance with the maximum flow rate applicable under the energy conservation standards. Based on the reasons discussed in this section, DOE has decided to maintain the current test pressure of 60 ±2 psi.

With regard to the suggestions to add a second test at a test pressure of 40 psi, DOE recognizes that some consumers may value representations of flow rate corresponding to other water pressures than 60 psi. DOE has determined, however, that requiring all manufacturers to perform an additional test at a pressure of 40 psi, for mandatory energy conservation standards and/or a mandatory labeling requirement as suggested by the CA IOUs, would be unduly burdensome, because this would require manufacturers to retest and recertify all CPSVs and the current test pressure is representative of average use. However, based on the comments received from NEEA and the CA IOUs in response to DOE's request for data regarding water pressure, DOE recognizes that representations of flow rate at pressures other than 60 psi may provide useful information to consumers at the lower end of the water pressure range. Therefore, in this final rule, DOE is explicitly providing for optional testing at test pressures other than the required 60 ± 2 psi. Specifically, DOE is establishing a new paragraph (d) of 10 CFR 431.264, which provides that manufacturers may voluntarily test pursuant to the DOE test procedure using other test pressures in addition to the 60 psi test pressure required for determining compliance with the standards at 10 CFR part 431. When making voluntary representations, manufacturers must represent flow rate at alternative water pressures in accordance with the sampling plan at 10 CFR 429.51(a); however, manufacturers are not required to submit certification reports for voluntary representations.

[7] Static water pressure refers to the water pressure when water is not flowing.

[8] The water pressure sensitivity analysis is available at *www.regulations.gov* under docket number EERE–2014–BT–TP–0055.

D. Test Procedure Costs

In this final rule, DOE amends the test procedures for CPSVs to amend the definition of CPSV to clarify the current scope, incorporate by reference the reaffirmed industry standard, ASTM F2324–13 (R2019), and explicitly permit voluntary testing at alternative water pressures.

As discussed, the amendment to the definition of ''commercial prerinse spray valve'' codifies DOE guidance on factors for determining whether a spray value is suitable for removing food residue from food service items before cleaning them in commercial dishwashing or ware washing equipment. The amendment does not change the scope of the definition or the scope of the test procedure and energy conservation standards.

DOE has determined that the reaffirmed industry standard, ASTM F2324–13 (R2019), is not substantively different from the prior version referenced by the DOE test procedure. As such, reference to ASTM F2324–13 (R2019) will not change how the testing CPSVs is conducted and would not impact the measured values of water use or spray force used to determine compliance with standards. Regarding voluntary representations, the provisions providing for testing at additional water pressures are optional only.

Accordingly, DOE has determined that these adopted amendments will not be unduly burdensome for manufacturers to conduct. Further, DOE has determined that the adopted test procedure amendments will not impact testing costs already experienced by manufacturers.

E. Effective and Compliance Dates

The effective date for the adopted test procedure amendment will be 30 days after publication of this final rule in the **Federal Register**. EPCA prescribes that all representations of energy efficiency and energy use, including those made on marketing materials and product labels, must be made in accordance with an amended test procedure, beginning 180 days after publication of the final rule in the **Federal Register**. (42 U.S.C. 6293(c)(2)) EPCA provides an allowance for individual manufacturers to petition DOE for an extension of the 180-day period if the manufacturer may experience undue hardship in meeting the deadline. (42 U.S.C. 6293(c)(3)) To receive such an extension, petitions must be filed with DOE no later than 60 days before the end of the 180-day period and must detail how the manufacturer will experience undue hardship. *Id.*

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget (''OMB'') has determined this test procedure rulemaking does not constitute ''significant regulatory actions'' under section 3(f) of Executive Order (''E.O.'') 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive order by the Office of Information and Regulatory Affairs (''OIRA'') in OMB.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of a final regulatory flexibility analysis (FRFA) for any final rule where the agency was first required by law to publish a proposed rule for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003 to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website: *energy.gov/gc/office-general-counsel.*

As stated, the amendments adopted in this final rule revise the definition of CPSVs without modifying the scope and update references to the reaffirmed industry standard, which made no substantive changes to the test procedure. DOE has determined that the adopted test procedure amendments would not impact testing costs already experienced by manufacturers.

The amendments adopted in this final rule would do not have significant economic impact on small businesses. The Small Business Administration (''SBA'') considers a business entity to be a small business, if, together with its affiliates, it employs less than a threshold number of workers or earns less than the average annual receipts specified in 13 CFR part 121. The threshold values set forth in these regulations use size standards and codes established by the North American Industry Classification System (''NAICS'').[9]

The NAICS code for commercial prerinse spray valve manufacturing is covered under NAICS code 332919, other metal valve and pipe fitting manufacturing. The SBA employee threshold for small businesses for NAICS code 332919 is 750 employees or less.

DOE collected data from DOE's compliance certification database to identify manufacturers of commercial prerinse spray valves.[10] DOE identified 13 companies that sell commercial prerinse spray valves covered by this rulemaking. To identify if these companies were small manufacturers, DOE used markets research tools (*e.g.,* D&B Hoovers, Glassdoor, LinkedIn) to estimate employment and determine whether companies met the SBA's definition of a small business. Two of these companies are large businesses with more than 750 total employees. Therefore, DOE determined that there are 11 companies that meet SBA's definition of a small business.

In summary, DOE concludes that the cost effects accruing from this final rule would not have a ''significant economic impact on a substantial number of small entities,'' and that the preparation of a FRFA is not warranted. DOE has submitted a certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of CPSVs must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including CPSVs (*See generally* 10 CFR part 429.) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork

[9] The size standards are listed by NAICS code and industry description and are available at: *www.sba.gov/document/support—table-size-standards* (Last accessed on December 1, 2021).

[10] Certified equipment in the CCD are listed by product class and can be accessed at *www.regulations.doe.gov/certification-data/#q=Product_Group_s%3A** (Last accessed December 1, 2021).

Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

In this final rule, DOE establishes test procedure amendments that it expects will be used to develop and implement future energy conservation standards for CPSVs. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, DOE has determined that adopting test procedures for measuring energy efficiency of consumer products and industrial equipment is consistent with activities identified in 10 CFR part 1021, appendix A to subpart D, A5 and A6. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE examined this final rule and determined that it will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action resulting in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *energy.gov/gc/office-general-counsel.* DOE examined this final rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988), that this regulation will not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by

each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at *www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf.* DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the regulation is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This regulatory action is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; ''FEAA'') Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (''FTC'') concerning the impact of the commercial or industry standards on competition.

The amendments to the test procedure for CPSVs adopted in this final rule incorporates testing methods contained in certain sections of the following commercial standard: ASTM F2324–13 (R2019). DOE has evaluated this standard and is unable to conclude whether it fully complies with the requirements of section 32(b) of the FEAA (*i.e.,* whether it was developed in a manner that fully provides for public participation, comment, and review.) DOE has consulted with both the Attorney General and the Chairman of the FTC about the impact on competition of using the methods contained in these standards and has received no comments objecting to their use.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule before its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

N. Description of Materials Incorporated by Reference

In this final rule, DOE incorporates by reference the test standard published by ASTM, titled ''Standard Test Method for Prerinse Spray Valves,'' ASTM Standard F2324–13 (R2019). ASTM F2324–13 (R2019) is an industry-accepted test procedure that measures water flow rate and spray force for CPSVs and is applicable to product sold in North America. Specifically, the test procedure codified by this final rule references various sections of ASTM F2324–13 (R2019) that address test set-up, instrumentation, test conduct, and calculations.

Copies of ASTM F2324–13 (R2019) can be obtained from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428–2959, (610) 832–9585 or by going to *www.astm.org.*

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation test procedures, Incorporation by reference, Reporting and recordkeeping requirements.

Signing Authority

This document of the Department of Energy was signed on March 6, 2022, by Kelly J. Speakes-Backman, Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on March 8, 2022.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

For the reasons stated in the preamble, DOE amends part 431 of Chapter II of Title 10, Code of Federal Regulations as set forth below:

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 2. Section 431.262 is amended by revising the definition for ''Commercial prerinse spray valve'' to read as follows:

§ 431.262 Definitions.

* * * * *

Commercial prerinse spray valve means a handheld device that has a release-to-close valve and is suitable for removing food residue from food service items before cleaning them in commercial dishwashing or ware washing equipment. DOE may determine that a device is suitable for removing food residue from food service items before cleaning them in commercial dishwashing or ware washing equipment based on any or all of the following:

(1) Equipment design and representations (for example, whether equipment is represented as being capable of rinsing dishes as compared to equipment that is represented exclusively for washing walls and floors or animal washing);

(2) Channels of marketing and sales (for example, whether equipment is marketed or sold through outlets that market or sell to food service entities);

(3) Actual sales (including whether the end-users are restaurants or commercial or institutional kitchens, even if those sales are indirectly through an entity such as a distributor).

* * * * *

■ 3. Section 431.263 is transferred from under the undesignated center heading ''Test Procedures'' to immediately following § 431.262 and revised to read as follows:

§ 431.263 Materials incorporated by reference.

(a) Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the U.S. Department of Energy (DOE) must publish a document in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the DOE and at the National Archives and Records Administration (NARA). Contact DOE at: The U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza SW, Washington, DC 20024, (202) 586–9127, or *Buildings@ee.doe.gov, https://www.energy.gov/eere/buildings/building-technologies-office.* For information on the availability of this material at NARA, email: *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.* The material may be obtained from the source(s) in the following paragraph(s) of this section.

(b) *ASTM.* ASTM, International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959, (610) 832–9585, or go to *www.astm.org.*

(1) ASTM F2324–13 (R2019) (''ASTM F2324''),''Standard Test Method for Prerinse Spray Valves'', Approved May 1, 2019; IBR approved for § 431.264.

(2) [Reserved]

■ 4. Section 431.264 is amended by revising paragraph (b) and adding paragraph (d) to read as follows:

§ 431.264 Uniform test method to measure flow rate and spray force of commercial prerinse spray valves.

* * * * *

(b) *Testing and calculations for a unit with a single spray setting*—(1) *Flow rate.* (i) Test each unit in accordance with the requirements of Sections 6.1 through 6.9 (Apparatus) (except 6.4 and 6.7), 9.1 through 9.4 (Preparation of Apparatus), and 10.1 through 10.2.5 (Procedure) of ASTM F2324, (incorporated by reference, see § 431.263). Precatory language in ASTM F2324 is to be treated as mandatory for the purpose of testing. In Section 9.1 of ASTM F2324, the second instance of ''prerinse spray valve'' refers to the spring-style deck-mounted prerinse unit defined in Section 6.8. In lieu of using manufacturer installation instructions or packaging, always connect the commercial prerinse spray valve to the flex tubing for testing. Normalize the weight of the water to calculate flow rate using Equation 1 to this paragraph, where W_{water} is the weight normalized to a 1 minute time period, W_1 is the weight of the water in the carboy at the conclusion of the flow rate test, and t_1 is the total recorded time of the flow rate test.

$$W_{water} = W_1 \, x \, \frac{60 \, s}{t_1} \qquad \text{(Eq. 1 to paragraph (b)(1)(i))}$$

(ii) Perform calculations in accordance with Section 11.3.1 (Calculation and Report) of ASTM F2324. Record the water temperature (°F) and dynamic water pressure (psi) once at the start for each run of the test. Record the time (min), the normalized weight of water in the carboy (lb) and the resulting flow rate (gpm) once at the end of each run of the test. Record flow rate measurements of time (min) and weight (lb) at the resolutions of the test instrumentation. Perform three runs on each unit, as specified in Section 10.2.5 of ASTM F2324, but disregard any references to Annex A1. Then, for each unit, calculate the mean of the three flow rate values determined from each run. Round the final value for flow rate to two decimal places and record that value.

(2) *Spray force.* Test each unit in accordance with the test requirements specified in Sections 6.2 and 6.4 through 6.9 (Apparatus), 9.1 through 9.5.3.2 (Preparation of Apparatus), and 10.3.1 through 10.3.8 (Procedure) of ASTM F2324. In Section 9.1 of ASTM F2324, the second instance of ''prerinse spray valve'' refers to the spring-style deck-mounted prerinse unit defined in Section 6.8. In lieu of using manufacturer installation instructions or packaging, always connect the commercial prerinse spray valve to the flex tubing for testing. Record the water temperature (°F) and dynamic water pressure (psi) once at the start for each run of the test. In order to calculate the mean spray force value for the unit under test, there are two measurements per run and there are three runs per test. For each run of the test, record a minimum of two spray force measurements and calculate the mean of the measurements over the 15-second time period of stabilized flow during spray force testing. Record the time (min) once at the end of each run of the test. Record spray force measurements at the resolution of the test instrumentation. Conduct three runs on each unit, as specified in Section 10.3.8 of ASTM F2324, but disregard any references to Annex A1. Ensure the unit has been stabilized separately during each run. Then for each unit, calculate and record the mean of the spray force values determined from each run. Round the final value for spray force to one decimal place.

* * * * *

(d) *Test procedure for voluntary representations.* Follow paragraph (b)(1) or (2) or (c) of this section, as applicable, using test water pressure(s) of interest for voluntary representations of flow rate. Representations made at a water pressure other than the required test water pressure cannot replace a representation at the required test water pressure specified in Section 9.1 of ASTM F2324. Any voluntary representation of flow rate made pursuant to this paragraph shall specify the water pressure associated with the represented flow rate.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. FAA–2022–0217; Notice No. NOA–23–22–01]

Accepted Means of Compliance; Airworthiness Standards: Normal Category Airplanes

AGENCY: Federal Aviation Administration, Department of Transportation (DOT).

ACTION: Issuance of accepted means of compliance.

SUMMARY: This document announces ASTM International (ASTM) consensus standards for use as a means of compliance to the applicable airworthiness standards for normal category airplanes. The FAA accepts ASTM Designation F3264–21 as a means of compliance for applicable airworthiness standards for normal category airplanes, with the changes identified in Table 1 of this document. For ease of use, Table 2 provides a side-by-side view, linking applicable regulations to the associated ASTM sections.

DATES: The FAA accepts the means of compliance effective March 11, 2022.

FOR FURTHER INFORMATION CONTACT: Hieu Nguyen, Federal Aviation Administration, Policy and Innovation Division, Small Airplane Strategic Policy Section, AIR–615, 901 Locust Street, Room 301, Kansas City, Missouri 64106; telephone (316) 946–4123; facsimile: (316) 946–4107; email: *hieu.nguyen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under the provisions of the National Technology Transfer and Advancement Act of 1995 [1] and Office of Management and Budget (OMB) Circular A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,'' effective January 27, 2016, the FAA participates in the development of consensus standards and uses consensus standards as a means of carrying out its policy objectives where appropriate.

Consistent with the Small Airplane Revitalization Act of 2013,[2] the FAA has been working with industry and other stakeholders through the ASTM International (ASTM) F44 Committee on General Aviation Aircraft to develop consensus standards as a means of compliance in certificating small airplanes under title 14, Code of Federal Regulations (14 CFR), part 23.

In part 23, amendment 23–64 [3] (81 FR 96572, published on December 30, 2016), the final rule described the FAA would publish those consensus standards in the **Federal Register**, when the Administrator accepts the consensus standards as an acceptable means of compliance.

Additionally, the FAA published Advisory Circular (AC) 23.2010–1,[4] dated March 27, 2017, titled ''FAA Accepted Means of Compliance Process for 14 CFR part 23''. In paragraph 5.5, the AC also describes that a notice will be published when the Administrator accepts a standard.

The means of compliance accepted by this document is one means, but not the only means of complying with part 23 regulatory requirements.

The FAA reviewed the published ASTM consensus standards developed by ASTM Committee F44 as the basis for means of compliance to 65 sections of part 23, amendment 23–64.

In some cases, the Administrator found sections of the ASTM Standard Designation F3264–21, titled ''Standard Specification for Normal Category Aeroplanes Certification,'' without changes, accepted as means of compliance with the airworthiness requirements of amendment 23–64, and within the scope and applicability of the consensus standards.

In other cases, the means of compliance, while based on ASTM consensus standards, include additional FAA provisions necessary to comply with the airworthiness requirements of amendment 23–64.

Applicants who desire to use means of compliance reflected by other revisions to ASTM standards not previously accepted, may seek guidance and possible acceptance from the FAA for the use of those means of compliance on a case-by-case basis. Applicants may also propose alternative means of compliance for FAA review and possible acceptance.

Part 23, amendment 23–64, established airworthiness requirements based on the safety requirements outlined in amendment 23–63, except in areas that address loss of control and icing, where the FAA increased the safety level. Depending on the details of a design, the applicant may require use of a different means of compliance beyond those accepted by this document. For example, novel airplane designs, such as unmanned airplanes or vertical takeoff and landing airplanes, may be outside the scope of this document, and applicants may need to propose alternative means of compliance applicable to their designs accepted under § 23.2010.

Means of Compliance Accepted

This document accepts only the revisions of the standards referenced in ASTM International Standard Designation (ASTM) F3264–21, ''Standard Specification for Normal Category Aeroplanes Certification.''

Table 1. The FAA accepts ASTM F3264–21 as a means of compliance for part 23, amendment 23–64, with the changes identified.

Table 2. For ease of use, Table 2 provides a side-by-side view, linking the applicable part 23 regulations to the ASTM F3264–21 sections. The ASTM F3264–21 sections must incorporate the changes required for FAA acceptance from Table 1.

TABLE 1—PART 23 ACCEPTED MEANS OF COMPLIANCE BASED ON ASTM CONSENSUS STANDARDS

ASTM designation No.	ASTM document title	Changes required for FAA acceptance [5]	Additional information [6]
F2490–20	Standard Guide for Aircraft Electrical Load and Power Source Capacity Analysis.	None.	

[1] *Ref* Public Law 104–113 as amended by Public Law 107–107.

[2] *Ref* Public Law 113–53.

[3] *See https://www.federalregister.gov/documents/2016/12/30/2016-30246/revision-of-airworthiness-standards-for-normal-utility-acrobatic-and-commuter-category-airplanes.*

[4] *See https://drs.faa.gov/browse.*

[5] The means of compliance are inteded for traditional part 23 airplanes, not for novel designs. Novel designs require evaluation and possible modification of the means of compliance.

[6] You may find additional information on the FAA Small Airplane Issues List (SAIL) here: *https://www.faa.gov/aircraft/air_cert/design_approvals/small_airplanes/small_airplanes_regs/.*

TABLE 1—PART 23 ACCEPTED MEANS OF COMPLIANCE BASED ON ASTM CONSENSUS STANDARDS—Continued

ASTM designation No.	ASTM document title	Changes required for FAA acceptance [5]	Additional information [6]
F3061/F3061M–20	Standard Specification for Systems and Equipment in Small Aircraft.	**Remove:** Tables 1, 3, 4, 5, 13 and 14 ..... **Replace 17.3.1 with the following:** (a) Each electrical or electronic system that performs a function, the failure of which would prevent the continued safe flight and landing of the airplane, must be designed and installed such that— (1) The function at the airplane level is not adversely affected during and after the time the airplane is exposed to lightning; and (2) The system recovers normal operation of that function in a timely manner after the airplane is exposed to lightning unless the system's recovery conflicts with other operational or functional requirements of the system. **Replace 17.3.2 with the following:** (b) Each electrical and electronic system that performs a function, the failure of which would significantly reduce the capability of the airplane or the ability of the flight crew to respond to an adverse operating condition, must be designed and installed such that the system recovers normal operation of that function in a timely manner after the airplane is exposed to lightning **Remove 17.3.3**.	Aircraft Type Code compliance matrix tables found in F3061/F3061M–20 are not accepted. Applicability will be determined by the Small Airplane Strategic Policy Section. F3061/F3061M–20 does not contain means for showing compliance to § 23.2310 *Buoyancy for seaplanes and amphibians.* If applying for certification of a seaplane or amphibian, applicants may use the provisions of §§ 23.751, 23.755, and 23.757 at amendment 23–63 as a means of complying with § 23.2310, or may obtain FAA acceptance of a different method of compliance in accordance with § 23.2010.
F3062/F3062M–20	Standard Specification for Aircraft Powerplant Installation.	None.	
F3063/F3063M–20	Standard Specification for Aircraft Fuel and Energy Storage and Delivery.	None.	
F3064/F3064M–21	Standard Specification for Aircraft Powerplant Control, Operation, and Indication.	None.	
F3065/F3065M–21a	Standard Specification for Aircraft Propeller System Installation.	None.	
F3066/F3066M–18	Standard Specification for Aircraft Powerplant Installation Hazard Mitigation.	None.	
F3082/F3082M–17	Standard Specification for Weights and Centers of Gravity of Aircraft.	None.	
F3083/F3083M–20a	Standard Specification for Emergency Conditions, Occupant Safety and Accommodations.	None.	
F3093/F3093M–21	Standard Specification for Aeroelasticity Requirements.	None.	
F3114–21	Standard Specification for Structures.	None.	
F3115/F3115M–20	Standard Specification for Structural Durability for Small Aeroplanes.	None	If applicant proposes to use F3115/F3115M–20 section 4.3 or 6.3.3, Policy & Innovation Division will be involved as the standard is applied during projects to review the approach to determining similarity (F3115/F3115M–20 section 4.3) and criteria defining obvious damage (F3115/F3115M–20 section 6.3.3).

TABLE 1—PART 23 ACCEPTED MEANS OF COMPLIANCE BASED ON ASTM CONSENSUS STANDARDS—Continued

ASTM designation No.	ASTM document title	Changes required for FAA acceptance [5]	Additional information [6]
F3116/F3116M–18e2 ..	Standard Specification for Design Loads and Conditions.	**Replace:** Section 4.1.4. **With:** FAA Section 4.1.4 ''Appendix X1 through Appendix X4 provides, within the limitations specified within the appendix, a simplified means of compliance with several of the requirements set forth in Sections 4.2 to 4.26 and 7.1 to 7.9 that can be applied as one (but not the only) means to comply. If the simplified methods in appendix X1 through X3 are used, they must be used together in their entirety. **Replace:** Section X1.1.1. **With:** FAA Section X1.1.1 ''The methods provided in this appendix provide one possible means (but not the only possible means) of compliance and can only be applied to level 1 and level 2 low speed airplanes.''. **Replace:** Section X2.1.1. **With:** FAA Section X2.1.1 ''The methods provided in this appendix provide one possible means (but not the only possible means) of compliance and can only be applied to level 1 and level 2 low speed airplanes.''. **Replace:** Section X3.1.1. **With:** FAA Section X3.1.1 ''The methods provided in this appendix provide one possible means (but not the only possible means) of compliance and can only be applied to level 1 and level 2 low speed airplanes.''. **Replace:** Section X4.1.1. **With:** FAA Section X4.1.1 ''The methods provided in this appendix provide one possible means (but not the only possible means) of compliance and can only be applied to level 1 low speed airplanes.''.	
F3117/F3117M–20	Standard Specification for Crew Interface in Aircraft.	**Add:** 4.3 Windshields and Windows. 4.3.1 For Level 4 airplanes, the windshield panels in front of the pilots must be arranged so that, assuming the loss of vision through any one panel, one or more panels remain available for use by a pilot seated at a pilot station to permit continued safe flight and landing. Or For Level 4 Airplanes Add F3117/F3117M—21a Section 4.3.	
F3120/F3120M–20	Standard Specification for Ice Protection for General Aviation.	None.	
F3173/F3173M–21	Standard Specification for Aircraft Handling Characteristics.	None.	
F3174/F3174M–19	Standard Specification for Establishing Operating Limitations and Information for Aeroplanes.	None.	
F3179/F3179M–20	Standard Specification for Performance of Aircraft.	None.	
F3180/F3180M–19	Standard Specification for Low-Speed Flight Characteristics of Aircraft.	FAA does not universally accept F3180/F3180M–19 due to inexperience with Alternative 2 within the standard. FAA previously and continues to accept F3180/F3180M–16.	Applicants are encouraged to consider proposing F3180/F3180M–19, particularly Alternative 2, for development of their method of compliance for low speed handling qualities on a project-by-project basis, or may obtain FAA acceptance of a different method of compliance in accordance with § 23.2010.

TABLE 1—PART 23 ACCEPTED MEANS OF COMPLIANCE BASED ON ASTM CONSENSUS STANDARDS—Continued

ASTM designation No.	ASTM document title	Changes required for FAA acceptance [5]	Additional information [6]
F3227/F3227M–21	Standard Specification for Environmental Systems in Small Aircraft.	**Remove:** Tables 1, 2, and 3	Aircraft Type Code compliance matrix tables found in F3227/F3227M–21, are not accepted. Applicability will be determined by the Small Airplane Strategic Policy Section.
F3228–17	Standard Specification for Flight Data and Voice Recording in Small Aircraft.	**Remove:** Table 1	Aircraft Type Code compliance matrix table found in F3228–17 are not accepted. Applicability will be determined by the Small Airplane Strategic Policy Section.
F3229/F3229M–17	Standard Practice for Static Pressure System Tests in Small Aircraft.	**Remove:** Table 1	Aircraft Type Code compliance matrix table found in F3229/F3229M–17 are not accepted. Applicability will be determined by the Small Airplane Strategic Policy Section.
F3230–20a	Standard Practice for Safety Assessments of Systems and Equipment in Small Aircraft.	**Remove:** Table 1	Aircraft Type Code compliance matrix table found in F3230–20a are not accepted. Applicability will be determined by the Small Airplane Strategic Policy Section.
F3231/F3231M–21	Standard Specification for Electrical Systems for Aircraft with Combustion Engine Electrical Power Generation.	**Remove:** Table 1	Aircraft Type Code compliance matrix table found in F3231/F3231M–21 are not accepted. Applicability will be determined by the Small Airplane Strategic Policy Section.
F3232/F3232M–20	Standard Specification for Flight Controls in Small Aircraft.	**Remove:** Tables 1 and 2	Aircraft Type Code compliance matrix tables found in F3232/F3232M–20 are not accepted. Applicability will be determined by the Small Airplane Strategic Policy Section.
F3233/F3233M–21	Standard Specification for Instrumentation in Small Aircraft.	**Remove:** Table 1	Aircraft Type Code compliance matrix table found in F3233/F3233M–21 are not accepted. Applicability will be determined by the Small Airplane Strategic Policy Section.
F3234/F3234M–17	Standard Specification for Exterior Lighting in Small Aircraft.	**Remove:** Table 1	Aircraft Type Code compliance matrix table found in F3234/F3234M–17 are not accepted. Applicability will be determined by the Small Airplane Strategic Policy Section.
F3235–17a	Standard Specification for Aircraft Storage Batteries.	**Remove:** Section 4.2 **Remove:** Table 1.	If applying for certification of an airplane with installed lithium batteries, applicants may use the guidance provided by RTCA DO–311A, or may obtain FAA acceptance of a different method of compliance in accordance with § 23.2010. Aircraft Type Code compliance matrix table found in F3235–17a are not accepted. Applicability will be determined by the Small Airplane Strategic Policy Section.
F3236–17	Standard Specification for High Intensity Radiated Field (HIRF) Protection in Small Aircraft.	**Remove:** Table 1 **Revise:** Table 2 400 to 700 Mhz frequency range field strength average value: **Replace:** ''100 volts/meter.'' **With:** ''50 volts/meter.'' **Replace:** Section 4.2.3.3. **With:** FAA Section 4.2.3.3 ''From 40 to 400 MHz, use conducted susceptibility tests, starting at a minimum of 30 mA at 40 MHz, decreasing 20 dB per frequency decade to a minimum of 3 mA at 400 MHz.''.	Aircraft Type Code compliance matrix table found in F3236–17 are not accepted. Applicability will be determined by the Small Airplane Strategic Policy Section.
F3239–19	Standard Specification for Aircraft Electric Propulsion Systems.	FAA does not universally accept F3239–19 due to inexperience with the standard.	Applicants are encouraged to consider proposing F3239–19 for development of their method of compliance for electric propulsion systems on a project-by-project basis. Any method of compliance proposed must establish a level of safety equivalent to certified reciprocating and turbine propulsion systems and receive acceptance by FAA in accordance with § 23.2010.
F3254–19	Standard Specification for Aircraft Interaction of Systems and Structures.	Figures 2, 3 and 4 **Replace:** ''Remote'' **With:** ''10^{-5}.'' **Replace:** ''Extremely Improbable.'' **With:** ''10^{-8}'' for Level 1, 2 and 3 airplanes and with ''10^{-9}'' for Level 4 airplanes''.	Other proposed probabilities will be considered by the FAA on a case by case basis.

TABLE 1—PART 23 ACCEPTED MEANS OF COMPLIANCE BASED ON ASTM CONSENSUS STANDARDS—Continued

ASTM designation No.	ASTM document title	Changes required for FAA acceptance [5]	Additional information [6]
F3309/F3309M–21	Standard Practice for Simplified Safety Assessment of Systems and Equipment in Small Aircraft.	None.	
F3316/F3316M–19	Standard Specification for Electrical Systems for Aircraft with Electric or Hybrid-Electric Propulsion.	FAA does not universally accept F3316/F3316M–19 due to inexperience with the standard. **Remove:** Table 1.	Applicants are encouraged to consider proposing F3316/F3316M–19 for development of their method of compliance for electrical systems installed on airplanes with electric or hybrid-electric propulsion systems on a project-by-project basis. Applicants may obtain FAA acceptance of a different method of compliance in accordance with § 23.2010. Aircraft Type Code compliance matrix table found in F3316/F3316M–19 are not accepted. Applicability will be determined by the Small Airplane Strategic Policy Section.
F3331–18	Standard Practice for Aircraft Water Loads.	None.	
F3367–21	Standard Practice for Simplified Methods for Addressing High-Intensity Radiated Fields (HIRF) and Indirect Effects of Lightning on Aircraft.	**Replace:** paragraph 5.1.1. **With:** Systems that are part of the Type Certificated Engine must be installed in accordance with the engine manufacturer's requirements. The minimum HIRF and lightning qualification in accordance with Sections 8 and 9 of this ASTM practice should be met at the aircraft level, except for engine control systems in Level 1 and 2 airplanes which should meet the following; • HIRF: DO–160, Section 20—R for both radiated and conducted susceptibility. • Lightning: Utilize Guidance in AC 33.28–3 For metallic fuselage DO–160G, Section 22—A3J3L3 (shielded) and A3H3L3 (unshielded). For composite fuselage DO–160G, Section 22—B3K3L3 (shielded) and B3H3L3 (unshielded). Use of lower HIRF and lighting induced voltage & current levels may be acceptable for electronic engine control systems if substantiated at the airplane level (by test in the proposed installation or similar) when exposed to external HIRF environment per AC20–158A and Lightning per AC20–136B; using shielding and grounding of the electronic engine control system and accessories in the given installation.	
F3380–19	Standard Practice for Structural Compliance of Very Light Aeroplanes.	None.	
F3396/F3396M–20	Standard Practice for Aircraft Simplified Loads.	None.	
F3408/F3408M–21	Standard Specification for Aircraft Emergency Parachute Recovery Systems.	None.	
F3432–20a	Standard Practice for Powerplant Instruments.	None.	

TABLE 2—SIDE-BY-SIDE VIEW OF 14 CFR PART 23 REGULATIONS AND ASTM F3264–21 SECTIONS

Part 23 amendment 23–64 regulation(s)	ASTM F3264–21 section(s) [7]	ASTM F3264–21 subsection(s) [8]
23.1457	9.12 Installation of Cockpit Recorders	9.12.1 F3061/F3061M—20 Standard Specification for Systems and Equipment in Small Aircraft. 9.12.1.1 F3228—17 Standard Specification for Flight Data and Voice Recording in Small Aircraft.
23.1459	9.13 Installation of Flight Data Recorders	9.13.1 F3061/F3061M—20 Standard Specification for Systems and Equipment in Small Aircraft. 9.13.1.1 F3228—17 Standard Specification for Flight Data and Voice Recording in Small Aircraft.
23.1529	10.6 Instructions for Continued Airworthiness	10.6.1 F3120/F3120M—20 Standard Specification for Ice Protection for General Aviation. 10.6.2 F3117/F3117M—20 Standard Specification for Crew Interface in Aircraft. 10.6.3 F3408/F3408M—21 Standard Specification for Aircraft Emergency Parachute Recovery Systems.
Subpart B—Flight:		
23.2100	5.1 Weight/Mass and Centre of Gravity	5.1.1 F3082/F3082M—17 Standard Specification for Weights and Centers of Gravity of Aircraft. 5.1.2 F3114—21 Standard Specification for Structures.
23.2105	5.2 Performance Data	5.2.1 F3179/F3179M—20 Standard Specification for Performance of Aircraft.
23.2110	5.3 Stall Speed	5.3.1 F3179/F3179M—20 Standard Specification for Performance of Aircraft.
23.2115	5.4 Takeoff Performance	5.4.1 F3179/F3179M—20 Standard Specification for Performance of Aircraft.
23.2120	5.5 Climb Requirements	5.5.1 F3179/F3179M—20 Standard Specification for Performance of Aircraft.
23.2125	5.6 Climb Information	5.6.1 F3179/F3179M—20 Standard Specification for Performance of Aircraft.
23.2130	5.7 Landing	5.7.1 F3179/F3179M—20 Standard Specification for Performance of Aircraft.
23.2135	5.8 Controllability	5.8.1 F3173/F3173M—21 Standard Specification for Aircraft Handling Characteristics.
23.2140	5.9 Trim	5.9.1 F3173/F3173M—21 Standard Specification for Aircraft Handling Characteristics.
23.2145	5.10 Stability	5.10.1 F3173/F3173M—21 Standard Specification for Aircraft Handling Characteristics.
23.2150	5.11 Stall Characteristics, Stall Warning, and Spins.	5.11.1 F3180/F3180M—19 Standard Specification for Low-Speed Flight Characteristics of Aircraft.
23.2155	5.12 Ground and Water Handling Characteristics.	5.12.1 F3173/F3173M—21 Standard Specification for Aircraft Handling Characteristics.
23.2160	5.13 Vibration, Buffeting, and High-Speed Characteristics.	5.13.1 F3173/F3173M—21 Standard Specification for Aircraft Handling Characteristics.
23.2165	5.14 Performance and Flight Characteristics Requirements for Flight in Icing Conditions.	5.14.1 F3120/F3120M—20 Standard Specification for Ice Protection for General Aviation Aircraft.
Subpart C—Structures:		
23.2200	6.1 Structural Design Envelope	6.1.1 F3116/F3116M—18e2 Standard Specification for Design Loads and Conditions. 6.1.1.1 F3396/F3396M—20 Standard Practice for Aircraft Simplified Loads.
23.2205	6.2 Interaction of Systems and Structure	6.2.1 F3254—19 Standard Specification for Aircraft Interaction of Systems and Structures.
23.2210	6.3 Structural Design Loads	6.3.1 F3116/F3116M—18e2 Standard Specification for Design Loads and Conditions. 6.3.1.1 F3396/F3396M—20 Standard Practice for Aircraft Simplified Loads. 6.3.2 F3408/F3408M—21 Standard Specification for Aircraft Emergency Parachute Recovery Systems.
23.2215	6.4 Flight Load Conditions	6.4.1 F3116/F3116M—18e2 Standard Specification for Design Loads and Conditions. 6.4.1.1 F3396/F3396M—20 Standard Practice for Aircraft Simplified Loads.
23.2220	6.5 Ground and Water Load Conditions	6.5.1 F3116/F3116M—18e2 Standard Specification for Design Loads and Conditions. 6.5.1.1 F3331—18 Standard Practice for Aircraft Water Loads.
23.2225	6.6 Component Loading Conditions	6.6.1 F3061/F3061M—20 Standard Specification for Systems and Equipment in Small Aircraft. 6.6.1.1 F3232/F3232M—20 Standard Specification for Flight Controls in Small Aircraft. 6.6.2 F3116/F3116M—18e2 Standard Specification for Design Loads and Conditions.

TABLE 2—SIDE-BY-SIDE VIEW OF 14 CFR PART 23 REGULATIONS AND ASTM F3264–21 SECTIONS—Continued

Part 23 amendment 23–64 regulation(s)	ASTM F3264–21 section(s) [7]	ASTM F3264–21 subsection(s) [8]
		6.6.2.1 F3396/F3396M—20 Standard Practice for Aircraft Simplified Loads.
23.2230	6.7 Limit and Ultimate Loads	6.7.1 F3114—21 Standard Specification for Structures. 6.7.2 F3408/F3408M—21 Standard Specification for Aircraft Emergency Parachute Recovery Systems.
23.2235	6.8 Structural Strength	6.8.1 F3114—21 Standard Specification for Structures. 6.8.2 F3408/F3408M—21 Standard Specification for Aircraft Emergency Parachute Recovery Systems.
23.2240	6.9 Structural Durability	6.9.1 F3061/F3061M—20 Standard Specification for Systems and Equipment in Small Aircraft. 6.9.2 F3066/F3066M –18 Standard Specification for Aircraft Powerplant Installation Hazard Mitigation. 6.9.3 F3115/F3115M—20 Standard Specification for Structural Durability for Small Aeroplanes. 6.9.3.1 F3380 –19 Standard Practice for Structural Compliance of Very Light Aeroplanes. 6.9.4 F3116/F3116M—18e2 Standard Specification for Design Loads and Conditions.
23.2245	6.10 Aeroelasticity	6.10.1 F3061/F3061M—20 Standard Specification for Systems and Equipment in Small Aircraft. 6.10.2 F3093/F3093M—21 Standard Specification for Aeroelasticity Requirements.
23.2250	6.11 Design and Construction Principles	6.11.1 F3061/F3061M—20 Standard Specification for Systems and Equipment in Small Aircraft. 6.11.1.1 F3232/F3232M—20 Standard Specification for Flight Controls in Small Aircraft. 6.11.2 F3114—21 Standard Specification for Structures. 6.11.2.1 F3380—19 Standard Practice for Structural Compliance of Very Light Aeroplanes. 6.11.3 F3408/F3408M—21 Standard Specification for Aircraft Emergency Parachute Recovery Systems.
23.2255	6.12 Protection of Structure	6.12.1 F3061/F3061M—20 Standard Specification for Systems and Equipment in Small Aircraft. 6.12.1.1 F3232/F3232M—20 Standard Specification for Flight Controls in Small Aircraft. 6.12.2 F3114—21 Standard Specification for Structures. 6.12.2.1 F3380—19 Standard Practice for Structural Compliance of Very Light Aeroplanes. 6.12.3 F3066/F3066M—18 Standard Specification for Aircraft Powerplant Installation Hazard Mitigation. 6.12.4 F3408/F3408M—21 Standard Specification for Aircraft Emergency Parachute Recovery Systems.
23.2260	6.13 Materials and Processes	6.13.1 F3114—21 Standard Specification for Structures. 6.13.1.1 F3380—19 Standard Practice for Structural Compliance of Very Light Aeroplanes. 6.13.2 F3408/F3408M—21 Standard Specification for Aircraft Emergency Parachute Recovery Systems.
23.2265	6.14 Special Factors of Safety	6.14.1 F3061/F3061M—20 Standard Specification for Systems and Equipment in Small Aircraft. 6.14.2 F3114—21 Standard Specification for Structures. 6.14.2.1 F3380 –19 Standard Practice for Structural Compliance of Very Light Aeroplanes.
23.2270	6.15 Emergency Conditions	6.15.1 F3061/F3061M—20 Standard Specification for Systems and Equipment in Small Aircraft. 6.15.1.1 F3232/F3232M—20 Standard Specification for Flight Controls in Small Aircraft. 6.15.2 F3083/F3083M—20a Standard Specification for Emergency Conditions, Occupant Safety and Accommodations. 6.15.3 F3408/F3408M—21 Standard Specification for Aircraft Emergency Parachute Recovery Systems.
Subpart D—Design and Construction		
23.2300	7.1 Flight Control Systems	7.1.1 F3061/F3061M—20 Standard Specification for Systems and Equipment in Small Aircraft. 7.1.1.1 F3232/F3232M—20 Standard Specification for Flight Controls in Small Aircraft. 7.1.2 F3066/F3066M—18 Standard Specification for Aircraft Powerplant Installation Hazard Mitigation. 7.1.3 F3117/F3117M—20 Standard Specification for Crew Interface.

TABLE 2—SIDE-BY-SIDE VIEW OF 14 CFR PART 23 REGULATIONS AND ASTM F3264–21 SECTIONS—Continued

Part 23 amendment 23–64 regulation(s)	ASTM F3264–21 section(s) [7]	ASTM F3264–21 subsection(s) [8]
23.2305	7.2 Landing Gear Systems	7.2.1 F3061/F3061M—20 Standard Specification for Systems and Equipment in Small Aircraft.
23.2310	7.3 Buoyancy for Seaplanes and Amphibians	7.3.1 F3061/F3061M—20 Standard Specification for Systems and Equipment in Small Aircraft.
23.2315	7.4 Means of Egress and Emergency Exits	7.4.1 F3061/F3061M—20 Standard Specification for Systems and Equipment in Small Aircraft. 7.4.2 F3083/F3083M—20a Standard Specification for Emergency Conditions, Occupant Safety and Accommodations.
23.2320	7.5 Occupant Physical Environment	7.5.1 F3061/F3061M—20 Standard Specification for Systems and Equipment in Small Aircraft. 7.5.1.1 F3227/F3227M—21 Standard Specification for Environmental Systems in Small Aircraft. 7.5.2 F3083/F3083M—20a Standard Specification for Emergency Conditions, Occupant Safety and Accommodations. 7.5.3 F3114—21 Standard Specification for Structures. 7.5.4 F3117/F3117M—20 Standard Specification for Crew Interface in Aircraft.
23.2325	7.6 Fire Protection	7.6.1 F3061/F3061M—20 Standard Specification for Systems and Equipment in Small Aircraft. 7.6.1.1 F3231/F3231M—21 Standard Specification for Electrical Systems for Aircraft with Combustion Engine Electrical Power Generation. 7.6.1.2 F3234/F3234M—17 Standard Specification for Exterior Lighting in Small Aircraft. 7.6.1.3 F3316/F3316M—19 Standard Specification for Electrical Systems for Aircraft with Electric or Hybrid-Electric Propulsion. 7.6.2 F3066/F3066M—18 Standard Specification for Aircraft Powerplant Installation Hazard Mitigation. 7.6.3 F3083/F3083M—20a Standard Specification for Emergency Conditions, Occupant Safety and Accommodations. 7.6.4 F3408/F3408M—21 Standard Specification for Aircraft Emergency Parachute Recovery Systems.
23.2330	7.7 Fire Protection in Designated Fire Zones and Adjacent Areas.	7.7.1 F3061/F3061M—20 Standard Specification for Systems and Equipment in Small Aircraft. 7.7.1.1 F3231/F3231M—21 Standard Specification for Electrical Systems for Aircraft with Combustion Engine Electrical Power Generation. 7.7.2 F3066/F3066M—18 Standard Specification for Aircraft Powerplant Installation Hazard Mitigation. 7.7.3 F3114—21 Standard Specification for Structures.
23.2335	7.8 Lightning Protection	7.8.1 F3061/F3061M—20 Standard Specification for Systems and Equipment in Small Aircraft.
Subpart E—Powerplant:		
23.2400	8.1 Powerplant Installation	8.1.1 F3062/F3062M—20 Standard Specification for Aircraft Powerplant Installation. 8.1.2 F3063/F3063M—20 Standard Specification for Aircraft Fuel and Energy Storage and Delivery. 8.1.3 F3064/F3064M—21 Standard Specification for Aircraft Powerplant Control, Operation, and Indication. 8.1.4 F3065/F3065M—21a Standard Specification for Aircraft Propeller System Installation. 8.1.5 F3066/F3066M—18 Standard Specification for Aircraft Powerplant Installation Hazard Mitigation. 8.1.6 F3239—19 Standard Specification for Aircraft Electric Propulsion Systems.
23.2405	8.2 Power or Thrust Control Systems	8.2.1 F3062/F3062M—20 Standard Specification for Aircraft Powerplant Installation. 8.2.2 F3064/F3064M—21 Standard Specification for Aircraft Powerplant Control, Operation, and Indication. 8.2.3 F3065/F3065M—21a Standard Specification for Aircraft Propeller System Installation. 8.2.4 F3117/F3117M—20 Standard Specification for Crew Interface.
23.2410	8.3 Powerplant Installation Hazard Assessment.	8.3.1 F3061/F3061M—20 Standard Specification for Systems and Equipment in Small Aircraft. 8.3.2 F3062/F3062M—20 Standard Specification for Aircraft Powerplant Installation. 8.3.3 F3063/F3063M—20 Standard Specification for Aircraft Fuel and Energy Storage and Delivery. 8.3.4 F3064/F3064M—21 Standard Specification for Aircraft Powerplant Control, Operation, and Indication.

TABLE 2—SIDE-BY-SIDE VIEW OF 14 CFR PART 23 REGULATIONS AND ASTM F3264–21 SECTIONS—Continued

Part 23 amendment 23–64 regulation(s)	ASTM F3264–21 section(s) [7]	ASTM F3264–21 subsection(s) [8]
		8.3.5 F3065/F3065M—21a Standard Specification for Aircraft Propeller System Installation. 8.3.6 F3066/F3066M—18 Standard Specification for Aircraft Powerplant Installation Hazard Mitigation. 8.3.7 F3117/F3117M—20 Standard Specification for Crew Interface in Aircraft. 8.3.8 F3239—19 Standard Specification for Aircraft Electric Propulsion Systems.
23.2415	8.4 Powerplant Installation Ice Protection	8.4.1 F3062/F3062M—20 Standard Specification for Aircraft Powerplant Installation. 8.4.2 F3063/F3063M—20 Standard Specification for Aircraft Fuel and Energy Storage and Delivery. 8.4.3 F3066/F3066M—18 Standard Specification for Aircraft Powerplant Installation Hazard Mitigation. 8.4.4 F3239—19 Standard Specification for Aircraft Electric Propulsion Systems.
23.2420	8.5 Reversing Systems	8.5.1 F3062/F3062M—20 Standard Specification for Aircraft Powerplant Installation. 8.5.2 F3065/F3065M—21a Standard Specification for Aircraft Propeller System Installation. 8.5.3 F3239—19 Standard Specification for Aircraft Electric Propulsion Systems.
23.2425	8.6 Powerplant Operational Characteristics	8.6.1 F3062/F3062M—20 Standard Specification for Aircraft Powerplant Installation. 8.6.2 F3064/F3064M—21 Standard Specification for Aircraft Powerplant Control, Operation, and Indication. 8.6.3 F3065/F3065M—21a Standard Specification for Aircraft Propeller System Installation. 8.6.4 F3066/F3066M—18 Standard Specification for Aircraft Powerplant Installation Hazard Mitigation. 8.6.5 F3117/F3117M—20 Standard Specification for Crew Interface in Aircraft. 8.6.6 F3239—19 Standard Specification for Aircraft Electric Propulsion Systems.
23.2430	8.7 Fuel and Energy Storage and Distribution Systems.	8.7.1 F3062/F3062M—20 Standard Specification for Aircraft Powerplant Installation. 8.7.2 F3063/F3063M—20 Standard Specification for Aircraft Fuel and Energy Storage and Delivery. 8.7.3 F3064/F3064M—21 Standard Specification for Aircraft Powerplant Control, Operation, and Indication. 8.7.4 F3066/F3066M—18 Standard Specification for Aircraft Powerplant Installation Hazard Mitigation. 8.7.5 F3114—21 Standard Specification for Structures. 8.7.6 F3239—19 Standard Specification for Aircraft Electric Propulsion Systems.
23.2435	8.8 Powerplant Induction, Exhaust, and Support Systems.	8.8.1 F3062/F3062M—20 Standard Specification for Aircraft Powerplant Installation. 8.8.2 F3239—19 Standard Specification for Aircraft Electric Propulsion Systems.
23.2440	8.9 Powerplant Installation Fire Protection	8.9.1 F3061/F3061M—20 Standard Specification for Systems and Equipment in Small Aircraft. 8.9.2 F3062/F3062M—20 Standard Specification for Aircraft Powerplant Installation. 8.9.3 F3063/F3063M—20 Standard Specification for Aircraft Fuel an Energy Storage and Delivery. 8.9.4 F3064/F3064M—21 Standard Specification for Aircraft Powerplant Control, Operation, and Indication. 8.9.5 F3066/F3066M—18 Standard Specification for Aircraft Powerplant Installation Hazard Mitigation. 8.9.6 F3239—19 Standard Specification for Aircraft Electric Propulsion Systems.
Subpart F—Equipment:		
23.2500	9.1 Systems and Equipment Function—Requirements.	9.1.1 F3061/F3061M—20 Standard Specification for Systems and Equipment in Small Aircraft. 9.1.1.1 F3231/F3231M—21 Standard Specification for Electrical Systems for Aircraft with Combustion Engine Electrical Power Generation. 9.1.1.1(a) F3235—17a Standard Specification for Aircraft Storage Batteries.

TABLE 2—SIDE-BY-SIDE VIEW OF 14 CFR PART 23 REGULATIONS AND ASTM F3264–21 SECTIONS—Continued

Part 23 amendment 23–64 regulation(s)	ASTM F3264–21 section(s) [7]	ASTM F3264–21 subsection(s) [8]
		9.1.1.2 F3232/F3232M—20 Standard Specification for Flight Controls in Small Aircraft. 9.1.1.3 F3233/F3233M—21 Standard Specification for Instrumentation in Small Aircraft. 9.1.1.3(a) F3229/F3229M—17 Standard Practice for Static Pressure System Tests in Small Aircraft. 9.1.1.4 F3316/F3316M—19 Standard Specification for Electrical Systems for Aircraft with Electric or Hybrid-Electric Propulsion. 9.1.2 F3064/F3064M—21 Standard Specification for Aircraft Powerplant Control, Operation, and Indication. 9.1.3 F3066/F3066M—18 Standard Specification for Aircraft Powerplant Installation Hazard Mitigation. 9.1.4 F3117/F3117M—20 Standard Specification for Crew Interface in Aircraft. 9.1.5 F3120/F3120M—20 Standard Specification for Ice Protection for General Aviation Aircraft. 9.1.6 F3408/F3408M—21 Standard Specification for Aircraft Emergency Parachute Recovery Systems.
23.2505	9.2 Equipment Function and Installation Requirements.	9.2.1 F3061/F3061M—20 Standard Specification for Systems and Equipment in Small Aircraft. 9.2.1.1 F3231/F3231M—21 Standard Specification for Electrical Systems for Aircraft with Combustion Engine Electrical Power Generation. 9.2.1.1(a) F3235—17a Standard Specification for Aircraft Storage Batteries. 9.2.1.2 F3232/F3232M—20 Standard Specification for Flight Controls in Small Aircraft. 9.2.1.3 F3233/F3233M—21 Standard Specification for Instrumentation in Small Aircraft. 9.2.1.4 F3316/F3316M—19 Standard Specification for Electrical Systems for Aircraft with Electric or Hybrid-Electric Propulsion. 9.2.2 F3408/F3408M—21 Standard Specification for Aircraft Emergency Parachute Recovery Systems.
23.2510	9.3 Equipment, Systems, and Installation	9.3.1 F3061/F3061M—20 Standard Specification for Systems and Equipment in Small Aircraft. 9.3.1.1 F3230—20a Standard Practice for Safety Assessments of Systems and Equipment in Small Aircraft. 9.3.1.2 F3233/F3233M—21 Standard Specification for Instrumentation in Small Aircraft. 9.3.1.3 F3227/F3227M—21 Standard Specification for Environmental Systems in Small Aircraft. 9.3.1.4 F3309/F3309M—21 Standard Practice for Simplified Safety Assessment of Systems and Equipment in Small Aircraft. 9.3.2 F3408/F3408M—21 Standard Specification for Aircraft Emergency Parachute Recovery Systems.
23.2515	9.4 Electrical and Electronic System Lightning Protection.	9.4.1 F3061/F3061M—20 Standard Specification for Systems and Equipment in Small Aircraft. 9.4.1.1 F3367—21 Standard Practice for Simplified Methods for Addressing High-Intensity Radiated Fields (HIRF) and Indirect Effects of Lightning on Aircraft.
23.2520	9.5 High Intensity Radiated Fields (HIRF) Protection.	9.5.1 F3061/F3061M—20 Standard Specification for Systems and Equipment in Small Aircraft. 9.5.1.1 F3236—17 Standard Specification for High Intensity Radiated Field (HIRF) Protection in Small Aircraft. 9.5.1.2 F3367—21 Standard Practice for Simplified Methods for Addressing High-Intensity Radiated Fields (HIRF) and Indirect Effects of Lightning on Aircraft.
23.2525	9.6 System Power Generation, Storage, and Distribution.	9.6.1 F3061/F3061M—20 Standard Specification for Systems and Equipment in Small Aircraft. 9.6.1.1 F3231/F3231M—21 Standard Specification for Electrical Systems for Aircraft with Combustion Engine Electrical Power Generation. 9.6.1.1(a) F2490—20 Standard Guide for Aircraft Electrical Load and Power Source Capacity Analysis. 9.6.1.2 F3233/F3233M—21 Standard Specification for Instrumentation in Small Aircraft. 9.6.1.3 F3316/F3316M—19 Standard Specification for Electrical Systems for Aircraft with Electric or Hybrid-Electric Propulsion.

TABLE 2—SIDE-BY-SIDE VIEW OF 14 CFR PART 23 REGULATIONS AND ASTM F3264–21 SECTIONS—Continued

Part 23 amendment 23–64 regulation(s)	ASTM F3264–21 section(s) [7]	ASTM F3264–21 subsection(s) [8]
		9.6.1.3(a) F2490—20 Standard Guide for Aircraft Electrical Load and Power Source Capacity Analysis.
		9.6.2 F3117/F3117M—20 Standard Specification for Crew Interface in Aircraft.
		9.6.3 F3120/F3120M—20 Standard Specification for Ice Protection for General Aviation Aircraft.
23.2530	9.7 External and Cockpit Lighting	9.7.1 F3061/F3061M—20 Standard Specification for Systems and Equipment in Small Aircraft.
		9.7.1.1 F3233/F3233M—21 Standard Specification for Instrumentation in Small Aircraft.
		9.7.1.2 F3234/F3234M—17 Standard Specification for Exterior Lighting in Small Aircraft.
		9.7.2 F3117/F3117M—20 Standard Specification for Crew Interface in Aircraft.
		9.7.3 F3120/F3120M—20 Standard Specification for Ice Protection for General Aviation Aircraft.
23.2535	9.8 Safety Equipment	9.8.1 F3061/F3061M—20 Standard Specification for Systems and Equipment in Small Aircraft.
		9.8.2 F3083/F3083M—20a Standard Specification for Emergency Conditions, Occupant Safety and Accommodations.
		9.8.3 F3117/F3117M—20 Standard Specification for Crew Interface.
23.2540	9.9 Flight in Icing Conditions	9.9.1 F3061/F3061M—20 Standard Specification for Systems and Equipment in Small Aircraft.
		9.9.1.1 F3233/F3233M—21 Standard Specification for Instrumentation in Small Aircraft.
		9.9.2 F3120/F3120M—20 Standard Specification for Ice Protection for General Aviation Aircraft.
23.2545	9.10 Pressurized System Elements	9.10.1 F3061/F3061M—20 Standard Specification for Systems and Equipment in Small Aircraft.
		9.10.2 F3229/F3229M—17 Standard Practice for Static Pressure System Tests in Small Aircraft.
23.2550	9.11 Equipment Containing High-Energy Rotors.	9.11.1 F3061/F3061M—20 Standard Specification for Systems and Equipment in Small Aircraft.
Subpart G—Flight crew Interface and Other Information:		
23.2600	10.1 Flight crew Compartment Interface	10.1.1 F3061/F3061M—20 Standard Specification for Systems and Equipment in Small Aircraft.
		10.1.1.1 F3232/F3232M—20 Standard Specification for Flight Controls in Small Aircraft.
		10.1.2 F3062/F3062M—20 Standard Specification for Aircraft Powerplant Installation.
		10.1.3 F3063/F3063M—20 Standard Specification for Aircraft Fuel and Energy Storage and Delivery.
		10.1.4 F3064/F3064M—21 Standard Specification for Aircraft Powerplant Control, Operation, and Indication.
		10.1.5 F3114—21 Standard Specification for Structures.
		10.1.6 F3117/F3117M—20 Standard Specification for Crew Interface in Aircraft.
		10.1.7 F3408/F3408M—21 Standard Specification for Aircraft Emergency Parachute Recovery Systems.
23.2605	10.2 Installation and Operation Information	10.2.1 F3061/F3061M—20 Standard Specification for Systems and Equipment in Small Aircraft.
		10.2.1.1 F3227/F3227M—21 Standard Specification for Environmental Systems in Small Aircraft.
		10.2.1.2 F3231/F3231M—21 Standard Specification for Electrical Systems for Aircraft with Combustion Engine Electrical Power Generation.
		10.2.1.3 F3232/F3232M—20 Standard Specification for Flight Controls in Small Aircraft.
		10.2.1.4 F3233/F3233M—21 Standard Specification for Instrumentation in Small Aircraft.
		10.2.2 F3062/F3062M—20 Standard Specification for Aircraft Powerplant Installation.
		10.2.3 F3063/F3063M—20 Standard Specification for Aircraft Fuel and Energy Storage and Delivery.
		10.2.4 F3064/F3064M—21 Standard Specification for Aircraft Powerplant Control, Operation, and Indication.
		10.2.5 F3117/F3117M—20 Standard Specification for Crew Interface in Aircraft.

TABLE 2—SIDE-BY-SIDE VIEW OF 14 CFR PART 23 REGULATIONS AND ASTM F3264–21 SECTIONS—Continued

Part 23 amendment 23–64 regulation(s)	ASTM F3264–21 section(s) [7]	ASTM F3264–21 subsection(s) [8]
		10.2.6 F3120/F3120M—20 Standard Specification for Ice Protection for General Aviation Aircraft.
		10.2.7 F3408/F3408M—21 Standard Specification for Aircraft Emergency Parachute Recovery Systems.
23.2610	10.3 Instrument Markings, Control Markings, and Placards:.	10.3.1 F3061/F3061M—20 Standard Specification for Systems and Equipment in Small Aircraft.
		10.3.2 F3063/F3063M—20 Standard Specification for Aircraft Fuel and Energy Storage and Delivery.
		10.3.3 F3117/F3117M—20 Standard Specification for Crew Interface in Aircraft.
		10.3.4 F3120/F3120M—20 Standard Specification for Ice Protection for General Aviation Aircraft.
		10.3.5 F3408/F3408M—21 Standard Specification for Aircraft Emergency Parachute Recovery Systems.
23.2615	10.4 Flight, Navigation, and Powerplant Instruments.	10.4.1 F3061/F3061M—20 Standard Specification for Systems and Equipment in Small Aircraft.
		10.4.2 F3062/F3062M—20 Standard Specification for Aircraft Powerplant Installation.
		10.4.3 F3064/F3064M—21 Standard Specification for Aircraft Powerplant Control, Operation, and Indication.
		10.4.3.1 F3432—20a Standard Practice for Powerplant Instruments.
		10.4.4 F3117/F3117M—20 Standard Specification for Crew Interface in Aircraft.
23.2620	5.15 Operating Limitations	5.15.1 F3174/F3174M—19 Standard Specification for Establishing Operating Limitations and Information for Aeroplanes.
	10.5 Airplane Flight Manual	5.15.2 F3408/F3408M—21 Standard Specification for Aircraft Emergency Parachute Recovery Systems.
		10.5.1 F3117/F3117M—20 Standard Specification for Crew Interface in Aircraft.
		10.5.2 F3174/F3174M—19 Standard Specification for Establishing Operating Limitations and Information for Aeroplanes.
		10.5.3 F3120/F3120M—20 Standard Specification for Ice Protection for General Aviation Aircraft.
		10.5.4 F3408/F3408M—21 Standard Specification for Aircraft Emergency Parachute Recovery Systems.

Editorial, Reapproval, Revision or Withdrawal

ASTM policy is that a consensus standard should be reviewed in its entirety by the responsible subcommittee and must be balloted for reapproval, revision, or withdrawal, within five years of its last approval date. When an ASTM standard is reapproved, that reapproval is denoted by the year in parentheses (*e.g.,* F2427–05a(2013)).

This date indicates the completion of a review cycle with no technical changes made to the standard. ASTM issues editorial changes denoted by a superscript epsilon in the standard designation (*e.g.,* F3235–17ε1). This indicates information was corrected, and it did not change the meaning or intent of a standard. Any means of compliance accepted by this document, that is based on a standard later reapproved or editorially changed, is also considered accepted and without the need for a notice in the **Federal Register**.

ASTM revises a standard to make changes to its technical content. Revisions to consensus standards serving as the basis for means of compliance accepted by this document, will not be automatically accepted, and will require further FAA acceptance in order for the revisions to be an accepted means of compliance.

Availability

ASTM International Standard Designation F3264–21, ''Standard Specification for Normal Category Aeroplanes Certification,'' is available for online reading at *https://www.astm.org/READINGLIBRARY/*. ASTM copyrights these consensus standards, and charges the public a fee for service. Individual downloads or reprints of a standard (single or multiple copies, or special compilations and other related technical information) may be obtained through *www.astm.org* or contacting ASTM at (610) 832–9585 (phone), (610) 832–9555 (fax), or through *service@astm.org* (email). To inquire about consensus standard content and/or membership or about ASTM Offices abroad, contact Joe Koury, Staff Manager for Committee F44 on General Aviation Aircraft: (610) 832–9804, *jkoury@astm.org*.

The FAA maintains a list of accepted means of compliance on the FAA website at *https://www.faa.gov/aircraft/air_cert/design_approvals/small_airplanes/small_airplanes_regs/*.

Issued in Kansas City, Missouri, on March 2, 2022.

[7] The ASTM F3264–21 Section(s) provides a means of compliance intended to be used on projects for traditional part 23 airplanes, not for novel designs. Novel designs require evaluation and possible modification of the means of compliance.

[8] The FAA does not accept the Aircraft Type Code compliance matrix tables included in F3061/F3061M–20, F3227/F3227M–21, F3228–17, F3229/F3229M–17, F3230–20a, F3231/F3231M–21, F3232/F3232M–20, F3233/F3233M–21, F3234/F3234M–17, F3235–17a, F3236–17, and F3316/F3316M–19. Applicability will be determined by the Small Airplane Strategic Policy Section.

Patrick Mullen,

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

[FR Doc. 2022–04845 Filed 3–10–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0959; Project Identifier AD–2021–00830–E; Amendment 39–21975; AD 2022–06–09]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Division Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2019–03–01 and AD 2021–05–51 for certain Pratt & Whitney Division (PW) PW4074, PW4074D, PW4077, PW4077D, PW4084D, PW4090, and PW4090–3 model turbofan engines. AD 2019–03–01 required performing initial and repetitive thermal acoustic image (TAI) inspections for cracks in certain 1st-stage low-pressure compressor (LPC) blades and removal of those blades that fail inspection. AD 2021–05–51 required performing a one-time TAI inspection for cracks in certain 1st-stage LPC blades and removal of those blades that fail inspection. This AD was prompted by three in-flight failures of a 1st-stage LPC blade, with one failure resulting in an engine fire during flight, and subsequent manufacturer publication of service information specifying improved inspections for three critical locations on the 1st-stage LPC blade. This AD requires initial and repetitive ultrasonic (UT) inspections and TAI inspections for cracks in certain 1st-stage LPC blades and removal of those blades that fail inspection. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 15, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 15, 2022.

ADDRESSES: For service information identified in this final rule, contact Pratt & Whitney Division, 400 Main Street, East Hartford, CT 06118; phone: (860) 565–0140; email: *help24@prattwhitney.com;* website: *https://connect.prattwhitney.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0959.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov*by searching for and locating Docket No. FAA–2021–0959; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Carol Nguyen, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7655; fax: (781) 238–7199; email: *carol.nguyen@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2019–03–01, Amendment 39–19553 (84 FR 4320, February 15, 2019) (AD 2019–03–01), and AD 2021–05–51, Amendment 39–21470 (86 FR 13445, March 9, 2021) (AD 2021–05–51). AD 2019–03–01 and AD 2021–05–51 applied to certain PW PW4074, PW4074D, PW4077, PW4077D, PW4084D, PW4090, and PW4090–3 model turbofan engines. The NPRM published in the **Federal Register** on December 28, 2021 (86 FR 73699). The NPRM was prompted by the manufacturer developing an improved UT inspection for the three critical locations on the 1st-stage LPC blade, two at the mid span region of the blade and one at the flow path region of the blade, following three in-flight failures of a 1st-stage LPC blade, with one failure resulting in an engine fire during flight. The manufacturer published Pratt & Whitney Alert Service Bulletin (ASB) PW4G–112–A72–361, dated October 15, 2021, which provides instructions for performing both the improved UT inspection and the TAI inspection. The manufacturer also determined that it was necessary to adjust the initial TAI inspection threshold and lower the repetitive TAI inspection interval on the 1st-stage LPC blades to address the unsafe condition. In the NPRM, the FAA proposed to require initial and repetitive UT inspections and TAI inspections for cracks in certain 1st-stage LPC blades and removal of those blades that fail inspection.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from five commenters. The commenters were Air Line Pilots Association, International (ALPA), All Nippon Airways (ANA), The Boeing Company (Boeing), Japan Airlines (JAL), and United Airlines (UAL). The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Revise Note and Add Additional Note in Required Actions

UAL requested that the FAA revise Note 2 to paragraph (g)(1)(ii) of the NPRM [Note 1 to paragraph (g)(1)(ii) of this AD] to ''The FAA-approved TAI inspection method and the vendors that can perform the FAA-approved TAI inspection are specified in the Accomplishment Instructions section and Vendor Services section of PW4G–112–A72–361, respectively.'' UAL also requested that the FAA add the same note to paragraph (g)(2)(iii) of this AD.

The FAA agrees and revised Note 1 to paragraph (g)(1)(ii) of this AD and added Note 2 to paragraph (g)(2)(iii) to this AD, as requested by UAL.

Request To Change the Initial Compliance Time to Before Revenue Flight

ANA requested that the FAA change the Required Actions, paragraph (g)(1) Initial 1st-stage LPC Blade Inspections, from ''before further flight after the effective of this AD'' to ''before the next revenue flight'' to clarify the ferry flight requirement.

Similarly, JAL requested the FAA change the Required Actions, paragraph (g)(1) Initial 1st-stage LPC Blade Inspections, from ''before further flight after the effective of this AD'' to ''before the next revenue flight'' or ''before further flight except the ferry flight without passenger and cargos.''

The FAA disagrees with changing the initial compliance in paragraph (g) of this AD as requested by ANA and JAL. The FAA has determined it is necessary to require certain actions prior to any flight, except as permitted in paragraph (i), Special Flight Permit, of this AD.

Request To Add Aircraft Maintenance Manual Task to Special Flight Permit

ANA and UAL requested that paragraph (h)(2) of the proposed AD (paragraph (i)(2) of this AD) include Task 29–11–00–710–806 of the Boeing 777–200/300 Aircraft Maintenance Manual as an acceptable method for accomplishing the functional check of the left and right hydraulic pump shutoff valves.

The FAA agrees and has added Task 29–11–00–710–806 of the Boeing 777–200/300 Aircraft Maintenance Manual to Note 3 to paragraph (i)(2) of this AD as guidance for accomplishing the actions in paragraph (i)(2), Special Flight Permit, of this AD.

Request To Add Certain Exceptions for Ferry Flights

JAL requested that the FAA revise the AD to include certain exceptions for ferry flights. JAL stated it is planning to ferry affected airplanes to a storage point in the United States. JAL commented that although the local authority in Japan provides regulatory requirements for special flight permissions which are similar to 14 CFR 21.197, Special flight permits, the Japanese regulatory requirements do not include ''to a point of storage'' language for the purpose of the flights. JAL proposed to add the following wording to paragraphs (c) and (g), Applicability and Required Actions, respectively, of this AD, ''except for ferry flights, without passenger and cargo, of the airplanes on which the actions specified in paragraphs (h)(1) and (h)(2) of this AD [paragraphs (i)(1) and (2) of this AD] have been done.''

The FAA disagrees with revising paragraph (c) Applicability or paragraph (g) Required Actions of this AD in response to JAL's comment. Paragraph (i), Special Flight Permit, provides that special flight permits, as described in 14 CFR 21.197 and 21.199, are permitted provided that the actions in paragraphs (i)(1) and (2) of this AD have first been accomplished. 14 CFR 21.197(a)(1) provides, in relevant part, that a special flight permit may be issued for flying the aircraft to a base where repairs, alterations, or maintenance are to be performed, or to a point of storage. The requested change is already permitted by this AD. The FAA did not change this AD as a result of this comment.

Request To Provide a Threshold for the Special Flight Permit

JAL and UAL requested that the FAA provide a threshold in paragraph (h)(1) of the proposed AD [paragraph (i)(1) of this AD] for the flow path UT inspection of the 1st-stage LPC blades for cracking prior to obtaining a special flight permit. JAL suggested a threshold of 275 flight cycles (FCs) since the last flow path UT inspection for 1st-stage LPC blades that have zero cycles since new (CSN) and also for 1st-stage LPC blades that have accumulated any number of CSN greater than zero.

UAL stated that omitting a compliance time in paragraph (h) of the proposed AD for the special flight permits creates ambiguity regarding when and how often the flow path UT inspection is required for special flight permits. UAL suggested a threshold of 275 FCs since the last flow path UT inspection.

The FAA agrees to add a threshold of 275 FCs to paragraph (i)(1) of this AD. This allows airplanes with 1st-stage LPC blades that have accumulated 275 CSN or fewer to be eligible for a special flight permit.

Request To Define Part Eligible for Installation

JAL requested that the FAA define the 1st-stage LPC blade eligible for installation.

The FAA agrees and added paragraph (h) to this AD to define a part eligible for installation.

Request To Clarify the Use of Revised Non-Destructive Inspection Procedures (NDIPs)

JAL requested clarification for the use of revised NDIPs for the flow path UT inspection of the 1st-stage LPC blades specified in paragraph (g)(1), (g)(2), and (h)(1) of the proposed AD (paragraph (g)(1), (g)(2), and (i)(1) of this AD). JAL commented that Pratt & Whitney ASB PW4G–112–A72–361, dated October 15, 2021, references the UT inspection procedures in NDIP 1238, NDIP–1240, and NDIP–1241, which are currently at the original version. JAL asked if the submission of an alternative method of compliance (AMOC) request is necessary if the NDIPs are later revised to meet the requirements in paragraph (g)(1), (g)(2), and (h)(1) of the proposed AD (paragraph (g)(1), (g)(2), and (i)(1) of this AD).

Pratt & Whitney Alert Service Bulletin PW4G–112–A72–361, dated October 15, 2021, requires the latest FAA-approved revision of NDIP–1238, NDIP–1240, and NDIP–1241 at the time the initial inspection is accomplished. Furthermore, the FAA has provided credit for accomplishment of the flow path and mid span UT inspection identified in paragraph (g)(1), and (i)(1) of this AD using the service information specified in paragraph (j) of this AD.

Support for the AD

ALPA and Boeing expressed support for the AD as written.

Conclusion

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed Pratt & Whitney ASB PW4G–112–A72–361, dated October 15, 2021. This ASB specifies procedures for performing the TAI and UT inspections of 1st-stage LPC blades. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Other Related Service Information

The FAA reviewed ''Engine-Driven Pump (EDP) Shutoff Valve Check'' (Subtasks 26–21–00–200–018, 26–21–00–200–019, 26–21–00–840–022, and Task 29–11–00–710–806) of Boeing 777–200/300 Aircraft Maintenance Manual, dated September 5, 2021. The service information specifies procedures for performing the engine-driven pump shutoff valve functional check.

Costs of Compliance

The FAA estimates that this AD affects 108 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Perform UT flow path inspection of 1st-stage LPC blades.	15 work-hours × $85 per hour = $1,275	$0	$1,275	$137,700
Perform UT mid span inspection of 1st-stage LPC blades.	30 work-hours × $85 per hour = $2,550	0	2,550	275,400
Perform TAI inspection of 1st-stage LPC blades.	22 work-hours × $85 per hour = $1,870	0	1,870	201,960

The FAA estimates the following costs to do any necessary replacement that would be required based on the results of the inspection. The agency has no way of determining the number of aircraft that might need this replacement:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace 1st-stage LPC blade	0 work-hours × $85 per hour = $0	$125,000	$125,000

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2019–03–01, Amendment 39–19553 (84 FR 4320, February 15, 2019), and AD 2021–05–51, Amendment 39–21470 (86 FR 13445, March 9, 2021); and

■ b. Adding the following new airworthiness directive:

2022–06–09 Pratt & Whitney Division: Amendment 39–21975; Docket No. FAA–2021–0959; Project Identifier AD–2021–00830–E.

(a) Effective Date

This airworthiness directive (AD) is effective April 15, 2022.

(b) Affected ADs

This AD replaces AD 2019–03–01, Amendment 39–19553 (84 FR 4320, February 15, 2019), and AD 2021–05–51, Amendment 39–21470 (86 FR 13445, March 9, 2021).

(c) Applicability

This AD applies to Pratt & Whitney Division (PW) PW4074, PW4074D, PW4077, PW4077D, PW4084D, PW4090, and PW4090–3 model turbofan engines, with a 1st-stage low-pressure compressor (LPC) blade, with part number 52A241, 55A801, 55A801–001, 55A901, 55A901–001, 56A201, 56A201–001, or 56A221, installed.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by three in-flight failures of a 1st-stage LPC blade, with one failure resulting in an engine fire during flight, and subsequent manufacturer publication of service information specifying improved inspections for three critical locations on the 1st-stage LPC blade. The FAA is issuing this AD to prevent failure of the 1st-stage LPC blades. The unsafe condition, if not addressed, could result in 1st-stage LPC blade release, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

(1) Initial 1st-Stage LPC Blade Inspections

(i) For 1st-stage LPC blades that have accumulated any number of cycles since new (CSN) greater than zero, before further flight after the effective date of this AD, perform a flow path and a mid span ultrasonic testing (UT) inspection of the 1st-stage LPC blades in accordance with the Accomplishment Instructions, Part A—Initial Inspection of All LPC Fan Blades Prior to Their Return to Service, paragraph 1.A. through C., of Pratt & Whitney Alert Service Bulletin (ASB) PW4G–112–A72–361, dated October 15, 2021 (PW4G–112–A72–361). New 1st-stage LPC

blades that have zero CSN do not need to undergo the initial 1st-stage LPC blade flow path and mid span UT inspection required by paragraph (g)(1)(i) of this AD, but must undergo the repetitive inspections of paragraph (g)(2) of this AD.

(ii) Within the following compliance times after the effective date of this AD, perform a thermal acoustic image (TAI) inspection of the 1st-stage LPC blades for cracks using a method approved by the FAA:

(A) For 1st-stage LPC blades with 1,000 CSN or more, with no prior TAI inspection, inspect before further flight.

(B) For 1st-stage LPC blades with 1,000 flight cycles (FCs) or more since the last TAI inspection, inspect before further flight.

(C) For 1st-stage LPC blades with fewer than 1,000 CSN, with no prior TAI inspection, inspect before accumulating 1,000 CSN.

(D) For 1st-stage LPC blades with fewer than 1,000 FCs since the last TAI inspection, inspect before accumulating 1,000 FCs since the last TAI inspection.

Note 1 to paragraph (g)(1)(ii): The FAA-approved TAI inspection method and the vendors that can perform the FAA-approved TAI inspection are specified in the Accomplishment Instructions section and the Vendor Services section of PW4G–112–A72–361, respectively.

(2) Repetitive 1st-Stage LPC Blade Inspections

(i) Before exceeding 275 FCs since the last flow path UT inspection, and thereafter at intervals not exceeding 275 FCs since the last flow path UT inspection, perform a flow path UT inspection of the 1st-stage LPC blades in accordance with the Accomplishment Instructions, Part B—Repetitive Inspection of All LPC Fan Blades After Their Return to Service, paragraph 1.A., of PW4G–112–A72–361.

(ii) Before exceeding 550 FCs since the last mid span UT inspection, and thereafter at intervals not exceeding 550 FCs since the last mid span UT inspection, perform a mid span UT inspection of the 1st-stage LPC blades in accordance with the Accomplishment Instructions, Part B—Repetitive Inspection of All LPC Fan Blades After Their Return to Service, paragraphs 1.B. and C., of PW4G–112–A72–361.

(iii) Before exceeding 1,000 FCs since the last TAI inspection, and thereafter at intervals not exceeding 1,000 FCs since the last TAI inspection, perform repetitive TAI inspections of the 1st-stage LPC blades using a method approved by the FAA.

Note 2 to paragraph (g)(2)(iii): The FAA-approved TAI inspection method and the vendors that can perform the FAA-approved TAI inspection are specified in the Accomplishment Instructions section and the Vendor Services section of PW4G–112–A72–361, respectively.

(3) Removal of the 1st-Stage LPC Blade

If any 1st-stage LPC blade fails any inspection required by paragraphs (g)(1) or (2) of this AD, before further flight, remove the 1st-stage LPC blade from service and replace with a part eligible for installation.

(h) Definition

For the purpose of this AD, a ''part eligible for installation'' is a new, zero CSN 1st-stage LPC blade or a 1st-stage LPC blade that has passed the inspections required by paragraphs (g)(1) and (2) of this AD, as applicable.

(i) Special Flight Permit

Special flight permits, as described in 14 CFR 21.197 and 21.199, are permitted provided that the actions in paragraphs (i)(1) and (2) of this AD have first been accomplished.

(1) A flow path UT inspection of the 1st-stage LPC blades for cracking has been done within the last 275 FCs, as specified in the Accomplishment Instructions, Part A—Initial Inspection of All LPC Fan Blades Prior to their Return to Service, paragraph 1.A., of PW4G–112–A72–361, and the 1st-stage LPC blades have been found serviceable. This inspection is not required for 1st-stage LPC blades with 275 CSN or fewer.

(2) A functional check of the left and right hydraulic pump shutoff valves to ensure they close in response to the corresponding engine fire handle input and all applicable corrective actions (*i.e.,* repair) within 10 days prior to flight.

Note 3 to paragraph (i)(2): Guidance for accomplishing the actions required by paragraph (i)(2) of this AD can be found in the ''Engine-Driven Pump (EDP) Shutoff Valve Check'' (Subtasks 26–21–00–200–018, 26–21–00–200–019, 26–21–00–840–022, or Task 29–11–00–710–806) of Boeing 777–200/300 Aircraft Maintenance Manual.

(j) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraphs (g)(1) and (i)(1) of this AD, if those actions were performed before the effective date of this AD using the service information specified in paragraph (j)(1), (2), or (3) of this AD.

(1) Paragraph 2. of the Accomplishment Instructions of Pratt & Whitney Special Instruction No. 85F21, dated May 12, 2021, for a flow path UT inspection.

(2) Paragraph 1.a) through c) of the Accomplishment Instructions of Pratt & Whitney Special Instruction No. 130F–21, dated July 1, 2021, for a flow path and a mid span UT inspection.

(3) Paragraph 2.a) through c) of the Accomplishment Instructions of Pratt & Whitney Special Instruction No. 130F–21, Revision A, dated July 28, 2021, for a flow path and a mid span UT inspection.

(k) Alternative Methods of Compliance (AMOCs)

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

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

(l) Related Information

For more information about this AD, contact Carol Nguyen, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7655; fax: (781) 238–7199; email: *carol.nguyen@faa.gov.*

(m) 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) Pratt & Whitney Alert Service Bulletin PW4G–112–A72–361, dated October 15, 2021.

(ii) [Reserved]

(3) For service information identified in this AD, contact Pratt & Whitney Division, 400 Main Street, East Hartford, CT 06118; phone: (860) 565–0140; email: *help24@prattwhitney.com;* website: *https://connect.prattwhitney.com.*

(4) You may view this service information FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (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 March 4, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–05296 Filed 3–9–22; 4:15 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0963; Project Identifier AD–2021–01026–T; Amendment 39–21977; AD 2022–06–11]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain The Boeing Company Model 777–200

and –300 series airplanes. This AD was prompted by reports of three incidents involving in-flight fan blade failures on certain Pratt & Whitney engines (''fan blades'' are also known as ''1st-stage low-pressure compressor (LPC) blades''—these terms are used interchangeably in this AD). This AD requires modifying the engine inlet to withstand fan blade failure event loads. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 15, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 15, 2022.

ADDRESSES: For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* For Pratt & Whitney service information identified in this AD contact Pratt & Whitney Division, 400 Main Street, East Hartford, CT 06118; phone: 860–565–0140; email: *help24@prattwhitney.com;* website: *https://connect.prattwhitney.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0963.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0963; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Luis Cortez-Muniz, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: (206) 231–3958; email: *Luis.A.Cortez-Muniz@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 777–200 and –300 series airplanes. The NPRM published in the **Federal Register** on December 28, 2021 (86 FR 73688). The NPRM was prompted by reports of three incidents involving in-flight fan blade failures on certain Pratt & Whitney engines. In the NPRM, the FAA proposed to require modifying the engine inlet to withstand fan blade failure event loads. The FAA is issuing this AD to address the airplane-level implications of the unsafe condition of engine fan blade failure. Fan blade failures can cause fan rotor imbalance and result in fan blade fragments penetrating the inner and outer barrel of the inlet. This condition, if not addressed could result in engine in-flight shutdown, and could result in separation of the inlet, the fan cowl doors, or the thrust reverser (T/R) cowl, or result in uncontrolled engine fire. Separation of the inlet, the fan cowl doors, or the T/R cowl could result in impact damage to the empennage and loss of control of the airplane, or to the fuselage or windows with potential injury to passengers; or it could result in significantly increased aerodynamic drag causing fuel exhaustion or the inability to maintain altitude above terrain during extended operations (ETOPS) flights, either of which could result in a forced off-airport landing and injury to passengers. Uncontrolled engine fire could result in loss of control of the airplane.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from The Air Line Pilots Association, International (ALPA), and two Anonymous commenters who supported the NPRM without change.

The FAA received additional comments from five commenters, including an Anonymous commenter, All Nippon Airways (ANA), Boeing, Japan Airlines (JAL), and United Airlines (UAL). The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Clarify Certain Sentences in the Background Paragraph

Boeing requested that the ''Background'' paragraph in the NPRM be revised to clarify that the failed hydraulic pump shutoff valve was not the direct cause of the uncontained engine fire. Boeing stated that flight data indicates that while the hydraulic pump shutoff valve failed to close, no hydraulic fluid was leaked from the system until well after the engine fire initiated.

Boeing proposed that two sentences in the ''Background'' paragraph of the NPRM be revised to, ''Several flammable fluid lines, the engine accessory gearbox, and T/R structure were fractured *and an uncontained engine fire occurred.* The hydraulic pump shutoff valve failed to close when the fire handle was pulled, contributing additional flammable fluid to the *T/R area.*'' Boeing commented that the proposed wording recognizes that the failure may have contributed additional flammable fluid to the T/R area, but that it did not directly cause the uncontained fire.

The FAA agrees with the commenter's clarification and did not intend to imply that the failed hydraulic pump shutoff valve was the direct cause of the uncontained engine fire. However, the detailed background information, which includes the sentences that the commenter proposed for the ''Background'' paragraph, are not carried over into the final rule. The FAA has not changed this final rule in this regard.

Request To Use Certain Service Information as a Method of Compliance

ANA, an Anonymous commenter, Boeing, and UAL requested the use of Boeing Alert Service Bulletin 777–71A0085 and Boeing Alert Service Bulletin 777–71A0093, for doing the actions in paragraph (g) of the proposed AD. Boeing stated that the description of the modification in the proposed AD is vague.

The FAA disagrees with allowing the use of Boeing Alert Service Bulletin 777–71A0085 and Boeing Alert Service Bulletin 777–71A0093 for the actions specified in paragraph (g) of this AD. The service bulletins are not yet FAA-approved. However, under the provisions of paragraph (j) of this AD, the FAA will consider requests for approval of the use of the service bulletins if sufficient data are submitted to substantiate that the service bulletins would provide an acceptable level of safety.

Request To Add Certain Exceptions for Ferry Flights

JAL requested that the FAA revise the AD to include certain exceptions for ferry flights. JAL stated it is planning to ferry affected airplanes to a storage point in the United States. JAL commented that although the local

authority in Japan provides regulatory requirements for special flight permissions which are similar to 14 CFR 21.197, the Japanese regulatory requirements do not include ''to a point of storage'' language for the purpose of the flights. JAL proposed to add the following wording to paragraphs (c) and (g) of the proposed AD, ''except for ferry flights, without passenger and cargo, of the airplanes on which the actions specified in paragraphs (h)(1) and (2) of this AD have been done.''

The FAA disagrees with revising paragraph (c) Applicability or paragraph (g) Modification of this AD in response to JAL's comment. Paragraph (i), Special Flight Permit, provides that special flight permits, as described in 14 CFR 21.197 and 21.199, are permitted provided that the actions in paragraphs (h)(1) and (2) of this AD have first been accomplished. 14 CFR 21.197(a)(1) provides, in relevant part, that a special flight permit may be issued for flying the aircraft to a base where repairs, alterations, or maintenance are to be performed, or to a point of storage. The requested change is already permitted by this AD. The FAA did not change this AD as a result of this comment.

Request To Change the Initial Compliance Time to Before Revenue Flight

ANA requested that in paragraph (g) of the proposed AD, the FAA update the initial compliance time of ''before further flight after the effective date of this AD'' to ''before the next revenue flight'' to clarify the ferry flight requirement.

Similarly, JAL requested that in paragraph (g) of the proposed AD, the FAA update the initial compliance time of ''before further flight after the effective of this AD'' to ''before the next revenue flight'' or ''before further flight except the ferry flight without passenger and cargos.''

The FAA disagrees with revising the initial compliance time in paragraph (g) of this AD as requested by ANA and JAL. The FAA has determined it is necessary to require certain actions prior to any flight, except as permitted in paragraph (h), Special Flight Permit, of this AD.

Request To Provide a Threshold for the Special Flight Permit

UAL requested that the FAA provide a threshold in paragraph (h)(1) of the proposed AD for the flow path UT inspection. UAL stated that omitting a compliance time in paragraph (h) of the proposed AD for the special flight permits creates ambiguity regarding when and how often the flow path UT inspection is required for special flight permits. UAL suggested a threshold of 275 flight cycles since the last flow path UT inspection.

The FAA agrees to add a threshold of 275 cycles to paragraph (h)(1) of this AD, which is specified in Pratt & Whitney Alert Service Bulletin PW4G–112–A72–361, dated October 15, 2021. This allows airplanes with 1st-stage LPC blades that have accumulated 275 cycles since new or fewer to be eligible for a special flight permit.

Request for an Additional Method of Compliance

UAL requested that the FAA revise paragraph (h)(1) of the proposed AD to add NPRM AD–2021–00830–E (86 FR 73699, December 28, 2021), as a method of compliance for the flow path ultrasonic testing (UT) inspection of the 1st-stage LPC blades.

The FAA disagrees with the commenter's request. The method of compliance in Pratt & Whitney Alert Service Bulletin PW4G–112–A72–361, dated October 15, 2021, is the same as paragraph (i)(1) of NPRM AD–2021–00830–E (86 FR 73699, December 28, 2021) and paragraph (h)(1) of this AD. If the actions in the service information are accomplished, the requirements in paragraph (h)(1) of this AD will have been met, and therefore, no change to this AD has been made.

Request To Add Aircraft Maintenance Manual Task to Special Flight Permit

ANA and UAL requested that paragraph (h)(2) of the proposed AD include Task 29–11–00–710–806 of the Boeing 777–200/300 Aircraft Maintenance Manual as an acceptable method for accomplishing the functional check of the left and right hydraulic pump shutoff valves.

The FAA agrees with the commenter's request and has added Task 29–11–00–710–806 of Boeing 777–200/300 Aircraft Maintenance Manual to the ''Other Related Service Information'' paragraph and to Note (1) to paragraph (h)(2) of this AD as guidance for accomplishing the actions required by paragraph (h)(2) of this AD.

Request To Delegate Alternative Methods of Compliance (AMOCs)

UAL requested that if Boeing Alert Service Bulletin 777–71A0085 and Boeing Alert Service Bulletin 777–71A0093 become an FAA-approved method of compliance, the FAA should delegate The Boeing Company Organization Designation Authorization (ODA) authority to approve structural related AMOCs when deviations to the service documents are required.

The FAA acknowledges UAL's request, however as stated previously, the Boeing service bulletins are not yet FAA-approved, and therefore ODA authority is not granted at this time. In the future, should the service bulletins be approved as a method of compliance to this AD, the FAA may consider ODA authority delegation for approval of structural-related AMOCs for deviations to the approved method of compliance.

Additional Change Made to This AD

In the process of preparing this final rule, the FAA noticed that the unsafe condition statement could be improved regarding the initial effects of the fan blade failure and the airplane level unsafe outcomes that could result from each of those initial effects. Therefore, the FAA has updated the unsafe condition statement in this AD to clarify the specific causes and hazardous effects.

Conclusion

The FAA reviewed the relevant data, considered any comments received, and determined that air safety requires adopting this AD as proposed. Except for minor editorial changes, and any other changes described previously, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Pratt & Whitney Alert Service Bulletin PW4G–112–A72–361, dated October 15, 2021. This service information specifies procedures for performing thermal acoustic image and ultrasonic testing inspections of 1st-stage LPC blades. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Other Related Service Information

The FAA reviewed Subtasks 26–21–00–200–018, 26–21–00–200–019, and 26–21–00–840–022, and Task 29–11–00–710–806, of Boeing 777–200/300 Aircraft Maintenance Manual, dated September 5, 2021. The service information specifies procedures for performing a functional check of the engine-driven pump shutoff valve.

Interim Action

The FAA considers this AD to be an interim action. The manufacturer is currently developing other actions that will address the unsafe condition identified in this AD. Once these actions

are developed, approved, and available, the FAA might consider additional rulemaking.

The FAA has received no definitive data on which to base the cost estimates for the on-condition repairs that are part of the modification specified in this AD.

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.

Costs of Compliance

The FAA estimates that this AD affects 54 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Modification	660 work-hours × $85 per hour = $56,100	$362,560	$418,660	$22,607,640

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:

2022–06–11 The Boeing Company: Amendment 39–21977; Docket No. FAA–2021–0963; Project Identifier AD–2021–01026–T.

(a) Effective Date

This airworthiness directive (AD) is effective April 15, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company airplanes, certificated in any category, as specified in paragraphs (c)(1) and (2) of this AD.

(1) Model 777–200 series airplanes equipped with Pratt & Whitney PW4074, PW4074D, PW4077, PW4077D, PW4084D, PW4090, and PW4090–3 model turbofan engines.

(2) Model 777–300 series airplanes equipped with Pratt & Whitney PW4090 and PW4098 model turbofan engines.

(d) Subject

Air Transport Association (ATA) of America Code 54, Nacelles/pylons.

(e) Unsafe Condition

This AD was prompted by reports of three incidents involving in-flight fan blade failures on certain Pratt & Whitney engines. The FAA is issuing this AD to address engine fan blade failure, which could result in engine in-flight shutdown, and could result in separation of the inlet, the fan cowl doors, or the thrust reverser (T/R) cowl, or result in uncontrolled engine fire. Separation of the inlet, the fan cowl doors, or the T/R cowl could result in impact damage to the empennage and loss of control of the airplane, or to the fuselage or windows with potential injury to passengers; or it could result in significantly increased aerodynamic drag causing fuel exhaustion or the inability to maintain altitude above terrain during extended operations (ETOPS) flights, either of which could result in a forced off-airport landing and injury to passengers. Uncontrolled engine fire could result in loss of control of the airplane.

(f) Compliance

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

(g) Modification

Before further flight after the effective date of this AD, modify the engine inlet to withstand fan blade failure event loads, in accordance with a method approved by the Manager, Seattle ACO Branch, FAA.

(h) Special Flight Permit

Special flight permits, as described in 14 CFR 21.197 and 21.199, are permitted provided that the actions in paragraphs (h)(1) and (2) of this AD have first been accomplished.

(1) A flow path ultrasonic testing (UT) inspection of the 1st-stage low-pressure compressor (LPC) blades for cracking has been done within the last 275 cycles, as specified in the Accomplishment Instructions, Part A—Initial Inspection of All LPC Fan Blades Prior to their Return to Service, paragraph 1.A., of Pratt & Whitney Alert Service Bulletin PW4G–112–A72–361, dated October 15, 2021, and the 1st-stage LPC blades have been found serviceable. This inspection is not required for 1st-stage LPC blades with 275 cycles since new or fewer.

(2) A functional check of the left and right hydraulic pump shutoff valves to ensure they close in response to the corresponding engine fire handle input and all applicable corrective actions (*i.e.,* repair) within 10 days prior to flight.

Note (1) to paragraph (h)(2): Guidance for accomplishing the actions required by paragraph (h)(2) of this AD can be found in the ''Engine-Driven Pump (EDP) Shutoff Valve Check'' (Subtasks 26–21–00–200–018, 26–21–00–200–019, and 26–21–00–840–022, or Task 29–11–00–710–806) of Boeing 777–200/300 Aircraft Maintenance Manual.

(i) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraph (h)(1) of this AD, if those actions were performed before the effective date of this AD using the service information specified in paragraph (i)(1), (2), or (3) of this AD.

(1) Paragraph 2. of the Accomplishment Instructions of Pratt & Whitney Special Instruction No. 85F–21, dated May 12, 2021, for a flow path UT inspection.

(2) Paragraph 1.a) of the Accomplishment Instructions of Pratt & Whitney Special Instruction No. 130F–21, dated July 1, 2021, for a flow path UT inspection.

(3) Paragraph 2.a) of the Accomplishment Instructions of Pratt & Whitney Special Instruction No. 130F–21, Revision A, dated July 28, 2021, for a flow path UT inspection.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle 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 (k)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(k) Related Information

(1) For more information about this AD, contact Luis Cortez-Muniz, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: (206) 231–3958; email: *Luis.A.Cortez-Muniz@faa.gov.*

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (l)(3) and (4) of this AD.

(l) Material Incorporated by Reference

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

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

(i) Pratt & Whitney Alert Service Bulletin PW4G–112–A72–361, dated October 15, 2021.

(ii) [Reserved]

(3) For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* For Pratt & Whitney service information identified in this AD contact Pratt & Whitney Division, 400 Main Street, East Hartford, CT 06118; phone: 860–565–0140; email: *help24@prattwhitney.com;* website: *https://connect.prattwhitney.com.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(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, *fr.inspection@nara.gov*, or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on March 4, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–05295 Filed 3–9–22; 4:15 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0962; Project Identifier AD–2021–00997–T; Amendment 39–21976; AD 2022–06–10]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain The Boeing Company Model 777–200 and –300 series airplanes. This AD was prompted by reports of three incidents involving in-flight fan blade failures on certain Pratt & Whitney engines (''fan blades'' are also known as ''1st-stage low-pressure compressor (LPC) blades''—these terms are used interchangeably in this AD). This AD requires installation of debris shields on the thrust reverser (T/R) inner wall at the left and right sides of the lower bifurcation, inspection of the fan cowl doors for moisture ingression, repetitive functional checks of the hydraulic pump shutoff valves to ensure they close in response to the fire handle input, and corrective actions if necessary. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 15, 2022.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 15, 2022.

ADDRESSES: For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* For Pratt & Whitney service information identified in this AD contact Pratt & Whitney Division, 400 Main Street, East Hartford, CT 06118; phone: 860–565–0140; email: *help24@prattwhitney.com;* website: *https://connect.prattwhitney.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0962.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0962; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: James Laubaugh, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3622; email: *james.laubaugh@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 777–200 and –300 series airplanes. The NPRM published in the **Federal Register** on December 28, 2021 (86 FR 73712). The NPRM was prompted by reports of three incidents involving in-flight fan blade failures on certain Pratt & Whitney engines. In the NPRM, the FAA proposed to require installation of debris shields on the T/R inner wall at the left and right sides of the lower bifurcation, inspection of the fan cowl doors for moisture ingression, repetitive functional checks of the hydraulic pump shutoff valves to ensure they close in response to the fire handle input, and corrective actions if necessary. The FAA is issuing this AD to address the airplane-level implications of the unsafe condition of engine fan blade failure. Fan blade

failures can cause fan rotor imbalance and result in fan blade fragments penetrating the inner and outer barrel of the inlet. This condition, if not addressed, could result in engine in-flight shutdown, and could result in separation of the inlet, the fan cowl doors, or the T/R cowl, or result in uncontrolled engine fire. Separation of the inlet, the fan cowl doors, or the T/R cowl could result in impact damage to the empennage and loss of control of the airplane, or to the fuselage or windows with potential injury to passengers; or it could result in significantly increased aerodynamic drag causing fuel exhaustion or the inability to maintain altitude above terrain during extended operations (ETOPS) flights, either of which could result in a forced off-airport landing and injury to passengers. Uncontrolled engine fire could result in loss of control of the airplane.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from The Air Line Pilots Association, International (ALPA) who supported the NPRM without change.

The FAA received additional comments from five commenters, including All Nippon Airways (ANA), Boeing, Japan Airlines (JAL), United Airlines (UAL), and an individual. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Clarify Certain Sentences in the ''Background'' Paragraph

Boeing requested that the ''Background'' paragraph in the NPRM be revised to clarify that the failed hydraulic pump shutoff valve was not the direct cause of the uncontained engine fire. Boeing stated that flight data indicates that while the hydraulic pump shutoff valve failed to close, no hydraulic fluid was leaked from the system until well after the engine fire initiated.

Boeing proposed that two sentences in the ''Background'' paragraph of the NPRM be revised to, ''Several flammable fluid lines, the engine accessory gearbox, and T/R structure were fractured *and an uncontained engine fire occurred.* The hydraulic pump shutoff valve failed to close when the fire handle was pulled, contributing additional flammable fluid to the *T/R area*.'' Boeing commented that the proposed wording recognizes that the failure may have contributed additional flammable fluid to the T/R area, but that it did not directly cause the uncontained fire.

The FAA agrees with the commenter's clarification and did not intend to imply that the failed hydraulic pump shutoff valve was the direct cause of the uncontained engine fire. However, the detailed background information, which includes the sentences that the commenter proposed for the ''Background'' paragraph, are not carried over into the final rule. The FAA has not changed this final rule in this regard.

Request To Use Certain Service Information as a Method of Compliance

ANA requested clarification on whether Boeing Alert Service Bulletin 777–71A0092, dated January 13, 2022, and Boeing Alert Service Bulletin 777–78A0103 will be allowed as an alternative method of compliance for the requirements in the proposed AD.

In addition, for the actions in paragraph (g) of the proposed AD, Boeing and UAL requested the use of Boeing Alert Service Bulletin 777–78A0103 for installing debris shields on the T/R inner wall at the left and right sides of the lower bifurcation. Boeing and UAL also proposed the use of Boeing Alert Service Bulletin 777–71A0092, dated January 13, 2022, for inspecting the fan cowl doors for moisture ingression. Boeing stated that the description of the modification in the proposed AD is vague.

The FAA agrees to allow the use of Boeing Alert Requirements Bulletin 777–71A0092 RB, dated January 13, 2022, for the inspection of the fan cowl doors for moisture ingression. The FAA has revised the ''Related Service Information under 1 CFR part 51'' paragraph and paragraph (g)(2) of this AD accordingly. The FAA disagrees with allowing the use of Boeing Alert Service Bulletin 777–78A0103 for the actions specified in paragraph (g)(1) of this AD because the service bulletin is not yet an FAA-approved service bulletin.

Request To Add Certain Exceptions for Ferry Flights

JAL requested that the FAA revise the AD to include certain exceptions for ferry flights. JAL stated it is planning to ferry affected airplanes to a storage point in the United States. JAL commented that although the local authority in Japan provides regulatory requirements for special flight permissions which are similar to 14 CFR 21.197, Special flight permits, the Japanese regulatory requirements do not include ''to a point of storage'' language for the purpose of the flights. JAL proposes to add the following wording to paragraphs (c) and (g) of the proposed AD, ''except for ferry flights, without passenger and cargo, of the airplanes on which the actions specified in paragraphs (h)(1) and (2) of this AD have been done.''

The FAA disagrees with revising paragraph (c) Applicability or paragraph (g) Required Actions of this AD in response to JAL's comment. Paragraph (i), Special Flight Permit, provides that special flight permits, as described in 14 CFR 21.197 and 21.199, are permitted provided that the actions in paragraphs (h)(1) and (2) of this AD have first been accomplished. 14 CFR 21.197(a)(1) provides, in relevant part, that a special flight permit may be issued for flying the aircraft to a base where repairs, alterations, or maintenance are to be performed, or to a point of storage. The requested change is already permitted by this AD. The FAA did not change this AD as a result of this comment.

Request To Change the Initial Compliance Time to Before Revenue Flight

ANA requested that in paragraph (g) of the proposed AD, the FAA update the initial compliance time of ''before further flight after the effective of this AD'' to ''before the next revenue flight'' to clarify the ferry flight requirement.

Similarly, JAL requested that in paragraph (g) of the proposed AD, the FAA update the initial compliance time of ''before further flight after the effective of this AD'' to ''before the next revenue flight'' or ''before further flight except the ferry flight without passenger and cargos.''

The FAA disagrees with revising the initial compliance in paragraph (g) of this AD as requested by ANA and JAL. The FAA has determined it is necessary to require certain actions prior to any flight, except as permitted in paragraph (h), Special Flight Permit, of this AD.

Request To Add a Note for Airplanes Under Storage or Heavy Check

JAL requested that the FAA add a note to paragraph (g)(3) of the proposed AD to clarify that the repetitive functional checks are not applicable to airplanes under storage or heavy check.

The FAA partially agrees with the commenter. The FAA did not intend for the repetitive functional checks of the left and right hydraulic pump shutoff valves to be performed every 10 days when the airplane is not flown. The FAA has revised the compliance time in paragraph (g)(3) of this AD to specify that the repetitive functional check is only required within 10 days prior to each flight. The FAA disagrees that a

note is necessary to specify that the functional check is not applicable to airplanes under storage or heavy check because of the previously discussed revisions to paragraph (g)(3) of this AD.

Request To Clarify the Use of Revised Non-Destructive Inspection Procedure (NDIP) Documents

JAL requested clarification for the use of revised NDIP documents for the flow path ultrasonic (UT) inspection of the 1st-stage LPC blades specified in paragraph (h)(1) of the proposed AD. JAL commented that Pratt & Whitney Alert Service Bulletin PW4G–112–A72–361, dated October 15, 2021, references the UT inspection procedures in NDIP–1238, NDIP–1240, and NDIP–1241, which are currently at the original version. JAL asked if the submission of an alternative method of compliance (AMOC) request is necessary if the NDIPs are later revised to meet the requirements in paragraph (h)(1) of the proposed AD.

The FAA acknowledges that Pratt & Whitney Alert Service Bulletin PW4G–112–A72–361, dated October 15, 2021, requires the latest FAA-approved revision of NDIP–1238, NDIP–1240, and NDIP–1241 at the time the inspection is accomplished. Furthermore, the FAA has provided credit for accomplishment of the flow path UT inspection identified in paragraph (h)(1) of this AD using the service information specified in paragraph (i) of this AD.

Request To Provide a Threshold for the Special Flight Permit

JAL and UAL requested that the FAA provide a threshold in paragraph (h)(1) of the proposed AD for the last flow path UT inspection. JAL suggested a threshold of 275 flight cycles since the last flow path UT inspection for 1st-stage LPC blades that have zero cycles since new and also for 1st-stage LPC that have accumulated any number of cycles since new greater than zero.

UAL stated that omitting a compliance time in paragraph (h) of the proposed AD for the special flight permits creates ambiguity regarding when and how often the flow path UT inspection is required for special flight permits. UAL suggested a threshold of 275 flight cycles since the last flow path UT inspection.

The FAA agrees to add a threshold of 275 cycles to paragraph (h)(1) of this AD, which is specified in Pratt & Whitney Alert Service Bulletin PW4G–112–A72–361, dated October 15, 2021. This allows airplanes with 1st-stage LPC blades that have accumulated 275 cycles since new or fewer to be eligible for a special flight permit.

Request To Add Aircraft Maintenance Manual Task to Special Flight Permit

ANA, JAL, and UAL requested that paragraph (h)(2) of the proposed AD include Task 29–11–00–710–806 of the Boeing 777–200/300 Aircraft Maintenance Manual as an acceptable method for accomplishing the functional check of the left and right hydraulic pump shutoff valves.

The FAA agrees with the commenter's request and has added Task 29–11–00–710–806 of Boeing 777–200/300 Aircraft Maintenance Manual to the ''Other Related Service Information'' paragraph and to Note (1) to paragraph (g)(3) of this AD as guidance for accomplishing the actions required by paragraphs (g)(3) and (h)(2) of this AD.

Request To Clarify Requirements in the NPRM

ANA requested that the FAA provide clarification of why affected operators will have to conduct required periodic testing [repetitive functional checks of the left and right hydraulic pump shutoff valves] even though Boeing recommends similar testing to be performed as a one-time check before return-to-service per Boeing MOM–MOM–21–0398–01B. ANA also requested clarification whether the repetitive 10 day interval continues until a terminating action has been found.

The FAA infers that ANA considers the low average failure rate per flight hour of the hydraulic pump shutoff valve in service to justify the performance of the one-time check of the hydraulic pump shutoff valve described in the Boeing MOM–MOM–21–0398–01B, combined with the existing maintenance program recommendation to check the function of the hydraulic pump shutoff valve at 18,000 flight hour intervals, as providing an acceptable level of safety. The FAA does not agree. Investigation of the February 2021 incident, as specified in the proposed AD, revealed that the hydraulic pump shutoff valve, which is remotely controlled by electrical switches, does not have an indication to the flightcrew to indicate when the hydraulic pump shutoff valve has failed to move to the commanded position. The hydraulic pump shutoff valve failed to close when commanded via the engine fire handle in that incident. Failure of this hydraulic pump shutoff valve to close in response to commands in the event of an engine fire could lead to flammable fluid continuing to be supplied to an engine fire for a prolonged period, potentially resulting in an uncontained fire that jeopardizes flight safety. The FAA has determined that this issue is an unsafe condition requiring corrective action.

For transport airplanes, the determination that an unsafe condition exists is based on several criteria, and the failure to meet one or more of the criteria could lead the FAA to determine that corrective action is warranted.

For each identified potential safety issue on a transport airplane, the FAA examines the risk on the worst reasonably anticipated flights (flights actually predicted to occur) to ensure that each flight provides an acceptable level of safety (identified as ''individual flight risk'' in FAA risk analysis policy). That acceptable level of safety consists of three basic expectations:

- That each flight begins in a fail-safe state (including consideration of latent failure conditions and allowed dispatch states under the minimum equipment list (MEL)), meaning that a foreseeable single failure on any anticipated flight should not have a significant likelihood of causing a catastrophic event.
- That each flight does not have a numerical risk of a catastrophic event due to the issue being examined that is excessively (an order of magnitude or more) greater than the risk of a catastrophic event on an average transport airplane.
- That safety features that were prescriptively required due to lessons learned from past incidents and accidents are not excessively reduced in their effectiveness or availability.

Failure to meet any of these three criteria can lead to a determination that an unsafe condition exists and AD action is necessary, because the level of safety on the affected flights does not meet the FAA's thresholds for an acceptable level of safety on individual flights.

For each identified potential safety issue, the FAA also assesses the total cumulative risk of an event occurring at any time in the remaining life of the fleet of affected airplanes (identified as ''total fleet risk'' in FAA risk analysis policy). The FAA may determine that corrective action is needed to limit total fleet risk even when the assessed individual flight risk does not violate any of the three individual flight risk criteria discussed above. Total fleet risk is typically assessed by multiplying the average probabilities of each of the failures or other factors that contribute to the occurrence of an event, the total number of airplanes affected, the average utilization of those airplanes, and the average remaining life for those airplanes. The FAA also considers the number of occupants of an aircraft in assessing fleet risk, and applies total

fleet risk guideline thresholds expressed in terms of both aircraft accidents and number of fatalities.

Either excessive individual flight risk or excessive total fleet risk, or both, can lead the FAA to determine that an unsafe condition exists that requires corrective action. The FAA does not use or accept calculations of acceptable total fleet risk, or acceptable average per-flight-hour risk, as a justification for taking no action on issues where an excessive individual flight risk is determined to exist on flights that are anticipated to occur.

In this case, the FAA determined that corrective action is necessary under the individual flight risk guideline above to minimize the occurrence of flights that are not fail safe for an engine fire due to latent failure of the hydraulic pump shutoff valve. The repetitive functional check will minimize the number of flights that occur with a latent failure of the hydraulic pump shutoff valve. The FAA determined that the 10-day interval for the inspections required by paragraph (g) of this AD is practical and provides an acceptable level of safety.

Additionally, regarding the commenter's request as to whether the repetitive 10-day interval continues until a terminating action has been found, the FAA has determined that the repetitive functional check of the left and right hydraulic pump shutoff valves is required until an alternative corrective action is approved.

Request for Credit for Previous Actions

UAL requested that Boeing Alert Service Bulletin 777–71A0092, dated January 13, 2022, and Boeing Alert Service Bulletin 777–78A0103 be added to paragraph (i) of the proposed AD as credit for actions that were previously accomplished in paragraph (g)(1) and (2) of the proposed AD. UAL also requested that credit be given in paragraphs (i)(2) and (3) of the proposed AD for doing a mid span UT inspection, in addition to providing credit for doing a flow path UT inspection.

The FAA partially agrees with the commenter's requests. The FAA has not yet approved a method of compliance for paragraph (g)(1) of this AD using a specific service bulletin, and therefore, credit cannot be provided. As previously mentioned the FAA has revised paragraph (g)(2) of this AD allowing for accomplishment of the inspection using Boeing Alert Requirements Bulletin 777–71A0092 RB, dated January 13, 2022 (original revision), and therefore, credit is not necessary. Although Pratt & Whitney Special Instruction No. 130F–21, dated July 1, 2021, and Pratt & Whitney Special Instruction No. 130F–21, Revision A, dated July 28, 2021, include instructions for a mid span UT inspection, the special flight permit paragraph in this AD does not include a requirement for the mid span UT inspection, and therefore, credit is not necessary. However, the FAA has retained the credit specified in paragraph (i) of this AD for doing the flow path UT inspection.

Request To Delegate AMOCs

UAL requested that if Boeing Alert Service Bulletin 777–71A0092, dated January 13, 2022, and Boeing Alert Service Bulletin 777–78A0103 become a FAA-approved method of compliance, the FAA should delegate The Boeing Company Organization Designation Authorization (ODA) authority to approve structural related AMOCs when deviations to the service documents are required.

The FAA partially agrees with the commenter. For Boeing service bulletins that are not yet FAA-approved, the ODA authority is not granted at this time. However, for Boeing service bulletins that are FAA-approved, the FAA has added a provision in paragraph (j)(3) of this AD for delegation to The Boeing Company ODA for approval of certain AMOCs. This provision allows Boeing to propose to the FAA the types of AMOCs that may be approved by The Boeing Company ODA.

Request for an Additional Person To Conduct the Inspection

An individual commenter stated that there are only 54 airplanes flying in the United States that need inspections and believes that someone who is involved in the professional side of the NPRM should be required to be present while the airplane is being inspected to ensure it is being done correctly. The commenter believes this will allow the airplane to be inspected the same across the board rather than each operator inspecting it differently. The commenter also believes that the NPRM has been needed since the first account of the fan blade failure.

The FAA infers that the commenter is suggesting additional FAA oversight is necessary for the fan cowl door moisture ingression inspections required by this AD. The FAA has reviewed the service information for the fan cowl door moisture ingression inspections and has determined that the FAA's existing oversight activity for operators performing such inspections provide an acceptable level of safety. The FAA has not changed this final rule in this regard.

Additional Change Made to This AD

In the process of preparing this final rule, the FAA noticed that the unsafe condition statement could be improved regarding the initial effects of the fan blade failure and the airplane level unsafe outcomes that could result from each of those initial effects. Therefore, the FAA has updated the unsafe condition statement in this AD to clarify the specific causes and hazardous effects.

Conclusion

The FAA reviewed the relevant data, considered any comments received, and determined that air safety requires adopting this AD as proposed. Except for minor editorial changes, and any other changes described previously, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

The FAA has reviewed Boeing Alert Requirements Bulletin 777–71A0092 RB, dated January 13, 2022. This service information specifies procedures for inspecting the fan cowl doors for moisture ingression. The FAA also reviewed Pratt & Whitney Alert Service Bulletin PW4G–112–A72–361, dated October 15, 2021. This service information specifies procedures for performing thermal acoustic image and ultrasonic testing inspections of 1st-stage LPC blades. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Other Related Service Information

The FAA also reviewed Subtasks 26–21–00–200–018, 26–21–00–200–019, and 26–21–00–840–022, and Task 29–11–00–710–806, of Boeing 777–200/300 Aircraft Maintenance Manual, dated September 5, 2021. The service information specifies procedures for performing a functional check of the engine-driven pump shutoff valve.

Interim Action

The FAA considers this AD to be an interim action. The manufacturer is currently developing other actions that will address the unsafe condition identified in this AD. Once these actions are developed, approved, and available, the FAA might consider additional rulemaking.

Costs of Compliance

The FAA estimates that this AD affects 54 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Installation of T/R debris shields	115 work-hour × $85 per hour = $9,775.	$4,300	$14,075	$760,050.
Inspection of fan cowl doors	64 work-hours × $85 per hour = $5,440.	0	$5,440	$293,760.
Functional checks of the hydraulic pump shutoff valves.	1 work-hour × $85 per hour = $85 per inspection cycle.	0	$85 per inspection cycle.	$4,590 per inspection cycle.

The FAA has received no definitive data on which to base the cost estimates for the on-condition corrective actions (*i.e.* repair) specified in this AD.

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:

2022–06–10 The Boeing Company: Amendment 39–21976; Docket No. FAA–2021–0962; Project Identifier AD–2021–00997–T.

(a) Effective Date

This airworthiness directive (AD) is effective April 15, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company airplanes, certificated in any category, as specified in paragraphs (c)(1) and (2) of this AD.

(1) Model 777–200 series airplanes equipped with Pratt & Whitney PW4074, PW4074D, PW4077, PW4077D, PW4084D, PW4090, and PW4090–3 model turbofan engines.

(2) Model 777–300 series airplanes equipped with Pratt & Whitney PW4090 and PW4098 model turbofan engines.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of three incidents involving in-flight fan blade failures on certain Pratt & Whitney engines. The FAA is issuing this AD to address engine fan blade failure, which could result in engine in-flight shutdown, and could result in separation of the inlet, the fan cowl doors, or the thrust reverser (T/R) cowl, or result in uncontrolled engine fire. Separation of the inlet, the fan cowl doors, or the T/R cowl could result in impact damage to the empennage and loss of control of the airplane, or to the fuselage or windows with potential injury to passengers; or it could result in significantly increased aerodynamic drag causing fuel exhaustion or the inability to maintain altitude above terrain during extended operations (ETOPS) flights, either of which could result in a forced off-airport landing and injury to passengers. Uncontrolled engine fire could result in loss of control of the airplane.

(f) Compliance

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

(g) Installation and Inspections

Before further flight after the effective date of this AD, do the actions specified in paragraphs (g)(1) through (3) of this AD. Repeat the functional check specified in paragraph (g)(3) of this AD within 10 days prior to each flight.

(1) Install debris shields on the T/R inner wall at the left and right sides of the lower bifurcation, in accordance with a method approved by the Manager, Seattle ACO Branch, FAA.

(2) Inspect the fan cowl doors for moisture ingression in accordance with paragraphs (g)(2)(i) or (ii) of this AD, as applicable.

(i) Do the inspection in accordance with a method approved by the Manager, Seattle ACO Branch, FAA. If any moisture ingression is found, repair before further flight, in accordance with a method approved by the Manager, Seattle ACO Branch, FAA.

(ii) Do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 777–71A0092 RB, dated January 13, 2022, except where Boeing Alert Requirements Bulletin 777–71A0092 RB, dated January 13, 2022, specifies to report inspection findings, this AD does not require any report, and where Boeing Alert Requirements Bulletin 777–71A0092 RB, dated January 13, 2022, specifies to contact

Boeing for a repair, this AD requires the repair to be accomplished in accordance with a method approved by the Manager, Seattle ACO Branch, FAA.

(3) Do a functional check of the left and right hydraulic pump shutoff valves to ensure they close in response to the corresponding engine fire handle input. If any hydraulic pump shutoff valve does not close, before further flight perform corrective actions until it closes in response to the corresponding engine fire handle input.

Note (1) to paragraph (g)(3): Guidance for accomplishing the actions required by paragraphs (g)(3) and (h)(2) of this AD can be found in the ''Engine-Driven Pump (EDP) Shutoff Valve Check'' (Subtasks 26–21–00–200–018, 26–21–00–200–019, and 26–21–00–840–022; or Task 29–11–00–710–806) of Boeing 777–200/300 Aircraft Maintenance Manual.

(h) Special Flight Permit

Special flight permits, as described in 14 CFR 21.197 and 21.199, are permitted provided that the actions in paragraphs (h)(1) and (2) of this AD have first been accomplished.

(1) A flow path ultrasonic testing (UT) inspection of the 1st-stage low-pressure compressor (LPC) blades for cracking has been done within the last 275 cycles, as specified in the Accomplishment Instructions, Part A—Initial Inspection of All LPC Fan Blades Prior to their Return to Service, paragraph 1.A., of Pratt & Whitney Alert Service Bulletin PW4G–112–A72–361, dated October 15, 2021, and the 1st-stage LPC blades have been found serviceable. This inspection is not required for 1st-stage LPC blades with 275 cycles since new or fewer.

(2) A functional check of the left and right hydraulic pump shutoff valves to ensure they close in response to the corresponding engine fire handle input and all applicable corrective actions (*i.e.,* repair) within 10 days prior to flight.

(i) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraph (h)(1) of this AD, if those actions were performed before the effective date of this AD using the service information specified in paragraph (i)(1), (2), or (3) of this AD.

(1) Paragraph 2. of the Accomplishment Instructions of Pratt & Whitney Special Instruction No. 85F–21, dated May 12, 2021, for a flow path UT inspection.

(2) Paragraph 1.a) of the Accomplishment Instructions of Pratt & Whitney Special Instruction No. 130F–21, dated July 1, 2021, for a flow path UT inspection.

(3) Paragraph 2.a) of the Accomplishment Instructions of Pratt & Whitney Special Instruction No. 130F–21, Revision A, dated July 28, 2021, for a flow path UT inspection.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle 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 (k)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(k) Related Information

(1) For more information about this AD, contact James Laubaugh, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3622; email: *james.laubaugh@faa.gov.*

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (l)(3) and (4) of this AD.

(l) Material Incorporated by Reference

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

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

(i) Boeing Alert Requirements Bulletin 777–71A0092 RB, dated January 13, 2022.

(ii) Pratt & Whitney Alert Service Bulletin PW4G–112–A72–361, dated October 15, 2021.

(3) For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* For Pratt & Whitney service information identified in this AD contact Pratt & Whitney Division, 400 Main Street, East Hartford, CT 06118; phone: 860–565–0140; email: *help24@prattwhitney.com*; website: *https://connect.prattwhitney.com.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(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, *fr.inspection@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on March 4, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–05309 Filed 3–9–22; 4:15 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9960]

RIN 1545–BP79

Guidance Under Section 958 on Determining Stock Ownership; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to a correction of a Treasury Decision.

SUMMARY: This document corrects a correction to a final regulations (Treasury Decision 9960) published in the **Federal Register** on Tuesday, February 22, 2022. The final regulations concern the treatment of domestic partnerships for purposes of determining amounts included in the gross income of their partners with respect to foreign corporations.

DATES: These corrections are effective on March 11, 2022, and applicable on or after February 22, 2022.

FOR FURTHER INFORMATION CONTACT: Edward J. Tracy at (202) 317–6934 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9960) subject to this correction are issued under section 958 of the Internal Revenue Code.

Need for Correction

As published on February 22, 2022 (87 FR 9445), the final regulations (TD 9960) contain errors that need to be corrected.

Correction of Publication

Accordingly, the publication of the correction to a final regulation (TD 9960), which was the subject of FR Doc. 2022–03611, published on February 22, 2022 (87 FR 9445), is corrected to read as follows:

1. On page 9445, first column, under the caption RIN, the language ''1545–BO59'' is corrected to read ''1545–BP79''.

2. On page 9445, first column, the subject heading, the language

''Guidance on Passive Foreign Investment Companies'' is corrected to read ''Guidance Under Section 958 on Determining Stock Ownership''.

Oluwafunmilayo A. Taylor,

Chief, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2022–05177 Filed 3–10–22; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2020–0719; FRL–9530–01–R1]

Air Plan Approval; Connecticut; Regulations To Limit Premises-Wide Actual and Potential Emissions From Major Stationary Sources of Air Pollution

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Connecticut. This revision approves into the Connecticut SIP state regulations that apply restrictions on emissions of criteria pollutants for which EPA has established National Ambient Air Quality Standards. Separately, we are also approving Connecticut regulations that apply restrictions on emissions of hazardous air pollutants (HAPs). The Connecticut regulations impose legally and practicably enforceable emissions limitations restricting eligible sources' actual and potential emissions below major stationary source thresholds, if a source chooses to be covered by the regulations. Such restrictions generally allow eligible sources to avoid having to comply with reasonably available control technology (RACT) that would otherwise apply to major stationary sources, title V operating permit requirements, or other requirements that apply only to major stationary sources. This action is being taken under the Clean Air Act.

DATES: This rule is effective on April 11, 2022. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of April 11, 2022.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2020–0719. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID–19.

FOR FURTHER INFORMATION CONTACT: Susan Lancey, Air Permits, Toxics and Indoor Programs Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100, (Mail code 05–2), Boston, MA 02109–3912, telephone 617–918–1656, email *lancey.susan@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Table of Contents

I. Background and Purpose

On February 8, 2021 (86 FR 8574), EPA published a notice of proposed rulemaking (NPRM) for the State of Connecticut.

The NPRM proposed approval of a SIP revision consisting of Regulations of Connecticut State Agencies (RCSA) section 22a–174–33a, Limit on Premises-wide Actual Emissions Below 50% of Title V Thresholds, effective September 24, 2020, and RCSA section 22a–174–33b, Limit on Premises-wide Actual Emissions Below 80% of Title V Thresholds, effective September 24, 2020, as the regulations relate to criteria pollutants. The Connecticut regulations impose legally and practicably enforceable emissions limitations restricting eligible sources' actual and potential emissions below major stationary source thresholds, if a source chooses to be covered by the regulations. The NPRM separately proposed approval of RCSA sections 22a–174–33a and 22a–174–33b under section 112(l) of the CAA, as the regulations relate to HAPs. As noted earlier, RCSA sections 22a–174–33a and 22a–174–33b are designed to limit air pollutant emissions from major stationary sources to below major stationary source thresholds by including legally and practicably enforceable restrictions on potential and actual emissions.

The formal SIP revision was submitted by Connecticut on October 26, 2020, supplemented on January 12, 2022. In the January 12, 2022 letter, Connecticut requested to withdraw provision RCSA 22a–174–33b(d)(6) from consideration as part of the SIP, clarified its interpretation of several provisions, and provided additional information concerning implementation of the regulations.

Connecticut submitted a December 21, 2020 letter requesting approval of RCSA sections 22a–174–33a and 22a–174–33b under section 112(l) of the CAA.

The rationale for EPA's proposed approval of the SIP revision and CAA 112(l) submittal is explained in the NPRM and will not be restated here.

II. Response to Comments

We received three comments that supported this action. One commenter stated that they support approval of the rule. One commenter stated it is important that air quality plans are passed and that clean air quality is crucial for anyone in any state. One commenter supports approval of the rule and believes that a limit on emissions should occur because of concerns that an increase of pollution affects air quality; the commenter also made additional statements not germane to this action. The following provides our responses to adverse comments received.

Comment 1: The commenter could not access the docket for this rulemaking and could not find any results on *Regulations.gov*.

Response: The docket was available on February 8, 2021, the publication date of the proposal. The commenter emailed comments on February 7th, after the pre-publication proposed rule was posted, but one day prior to the proposed rule's publication in the **Federal Register** on February 8th. The docket only becomes available on the actual date that a Rulemaking publishes in the **Federal Register**, and that it is typically available by 10 a.m. EST. We informed the commenter on February 8th that the docket was available.

Comment 2: The commenter was concerned that RCSA section 22a–174–

33a ignores, in the definition of Hazardous Air Pollutant (HAP) in section (a)(4), HAPs added to the CAA 112(b) HAPs list. The commenter pointed out that there are several petitions in front of EPA, being reconsidered by EPA, or headed for or in litigation to add HAPs to the HAPs list. The commenter asserted that 22a–174–33a would ignore these added HAPs and thus isn't approvable. The commenter stated that without a change in the regulation to address this issue, sources could be over the major source threshold, and would not be covered by the regulation, by virtue of a HAP which is added to the HAP list but does not appear in CAA 112(b). The commenter submitted the same comment in relation to Connecticut's regulation at RCSA 22a–174–33b.

Response: The definition of Hazardous Air Pollutant (HAP) in Section 22a–174–33a(a)(4) and 33b(a)(10) means ''notwithstanding the definition in Section 22a–174–1 of the Regulations of Connecticut State Agencies (RCSA), any air pollutant listed in section 112(b) of the Federal Clean Air Act excluding any air pollutants that are removed from such list.'' We agree that Connecticut's definition does not include air pollutants that are added to the list. However, this should not be a reason to disapprove Connecticut's requested CAA 112(l) submission. On January 5, 2022, EPA added a new HAP, 1-bromopropane, to the CAA HAP list by amending 40 CFR part 63, subpart C. (See 87 FR 393) As a result, Connecticut should now amend its regulations to add 1-bromopropane to its definition of Hazardous Air Pollutant so that sources emitting 1-bromopropane may be covered by Connecticut's regulation. EPA could then approve a subsequent State submittal including 1-bromopropane under Section 112(l). It is not a legal requirement of the CAA that all sources be regulated by the regulation in question. A source that is a major source if not regulated pursuant to this CAA 112(l) approval will have to comply with any applicable major source requirements unless and until Connecticut amends its rule to include the added HAP. In a letter dated January 12, 2022, Connecticut Department of Energy and Environmental Protection (DEEP) clarified its implementation with respect to HAPs added to the HAP list. Connecticut's January 12, 2022 letter provided that ''To the extent that a hazardous air pollutant (HAP) is added to the Clean Air Act (CAA) HAP list but does not appear in CAA Section 112(b), if DEEP identifies a facility with potential emissions of such a HAP not listed in CAA Section 112(b), DEEP shall not allow such facility to operate under RCSA section 22a–174–33a or RCSA section 22a–174–33b until such time as DEEP adopts regulatory revisions to include such a newly listed HAP within the definitions that apply to RCSA sections 22a–174–33a and 22a–174–33b. As 1-bromopropane has recently been added to the CAA list of HAPs and does not appear in CAA Section 112(b), neither RCSA section 22a–174–33a nor RCSA section 22a–174–33b is a regulatory compliance option available for a facility that emits 1-bromopropane to limit the potential to emissions [sic] of criteria pollutants and hazardous air pollutants.'' Thus, the commenter's concerns are unwarranted.

Comment 3: The commenter was concerned that section (d)(1) of Connecticut's regulation ignores VOC and NO_X emissions in areas that are marginal, moderate, or extreme ozone nonattainment areas, as well as areas designated attainment but located inside the ozone transport region. Connecticut currently contains one marginal ozone nonattainment area and one moderate nonattainment area for the 2015 ozone National Ambient Air Quality Standard (NAAQS). The commenter asserted that the fact that those areas are currently designated as serious nonattainment areas for the 2008 ozone NAAQS does not fix this problem as that could change in the future if those areas were redesignated to attainment for the 2008 ozone NAAQS. The commenter believes the current rule would leave a gap by not placing emission limits on NO_X and VOC emissions and thus is not approvable. The commenter asserts that the same is true if those areas were to be ''bumped up'' to extreme nonattainment areas for the 2008 ozone NAAQS. The same comment was submitted for Connecticut's regulation at RCSA 22a–174–33b.

Response: By definition, any source in Connecticut eligible to be regulated by this rule could avail itself of the limits contained within the regulation. The definition of ''Serious non-attainment area for ozone'' in Connecticut's SIP-approved regulation at RCSA Section 22a–174–1 means ''all towns within the State of Connecticut, except those towns located in the severe non-attainment area for ozone.'' The SIP-approved definition of ''Severe non-attainment area for ozone'' in Connecticut's regulation at RCSA 22a–174–1 means the towns of Bethel, Bridgeport, Bridgewater, Brookfield, Danbury, Darien, Easton, Fairfield, Greenwich, Monroe, New Canaan, New Fairfield, New Milford, Newtown, Norwalk, Redding, Ridgefield, Sherman, Stamford, Stratford, Trumbull, Weston, Westport, and Wilton. These serious and severe non-attainment areas, as defined, represent Connecticut's nonattainment area classifications under the one-hour ozone standard, encompassing all locations in the State of Connecticut and thereby all sources eligible to be regulated by this rule. Because Connecticut's regulations define all areas as serious nonattainment for ozone, except for towns located in a severe nonattainment area for ozone, the state definitions are equivalent to or more stringent than the current classifications under the 2008 and 2015 ozone standards. EPA can request in the future that Connecticut amend its regulation if any area in Connecticut were to be reclassified. Reclassifying an area, for example from serious to severe, would be done through a proposed and final rulemaking process. Connecticut would then have to make any regulatory changes as needed. In addition, in a letter dated January 12, 2022, Connecticut stated that ''To the extent that EPA changes the ozone attainment designations applicable to Connecticut, DEEP will act with all due haste to make necessary revisions to the relevant definitions in Connecticut's regulations and in the SIP.''

Comment 4: The commenter was concerned that RCSA 33a(d)(4)(F) is a ''director's discretion'' provision which the commenter asserted is illegal. The same comment was submitted for Connecticut's regulation at RCSA 22a–174–33b(d)(4)(F).

Response: Connecticut's regulations at sections 33a(d)(4)(F) and 33b(d)(4)(F) provide that ''if the data in subparagraphs (A), (B), (C), (D) and (E) of this subdivision are unavailable, the emission rate shall be calculated using another source of emissions data that is approved by the Commissioner and the Administrator. Such approval shall be obtained prior to operating in accordance with this section.'' In a letter dated January 12, 2022, Connecticut clarified implementation of these provisions. Connecticut stated that ''Sections 22a–174–33a(d)(4)(F) and 22a–174–33b(d)(4)(F) of the Regulations of Connecticut State Agencies (RCSA) are the final alternatives in a hierarchy of data acceptable for a source owner to determine actual emissions. The two provisions allow for the use of data not otherwise specified in the hierarchy with the prior approval of the Commissioner and Administrator. DEEP understands the approval of the Commissioner and Administrator to be achieved via DEEP's submission of a

single-source SIP revision that would be subject to the procedural requirements of 40 CFR part 51, subpart F, and DEEP will proceed according to this understanding should any requests be received under one of these two provisions. DEEP further understands that such exercise of discretion will not have an effect on the existing SIP requirement until such time as the single-source SIP revision has been approved by the Administrator.'' The commenters concerns are unwarranted because any alternatives approved by EPA and DEEP under RCSA Sections 33a(d)(4)(F) or 33b(d)(4)(F) would be accomplished by a SIP revision with an opportunity for public review and comment.

Comment 5: The commenter stated that the regulations are not enforceable as a practical matter because they do not ensure actual emissions stay below the thresholds in section (d)(1) of the regulation. Section (d)(4)(A) requires the use of a Continuous Emission Monitoring System (CEMS) if the data is available. The commenter was concerned that while CEMS are a good monitoring method, Section (d)(4)(A) does not require data substitution or gap filling when CEMS data for certain time periods are not available, and potential to emit and actual emissions that trigger title V and reasonably available control technology (RACT) applicability don't allow for ignoring emissions. The commenter asserted that, for example, CEMS are often not required to gather data during periods of startup and shutdown even though some emission sources, such as combustion devices, can have substantially higher emissions during those periods. The commenter cites generally to *Weiler* v. *Chatham Forest Products,* 392 F.3d 532, 535 (2nd Cir. 2004). Also, the commenter stated that CEMS have downtime, both planned downtime to do testing and also unplanned downtime, and section (d)(4)(A) of Connecticut's regulation does not address these situations so it would be arbitrary and capricious for EPA to approve this regulation.

The commenter was concerned that Section (d)(4)(B) suffers from similar flaws as discussed above but much worse. For example, the commenter asserted that stack tests are not performed during startups or shutdowns. The commenter stated that by using stack test data to calculate ''actual'' emissions on an annual basis, Section (d)(4)(B) ignores an important part of the problem, that is actual emissions during periods of startup, shutdown, process malfunctions, control equipment malfunctions or operations at different parameters that are not startup and shutdown. The commenter stated that the problem isn't limited to startup or shutdown. The commenter stated that the fact that a source emitted at a certain rate during a stack test does not prove that a source emits at that same rate every other hour that it operates. The commenter stated that this flaw is further compounded by the lack of a requirement for the frequency of stack testing, because a stack test performed 20 years ago, for example, provides no reliable data on current emissions.

The commenter was concerned that Section (d)(4)(C) of Connecticut's regulation suffers from the same problems discussed above but noted that it also ignores a host of other considerations. The commenter questioned whether, for example, the source that is going to use this rule is defective in some way or not properly installed. The commenter stated that if that is the case, the manufacturers' testing doesn't provide reliable data on emissions from the source in question. The commenter pointed to the introduction section of AP–42, Compilation of Air Pollutant Emission Factors, which states ''Average emissions differ significantly from source to source and, therefore, emission factors frequently may not provide adequate estimates of the average emissions for a specific source. The extent of between-source variability that exists, even among similar individual sources, can be large depending on process, control system, and pollutant. Although the causes of this variability are considered in emission factor development, this type of information is seldom included in emission test reports used to develop AP–42 factors.'' As a result, some emission factors are derived from tests that may vary by an order of magnitude or more. Similarly, the commenter was concerned whether the conditions of the source in any way match the conditions of the manufacturer's test. The commenter stated that if the manufacturer did its testing in a high-altitude desert, that could create radically different conditions from sea level winter conditions than a source in Connecticut faces. The commenter stated that this difference in altitude and weather can result in very different combustion and evaporation conditions which change emissions.

The commenter was concerned that Sections (d)(4)(D) and (E) are much worse than prior sections of Connecticut's regulation and use calculations which are in no way rationally related to actual emissions. The commenter believes that these sections allow the use of absolutely no actual emissions data to determine ''actual'' emissions and that they suffer from most of the same faults discussed above. Furthermore, the commenter questioned how a pertinent material balance would account for thermal NO_X emissions, that is NO_X that is formed in combustion processes because our air is 78% nitrogen, regardless of the composition of the fuel. The commenter stated that thermal NO_X formation is greatly influenced by temperature in combustion processes but (d)(4)(D) does not require any parametric monitoring, much less restrictions, on operating temperature. Thus, the commenter states the rule is ignoring this important aspect of the problem such that the calculated emissions from application of (d)(4)(D) would not be rationally related to actual emissions. As to AP–42, the commenter stated that EPA's position has been that AP–42 should not be used for ensuring compliance with synthetic minor limits. The commenter stated that AP–42 clearly states that it is used for ''estimating emissions'', See, *e.g.,* AP–42 Introduction at 1, but a synthetic minor limit is not an estimate. The commenter stated that actual and potential to emit emissions have to be below the applicable threshold. The commenter asserted that actual emissions and an estimate of emissions are two separate things; that AP–42 emission factors come with ratings. The commenter stated that a ''D'' rating is below average and an ''E'' rating is poor. See AP–42 Introduction at 10. The commenter stated that Section (d)(4)(E) allows the use of even emission factors which EPA itself describes as ''Poor'', and it is arbitrary for EPA to allow the use of ''Poor'' ''estimates'' to provide actual emissions.

Therefore, the commenter believes EPA must disapprove this SIP submittal.

The commenter submitted the same comments in relation to Connecticut's regulation at RCSA 22a–174–33b.

Response: The Commenter asserts that ''the regulations are not enforceable as a practical matter because they do not ensure actual emissions stay below the thresholds in section (d)(1).'' As a general matter, a source may avoid treatment as a major source if its ''potential to emit'' (PTE) pollutants is below the relevant major source thresholds. See for example the definition of ''major source'' in 40 CFR part 63, subpart A, and 40 CFR 70.2. In addition, 40 CFR 63.2 defines ''potential to emit'' as the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the

stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. The Connecticut regulations under RCSA section 22a–174–33a allow sources to elect to comply with emission limitations set at 50% of the title V operating permit program thresholds for a major source; or, alternatively, under RCSA section 22a–174–33b, certain specified source categories may commit to be limited to emissions up to, but no more than, 80% of the title V operating permit program thresholds for a major stationary source provided the owner or operator conducts the additional specified monitoring and any other additional requirements required by RCSA 22a–174–33b for the relevant source category. The commenter essentially maintains that the limits in question are not enforceable because of flawed or inadequate methods for determining compliance with the applicable limits.

Connecticut's RCSA sections 22a–174–33a and 22a–174–33b require the owner or operator committing to operate pursuant to the applicable regulations to submit a notification to the State and to keep records that include, among other things, calculation of a source's actual emissions on a monthly and 12-month rolling basis for regulated air pollutants and a detailed description of the methodology used to calculate those actual emissions. The methodology used by an eligible source to calculate emissions must be selected from a preferential hierarchy of methodologies explicitly identified in the regulations.

The commenter cites generally to *Weiler* v. *Chatham Forest Products,* 392 F.3d 532, 535 (2nd Cir. 2004), which held that a group of citizens could bring an action under CAA 304(a)(3) against an owner or operator of a proposed source for which New York had issued a synthetic minor source construction permit, where the citizens contended that the controls or limitations on the source's potential to emit were neither practicably effective nor enforceable and where the source was to be constructed in a nonattainment area. The Court concluded that the plain language of the CAA allowed citizen suits to challenge a state's determination that no major source permit is necessary. In reaching this conclusion, the Court reviewed EPA's treatment of a source's ''potential to emit,'' as relevant to determining whether a source is a major source, and summarized EPA's position that a source that otherwise might be considered a major emitting facility may be treated as not such a source if ''there are legally and practicably enforceable mechanisms in place to make certain that the emissions remain below the relevant levels.'' The Court did not reach the question of whether the controls or limitations at issue in New York were ''legally and practicably enforceable.'' Connecticut's regulation is legally enforceable because it was properly promulgated under state law. In addition, Connecticut's regulation states that no owner or operator of any premises operating in accordance with the rule shall cause or allow the emission of any regulated air pollutant during each and every consecutive 12-month period to be equal to or exceed the emission limitations in the regulation.

Connecticut's approach was developed in accordance with an EPA guidance document titled ''Options for Limiting Potential to Emit of a Stationary Source under Section 112 and Title V of the Clean Air Act,'' issued by John Seitz, Office of Air Quality Planning and Standards (OAQPS) to EPA Air Division Directors, dated January 25, 1995 [1] (January 25, 1995 OAQPS PTE memorandum). This guidance lays out the key criteria for practical enforceability of limits on PTE, which EPA later incorporated into its rationale, in part, for the 2002 New Source Review (NSR) Reform rule (2002 final rule).[2] In the 2002 final rule, EPA stated that practical enforceability for a source-specific permit will be achieved if the permit's provisions specify: (1) A technically-accurate limitation and the portions of the source subject to the limitation; (2) the time period for the limitation (hourly, daily, monthly, and annual limits such as rolling annual limits); and (3) the method to determine compliance, including appropriate monitoring, recordkeeping, and reporting. For rules and general permits that apply to categories of sources, practicable enforceability additionally requires that the provisions: (1) Identify the types or categories of sources that are covered by the rule; (2) where coverage is optional, provide for notice to the permitting authority of the source's election to be covered by the rule; and (3) specify the enforcement consequences relevant to the rule. EPA also stated in the 2002 final rule that '' '[e]nforceable as a practical matter' will be achieved if a requirement is both legally and practically enforceable.'' Among several other provisions, the 2002 final rule established provisions for Plantwide Applicability Limitations (PALs).[3]

To make a PAL enforceable as a practical matter, the EPA regulations require a source to conduct monitoring, recordkeeping and reporting of the actual emissions of a PAL pollutant on a 12-month rolling total basis. A PAL monitoring system must employ one or more of four general approaches meeting minimum requirements specified in the regulations. These include mass balance calculations for activities using coatings or solvents, CEMS, continuous parameter monitoring systems (CPMS) or predictive emissions monitoring systems (PEMS), and emission factors. 40 CFR 52.21(aa)(12)(i)(*b*), (aa)(12)(ii). The regulations also provide for alternative monitoring approaches that are approved by the reviewing authority. 40 CFR 52.21(aa)(12)(i)(*c*). Connecticut's RCSA Sections 33a and 33b contain monitoring and recordkeeping requirements that are substantially consistent with those in the EPA PAL regulations, supporting the conclusion that the limits in Connecticut's RCSA Sections 33a and 33b are enforceable as a practical matter.

As stated above, EPA's January 25, OAQPS PTE memorandum and EPA's 2002 final rule provide specific criteria for practical enforceability to be achieved. Connecticut's rules include requirements that meet these criteria. Specifically, 33a(d) and 33b(d) specify technically-accurate emission limitations that apply premises-wide on a 12-month rolling annual basis. Sections 33a(d) and 33b(d) specify a preferential hierarchy for determining compliance with the emission limitations, as well as monitoring, reporting and recordkeeping. In addition, Sections 33a(g) and 33b(h) require a notification to the permitting

[1] The January 25, 1995 OAQPS memo was predicated on a view that federal enforceability is an essential element in establishing potential to emit limits. A court decision in the *National Mining Association (NMA)* v. *EPA,* 59 F.3d 1351, 1363–1365 (D.C. Cir. 1995) remanded the Federal enforceability provision. Consistent with this decision, EPA's longstanding policy allows for any physical or operational limitation on the capacity of the stationary source to emit a pollutant to be treated as part of the source's design if the limitation or the effect it would have on emissions is, first, either federally enforceable or legally enforceable by a state or local permitting authority and, second, practicably enforceable. See December 20, 1999, memorandum titled ''Third Extension of January 25, 1995 Potential to Emit Transition Policy.'' Available in the docket for this rulemaking.

[2] PSD and NSR: Baseline Emissions Determination, Actual-to-Future-Actual Methodology, Plantwide Applicability Limitations, Clean Unit, Pollution Control Projects. 67 FR 80190–80191 (December 31, 2002).

[3] The PAL regulations were upheld by the Court in *New York* v. *EPA,* 413 F.3d 3, 22 (D.C. Cir. 2005).

authority for sources that elect coverage under the rules. Sections 33a(b) and 33b(c) include duty to comply provisions, as well as a required certification statement in 33a(c) and 33b(k) to be submitted that the information submitted is true, accurate and complete. These provisions require the certifier to acknowledge that any false statements may be punishable as a criminal offense under Connecticut's statutes. In addition, Sections 33a(j) and 33b(k) provide that nothing in these sections precludes the Commissioner from requiring a source to obtain a title V operating permit. Lastly, Sections 33a(f)(2)(A) and 33b(g)(3)(A) require the owner or operator to determine the cause of any emission limitation exceedance, correct such exceedance, mitigate its results, and prevent any further exceedance.

In addition to providing practical enforceability criteria, the January 25, 1995 OAQPS PTE memo indicates that one approach to establishing appropriately enforceable limitations is by general rules creating enforceable restrictions at one time for many sources. The memo discusses a California model rule developed in consultation with EPA as an example of such an approach. The California model rule is designed to place smaller sources under annual emissions limits which restrict their ''potential to emit'' and thus their exposure to ''major source'' requirements of the Clean Air Act. The California model rule ensures compliance with the annual limit through a series of recordkeeping and reporting requirements. These requirements are tapered to reduce burdens as source size (as it relates to emissions) decreases. The California model rule provides a hierarchy of data for sources to calculate actual emissions for every consecutive 12-month period.

Connecticut's RCSA Sections 33a and 33b are consistent with the approach taken in the California model rule, cited approvingly as an example by EPA. The California model rule and Connecticut's rules require a detailed hierarchy for sources to calculate emissions. Specifically, Connecticut's Section 22a–174–33a(d)(4) requires:

(A) If data are available from CEM equipment, such data shall be used to determine the rate of emissions. Only CEM installed, operated, and certified in accordance with a permit or order, regulation issued or administered by the Commissioner or the Administrator, or a Commissioner approved voluntarily installed CEM may be used to satisfy the requirements of this subdivision;

(B) If the data in subparagraph (A) of this subdivision are unavailable but stack testing data are available, such stack testing data shall be used to determine the rate of emissions, provided such testing was conducted in accordance with protocols approved in writing by the Commissioner or the Administrator in advance of testing and a representative of the Commissioner or the Administrator was provided the opportunity to witness such testing;

(C) If the data in subparagraphs (A) and (B) of this subdivision are unavailable, the rate of emissions shall be calculated using data supplied by the manufacturer of the subject emission unit or units, which data were derived from EPA approved emissions testing of such unit performed by or for the manufacturer;

(D) If the data in subparagraphs (A), (B) and (C) of this subdivision are unavailable, the rate of emissions shall be calculated using data derived from an analysis of pertinent material balances;

(E) If the data in subparagraphs (A), (B), (C) and (D) of this subdivision are unavailable, the rate of emissions shall be calculated using the data or emissions estimation technique from the following EPA publications that results in the *highest* rate of emissions:

(i) Compilation of Air Pollutant Emission Factors (AP–42),

(ii) AIRS Facility Subsystem Emission Factors, or

(iii) The Emission Inventory Improvement Program; and

(F) If the data in subparagraphs (A), (B), (C), (D) and (E) of this subdivision are not available, the emission rate shall be calculated using another source of emissions data that is approved by the Commissioner and the Administrator. Such approval shall be obtained prior to operating in accordance with this section.

Connecticut's rules include a preferential hierarchy to use the best data to calculate actual emissions when available. Actual emissions are required to be calculated for the premises for each and every consecutive 12-month period. Connecticut set the emissions limitation in Section 33a at 50% of the major source threshold to create a sufficient buffer to account for variability that may exist in calculating emissions using the methods allowed in the preferential hierarchy. Section 33b sets the premises wide limit to below 80% of the major source threshold for certain source categories and requires additional monitoring and recordkeeping for these source categories.

In addition to the preferential hierarchy, Connecticut's RCSA Sections 33a and 33b also require detailed records and emissions calculations including a log of:

(i) The total amount of fuels, solvents, coatings, raw materials, or other such material, used by each emission unit during each month,

(ii) An identification of such fuels, solvents, coatings, raw materials, or other such material used, by each emission unit during each month,

(iii) The actual operating hours of each emission unit during each month, as necessary to calculate emissions,

(iv) Any other documentation the Commissioner deems necessary to reliably calculate the emission of air pollutants regulated under this section, and

(v) All purchase orders, invoices, Material Safety Data Sheets, test results, certifications or other documents necessary to verify information and calculations in the monthly log.

In addition, Connecticut's RCSA 33a and 33b require sources to maintain a log of annual actual emissions of each regulated air pollutant emitted from the premises, including a detailed description of the methodology the owner or operator used to calculate such emissions and the basis thereof.

Connecticut's 33a and 33b also require the facility to submit annual compliance certifications. Section 33b, which limits sources to up to, but not more than, 80% of the major title v operating source threshold, requires sources with actual emissions >50% of the major source threshold to report emissions for each and every 12-month period. Sections 33a and 33b further allow DEEP to request any additional information in writing to verify actual emissions. (See RCSA 22a–174–33a(f) and 33b(g)) Connecticut's rules also require sources to maintain records of any other documentation the Commissioner deems necessary to reliably calculate the emission of air pollutants regulated. (See RCSA 22a–174–33a(e)(1)(B)(iv) and 33b(f)(1)(B)(iv))

In addition to this regulatory oversight of sources by the State, in a letter dated January 12, 2022, Connecticut provided that:

DEEP has a robust federally enforceable minor source new source review (NSR) permit program that governs operations of individual pieces of equipment. Section 22a–174–33a and Section 22a–174–33b do not shield pieces of equipment from Connecticut's minor source NSR program. Consequently, pieces of equipment subject to minor source NSR at facilities operating under RCSA Section 22a–174–33a or Section 22a–174–33b would be subject to Best Achievable Control Technology, ambient air quality impact analysis, monitoring, record keeping and reporting to assure compliance with individual pollutant limits contained in the permits. Permits for many pieces of equipment require periodic emissions testing and/or continuous emission monitoring systems (CEMS) to assure compliance with permit limits. The permits contain limits on allowable materials, material composition and material throughput and include monitoring, record keeping and reporting to assure that sources are operating as expected. Where applicable, many permits limit startup and shutdown emissions and require

monitoring and record keeping of startup and shutdown emissions to assure compliance with annual emissions limits.

Finally, concerning DEEP's compliance oversight of sources operating under RCSA sections 22a–174–33a and –33b, DEEP offers the following information. . . . DEEP's five-year inspection frequency for RCSA section 22a–174–33b sources is consistent with the frequency stipulated in EPA's CAA CMS policy for synthetic minor 80 percent (SM–80) sources. Note that under EPA's CAA CMS, an SM–80 source is one with a premises-wide potential to emit (including any federally or legally and practicably enforceable physical or operational limitations on such source's capacity) greater than or equal to 80% and less than 100% of the major source thresholds, whereas an RCSA section 22a–174–33b source is limited to premises-wide emissions less than 80% of the major source thresholds. See EPA's CAA Stationary Source CMS, October 2016, section IV [available in the docket for this rulemaking]. Since EPA's CMS does not establish a minimum inspection frequency for true minor sources or synthetic minor sources that do not qualify as SM–80s, the five-year FCE [full compliance evaluation] frequency to which DEEP has committed for the RCSA section 22a–174–33b source universe is more stringent than required by EPA's CMS.

Sources operating under RCSA section 22a–174–33a are subject to inspection at DEEP's discretion. Such inspections may take the form of an on-site FCE or an off-site partial compliance evaluation (*e.g.,* the issuance of an information request under RCSA section 22a–174–4 and the subsequent inspection of responsive records).

In inspecting synthetic minor sources operating under RCSA sections 22a–174–33a and –33b, DEEP ensures proper calculation of facility-wide emissions, including the appropriateness of the selected emission factors, pursuant to the hierarchy of emission calculation methodologies established in subsection (d)(4) of either regulation. This approach is consistent with DEEP's handling of sources previously registered under DEEP's General Permit to Limit the Potential to Emit (GPLPE). In inspecting sources that calculate emissions using CEMS data, DEEP ensures that such CEMS meet applicable performance specifications, quality assurance (QA) requirements, and operational requirements by (i) reviewing relative accuracy test audit (RATA) protocols and results and auditing such test programs as resources allow; (ii) reviewing quarterly excess emission and downtime reports; (iii) verifying that the required QA activities are completed and passed; and (iv) during on-site FCEs, conducting a physical inspection of the CEMS. In inspecting sources that calculate emissions using stack test data, DEEP ensures the validity of stack testing—including the utilization of appropriate test methods, conformance with such methods, and the proper reduction and accuracy of the test results—by reviewing all stack test protocols and results and auditing such test programs as resources allow. Furthermore, DEEP verifies that testing is conducted under the most challenging representative operating conditions. *See, e.g.,* EPA's CAA National Stack Testing Guidance, April 2009, section 5 and DEEP's Source Emission Monitoring Test Guidelines, Version 2.0, April 2019, section 8 [available in the docket for this rulemaking].

Furthermore, consistent with its handling of GPLPE reports, DEEP reviews all reports submitted in accordance with RCSA sections 22a–174–33a and –33b upon their submission, including annual compliance certifications; emission exceedance reports; and, for sources operating under RCSA section 22a–174–33b, annual emission reports. In reviewing emission reports, DEEP ensures proper calculation of facility-wide emissions, including the appropriateness of the selected emission factors, pursuant to the hierarchy of emission calculation methodologies established in the regulations.[4]

In summary, Connecticut's regulatory scheme includes significant oversight; emission limitations containing a sufficient buffer below the major source thresholds to account for variability that may exist in calculating emissions; the requirement to use methods to calculate emissions from a preferential hierarchy; and requirements for monitoring, reporting and recordkeeping. The overall regulatory scheme is based on a model rule contained in EPA guidance, California's model rule, and establishes a program that EPA finds legally and practicably enforceable to limit a sources potential to emit.

While EPA provides a general response to the adverse comment above, for purposes of clarity, below we have broken down the comment into its specific parts and provide additional responses for specific issues raised within the comment.

Comment 5a: The commenter stated that while CEMS are a good method, Section (d)(4)(A) does not require data substitution or gap filling when CEMS data for certain time periods are not available, and that potential to emit and actual emissions which trigger title V and RACT applicability don't allow for ignoring certain periods of emissions. The commenter is concerned about periods of startup and shutdown when CEMS may not be operating or other times when CEMS data is unavailable. The commenter states that CEMS are often not required to gather data during periods of startup and shutdown even though some emission sources, such as combustion devices, can have substantially higher emissions during those periods and cites generally to *Weiler* v. *Chatham Forest Products,* 392 F.3d 532, 535 (2nd Cir. 2004). The commenter also stated that CEMS have downtime, both planned downtime to do testing and unplanned downtime, and because (d)(4)(A) does not address this, it would be arbitrary and capricious for EPA to approve this.

Response: EPA disagrees with the commenter and finds that the portions of Connecticut's rules that allow for calculating premises-wide emissions using CEMS data sufficiently accounts for determining actual emissions over a 12-month rolling period. Only CEMS installed, operated, and certified in accordance with a permit, order, or regulation issued or administered by the Commissioner or EPA, or a Commissioner approved voluntarily installed CEMS may be used to calculate emissions. (See RCSA 33a(d)(4)(A) and 33b(d)(4)A)) In addition, the regulations specify when data from CEMS are not available, the next method in the hierarchy, if available, is to be used to calculate emissions, so the regulations do not allow data gaps in calculating actual emissions. Connecticut's CEMS rules do not allow for the exclusion of startup and shutdown emissions. Connecticut's CEMS regulations also specify quality assurance requirements for CEMS, minimum CEMS data availability, and prohibit shutdown of monitoring equipment. (See RCSA 22a–174–4(c)(4)–(5), and 22a–174–7) Connecticut's regulations specify that CEMS data shall be available no less than 90% of the total operating hours of a source per calendar quarter, except for sources operated less than 336 hours and approved by the Commissioner. In addition, Connecticut's rule is written to provide a sufficient buffer below the major source threshold by setting the premises-wide limit to below 50% of the major source threshold or alternatively, setting the premises-wide limit in Connecticut's 33b to below 80% of the major source threshold for certain source categories with additional required monitoring and recordkeeping. Connecticut's requirements for minimum CEMS data availability ensure that sufficient data is being collected for calculating emissions, which combined with the buffer below the major source thresholds, ensure that sources' emissions stay below the major source thresholds. In light of the overall regulatory scheme, the PTE limits in Connecticut's regulation are not

[4] EPA notes that when Connecticut DEEP refers to the GPLPE, they are referring to a prior general permit designed to limit air pollutant emissions from major stationary sources to below major source thresholds by including legally and practicably enforceable permit restrictions on potential and actual emissions. Connecticut adopted new RCSA sections 22a–174–33a and 22a–174–33b as a replacement program for the GPLPE. On April 24, 2017, EPA approved Connecticut's GPLPE issued on November 9, 2015. See 82 FR 18868.

rendered practicably unenforceable because of the use of CEMS.

Comment 5b: The commenter was concerned that stack tests are not performed during startups or shutdowns. The commenter stated that by using stack test data to calculate ''actual'' emissions on an annual basis, Section (d)(4)(B) ignores an important part of the problem, that is actual emissions during periods of startup, shutdown, process malfunctions, control equipment malfunctions or operations at different operating periods that are not startup and shutdown. The commenter asserted that the problem isn't limited to startup or shutdown because the fact that a source emitted at a certain rate during a stack test does not prove that a source emits at that same rate every other hour that it operates. The commenter asserted that this flaw is further compounded by the lack of a requirement for the frequency of stack testing. The commented asserted that a stack test performed 20 years ago, for example, provides no reliable data on current emissions.

Response: Connecticut's 33a(d)(4)(B) and 33b(d)(4)(B) only allow stack tests if such testing is conducted in accordance with protocols approved in writing by the Commissioner or the Administrator in advance of testing and when a representative of the Commissioner or the Administrator has been provided the opportunity to witness such testing. Should parametric monitoring, specifically required by RCSA 22a–174–33b, indicate that operations are outside of the ranges occurring during the most recent test, or for any other reason, Connecticut has the authority to mandate emissions testing to assure compliance with applicable limits under RCSA 22a–174–5(e)(2). In addition, Connecticut's rule is written to provide a sufficient buffer below the major source threshold by setting the premises wide limit to below 50% of the major source threshold or alternatively, setting the premises wide limit in Connecticut's 33b to below 80% of the major source threshold for certain source categories with additional required monitoring and recordkeeping. Although stack tests are not conducted during startup or shutdown, stack tests are required to be conducted under conditions representative of a source's operations and that would be reviewed during the required approval of the test protocol. Stack test data, combined with the buffer below the major source thresholds, ensure that sufficient data is being collected to ensure that sources' emissions stay below the major source thresholds. In light of the overall regulatory scheme, the PTE limits in Connecticut's regulations are not rendered practicably unenforceable because of the allowance for stack testing.

Comment 5c: Regarding manufacturers' data to calculate emissions, the commenter is concerned that the manufactures' testing may not provide reliable data on emissions from the source in question if the source that is going to use this rule is defective in some way or not properly installed. The commenter is also concerned about the conditions of the source matching the conditions of the manufacturer's test. The commenter states that if the manufacturer did its testing in a high-altitude desert, that could create radically different conditions from sea level winter conditions that a source in Connecticut faces. This difference in altitude and weather can result in very different combustion and evaporation conditions which change emissions.

Response: Connecticut's 33a(d)(4)(C) and 33b(d)(4)(C) only allow the rate of emissions to be calculated using data supplied by the manufacturer of the subject emission unit or units, when such data were derived from EPA approved emissions testing of such unit performed by or for the manufacturer. Should parametric monitoring, specifically required by RCSA 22a–174–33b, indicate that operations are outside of the ranges occurring during the most recent test, or for any other reason, Connecticut has the authority to mandate emissions testing to assure compliance with applicable limits under RCSA 22a–174–5(e)(2). Regarding the commenter's concern that the source may be defective or not installed properly, Connecticut's RCSA 22a–174–7(b) prohibits the deliberate shut down of air pollution control equipment or monitoring equipment except to perform maintenance as specified. In addition, Connecticut has committed to conduct inspections every 5 years for sources covered by RCSA 22a–174–33b, and sources covered by RCSA 22a–174–33a are subject to inspection at DEEP's discretion. Lastly, Connecticut's rule is written to provide a sufficient buffer below the major source threshold by setting the premises wide limit to below 50% of the major source threshold or alternatively, setting the premises wide limit in Connecticut's 33b to below 80% of the major source threshold for certain source categories with additional required monitoring and recordkeeping. Manufacturers' test data, combined with Connecticut's oversight and the buffer below the major source thresholds, ensures that sufficient data is being collected to ensure that sources stay below the major source thresholds. In light of the overall regulatory scheme, the PTE limits in Connecticut's regulations are not rendered practicably unenforceable by the allowance, under certain circumstances, of the use of manufacturers' data to calculate emissions.

Comment 5d: The commenter is concerned that 33a(d)(4)(D) and 33b(d)(4)(D), a requirement in the hierarchy to use pertinent material balances, is not rationally related to actual emissions. The commenter questioned how a pertinent material balance would account for thermal NO_X emissions, that is NO_X that is formed in combustion processes because our air is 78% nitrogen, regardless of the composition of the fuel. The commenter stated that thermal NOx formation is greatly influenced by temperature in combustion processes but (d)(4)(D) does not require any parametric monitoring, much less restrictions, on operating temperature.

Response: EPA disagrees that a source would be required to use material balances to calculate thermal NO_X formation. Sections 33a(d)(4)(E) and 33b(d)(4)(E) require that if pertinent material balance data is not available, for example, to calculate thermal NO_X emissions, and other preferential methods in the hierarchy were not available, sources should use the data or emissions estimation technique from the following EPA publications that results in the *highest* rate of emissions: (i) Compilation of Air Pollutant Emission Factors (AP–42), (ii) AIRS Facility Subsystem Emission Factors, or (iii) The Emission Inventory Improvement Program (EIIP). In addition, emissions can be calculated for a premise using a combination of methods in the hierarchy depending on the operations. That is because the hierarchy does not require the exclusive use of one method for calculating emissions if data in the hierarchy is available for certain operations and not for others. Material balances, combined with the buffer below the major source thresholds, ensures that sufficient data is being collected to ensure that sources stay below the major source thresholds. In light of the overall regulatory scheme, the PTE limits in Connecticut's regulations are not rendered practicably unenforceable by the allowance, under certain circumstances, of the use of material balances to calculate emissions.

Comment 5e: The commenter is concerned that 33a(d)(4)(E) and 33b(d)(4)(E) are not rationally related to actual emissions. The commenter points to the introduction section of AP–42, Compilation of Air Pollutant Emission Factors which provides ''Average

emissions differ significantly from source to source and, therefore, emission factors frequently may not provide adequate estimates of the average emissions for a specific source. The extent of between-source variability that exists, even among similar individual sources, can be large depending on process, control system, and pollutant. Although the causes of this variability are considered in emission factor development, this type of information is seldom included in emission test reports used to develop AP–42 factors.'' As a result, some emission factors are derived from tests that may vary by an order of magnitude or more. The commenter states that EPA's position has been that AP–42 should not be used for ensuring compliance with synthetic minor limits. The commenter states that AP–42 clearly states that it is used for ''estimating emissions'' but a synthetic minor limit is not an estimate. The commenter states that actual and potential to emit emissions have to be below the applicable threshold, and that actual emissions and an estimate of emissions are two separate things. The commenter is also concerned that AP–42 emission factors come with ratings. A ''D'' rating is below average and an ''E'' rating is Poor. The commenter states that Section (d)(4)(E) allows the use of even emission factors which EPA itself describes as ''Poor'', and that it is arbitrary for EPA to allow the use of ''Poor'' ''estimates'' to provide actual emissions.

Response: Sections 33a(d)(4)(E) and 33b(d)(4)(E) require that if other preferential methods in the hierarchy are not available, sources should use the data or emissions estimation technique from the following EPA publications that results in the *highest* rate of emissions: (i) Compilation of Air Pollutant Emission Factors (AP–42), (ii) AIRS Facility Subsystem Emission Factors, or (iii) The Emission Inventory Improvement Program (EIIP). In calculating emissions using emission factors when other data are not available, Connecticut conservatively requires the highest rate of emissions from these publications to be used. The calculation of emissions and assurance of compliance with the limits is not reliant on this alone but also on parametric monitoring, which is explicitly required by RCSA 22a–174–33b. Should parametric monitoring indicate that operations are outside of the ranges occurring during the most recent test, or for any other reason, Connecticut has the authority to mandate emissions testing to assure compliance with applicable limits under RCSA 22a–174–5(e)(2). As noted above, emissions can be calculated for a premise using a combination of methods in the hierarchy depending on the operations, because the hierarchy does not require the exclusive use of one method if data in the hierarchy is available for certain operations and not for others.

EPA acknowledges that in the AP–42 Introduction document we state that use of these factors as source-specific permit limits and/or as emission regulation compliance determinations is not recommended by EPA. However, we also state that emission factors are frequently the best or only method available for estimating emissions, despite their limitations. And we further provide that if representative source-specific data cannot be obtained, emissions information from equipment vendors, particularly emission performance guarantees or actual test data from similar equipment, is a better source of information for permitting decisions than an AP–42 emission factor. When such information is not available, use of AP–42 emission factors may be necessary as a last resort. Sources that reach this level of the data hierarchy in Connecticut's rules would typically be the smallest sources of emissions and it would be unreasonably costly to require such small sources to install a CEMS or conduct a stack test to calculate emissions for purposes of demonstrating emissions remain below the major source thresholds.[5]

In addition, Connecticut's rule is written to provide a sufficient buffer below the major source threshold by setting the premises wide limit in Connecticut's 33a to below 50% of the major source threshold, or alternatively, setting the premises wide limit in Connecticut's 33b to below 80% of the major source threshold for certain source categories with additional required monitoring and recordkeeping. In light of all the material provisions of Connecticut's regulatory scheme including the buffer below the major source thresholds, the possibility of the use of AP–42 emissions factors when other data in the hierarchy are not available does not render the PTE limits practicably unenforceable.

III. Final Action

EPA is approving Connecticut's RCSA section 22a–174–33a, Limit on Premises-wide Actual Emissions Below 50% of Title V Thresholds, effective September 24, 2020, and RCSA section 22a–174–33b, Limit on Premises-wide Actual Emissions Below 80% of Title V Thresholds, effective September 24, 2020 (excluding the following provision: RCSA 22a–174–33b(d)(6)) as a revision to the Connecticut SIP with respect to criteria pollutants and is separately approving the regulations under section 112(l) of the Act with respect to HAPs. EPA is approving Connecticut's request in accordance with the requirements of sections 110 and 112 of the CAA.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Connecticut Regulations described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available through *https://www.regulations.gov* and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely

[5] See AP–42, Introduction at 3. ''Where the risks of using a poor estimate are low, and the costs of more extensive methods are unattractive, then less expensive estimation methods such as emission factors and emission models may be both satisfactory and appropriate.''

affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 10, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2))

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 4, 2022.

David Cash,

Regional Administrator, EPA Region 1.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart H—Connecticut

■ 2. Section 52.370 is amended by adding paragraph (c)(127) to read as follows:

§ 52.370 Identification of plan.

* * * * *

(c) * * *

(127) Revisions to the State Implementation Plan submitted by the Connecticut Department of Energy and Environmental Protection on October 26, 2020, supplemented on January 12, 2022.

(i) *Incorporation by reference.* (A) Regulations of Connecticut State Agencies section 22a–174–33a, Limit on Premises-wide Actual Emissions Below 50% of Title V Thresholds, effective September 24, 2002.

(B) Regulations of Connecticut State Agencies section 22a–174–33b, Limit on Premises-wide Actual Emissions Below 80% of Title V Thresholds, effective September 24, 2020, excluding section (d)(6).

(ii) *Additional materials.* (A) Letter from the Connecticut Department of Energy and Environmental Protection dated October 26, 2020, submitting a revision to the Connecticut State Implementation Plan.

(B) Letter from the Connecticut Department of Energy and Environmental Protection dated January 12, 2022, withdrawing Regulations of Connecticut State Agencies section 22a–174–33b(d)(6) from its SIP submittal.

■ 3. Section 52.385 is amended in Table 52.385 by adding state citations for 22a–174–33a and 22a–174–33b in alphanumerical order to read as follows:

§ 52.385 EPA-approved Connecticut regulations.

* * * * *

TABLE 52.385—EPA-APPROVED REGULATIONS

Connecticut State citation	Title/subject	Dates		**Federal Register** citation	Section 52.370	Comments/description
		Date adopted by State	Date approved by EPA			
*	*	*	*	*	*	*
22a–174–33a	Limit on Premises-wide Actual Emissions Below 50% of Title V Thresholds.	9/24/2020	3/11/2022	[Insert **Federal Register** citation].	(c)127	
22a–174–33b	Limit on Premises-wide Actual Emissions Below 80% of Title V Thresholds.	9/24/2020	3/11/2022	[Insert **Federal Register** citation].	(c)127	Approved with the exception of section (d)(6) which Connecticut withdrew from its SIP submittal.
*	*	*	*	*	*	*

[FR Doc. 2022–05042 Filed 3–10–22; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2021–0642; FRL–9536–01–OCSPP]

Calcium Sulfate; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of calcium sulfate when used as an inert ingredient in antimicrobial formulations applied to food-contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils, limited to 100 parts per million (ppm) in the final formulation. Exponent, Inc. on behalf of Tygrus, LLC, submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of calcium sulfate when used in accordance with this exemption.

DATES: This regulation is effective March 11, 2022. Objections and requests for hearings must be received on or before May 10, 2022, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2021–0642, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805.

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is open to visitors by appointment only. For the latest status information on EPA/DC services and access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Marietta Echeverria, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

You may access a frequently updated electronic version of 40 CFR part 180 through the Office of the Federal Register's e-CFR site at *https://www.ecfr.gov/current/title-40.*

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

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2021–0642 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before May 10, 2022. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2021–0642, by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets/contacts.html.*

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

II. Petition for Exemption

In the **Federal Register** of November 23, 2021 (86 FR 66512) (FRL–8792–05), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP IN–11565) by Exponent, Inc., 1150 Connecticut Ave. NW, Suite 1100, Washington, DC 20036 on behalf of Tygrus, LLC, 1132 E. Big Beaver Road, Troy, MI 48083. The petition requested that 40 CFR 180.940(a) be amended by establishing an exemption from the requirement of a tolerance for residues of calcium sulfate when used as an inert ingredient in antimicrobial formulations applied to food-contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils, limited to 100 parts per million (ppm) in the final formulation. That document referenced a summary of the petition prepared by Exponent, Inc. on behalf of Tygrus, LLC, the petitioner, which is available in the docket, *https://www.regulations.gov.* There were no comments received in response to the notice of filing.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as

polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

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

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no harm to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(c)(2)(A), and the factors specified in FFDCA section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for calcium sulfate including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with calcium sulfate follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by calcium sulfate as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *https://www.regulations.gov* in the document ''Calcium Sulfate; Human Health Risk Assessment and Ecological Effects Assessment to Support Proposed Exemption from the Requirement of a Tolerance When Used as an Inert Ingredient in Pesticide Formulations'' in docket ID number EPA–HQ–OPP–2021–0642.

Acute oral toxicity, primary dermal and eye irritation, acute inhalation toxicity and dermal sensitization studies are available for calcium sulfate. The acute oral toxicity of calcium sulfate is low. The acute oral LD50 (lethal dose) in rats is greater than 2,000 milligrams/kilogram (mg/kg). Acute inhalation toxicity is also low; the LC_{50} (lethal concentration) in rats is greater than 2.61 milligrams/liter (mg/L). A study conducted in rabbits indicates it is not irritating to the skin or eye. A study conducted in the guinea pig indicates it is not a dermal sensitizer.

Based on the toxicity database for calcium sulfate, no toxicity is observed in a combined repeated dose toxicity study with the reproduction/developmental screening test in rats at the limit dose of 1,000 mg/kg/day. No mutagenicity is seen in the Ames or in the mammalian erythrocyte micronucleus tests.

Neurotoxicity and immunotoxicity toxicity studies for calcium sulfate are not available for review. However, no evidence of neurotoxicity or immunotoxicity is seen in the available studies.

B. Toxicological Points of Departure/Levels of Concern

The available toxicity studies indicate that calcium sulfate has a very low overall toxicity. No toxicity was observed in any of the available studies. Since no endpoint of concern was identified for the acute and chronic dietary exposure assessment and short and intermediate dermal and inhalation exposure, a quantitative risk assessment for calcium sulfate is not necessary.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to calcium sulfate, EPA considered exposure under the proposed exemption from the requirement of a tolerance and from existing uses. EPA assessed dietary exposures from calcium sulfate in food as follows:

Dietary exposure (food and drinking water) to calcium sulfate may occur following ingestion of foods with residues from use in accordance with this exemption (*e.g.,* ingesting foods that come in contact with surfaces treated with pesticide formulations containing calcium sulfate), as well as non-pesticidal uses in food (see 21 CFR 184.1230). However, a quantitative dietary exposure assessment was not conducted since a toxicological endpoint for risk assessment was not identified.

2. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables).

Calcium sulfate may be used in pesticide products and non-pesticide products that may be used in and around the home (*e.g.,* for lawn and garden pest control, indoor pest control) and in personal care products. A quantitative residential exposure assessment was not conducted since a toxicological endpoint for risk assessment was not identified.

3. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Based on the lack of toxicity in the available data, calcium sulfate and its

metabolites are not expected to share a common mechanism of toxicity with other chemicals; therefore, section 408(b)(2)(D)(v) does not apply.

D. Safety Factor for Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database unless EPA concludes that a different margin of safety will be safe for infants and children. Based on the lack of threshold effects, EPA has not identified any toxicological endpoints of concern and is conducting a qualitative assessment of calcium sulfate. The qualitative assessment does not use safety factors for assessing risk, and no additional safety factor is needed for assessing risk to infants and children. Based on an assessment of calcium sulfate, EPA has concluded that there are no toxicological endpoints of concern for the U.S. population, including infants and children.

E. Aggregate Risks and Determination of Safety

Taking into consideration all available information on calcium sulfate, EPA has determined that there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to calcium sulfate residues. Therefore, the establishment of an exemption from the requirement of a tolerance under 40 CFR 180.940(a) for residues of calcium sulfate when used as an inert ingredient in antimicrobial pesticide formulations applied to food-contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils limited to 100 ppm in the final formulation, is safe under FFDCA section 408.

V. Other Considerations

Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is not establishing a numerical tolerance for residues of calcium sulfate in or on any food commodities. EPA is establishing a limitation on the amount of calcium sulfate that may be used in antimicrobial pesticide formulations applied to food-contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils. This limitation will be enforced through the pesticide registration process under the Federal Insecticide, Fungicide, and Rodenticide Act (''FIFRA''), 7 U.S.C. 136 *et seq.* EPA will not register any such antimicrobial pesticide formulation that exceeds 100 ppm of calcium sulfate when ready for use.

VI. Conclusions

Therefore, an exemption from the requirement of a tolerance is established under 40 CFR 180. 940(a) for calcium sulfate when used as an inert ingredient in antimicrobial formulations applied to food-contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils limited to 100 ppm in the final formulation.

VII. Statutory and Executive Order Reviews

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

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

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

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

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: March 3, 2022.

Marietta Echeverria,

Acting Director, Registration Division, Office of Pesticide Programs.

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

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

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

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

■ 2. In § 180.940, amend table 1 to paragraph (a) by adding in alphabetical order an entry for ''Calcium Sulfate'' to read as follows:

§ 180.940 Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (Food-contact surface sanitizing solutions)

* * * * *

(a) * * *

TABLE 1 TO PARAGRAPH (a)

Inert ingredients	CAS Reg. No.	Limits
*	*	*
Calcium Sulfate	7778–18–9	When ready for use, the end-use concentration is not to exceed 100 ppm.
*	*	*

* * * * *

[FR Doc. 2022–05213 Filed 3–10–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 18–143, 10–90, 14–58; FCC 19–95; FRS 75184]

The Uniendo a Puerto Rico Fund and the Connect USVI Fund, Connect America Fund, ETC Annual Reports and Certifications; Correction

AGENCY: Federal Communications Commission.

ACTION: Correcting amendment.

SUMMARY: This document corrects an error in the regulatory text of a **Federal Register** document that took major steps to promote the deployment of advanced, hardened networks in the Territories by allocating nearly a billion dollars in Federal universal service support in Puerto Rico and the U.S. Virgin Islands. The summary was published in the **Federal Register** on November 7, 2019, and this document corrects the final regulations in that document.

DATES: Effective March 11, 2022.

FOR FURTHER INFORMATION CONTACT: Jesse Jachman, Wireline Competition Bureau, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This summary contains a correction to the regulatory text of a **Federal Register** document, 84 FR 59937, November 7, 2019. The full text of the Federal Communications Commission's (Commission or FCC) Report and Order and Order on Reconsideration in WC Docket Nos. 18–143, 10–90, 14–58; FCC 19–95, released on September 30, 2019, is available for public inspection during regular business hours in the FCC Reference Center, 45 L Street NE, Washington, DC 20554. See also the Commission's notification of intent to correct published at 85 FR 78814, December 7, 2020, and the announcement of effective date published at 87 FR 9453, February 22, 2022.

List of Subjects in 47 CFR Part 54

Communications common carriers, Health facilities, Infants and children, internet, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

Accordingly, 47 CFR part 54 is corrected by making the following correcting amendment:

PART 54—UNIVERSAL SERVICE

■ 1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004, 1302, and 1601–1609, unless otherwise noted.

■ 2. In § 54.316, revise paragraph (b)(7) to read as follows:

§ 54.316 Broadband deployment reporting and certification requirements for high-cost recipients.

* * * * *

(b) * * *

(7) Recipients of Uniendo a Puerto Rico Fund Stage 2 fixed and Connect USVI Fund fixed Stage 2 fixed support shall provide: On an annual basis by the last business day of the second calendar month following each service milestone in § 54.1506, a certification that by the end of the prior support year, it was offering broadband meeting the requisite public interest obligations specified in § 54.1507 to the required percentage of its supported locations in Puerto Rico and the U.S. Virgin Islands as set forth in § 54.1506. The annual certification shall quantify the carrier's progress toward or, as applicable, completion of deployment in accordance with the resilience and redundancy commitments in its application and in accordance with the detailed network plan it submitted to the Wireline Competition Bureau.

* * * * *

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2022–05116 Filed 3–10–22; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 11

[Docket No. FWS–HQ–LE–2022–0004; FF09L00200–FX–LE12200900000]

RIN 1018–BF67

Civil Penalties; 2022 Inflation Adjustments for Civil Monetary Penalties

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) is issuing this final rule, in accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Inflation Adjustment Act) and Office of Management and Budget (OMB) guidance, to adjust for inflation the statutory civil monetary penalties that may be assessed for violations of Service-administered statutes and their implementing regulations. We are required to adjust civil monetary penalties annually for inflation according to a formula specified in the Inflation Adjustment Act. This rule replaces the previously issued amounts with the updated amounts after using the 2022 inflation adjustment multiplier provided in the OMB guidance.

DATES: This rule is March 11, 2022.

ADDRESSES: This rule may be found on the internet at *https://*

www.regulations.gov in Docket No. FWS–HQ–LE–2022–0004.

FOR FURTHER INFORMATION CONTACT: Victoria Owens, Special Agent in Charge, Branch of Investigations, U.S. Fish and Wildlife Service, Office of Law Enforcement, (703) 358–1949. 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:

Background

The regulations in title 50 of the Code of Federal Regulations at 50 CFR part 11 provide uniform rules and procedures for the assessment of civil penalties resulting from violations of certain laws and regulations enforced by the Service.

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (sec. 701 of Pub. L. 114–74) (Inflation Adjustment Act) required 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.

Under section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, as amended by the Inflation Adjustment Act, each Federal agency is required to issue regulations adjusting for inflation the statutory civil monetary penalties (civil penalties) that can be imposed under the laws administered by that agency. The Inflation Adjustment Act provided that the initial ''catch up adjustment'' take effect no later than August 1, 2016, followed by subsequent adjustments to be made no later than January 15 every year thereafter. This final rule adjusts the civil penalty amounts that may be imposed pursuant to each statutory provision beginning on the date specified above in **DATES**.

On June 28, 2016, the Service published in the **Federal Register** an interim rule that revised 50 CFR part 11 (81 FR 41862) to carry out the Inflation Adjustment Act. The Service subsequently published a final rule to that interim rule on December 23, 2016 (81 FR 94274). The Service has published final rules every year thereafter, further adjusting the civil penalty amounts in 50 CFR 11.33 per OMB guidance:

- 82 FR 6307, January 19, 2017;
- 83 FR 5950, February 12, 2018;
- 84 FR 15525, April 16, 2019;
- 85 FR 10310, February 24, 2020; and
- 86 FR 15427, March 23, 2021.

This final rule adjusts the civil monetary penalty amounts that were listed in the 2021 final rule and subsequently codified at 50 CFR 11.33 by using the 2022 inflation multiplier provided to all Federal agencies by OMB (see below).

OMB issued a memorandum, M–22–07, entitled ''Implementation of Penalty Inflation Adjustments for 2022, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015,'' which provides the cost-of-living adjustment multiplier for 2022: 1.06222. Therefore, we multiplied each penalty in the table in 50 CFR 11.33 by 1.06222 to obtain the 2022 annual adjustment. The new amounts are reflected in the table in the rule portion of this document and replace the current amounts in 50 CFR 11.33.

Required Determinations

In addition, in this final rule, we affirm the required determinations we made in the June 28, 2016, interim rule (81 FR 41862); for descriptions of our actions to ensure compliance with the following statutes and Executive Orders, see that rule:

- National Environmental Policy Act (42 U.S.C. 4321 *et seq.*);
- Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2));
- Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*);
- Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*);
- Executive Orders 12630, 12866, 12988, 13132, 13175, 13211, and 13563.

Administrative Procedure Act

As stated above, under section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, as amended by the Inflation Adjustment Act, Public Law 114–74, 129 Stat. 584 (2015), each Federal agency is required to issue regulations adjusting for inflation the statutory civil monetary penalties that can be imposed under the laws administered by that agency. The Inflation Adjustment Act provided for an initial ''catch up adjustment'' to take effect no later than August 1, 2016, followed by subsequent adjustments to be made no later than January 15 every year thereafter. This final rule adjusts the civil penalty amounts that may be imposed pursuant to each statutory provision beginning on the effective date of this rule. To comply with the Inflation Adjustment Act, we are issuing these regulations as a final rule.

Section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) 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. The Service finds that providing for public comment before issuing this rule is unnecessary as this rulemaking is a nondiscretionary action. The Service is required to publish this rule in order to update the civil penalty amounts by the specified formula described above. The Service has no discretion to vary the amount of the adjustment to reflect any views or suggestions provided by commenters. Since this update to the March 23, 2021, final rule (86 FR 15427) is merely ministerial, we find that pre-publication notice and public comment with respect to the revisions set forth in this rule is unnecessary. We also believe that we have good cause under 5 U.S.C. 553(d) to make this rule effective upon publication to meet the statutory deadline imposed by the Inflation Adjustment Act.

List of Subjects in 50 CFR Part 11

Administrative practice and procedure, Exports, Fish, Imports, Penalties, Plants, Transportation, Wildlife.

Regulation Promulgation

For the reasons described above, we amend part 11, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below.

PART 11—CIVIL PROCEDURES

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

Authority: 16 U.S.C. 470aa–470mm, 470aaa–470aaa-–11, 668–668d, 1361–1384, 1401–1407, 1531–1544, 3371–3378, 4201–4245, 4901–4916, 5201–5207, 5301–5306; 18 U.S.C. 42–43; 25 U.S.C. 3001–3013; and Sec. 107, Pub. L. 114–74, 129 Stat. 599, unless otherwise noted.

■ 2. Revise the table in § 11.33 to read as follows:

§ 11.33 Adjustments to penalties.

* * * * *

Law	Citation	Type of violation	Maximum civil monetary penalty
(a) African Elephant Conservation Act	16 U.S.C. 4224(b)	Any violation	$11,506
(b) Bald and Golden Eagle Protection Act	16 U.S.C. 668(b)	Any violation	14,536
(c) Endangered Species Act of 1973	16 U.S.C. 1540(a)(1)	(1) Knowing violation of section 1538	57,527
		(2) Other knowing violation	27,612
		(3) Any other violation	1,453
(d) Lacey Act Amendments of 1981	16 U.S.C. 3373(a)	(1) Violations referred to in 16 U.S.C. 3373(a)(1)	29,074
		(2) Violations referred to in 16 U.S.C. 3373(a)(2)	727
(e) Marine Mammal Protection Act of 1972	16 U.S.C. 1375	Any violation	29,074
(f) Recreational Hunting Safety Act of 1994	16 U.S.C. 5202(b)	(1) Violation involving use of force or violence or threatened use of force or violence.	18,500
		(2) Any other violation	9,250
(g) Rhinoceros and Tiger Conservation Act of 1998.	16 U.S.C. 5305a(b)(2)	Any violation	20,238
(h) Wild Bird Conservation Act	16 U.S.C. 4912(a)(1)	(1) Violation of section 4910(a)(1), section 4910(a)(2), or any permit issued under section 4911.	48,763
		(2) Violation of section 4910(a)(3)	23,405
		(3) Any other violation	976

Shannon Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2022–05134 Filed 3–10–22; 8:45 am]

BILLING CODE 4333–15–P

Proposed Rules

Federal Register
Vol. 87, No. 48
Friday, March 11, 2022

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL TRADE COMMISSION

16 CFR Part 462

Deceptive or Unfair Earnings Claims

AGENCY: Federal Trade Commission.

ACTION: Advance notice of proposed rulemaking; request for public comment.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') is considering proposing a rule to address deceptive or unfair marketing using earnings claims. The Commission is soliciting written comment, data, and arguments concerning the need for such a rulemaking. In addition, the Commission solicits comment on how the Commission can ensure the broadest participation by affected interests in the rulemaking process.

DATES: Comments must be received on or before May 10, 2022.

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Comment Submissions part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Earnings Claims ANPR, R111003'' on your comment, and file your comment online at *https://www.regulations.gov.* If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex B), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex B), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Melissa Dickey (202–326–2662), *mdickey@ftc.gov,* or Andrew Hudson (202–326–2213), *ahudson@ftc.gov,* Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Mailstop CC–5201, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The Commission is publishing this notice pursuant to section 18 of the Federal Trade Commission Act (FTC Act), 15 U.S.C. 57a, and the provisions of part 1, subpart B of the Commission's Rules of Practice, 16 CFR 1.7 through 1.20. The FTC Act authorizes the Commission to promulgate, modify, and repeal trade regulation rules that define with specificity acts or practices that are unfair or deceptive in or affecting commerce within the meaning of section 5(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1).

I. Background

Misleading earnings claims have long been a significant problem for consumers.[1] The use of such claims both deprives consumers of the ability to make informed decisions and unfairly advantages bad actors in the marketplace at the expense of honest businesses. The promise of significant earnings is a powerful inducement to purchase or invest time or money.

The Commission has extensive law enforcement experience challenging misleading earnings claims under section 5 of the FTC Act, 15 U.S.C. 45,[2] resulting in a long line of federal court opinions holding that the use of false, unsubstantiated, or otherwise misleading earnings claims violates Section 5.[3] The Commission has also issued litigated rulings in a number of cases dealing with misleading earnings claims and has repeatedly determined that such claims violate Section 5.[4]

The cases establish, among other things: (a) Earnings claims are material;[5] (b) representations regarding possible earnings are not mere puffery,[6] and will usually imply that such earnings are typical;[7] (c) the representation that an amount or degree of earnings is likely can be implied, including through testimonials from successful participants and examples of

[1] As discussed further below, consumers encounter such claims in many contexts, including in seeking work, business and other money-making opportunities, education, and more.

[2] *See, e.g.,* Press Release, Federal Trade Commission, Statement on the FTC's ''Operation Income Illusion'' sweep (2020), *https://www.ftc.gov/news-events/press-releases/2020/12/scammers-leverage-pandemic-fears-ftc-law-enforcement-partners;* Press Release, Federal Trade Commission, Statement on the FTC's ''Operation Lost Opportunity Sweep'' (2012), *https://www.ftc.gov/news-events/press-releases/2012/11/ftc-expands-fight-against-deceptive-business-opportunity-schemes;* Press Release, Federal Trade Commission, Statement on the FTC's ''Operation Bottom Dollar'' enforcement sweep (2010), *https://www.ftc.gov/news-events/press-releases/2010/02/ftc-cracks-down-con-artists-who-target-jobless-americans;* Press Release, Federal Trade Commission, Statement on the FTC's ''Operation Short Change'' enforcement sweep (2009), *https://www.ftc.gov/news-events/press-releases/2009/07/ftc-cracks-down-scammers-trying-take-advantage-economic-downturn;* Press Release, Federal Trade Commission, Statement on the FTC's ''Biz Opp Flop'' sweep (2005), *https://www.ftc.gov/news-events/press-releases/2005/02/criminal-and-civil-enforcement-agencies-launch-major-assault.*

[3] *See, e.g., FTC* v. *John Beck Amazing Profits,* 865 F. Supp. 2d 1052 (C.D. Cal. 2012) (summary judgment); *FTC* v. *Grant Connect, LLC,* 827 F. Supp. 2d 1199 (D. Nev. 2011) (summary judgment); *FTC* v. *Holiday Enterprises,* No. 1:06–cv–2939, 2008 WL 953358 (N.D. Ga. Feb. 5, 2008) (summary judgment); *FTC* v. *Stefanchik,* No. 04–cv–1852, 2007 WL 1058579 (W.D. Wash. Apr. 3, 2007) (summary judgment); *FTC* v. *Transnet Wireless Corp.,* 506 F. Supp. 2d 1247 (S.D. Fla. 2007) (summary judgment); *FTC* v. *Tashman,* 318 F.3d 1273 (11th Cir. 2003) (vacating judgment and finding defendants liable on appeal); *FTC* v. *Medicor LLC,* 217 F. Supp. 2d 1048 (C.D. Cal. 2002) (summary judgment); *FTC* v. *Five-Star Auto Club, Inc.,* 97 F. Supp. 2d 502 (S.D.N.Y. 2000) (final judgment after trial); *FTC* v. *Minuteman Press, Inc.,* 53 F. Supp. 2d 248 (E.D.N.Y. 1998) (judgment on liability after trial); *FTC* v. *Wolf,* No. 94–cv–8119, 1996 WL 812940 (S.D. Fla. Jan. 31, 1996) (summary judgment); *FTC* v. *Nat'l Bus. Consultants, Inc.,* No. 89–cv–1740, 1990 WL 32967 (E.D. La. Mar. 20, 1990) (judgment after trial); *FTC* v. *U.S. Oil and Gas Corp.,* No. 83–cv–1702, 1987 U.S. Dist. LEXIS 16137 (S.D. Fl. 1987) (summary judgment); *FTC* v. *Kitco,* 612 F. Supp. 1282 (D. Minn. 1985) (final judgment after trial).

[4] *See* Notice of Penalty Offense Authority Concerning Money-Making Opportunities, *available at https://www.ftc.gov/MMO-notice.*

[5] *John Beck Amazing Profits,* 865 F. Supp. 2d at 1067–76 (claims of quick and easy substantial income were material); *see also, e.g., FTC* v. *Noland,* No. 2:20–cv–0047, 2020 WL 954958, *12–14 (D. Ariz. Feb. 27, 2020); *FTC* v. *World Patent Mktg.,* No. 17–cv–20848, 2017 WL 3508639, *11–12 (S.D. Fla. Aug. 16, 2017); *FTC* v. *Vemma Nutrition Co.,* No. 15–cv–01578, 2015 WL 11118111, *5 (D. Ariz. Sept. 18, 2015); *Holiday Enterprises,* No. 1:06–cv–2939, 2008 WL 953358, *6–7; *FTC* v. *Med. Billers Network, Inc.,* 543 F. Supp. 2d 283, 306–08 (S.D.N.Y. 2008).

[6] *Grant Connect,* 827 F. Supp. 2d at 1225–26 (rejecting puffery defense and finding claims that ''[r]iches range from a few hundred dollars a month to $50,000 or more a year!'' were deceptive), affirmed in relevant part at 763 F.3d 1094 (9th Cir. 2014); *see also, e.g., FTC* v. *Febre,* No. 94–cv–3625, 1996 WL 396117, *2 (N.D. Ill. Jul. 3, 1996); *Noland,* No. 20–cv–00047, 2020 WL 954958, *12–13; *World Patent,* No. 17–cv–20848, 2017 WL 3508639, *12.

[7] *Five-Star Auto Club,* 97 F. Supp. 2d at 528 (''[I]t would have been reasonable for consumers to have assumed that the promised rewards were achieved by the typical [participant.]''); *see also, e.g., Tashman,* 318 F.3d at 1276; *Febre,* No. 94–cv–3625, 1996 WL 396117, *2; *National Dynamics Corp.,* 82 FTC 488, 512, 565 (1973) as modified at 85 FTC 1052 (1975).

hypothetical or past profits;[8] and (d) earnings claims must be substantiated—that is, the maker must have a reasonable basis for the claim before making it.[9] The well-settled law on deception under section 5 of the FTC Act applies fully to deceptive earnings claims: (a) Liability turns on whether the net impression conveyed by representations—not merely their express terms—is unsubstantiated or otherwise misleading;[10] (b) disclaimers do not bar liability, as they often fail to dispel a misleading impression created by other representations;[11] (c) as a matter of law, good faith or a lack of intent to deceive is not a defense;[12] (d) a company may be liable for bait-and-switch advertising or the use of ''misleading door openers,'' ''even if the truth is subsequently made known;''[13] (e) a principal may be liable for deceptive claims made by its representatives or other agents;[14] and (f) a company may be liable for providing deceptive marketing materials for others to use on its behalf (sometimes called providing ''means and instrumentalities'').[15]

Despite the Commission's aggressive enforcement program,[16] deceptive earning claims continue to proliferate in the marketplace. The FTC continues to receive widespread reports from consumers and informants of misleading earnings claims. In *AMG Capital Mgmt., LLC* v. *FTC*[17] the Supreme Court ruled that the Commission may not seek equitable monetary relief under section 13(b) of the FTC Act for violations of the FTC Act or other statutes enforced by the Commission.[18] While the Commission recently issued a Notice of Penalty Offenses concerning earnings claims,[19] which will permit the Commission to seek civil penalties for misleading earnings claims in some cases, this authority does not provide a basis for the Commission to recover funds to return to injured consumers.

The Commission anticipates that a rule prohibiting the use of misleading earnings claims would enhance deterrence and help the Commission move quickly to stop illegal conduct. Such a rule also may further clarify for businesses what constitutes a deceptive earnings claim and what it means to have substantiation for an earnings claim.

In addition, a rule would enable the Commission to seek monetary relief for consumers harmed by deceptive earnings claims, as well as civil penalties against those who make the deceptive claims. Specifically, section 19 of the FTC Act, 15 U.S.C. 57b, authorizes the Commission to seek ''rescission or reformation of contracts, the refund of money or return of property, [and] the payment of damages,'' among other things, to redress harm caused by violations of FTC rules, such as one prohibiting deceptive earnings claims. And section 5 of the FTC Act, 15 U.S.C. 45(m), allows the Commission to ''recover civil penalties'' against those who violate such a rule.

The Commission has previously promulgated rules regulating the use of earnings claims in certain industry settings: The Franchise Rule,[20] the Business Opportunity Rule,[21] and the Telemarketing Sales Rule.[22] However, the scope of coverage of these rules is limited. Numerous different types of enterprises that do not clearly fall under the scope of these existing rules continue to use misleading earnings claims to deceive consumers in violation of section 5. The financial consequences of this deception for consumers are significant.[23]

[8] *John Beck Amazing Profits,* 865 F. Supp. 2d at 1072 (ads featuring testimonials created impression that ''a typical consumer can easily and quickly earn thousands of dollars per week''); *see also, e.g., World Patent,* No. 17–cv–20848, 2017 WL 3508639, *12; *Macmillan, Inc.,* 96 FTC 208, 301 (1980); *National Dynamics,* 82 FTC at 511–13, 564 and as modified at 85 FTC at 1057; *Universal Credit Acceptance Corp.,* 82 FTC 570, 669, 682–83 (1973); *Von Schrader Mfg.,* 33 FTC 58, 65 (1941).

[9] *Grant Connect,* 827 F. Supp. 2d at 1214, 1226 (''Examples of deceptive conduct violative of the Act include unsubstantiated claims that consumers can make a lot of money using the defendant's product . . . .''); *see also, e.g., FTC* v. *Digital Altitude, LLC,* No. 2:18–cv–0729, 2018 WL 1942392, *7–10 (C.D. Cal. Mar. 9, 2018); *John Beck Amazing Profits,* 865 F. Supp. 2d at 1067, 1071–72; *Holiday Enterprises,* No. 1:06–cv–2939, 2008 WL 953358, *6–7; *Von Schrader,* 33 FTC at 64.

[10] *Vemma,* No. 2:15–cv–01578, 2015 WL 11118111, *6 (in determining whether marketing made deceptive income claims, ''[t]he 'common-sense net impression' of representations controls''); *see also, e.g., World Patent,* No. 17–cv–20848, 2017 WL 3508639, *11–12; *John Beck Amazing Profits,* 865 F. Supp. 2d at 1073; *Med. Billers Network,* 543 F. Supp. 2d at 306–07; *Tashman,* 318 F.3d at 1276; *Febre,* No. 94–cv–3625, 1996 WL 396117, *4.

[11] *World Patent,* No. 17–cv–20848, 2017 WL 3508639, *13–14 (rejecting disclaimer defense as they ''failed to change the net impression created by Defendants' salespeople who verbally promised financial gain''); *see also, e.g., Vemma,* No. 2:15–cv–01578, 2015 WL 11118111, *6; *John Beck Amazing Profits,* 865 F. Supp. 2d at 1072; *Stefanchik,* No. 04–cv–1852, 2007 WL 1058579, *6; *Minuteman Press,* 53 F. Supp. 2d at 262–63.

[12] *Five-Star Auto Club,* 97 F. Supp. 2d at 526 (liability for misleading earnings claims under Section 5 did not turn on ''intent to defraud or deceive,'' or ''bad faith''); *see also, e.g., Holiday Enterprises,* No. 1:06–cv–2939, 2008 WL 953358, *6–7; *Med. Billers Network,* 543 F. Supp. 2d at 304; *Nat'l Bus. Consultants,* No. 89–cv–1740, 1990 WL 32967, *9; *Wolf,* No. 94–cv–8119, 1996 WL 812940, *5.

[13] FTC Policy Statement on Deception (October 23, 1984) (appended to *Cliffdale Assocs. Inc.,* 103 FTC 110, 180 & n.37 (1984); *see also, e.g., Exposition Press, Inc.* v. *FTC,* 295 F.2d 869, 873 (2d Cir. 1961); *Med. Billers Network,* 543 F. Supp. 2d at 307.

[14] *Med. Billers Network,* 543 F. Supp. 2d at 319–20 (holding seller liable for telemarketer agent's earnings misrepresentations regardless of telemarketer's purported independent contractor status); *see also, e.g., Stefanchik,* No. 04–cv–1852, 2007 WL 1058579, *6; *FTC* v. *Skybiz.com, Inc.,* No. 01–cv–396, 2001 WL 1673645, *9 (N.D. Okla. Aug. 31, 2001), *aff'd,* 57 F. App'x 374 (10th Cir. 2003); *Five-Star Auto Club,* 97 F. Supp. 2d at 527; *U.S. Oil and Gas,* No. 83–cv–1702, 1987 U.S. Dist. LEXIS 16137, *48–49; *Goodman* v. *FTC,* 244 F.2d 584, 592–593 (9th Cir. 1957).

[15] *Five-Star Auto Club,* 97 F. Supp. 2d at 530 (''[Defendants] violated [the] FTC Act by providing participants with deceptive means and instrumentalities,'' specifically, marketing materials that included deceptive earnings claims, explaining that ''[a]s a matter of law, 'those who put into the hands of others the means by which they may mislead the public, are themselves guilty of a violation of Section 5 of the Federal Trade Commission Act.' ''); *see also, e.g., Vemma,* No. 2:15–cv–01578, 2015 WL 11118111, *7.

[16] *See, e.g., FTC* v. *BINT Operations LLC,* No. 4:21–cv–518 (filed E.D. Ark. 2021); *FTC* v. *Moda Latina BZ Inc.,* No. 2:20–cv–10832 (filed C.D. Cal. 2020); *FTC* v. *Digital Income System, Inc.,* No. 1:20–cv–24721 (filed S.D. Fla. 2020); *FTC* v. *OTA Franchise Corp.,* No. 8:20–cv–287 (filed C.D. Cal. 2020); *FTC* v. *Ragingbull.com, LLC,* No. 1:20–cv–3538 (filed D. Md. 2020); *FTC* v. *National Web Design, LLC,* No. 2:20–cv–846 (filed D. Utah 2020); *FTC* v. *Noland,* No. 2:20–cv–0047 (filed D. Ariz. 2020); *FTC* v. *Position Gurus, LLC,* No. 2:20–cv–710 (filed W.D. Wash. 2020); *FTC* v. *8 Figure Dream Lifestyle LLC,* No. 8:19–cv–1165 (filed C.D. Cal. 2019); *FTC* v. *Zurixx LLC,* No. 2:19–cv–713 (filed D. Utah 2019); *FTC* v. *Advocare, Int'l, L.P.,* No. 4:19–cv–715 (filed E.D. Tex. 2019); *FTC* v. *Neora, LLC,* No. 3:20–cv–1979 (filed D.N.J. 2019, transferred N.D. Tex.); *FTC* v. *Fat Giraffe Mktg. Group LLC,* No. 2:19–cv–63 (filed D. Utah 2019); *FTC* v. *AWS, LLC,* No. 2:18–cv–442 (filed D. Nev. 2018); *FTC* v. *Sellers Playbook, Inc.,* No. 18–cv–2207 (filed D. Minn. 2018); *FTC* v. *Dluca,* No. 0:18–cv–60379 (filed S.D. Fla. 2018); *FTC* v. *Mobe Ltd.,* No. 6:18–cv–862 (filed M.D. Fla. 2018); *FTC* v. *Vision Solution Marketing LLC,* No. 2:18–cv–356 (filed D. Utah 2018); *FTC* v. *Jason Cardiff,* No. 5:18–cv–2104 (filed C.D. Cal. 2018).

[17] *AMG Capital Mgmt., LLC* v. *FTC,* 141 S. Ct. 1341 (2021).

[18] 15 U.S.C. 53(b).

[19] Penalty Offenses Concerning Multi-Making Opportunities (issued October 2021), *available at https://www.ftc.gov/enforcement/penalty-offenses/money-making-opportunities.*

[20] Disclosure Requirements and Prohibitions Concerning Franchising, 16 CFR part 436 (2007).

[21] Business Opportunity Rule, 16 CFR part 437 (2012).

[22] Telemarketing Sales Rule, 16 CFR part 310.

[23] *See, e.g., FTC* v. *OTA Franchise Corp.,* No. 8:20–cv–287 (filed C.D. Cal. 2020) (alleging consumer harm of over $370 million); *FTC* v. *Neora, LLC,* No. 3:20–cv–1979 (filed D.N.J. 2019, transferred N.D. Tex.) (alleging consumer harm of over $120 million); *FTC* v. *Mobe,* No. 6:18–cv–862, Dkt. No. 257, Renewed Motion for Default Judgment, at 5 (filed M.D. Fla. 2018) (alleging consumer harm of over $318 million); *FTC* v. *The Tax Club, Inc.,* No. 13–cv–210 (filed S.D.N.Y. 2016) (alleging consumer harm of over $200 million). Individual losses can be substantial; for example, tens of thousands of purchasers in the *OTA Franchise* matter each paid over $10,000 for purported courses on how to make money trading in the financial markets.

The Commission believes that initiating a rulemaking to address the use of earnings claims could benefit consumers and could provide useful guidance without burdening businesses. The rule would be designed to deter the use of misleading earnings claims, inform market participants of their legal obligations by spelling out prohibitions plainly, and ensure the Commission can seek monetary relief for consumers deceived by misleading earnings claims.

II. Objectives and Regulatory Alternatives

The Commission requests input on whether and how it can most effectively use its authority under section 18 of the FTC Act, 15 U.S.C. 57a, to address certain deceptive or unfair acts or practices involving the use of false, unsubstantiated, or otherwise misleading earnings claims.

The Commission is aware that such claims are used by numerous companies and individuals to entice prospective purchasers, job-seekers, investors, or other participants in widely varying contexts. For example, the Commission and other government agencies have alleged that misleading earnings claims have been used to tout offers as diverse as coaching or mentoring,[24] education,[25] work-from-home, ''gig'' work, and other job opportunities,[26] multi-level marketing opportunities,[27] franchise,[28] e-commerce [29] or other business opportunities,[30] chain referral schemes,[31] and other investment opportunities,[32] as well as other types of business or money-making opportunities.[33] The Commission requests that commenters provide other information or evidence on the prevalence of these practices in these same contexts as well as any others.

The Commission also is interested in exploring disclaimers: Specifically, whether a disclaimer can be sufficient to correct a misleading impression from an atypical earnings claim,[34] and, if so, what features such a disclaimer must have, and in what contexts will it suffice. In the Commission's experience, we have not seen probative evidence that disclaimers effectively cure atypical earnings claims. In Commission enforcement actions where defendants have argued that disclaimers or disclosures cured any deceptive earnings claims, courts have repeatedly found otherwise.[35] Further, research by the Commission has found that even clear and prominent disclaimers of ''Results not typical'' or the stronger ''These testimonials are based on the experiences of a few people and you are not likely to have similar results,'' are not sufficient to dispel the implication that a testimonial depicts typical results.[36] Yet, some companies continue to use disclaimers with such language. Based on the foregoing, the Commission seeks comment, information, and evidence on whether a disclaimer can be sufficient to correct an otherwise misleading impression created by earnings claims, and, if so, whether and how the issue should be addressed in a rule.

The Commission also wishes to explore in this rulemaking whether some or all entities and individuals making earnings claims should be required to give recipients specific earnings information. The Franchise and Business Opportunity Rules require companies that make earnings claims to furnish prospective members with a disclosure document that includes information about earnings.[37] Should similar provisions be implemented in an earnings claim rule? How would it effectively prevent or curb deception regarding earnings? If so, what information should such a disclosure include? What would be the benefit to consumers and the burden to business of such a disclosure requirement? Given the wide variety of commercial contexts in which earnings claims may be used, should a disclosure requirement apply to only certain types of entities and individuals or in certain contexts, or should its application be limited in some other way? For example, should

[24] *See, e.g., FTC* v. *OTA Franchise Corp.,* No. 8:20–cv–287 (filed C.D. Cal. 2020); *FTC* v. *Ragingbull.com, LLC,* No. 1:20–cv–3538 (filed D. Md. 2020); *FTC* v. *Zurixx LLC,* No. 2:19–cv–713 (filed D. Utah 2019); *FTC* v. *Nudge LLC,* No. 2:19–cv–867 (filed D. Utah 2019); *FTC* v. *Mobe Ltd.,* No. 6:18–cv–862 (filed M.D. Fla. 2018); *FTC* v. *Digital Altitude,* No. 2:18–cv–0729 (filed C.D. Cal. 2018).

[25] *See, e.g., FTC* v. *Devry Education Group Inc.,* No. 2:16–cv–579 (filed C.D. Cal. 2016); *Commonwealth of Massachusetts* v. *ITT Educational Services, Inc.,* No. 16–0411 (filed Mass. Super. Ct. 2016); *State of Colorado* v. *Center For Excellence in Higher Education, Inc.,* No. 2014–cv–34530 (filed Denver City And County Dist. Ct. 2014); *Macmillan, Inc.,* 96 FTC 208 (1980).

[26] *See, e.g., Amazon.com, Inc.,* FTC Docket No. C–4746 (filed 2021); *FTC* v. *Moda Latina BZ Inc.,* No. 2:20–cv–10832 (filed C.D. Cal. 2020); *FTC* v. *Fat Giraffe Mktg. Group LLC,* No. 2:19–cv–63 (filed D. Utah 2019); *FTC* v. *Uber Technologies, Inc.,* No. 3:17–cv–0261 (filed N.D. Cal. 2017); *Encyclopaedia Britannica, Inc., et al.,* 87 FTC 421, 450, 486–88, 531–32 (1976); *Abel Allan Goodman Trading As Weavers Guild,* 52 FTC 982, 988 (1956), order affirmed 244 F.2d 584 (9th Cir. 1957).

[27] *See, e.g., FTC* v. *Noland,* No. 2:20–cv–0047 (filed D. Ariz. 2020); *FTC* v. *Neora, LLC,* No. 3:20–cv–1979 (filed D.N.J. 2019, transferred N.D. Tex.); *FTC* v. *Advocare, Int'l, L.P.,* No. 4:19–cv–715 (filed E.D. Tex. 2019); *FTC* v. *Herbalife Int'l of America, Inc.,* No. 2:16–cv–5217 (filed C.D. Cal. 2016); *FTC* v. *Vemma Nutrition Co.,* No. 2:15–cv–01578 (filed D. Ariz. 2015).

[28] *See, e.g., United States* v. *We The People Forms and Service Centers USA, Inc.,* No. 04–cv–10075 (filed C.D. Cal. 2004); *FTC* v. *Government Careers Network, Inc., et al.,* No. 01–cv–2286 (filed S.D.N.Y. 2001); *FTC* v. *Minuteman Press, Inc.,* No. 93–cv–2496 (filed E.D.N.Y. 1993); *FTC* v. *National Business Consultants,* No. 89–cv–1740 (filed E.D. La. 1987).

[29] *See, e.g., FTC* v. *National Web Design, LLC,* No. 2:20–cv–846 (filed D. Utah 2020); *FTC* v. *AWS, LLC,* No. 2:18–cv–442 (filed D. Nev. 2018); *FTC* v. *Sellers Playbook, Inc.,* No. 18–cv–2207 (filed D. Minn. 2018); *FTC* v. *Advertising Strategies, LLC,* No. 2:16–cv–3353 (filed D. Ariz. 2016); *FTC* v. *The Online Entrepreneur, Inc.,* No. 8:12–cv–2500 (filed M.D. Fla. 2012).

[30] *See, e.g., FTC* v. *Digital Income System, Inc.,* No. 1:20–cv–24721 (filed S.D. Fla. 2020); *FTC* v. *8 Figure Dream Lifestyle LLC,* No. 8:19–cv–1165 (filed C.D. Cal. 2019); *FTC* v. *Money Now Funding, LLC,* No. 2:13–cv–1583 (filed D. Ariz. 2013); *FTC* v. *American Business Builders, LLC,* No. 2:12–cv–2368 (filed D. Ariz. 2012); *United States* v. *The Zaken Corp.,* No. 2:12–cv–9631 (filed C.D. Cal. 2012); *FTC* v. *Universal Advertising, Inc.,* No. 1:06–cv–152 (filed D. Utah 2006).

[31] *See, e.g., FTC* v. *BINT Operations LLC,* No. 4:21–cv–518 (filed E.D. Ark. 2021); *FTC* v. *Dluca,* No. 0:18–cv–60379 (filed S.D. Fla. 2018); *FTC* v. *Evans,* No. 4:03–cv–178 (E.D. Tex. 2003); *FTC* v. *Lightfoot,* No. C 3–02–145 (filed S.D. Ohio 2002); *FTC* v. *Bigsmart.com LLC,* No. 01–cv–466 (filed D. Ariz. 2001); *FTC* v. *Cano,* No. 97–cv–7947 (filed C.D. Cal. 1997).

[32] *See, e.g., SEC* v. *Senderov,* No. 19–cv–5242 (filed E.D. Wa. 2019); *SEC* v. *Peterson,* No. 19–cv–8334 (filed C.D. Cal. 2019); *In re Spectrum Concepts LLC,* SEC No. 3–16358 (filed SEC 2015); *In re Pankaj Kumar Srivastava,* SEC No. 3–1267 (filed SEC 2014); *SEC* v. *Butts,* No. 13–23115 (filed S.D. Fla. 2013); *SEC* v. *Shavers,* No. 4:13–cv–416 (filed E.D. Tex. 2013).

[33] *See, e.g., FTC* v. *Position Gurus, LLC,* No. 2:20–cv–710 (filed W.D. Wash. 2020) (marketing and other business-related services); *FTC* v. *Montano,* No. 6:17–cv–2203 (filed M.D. Fla. 2017) (''automatic money systems'' and ''secret codes''); *FTC* v. *World Patent Mktg.,* No. 17–cv–20848 (filed S.D. Fla. 2017) (invention promotion); *FTC* v. *Blue Saguaro Marketing, LLC,* No. 2:16–cv–3406 (filed D. Ariz. 2016) (grant scheme).

[34] An atypical earnings claim is a representation, express or implied, regarding profit, earnings, or other financial gain, that does not reflect the experience of the typical purchaser, employee, independent contractor, or other participant engaged in the money-making opportunity at issue. Such claims often convey the message that the represented earnings *are* typical—this is deceptive. *See* notes 5 & 6, *supra;* FTC's Guides Concerning the Use of Endorsements and Testimonials in Advertising (''Endorsement Guides''), 16 CFR 255.2(b).

[35] *World Patent Mktg.,* No. 17–cv–20848, 2017 WL 3508639, *13–14 (even if disclaimers were seen, ''they failed to change the net impression created by Defendants' salespeople who verbally promised financial gain''); *Vemma,* No. 2:15–cv–01578, 2015 WL 11118111, at *6–7 (disclaimers of ''results not typical'' not sufficient, as ''consumer may [still] reasonably believe that a statement of unusual earning potential represents typical earnings''); *Medicor,* 217 F. Supp. 2d at 1053–54 (''consumers could reasonably believe that the statements of earnings potential represent typical or average earnings'' despite disclaimer); *Minuteman Press,* 53 F. Supp. 2d at 262–63 (written disclaimers contradicting oral earnings claims not sufficient, as ''a reasonable consumer could legitimately conclude that he or she was being furnished important specific earnings information, *subrosa,* to assist in the decision-making process notwithstanding the general disclaimers in the [contract]'').

[36] Endorsement Guide 16 CFR 255.2(b) n. 105.

[37] 16 CFR 436.2 and 436.5(u); 16 CFR 437.2.

its coverage exclude job postings and help wanted ads? Should it apply only to those whose claims cite atypical earnings figures? Or should it be limited on some other basis?

Relatedly, the Commission is interested in exploring whether a rule should address the use of real or purported earnings data or statistics from an industry or professional field in the promotion of money-making opportunities.[38] In the Commission's experience, some such uses are misleading. These seemingly objective figures may create the impression that the depicted level of sales or earnings is typical in the industry or field, or for the opportunity being advertised, and by implication, that the prospective purchaser, employee, or other participant will achieve similar results.[39] The Commission seeks comment on whether a prohibition on such misleading ''industry'' earnings claims should be included in a rule, and if so, what the proper scope of its coverage should be.

The Commission also seeks comment on whether and how a rule can most effectively provide clarity on the substantiation a company must possess before making an earnings claim, and whether those who make earnings claims should be required to keep records to demonstrate how they have substantiated the claims. In the Commission's experience, numerous companies have taken positions that appear to misunderstand the substantiation obligation. For example, the Commission is aware that, historically, some multi-level marketing companies have made earnings claims to potential distributors without knowing what expenses their distributors incur. But earnings claims that reflect gross income and omit material expenses are misleading.[40] Before making an earnings claim, a business must have a reasonable basis for the claim[41]—that means both gross income and expenses incurred in generating that income. As another example, entities and individuals often argue before the Commission that earnings claims made in testimonials are substantiated if the testimonialist provides evidence that he or she attained the results described in the testimonial. But confirming that a testimonialist is accurately describing their own experience does not substantiate a key message that such representations usually convey—that prospective participants can expect similar results.[42] Given the frequency with which these and other similar issues arise, the Commission is considering how a rule might provide clarity on the matter. How should a rule define the evidence necessary to meet the substantiation requirement? Also, should a rule impose a recordkeeping requirement for substantiation evidence? Such requirements ensure that the Commission can obtain the evidence necessary to evaluate a company's claims that its earnings representations are substantiated.[43] If the rule includes a recordkeeping requirement, what must be kept? In what form? For how long? What would be the costs of such a requirement, and are there ways to streamline the requirement to minimize the costs on businesses?

Additionally, the Commission seeks comments on whether, if at all, lifestyle claims should be addressed by a rule. Lifestyle claims are claims that participating in a money-making opportunity will lead to a material change in lifestyle—such as getting to go on expensive vacations, quitting your job, or buying a luxury car. These claims are being used frequently on online advertisements and social media. And the Commission has initiated several enforcement actions that involved deceptive lifestyle claims.[44] The Commission, however, has never comprehensively analyzed such claims, instead addressing them on a case-by-case basis.[45] Comment, evidence, and information is therefore sought on (a) whether and what lifestyle claims are deceptive; (b) the benefits to businesses and consumers from receiving guidance on this topic; and (c) what evidence a company must have before making a lifestyle claim to substantiate it.

Finally, the Commission seeks comment on, among other things, the costs and benefits of a rule that would address the above practices, and on alternatives to such a rulemaking, such as the publication of additional consumer and business education. In their replies, commenters should provide any available evidence and data that supports their position, such as empirical data, consumer perception studies, and consumer complaints.

III. Request for Comments

Members of the public are invited to comment on any issues or concerns they believe are relevant or appropriate to the Commission's consideration of potential rulemaking in this area. The Commission requests that commenters also submit any relevant factual data

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[38] For example, the Business Opportunity Rule bars business opportunity sellers from disseminating industry financial information to prospective purchasers unless they have substantiation that the information ''reflects, or does not exceed, the typical or ordinary'' experience of purchasers. 16 CFR 437.4(c).

[39] *FTC* v. *Zurixx,* No. 2:19–cv–0713, (filed D. Utah 2019), Second Amended Complaint, Dkt. 219, para. 62 & 88 (earnings claims included national averages drawn from industry sources); Dkt. 12–15 (p.7) (same); Dkt. 12–48 (p.35) (same); *Med. Billers Network,* 543 F. Supp. 2d at 305–06 (earnings claims based on industry statistics deceptively implied that participants in defendants' opportunity would make the depicted amounts); *cf.* FTC Endorsement Guides, 16 CFR 255.2(b) (representations of individual consumers' experiences ''will likely be interpreted as representing that the . . . experience is representative of what consumers will generally achieve'').

[40] *Febre,* No. 94–cv–3625, 1996 WL 396117, *3–5 (finding ads with earnings claims deceptive because they failed to disclose expenses); *Encyclopaedia Britannica,* 87 FTC at 445–50, 486–87, 505, 510, 532. *See also Med. Billers Network,* 543 F. Supp. 2d at 315 (failure to disclose costs necessary to earn income with product was a deceptive telemarketing practice and violated the Telemarketing Sales Rule); *Southwest Sunsites, Inc., et al.,* 105 FTC 7, 99–102 (1985) (claims about potential use of property were deceptive because they implied the property was a good investment but failed to disclose substantial expenses that rendered the proposed uses uneconomical), *aff'd* 785 F.2d 1431, 1438 (9th Cir. 1986).

[41] *See, e.g., Grant Connect,* 827 F. Supp. 2d at 1225–1226 (defendants ''cannot fabricate a number [in an earnings claim] and then fall back on the defense that they would not have access to the documentation to support that claim''); *Holiday Enterprises,* No. 1:06–cv–2939, 2008 WL 953358, at *6–7 (granting summary judgement to FTC in part because ''defendants had no substantiation for [their earnings] claims'').

[42] *World Patent Mktg.,* No. 17–cv–20848, 2017 WL 3508639, *12 (''success stories'' in ads implied purchasers would see similar results); *John Beck Amazing Profits,* 865 F. Supp. 2d at 1072–73 (ad with ''numerous testimonials'' conveyed impression that ''a typical consumer'' would ''earn thousands of dollars per week''); *Cliffdale Assocs., Inc.,* 103 FTC 110, 171–72 (1984) (''[b]y printing the testimonials, respondents implicitly made performance claims'' that were deceptive; ''irrespective of the veracity of the individual consumer testimonials, respondents' use of the testimonials to make underlying claims that were false and deceptive was, itself, deceptive''); *Macmillan,* 96 FTC at 301 (''testimonials . . . implied that the success portrayed therein was ordinary and typical''). *See also* FTC Endorsement Guides, 16 CFR 255.2(b) (testimonials ''will likely be interpreted as representing that the . . . experience is representative of what consumers will generally achieve'').

[43] For example, the Business Opportunity Rule requires retention of substantiation documents for three years after an earnings claim is made. 16 CFR 437.7. The Franchise Rule and Business Opportunity Rules both require that substantiation materials be made available to consumers upon request, thereby implicitly requiring retention of substantiation documents. 16 CFR 436.9(d); 16 CFR 437.6(f).

[44] *See, e.g., FTC* v. *Neora, LLC,* No. 3:20–cv–1979 (filed D.N.J. 2019, transferred N.D. Tex.); *FTC* v. *Advocare, Int'l, L.P.,* No. 4:19–cv–715 (filed E.D. Tex. 2019); *FTC* v. *Herbalife Int'l of America, Inc.,* No. 2:16–cv–5217 (filed C.D. Cal. 2016); *FTC* v. *Fortune Hi-Tech Mktg., Inc.,* No. 13–cv–578 (filed N.D. Ill. 2013).

[45] The Business Opportunity Rule's definition of earnings claims includes lifestyle claims, but only if they imply a certain minimum level of earnings. 16 CFR 437.1(f).

upon which their comments are based. In addition to the issues raised above, the Commission solicits public comment on the specific questions identified below. These questions are designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted.

Questions

1. How widespread is the use of false, unsubstantiated, or otherwise misleading earnings claims by entities or individuals in connection with the offer or sale of a good or service, participation in a job or other work opportunity, or in a business, investment, or other money-making opportunity? Is the practice prevalent among those who make earnings claims? Are there certain business contexts or industries in which the practice is prevalent, or certain business contexts or industries in which it is not? For example, are deceptive earnings claims prevalent among all businesses that offer work or employment, or just among those in certain industries? [46] If so, describe the relevant industry or business context and the basis for your position. Provide any evidence, such as empirical data, consumer perception studies, or consumer complaints, that demonstrates the extent of such practices. Provide all evidence that supports your answer.

2. Are there circumstances in which the practices described in Question 1, above, would not be deceptive or unfair? If so, what are those circumstances? Should the Commission exclude such circumstances from the scope of any rulemaking? Why or why not? Provide all evidence that supports your answer.

3. Do the practices described in Question 1, above, cause injury to consumers, and if so, how much? Do such practices cause injury to other businesses by unfairly disadvantaging them? Provide any evidence that quantifies or estimates these injuries if possible, including the size of the discrepancy between misleading earnings claims and actual earnings. Provide all evidence that supports your answer.

4. Do the practices described in Question 1, above, disproportionately target or affect certain groups, including communities of color or other historically underserved communities? If so, why and how? Provide all evidence that supports your answer.

5. Please provide any evidence concerning consumer perception of, or experience with, earnings claims that is relevant to the practices described in Question 1, above.

6. Is there a need for new regulatory provisions to prevent the practices described in Question 1, above? If yes, why? If no, why not? What evidence supports your answer?

7. How should a rule addressing the practices described in Question 1, above, be crafted to maximize the benefits to consumers while minimizing the costs to businesses? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses.

8. Should the Commission consider additional consumer, employee, independent contractor, and business education to reduce harm to consumers associated with the practices described in Question 1, above? If so, what should such education materials include, and how should the Commission communicate that information to consumers and businesses?

9. What alternatives to regulations should the Commission consider to address the practices described in Question 1, above? Would those alternatives obviate the need for regulation? If so, why? If not, why not? What evidence supports your answer?

10. Should a rule addressing the practices described in Question 1, above, define or describe the substantiation required to make an earnings claim? Why or why not? If so, how should it do so? Should a rule adopt the Business Opportunity Rule's language of ''a reasonable basis'' for a claim at the time the claim is made, or should it use some other definition? If the latter, what? What are the benefits to consumers, and costs to businesses, and in particular small businesses, from such a rule? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, and in particular small businesses.

11. Should a rule addressing the practices described in Question 1, above, require the preservation or documentation of substantiation? Why or why not? If so, what types of recordkeeping requirements should be required? What are the benefits to consumers, and costs to businesses, and in particular small businesses, from such a rule? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, and in particular small businesses.

12. What requirements, if any, should a rule impose to address earnings claims made by agents or others interacting with prospective purchasers, employees, independent contractors, or participants on a company's behalf, to address the potential use of misleading claims? How can the Commission ensure that companies effectively monitor the actions of such agents or other persons? Should a rule addressing the practices described in Question 1, above, impose affirmative requirements on companies regarding earnings claims made by their agents or others acting with them or on their behalf? Why or why not? If so, how? What are the benefits to consumers, and costs to businesses from such a rule? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses.

13. Are there circumstances in which disclaimers or disclosures can effectively dispel a misleading impression regarding earnings or profits, or prevent such an impression? If so, describe such circumstances in detail, including all necessary aspects of such disclaimer or disclosure, such as language, format, or the context in which it is presented. Provide all evidence that supports your answer, or that otherwise addresses the effectiveness of disclaimers or disclosures.

14. In the cases the Commission has brought, we have repeatedly seen circumstances where earnings claims convey the impression that the represented earnings are typical. Are there circumstances where they do not? If so, describe such circumstances in detail. Provide all evidence that supports your answer.

15. How should the rule address disclaimers? Are there any circumstances in which a rule should require a disclaimer, such as with atypical earnings claims? Why or why not? If so, describe such circumstances in detail. How should a rule define or describe such disclaimer? Should the rule address conduct that may minimize the effectiveness of any disclaimer, and if so, how? What are the benefits to consumers, and costs to businesses from such a rule? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses.

16. Based on the Commission's enforcement experience, representations of an expensive or otherwise desirable lifestyle—such as images of or references to mansions, yachts, luxury

[46] *See, e.g., Amazon.com, Inc.,* FTC Docket No. C–4746 (filed 2021); *FTC* v. *Uber Technologies, Inc.,* No. 3:17–cv–0261 (N.D. Cal. filed 2017); *Encyclopaedia Britannica,* 87 FTC at 450, 486–88, 531–32; *Abel Allan Goodman,* 52 FTC at 988, order affirmed 244 F.2d 584 (9th Cir. 1957).

goods or automobiles, exotic or otherwise desirable vacations, or even just having more free time—convey the impression that a money-making opportunity can or will provide participants sufficient income to afford a similar lifestyle. Under what circumstances, if any, do such representations not convey such an impression? Describe such circumstances in detail. Provide all evidence that supports your answer.

17. Should a rule addressing the practices described in Question 1, above, address the use of ''lifestyle'' claims of the type described in Question 15? Why or why not? If so, how? What are the benefits to consumers, and costs to businesses from such a rule? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses.

18. Should a rule addressing the practices described in Question 1, above, exempt from its coverage businesses or individuals that are subject to the Business Opportunity Rule, the Franchise Rule, or the Telemarketing Sales Rule? Why or why not? If so, how and to what extent? What are the benefits to consumers, and costs to businesses from such a rule? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses.

19. If a rule addressing the practices described in Question 1, above, is adopted, should the Business Opportunity Rule, the Franchise Rule, or the Telemarketing Sales Rule be amended? Why or why not? If so, how and to what extent?

20. Should a rule addressing the practices described in Question 1, above, exempt from its coverage any other businesses or individuals? Why or why not? If so, how and to what extent? What are the benefits to consumers, and costs to businesses from such a rule? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses.

21. Should a rule addressing the practices described in Question 1, above, include an example earnings disclosure statement that would not be mandatory, but would provide guidance for companies on how to make a lawful earnings claim? Why or why not? If so, what should be contained in the example statement? What are the benefits to consumers, and costs to businesses from such a rule? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses.

22. Should a rule addressing the practices described in Question 1, above, require that an earnings claim disclosure document be provided to consumers prior to purchase, prior to accepting an offer for work, or at any other time? Why or why not? If so, how should the rule define or describe the required disclosure, the time(s) at which it must be provided, the manner in which it must be provided (so it cannot be hidden or obscured by other paperwork), the languages in which it must be provided, and who must provide it? What are the benefits to consumers, and costs to businesses, and in particular small businesses, from such a rule? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, and in particular small businesses.

23. How prevalent is the deceptive or misleading use of real or purported industry earnings data or statistics in the promotion of money-making opportunities? Provide any evidence, such as empirical data, consumer perception studies, or consumer complaints, that demonstrates the extent of such practices. Provide all evidence that supports your answer.

24. Do the practices described in Question 21, above, cause injury to consumers, and if so, how, and how much? Provide any evidence that quantifies or estimates that injury if possible, including any non-financial or indirect injuries to consumers, and including the size of the discrepancy between misleading earnings claims and actual earnings. Provide all evidence that supports your answer.

25. Should a rule addressing the practices described in Question 1, above, include a provision concerning the use of real or purported industry earnings data or statistics? Why or why not? If so, how? Should the coverage of such a provision be limited? If so, how and why? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses.

26. Do existing laws and regulations covering false, unsubstantiated, or otherwise misleading earnings claims affect businesses, particularly small businesses? If so, how? Provide all evidence that supports your answer.

27. Are there other commercial acts or practices involving earnings claims that are deceptive or unfair that should be addressed in the proposed rulemaking? If so, describe the practices. How widespread are the practices? Provide all evidence that supports your answer, and please answer Questions 2–9 with respect to the practices.

28. Do current or impending changes in technology or market practices affect the need for rulemaking? If so, describe the changes and how they affect whether and how a rulemaking should proceed. Provide all evidence that supports your answer.

IV. Comment Submissions

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before May 10, 2022. Write ''Earnings Claims ANPR, R111003'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the *https://www.regulations.gov* website.

Because of the public health emergency in response to the COVID–19 outbreak and the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the *https://www.regulations.gov* website. To ensure the Commission considers your online comment, please follow the instructions on the web-based form.

If you file your comment on paper, write ''Earnings Claims Rulemaking, R111003'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex B), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex B), Washington, DC 20024. If possible, please submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the public record, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not contain sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include any sensitive health information, such as medical records or other individually identifiable health

information. In addition, your comment should not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential''—as provided in section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at *www.regulations.gov*—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website to read this document and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments it receives on or before May 10, 2022. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

By direction of the Commission.

April J. Tabor,

Secretary.

Statement of Commissioner Rebecca Kelly Slaughter Regarding Advance Notice of Proposed Rulemaking on the Use of Earnings Claims

Unfair and deceptive earnings claims underpin some of the worst and most financially ruinous scams Americans face. Pyramid schemes, phony investments, and multi-level-marketing all exploit people's hopes—for financial stability, for a chance to improve their lives—with false promises. These scammers often take advantage of national and financial crises to exploit the newly vulnerable. And unfortunately, we've seen that in the Covid–19 pandemic as well. The extent of these scams is astounding. In a 2020 law enforcement crackdown the FTC pursued over a billion dollars lost to these schemes.[1]

Combating these schemes illuminates something important about the agency's authority and our mission, too. Section 5's requirement that earnings claims are honest and substantiated reflects an underappreciated obligation of the FTC: To protect Americans as workers and not simply as the consumers of products and services. Markets cannot function effectively without honest and transparent pricing. That is just as true for the labor market as it is for consumer goods. False or misleading earnings claims robs people of their investments, their time, and the fair value of their labor. It is also worth remembering: Individuals who put their savings into the stock market—often wealthier individuals—can rely on the SEC to police misrepresentations about earnings claims with respect to those investments. But less wealthy folks who may pour their life savings into promised business opportunities deserve the protection of the federal government as well; that is why we must aggressively police misleading earnings claims.

Two of our recent enforcement actions demonstrate how this kind of exploitation works in practice. Last year the FTC settled with the owners and operators of Moda Latina.[2] The company primarily targeted Latinas with Spanish-language ads that made false promises of significant earnings reselling luxury products. Moda Latina's marketing campaign specifically targeted Latina consumers interested in starting work-at-home businesses.[3] It seems like none of the women targeted in this scheme made money but were instead cheated out of their time and funds to buy useless goods. These kinds of false claims crowd out honest opportunities for people to start businesses, making life even more precarious for vulnerable workers and would-be entrepreneurs.

I'm also deeply concerned about the effect of the over-promises of the gig economy on workers and the labor market. Last year, the FTC settled with Amazon over our charges that it robbed its Amazon Flex drivers the full amount of tips it promised to them.[4] These gig-economy workers signed up as drivers to deliver goods and groceries order through Amazon based on an advertised hourly rate and the promise of receiving ''100% of tips'' they earned while completing deliveries. After people had already signed up to work for the company, Amazon secretly changed its payment scheme and ceased giving drivers their tips while still representing that it did so to these workers and to consumers. In settlement the agency recovered $61.7 million from Amazon, the full amount of the tips the agency believe Amazon withheld from them. By misrepresenting these drivers' take-home pay Amazon distorted both the gig-driver labor market and the consumer home delivery market in what I believe we can fairly surmise was an unlawful bid to increase its market share and lower its labor costs.

Effective enforcement of Section 5's consumer protection obligations helps make these markets for labor functional, fair, and competitive. That's why I'm eager to begin a rulemaking inquiry on earnings claims. I'm proud of the decades of enforcement actions the agency has undertaken to protect against these unfair and deceptive practices. But case by case enforcement has left gaps unscrupulous actors can exploit.

Starting this inquiry means we can now gather evidence on how best to protect against these scams and begin to think about how a possible trade regulation rule could help level the playing field between workers and those that employ them. Pursuing rule violations would also reopen an avenue to return stolen money to consumers—something we can no longer do under section 13(b) until Congress steps in to fix it.

I want to thank everyone that helped bring this ANPR to the Commission today, in particular Melissa Dickey, Andrew Hudson and Kati Daffan in DMP. I'd also like to thank Elisa Jillson, the CTD for the Bureau, Kenny Wright in the Office of the General Counsel, Jason Adler and Guy Ward from the MWRO, and David Givens, Douglas

[1] Press Release, Federal Trade Commission, As Scammers Leverage Pandemic Fears, FTC and Law Enforcement Partners Crack Down on Deceptive Income Schemes Nationwide, December 14, 2020, *https://www.ftc.gov/newsevents/press-releases/2020/12/scammers-leverage-pandemic-fears-ftc-law-enforcement-partners.*

[2] Press Release, Federal Trade Commission, Operators of Bous Income Scam Targeting Latinas Face FTC Settlement, March 2, 2021, *https://www.ftc.gov/news-events/press-releases/2021/03/operators-bogus-income-scam-targeting-latinas-face-ftc-settlement.*

[3] *FTC* v. *Moda Latina BZ Inc.*, No. 2:20–cv–10832 (filed C.D. Cal. 2020), *https://www.ftc.gov/system/files/documents/cases/001_complaint.pdf.*

[4] Press Release, Federal Trade Commission, *Amazon to Pay $61.7 Million to Settle FTC Charges it Withheld Some Customer Tips from Amazon Flex Drivers,* February 2, 2021, *https://www.ftc.gov/news-events/pressreleases/2021/02/amazon-pay-617-million-settle-ftc-charges-it-withheld-some.*

Smith, and Yan Lau, in the Bureau of Economics for all their work.

Concurring Statement of Commissioner Christine S. Wilson on Advance Notice of Proposed Rulemaking Concerning Earnings Claims

Today, the Commission issues an Advance Notice of Proposed Rulemaking (''ANPRM'') to commence proceedings to address the use of false, unsubstantiated, or otherwise misleading earnings claims. As explained in this **Federal Register** document, despite the Commission's aggressive enforcement efforts for decades to combat deceptive earnings claims, false claims about income opportunities continue to proliferate. While I remain skeptical of unleashing a tsunami of rulemakings to address common unfair or deceptive acts or practices, I do not oppose seeking comment on today's ANPRM.

We contemplate this rule against the backdrop of *AMG Capital Mgmt., LLC* v. *FTC.*[1] The Supreme Court's recent decision in *AMG* limits the Commission's authority to use section 13(b) of the FTC Act to obtain monetary relief for consumers harmed by misleading earnings claims. While a rule would not prevent fraudsters from engaging in deceptive earnings claims, it would enhance the FTC's ability to strip them of their ill-gotten gains and return that money to consumers. But for *AMG,* I would be skeptical about the need for rules regarding conduct frequently targeted by the FTC's extensive fraud program. That said, a 13(b) fix would be preferable to having the FTC pursue a cornucopia of rules. And if a 13(b) fix is enacted during the pendency of this rulemaking, I likely would ask the Commission to terminate the process.

In the wake of *AMG,* the exploration of a potential Earnings Claims rule is appropriate for two reasons. First, whether false earnings claims are made by frauds or legitimate businesses, no benefit accrues to consumers or competition. In fact, a 2020 FTC Data Spotlight about ''income scams'' stated that the median loss associated with business and work-at-home opportunities is $3,000.[2] Consumer losses related to deceptively marketed investment seminars are even higher, exceeding $16,000.[3] For decades, the Commission has challenged deceptive earnings claims in connection with coaching and mentoring schemes, multi-level marketing (''MLM'') arrangements, and work-from-home or other business opportunity scams, to name a few.[4] Despite decades of aggressive enforcement and extensive consumer and business education efforts, deceptive earnings claims persist.

Second, consumers cannot analyze the costs and benefits of investing significant resources to pursue coaching, training, MLM, or educational opportunities without accurate representations from sellers. But the true value of these opportunities is best assessed by the entities offering them. In other words, we see significant information asymmetries between consumers and the entities that make earnings claims. The monetary value of an opportunity is likely the central, material claim that consumers consider before spending hundreds, thousands, or even tens of thousands of dollars on financial-improvement opportunities. This ANPRM seeks information on how to ensure that when disclosures are made, they are substantiated.

For these reasons, I do not oppose an ANPRM that explores ways to incentivize establishing a reasonable basis for earnings claims.

[FR Doc. 2022–04679 Filed 3–10–22; 8:45 am]

BILLING CODE 6750–01–P

[1] *AMG Capital Mgmt., LLC* v. *FTC,* 141 S. Ct. 1341 (2021).

[2] Emma Fletcher, *Income scams: big promises, big losses,* FTC Consumer Protection Data Spotlight (Dec. 10, 2020), *available at https://www.ftc.gov/system/files/attachments/blog_posts/%20scams%3A%20big%20promises%2C%20big%20losses%20/.final_.correctlink.pdf.*

[3] *Id.*

[4] *See* Section I of **SUPPLEMENTARY INFORMATION**, *supra. See also* Notice of Penalty Offense Authority Concerning Money-Making Opportunities, *available at https://www.ftc.gov/MMO-notice.*

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0085]

RIN 1625–AA00

Temporary Safety Zone; Tugs Champion, Valerie B, Nancy Anne and Barges Kokosing I, Kokosing III, Kokosing IV Operating in the Straits of Mackinac, MI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the navigable water within a 500-yard radius of several tugs and barges in the Straits of Mackinac. The safety zone is needed to protect personnel, vessels, and the marine environment from the potential hazards created by the work, survey, and inspection conducted within the Straits of Mackinac. Entry of vessels or persons into the zone is prohibited unless specifically authorized by the Captain of the Port Sault Sainte Marie or their designated representative. Due to the lengthy duration of this safety zone, the Coast Guard is accepting and reviewing public comments until March 31, 2022. While this document is effective beginning April 15, 2022, the Coast Guard reserves the right to modify the safety zone if an issue is raised by the public comments that requires such a modification. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before April 11, 2022.

ADDRESSES: You may submit comments identified by docket number USCG–2022–0085 using the Federal Decision Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Deaven S. Palenzuela, Sector Sault Sainte Marie Waterways Management Division, U.S. Coast Guard at (906) 635–3223 or email *ssmprevention@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, Purpose, and Legal Basis

On February 3, 2022, the Project Manager of Kokosing Industrial notified the Coast Guard that they are contracted by American Transmission Company (ATC) for the pupose of protecting their new 138kV submarine power cables installed in the Straits of Mackinac RNA in 2021. Pursuant to 33 CFR 165.944, Kokosing sent the Coast Guard a letter notifying their 2022 project proposal and request to anchor and work inside the regulated navigation area (RNA) within one nautical mile of submerged pipeline/cable.

The Captain of the Port Sault Sainte Marie (COTP) has determined that potential hazards associated with the work, survey, and inspection of underwater infrastructure within the

Straits of Mackinac starting April 15, 2022 will be a safety concern for anyone within a 500-yard radius of the tugs and barges. The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within a 500-yard radius of the working tugs and barges affiliated with the pipeline work in the Straits of Mackinac. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

III. Discussion of Proposed Rule

In accordance with 33 CFR 165.944(c)(4), vessels are prohibited from anchoring in any charted submerged pipeline or cable areas within the Stratis of Mackinac RNA; except when expressly permitted by the COTP. Kokosing underwent the proper procedures to notify the COTP their project proposal within the Straits of Mackinac RNA by submitting a letter requesting to anchor within one nautical mile of submerged infrastructure.

This rule establishes a temporary safety zone from April 15, 2022 to December 31, 2022. The safety zone will cover all navigable waters within 500 yards of the tugs and barges being used to work, survey, and inspect within the Straits of Mackinac Regulated Navigation Area. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the operation is conducted. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size and location of the safety zone. Vessel traffic will be able to safely transit around this safety zone which would impact a small designated area of the Straits of Mackinac. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone that will prohibit entry within 500 yards of tugs and barges used to work, survey, and inspect within the Straits of Mackinac. Normally such actions are categorically excluded from further review under paragraph L[60(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. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG- 2022–0085 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 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.T09–0085 to read as follows:

§ 165.T09–0085 Safety Zone; Tugs Champion, Valerie B, Nanacy Anne and Barges Kokosing I, Kokosing III, Kokosing IV operating in the Straits of Mackinac, MI.

(a) *Location.* The following areas are safety zones: All navigable water within 500 yards of the Tugs Valerie B, Nancy Anne, Champion and Barges Kokosing I, III, and IV while conducting work, surveys, and inspection within the Straits of Mackinac.

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

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into, transiting, or anchoring within the safety zone described in paragraph (a) is prohibited unless authorized by the Captain of the Port, Sault Sainte Marie or his designated representative. (2) Before a vessel operator may enter or operate within the safety zones, theymust obtain permission from the Captain of the Port, Sault Sainte Marie, or his designated representative via VHF Channel 16 or telephone at (906) 635–3233. Vessel operators given permission to enter or operate in the safety zone must comply with all orders given to them by the Captain of the Port, Sault Sainte Marie or his designated representative.

(d) *Enforcement period.* This section will be enforced from April 15, 2022 to December 31, 2022.

Dated: March 8, 2022

A.R. Jones,

Captain, U.S. Coast Guard, Captain of the Port Sault Sainte Marie.

[FR Doc. 2022–05235 Filed 3–10–22; 8:45 am]

BILLING CODE 9110–04–P

Notices

Federal Register
Vol. 87, No. 48
Friday, March 11, 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

Agricultural Marketing Service

[Doc. No. AMS–TM–22–0017]

Regional Food Business Centers; Request for a New Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agricultural Marketing Service's (AMS) intention to seek approval from the Office of Management and Budget to collect information related to the new Regional Food Business Centers created by the AMS Transportation and Marketing Program.

DATES: Comments on this notice must be received by May 10, 2022 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit comments concerning this information collection notice. Comments should be submitted online at *www.regulations.gov* or sent to Christina Conell, Marketing Services Division Deputy Director, AMS Transportation and Marketing Program, 1400 Independence Avenue SW, Stop 0269, Washington, DC 20250–0264, Fax: (202) 690–0338. All comments should reference the document number and the date and page number of this issue of the **Federal Register**. All comments submitted in response to this notice will be posted without change, including any personal information provided, at *www.regulations.gov* and will be included in the record and made available to the public. All comments received will also be available for public inspection during regular business hours at the address above.

FOR FURTHER INFORMATION CONTACT: Christina Conell, Marketing Services Division Deputy Director, AMS Transportation and Marketing Program, 1400 Independence Avenue SW, Stop 0269, Washington, DC 20250–0264, Telephone: (202) 657–8647 or Email: *christina.conell@usda.gov.*

SUPPLEMENTARY INFORMATION:

Overview of This Information Collection

Agency: USDA, AMS.

Title: Regional Food Business Centers (RFBC).

OMB Number: 0581–NEW.

Type of Request: New Information Collection.

Abstract: The Regional Food Business Centers are authorized and funded by Section 1001(b)(4) of the American Rescue Plan Act of 2021 (Pub. L. 117–2). Under Section 1001(b)(4), the Secretary is directed to provide assistance for maintaining and improving food and agricultural supply chain resiliency. AMS will enter into cooperative agreements with the RFBCs.

The Regional Food Business Centers will be the backbone for local and regional supply chain development and will offer coordination, technical assistance, and capacity building support to small and mid-sized food and farm businesses which will lead to more resilient, diverse, and connected supply chains. This program will provide a way for geographic regions to tailor development and investment to fit their needs, while recognizing that resilient supply chains are built upon strong relationships between individuals, communities, regions, sectors, and institutions. The RFBCs will support coordination in their region, fund technical assistance (TA) providers to offer business technical assistance to food and farm businesses and provide small grants to food businesses looking to expand or start in their region.

Because these programs are voluntary, respondents apply for the specific program, and in doing so, they provide information. AMS is the primary user of the information. The information collected is needed to certify that RFBCs are complying with applicable program regulations, and the data collected is the minimum information necessary to effectively carry out the requirements of the program. The information collection requirements in this request are essential to administer and evaluate the program and to provide the necessary technical assistance to RFBCs and their subrecipients.

The data collection will include the collection of application information, quarterly reports, in addition to biannual interviews and quantitative information related to RFBCs (awardees), the TA providers (sub-awardees) and the businesses they fund.

Estimate of Burden: Public reporting burden for this collection of information is estimated to total 1,508.33 hours.

Respondents: Peer reviewers, RFBC applicants, RFBCs (awardees).

Estimated Number of Respondents: 460 respondents.

Estimated Total Annual Responses including Recordkeeping: 591 annual responses.

Estimated Number of Responses per Respondent: 34.76 annual responses per respondent (591 annual responses/17 responses per respondent).

Estimated Total Annual Burden on Respondents and Recordkeepers: 119.87 total hours per respondent (1508.33 hours/12.583 hours per response).

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Melissa R. Bailey,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2022–05170 Filed 3–10–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 8, 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. 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 11, 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: Spot Market Hog Pandemic Program (SMHPP).

OMB Control Number: 0560–0305.

Summary of Collection: In the Coronavirus Aid, Relief, Economic Security Act (Pub. L. 116–136), the Secretary is using an estimated $50 million in funds to assist applicants under the Spot Market Hog Pandemic Program (SMHPP). Applicants will receive payments under the CARES Act to compensate eligible hog producers for hogs sold through a negotiated sale from April 16, 2020, through September 1, 2020.

Need and Use of the Information: To determine whether a producer is eligible for SMHPP and to calculate a payment, an applicant is required to submit FSA–940, SMHPP application; AD–2047, Customer Data Worksheet (if applicable); CCC–901, Member Information for Legal Entities, if applicable; CCC–902, Farm Operating Plan for Payment Eligibility; CCC–941, Average Adjusted Gross Income (AGI) Certification and Consent to Disclosure of Tax Information; FSA–1123, Certification of 2020 AGI (if applicable); and AD–1026—Highly Erodible Land Conservation (HELC) and Wetland Conservation Certification. Failure to solicit applications will result in failure to provide payments to eligible producers as intended by the CARES Act.

Description of Respondents: Businesses or other for-profit and Farms.

Number of Respondents: 23,113.

Frequency of Responses: Reporting; Other (one-time).

Total Burden Hours: 18,105.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–05186 Filed 3–10–22; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 8, 2022.

The Department of Agriculture has submitted the following information collection requirement(s) to Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding: Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; 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 11, 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.

Rural Utilities Service

Title: 7 CFR 1717 Subpart Y, Settlement of Debt Owed by Electric Borrowers.

OMB Control Number: 0572–0116.

Summary of Collection: The Rural Utilities Service makes mortgage loans and loan guarantees to electric systems to provide and improve electric service in rural areas pursuant to the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*) (RE Act). This information collection requirement stems from passage of Public Law 104–127, on April 4, 1996, which amended section 331(b) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*) to extend to RUS the Secretary of Agriculture's authority to settle debts with respect to loans made or guaranteed by RUS. Only those electric borrowers that are unable to fully repay their debts to the Government and who apply to RUS for relief will be affected by this information collection. The collection will require only that information which is essential for determining: The need for debt settlement; the amount of relief that is needed; the amount of debt that can be repaid; the scheduling of debt repayment; and the range of opportunities for enhancing the amount of debt that can be recovered.

Need and Use of the Information: The information to be collected will be similar to that which any prudent lender would require to determine whether debt settlement is required and the amount of relief that is needed. Since the need for relief is expected to vary substantially from case to case, so will the required information to be collected.

Description of Respondents: Private Sector; Business or other for-profit.

Number of Respondents: 1.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,000.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–05172 Filed 3–10–22; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by April 11, 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.

Food and Nutrition Service

Title: 2023 Farm to School Census.

OMB Control Number: 0584–0646.

Summary of Collection: Section 18 of the Richard B. Russell National School Lunch Act authorized and funded USDA to establish a farm to school program in order to assist eligible entities, through grants and technical assistance, in implementing farm to school programs that improve food and agriculture education as well as access to local foods in schools. This work is housed within the FNS Office of Community Food Systems (OCFS). As part of the Farm to School Program's authorization, OCFS collects and disseminates information on farm to school activity throughout the country. OCFS conducted a national census of farm to school activity in 2013, 2015, and 2019. The Farm to School Census provides the only nationally-representative data available on farm to school participation and activities in the United States.

Need and Use of the Information: The 2023 Farm to School Census (Census) will collect and synthesize data from a national census of SFAs to better understand the characteristics of SFAs participating in farm to school and the scope and details of the activities they engage in (*e.g.,* local food procurement, gardening, agriculture education). The Census will be distributed to all public and private SFAs (including residential child care institutions) participating in the National School Lunch Program (NSLP) in the 50 states, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, the U.S. Virgin Islands, and Washington, DC.

Description of Respondents: State, Local, or Tribal government, Business or Other For Profit and Not for Profit.

Number of Respondents: 19,056.

Frequency of Responses: Reporting: Once, Annually.

Total Burden Hours: 18,681.

Dated: March 8, 2022.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–05207 Filed 3–10–22; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–75–2021]

Foreign-Trade Zone (FTZ) 41—Milwaukee, Wisconsin, Authorization of Production Activity, GXO Logistics (Thermal Transfer Printers, Data Transmission Devices and Accessories Kitting), Kenosha, Wisconsin

On November 8, 2021, GXO Logistics submitted a notification of proposed production activity to the FTZ Board for its facility within FTZ 41, in Kenosha, Wisconsin.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (86 FR 64898–64899, November 19, 2021). On March 8, 2022, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: March 8, 2022.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2022–05216 Filed 3–10–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–07–2022]

Foreign-Trade Zone (FTZ) 75—Phoenix, Arizona, Notification of Proposed Production Activity, Sunlit Arizona LLC (Specialty Chemicals for Microchip Production), Phoenix, Arizona

Sunlit Arizona LLC submitted a notification of proposed production activity to the FTZ Board (the Board) for its facility in Phoenix, Arizona within FTZ 75. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on March 3, 2022.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material(s)/component(s) and specific finished product(s) described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the

background section of the Board's website—accessible via *www.trade.gov/ftz*.

The proposed finished products include hydrofluoric acid 49%, hydrofluoric acid 25%, buffer oxide etchant, aluminum etchant, poly etchant, cyclopentanone, propylene glycol monomethyl ether acetate, siloxane remover, and silicon etchant (duty rate ranges from duty-free to 6.5%).

The proposed foreign-status materials and components include hydrofluoric acid 60%, ammonium fluoride 40%, nitric acid, acetic acid, phosphoric acid, and sulfuric acid (duty rate ranges from duty-free to 3.1%). The request indicates that certain materials/components are subject to duties under Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov*. The closing period for their receipt is April 20, 2022.

A copy of the notification will be available for public inspection in the ''Online FTZ Information System'' section of the Board's website.

For further information, contact Juanita Chen at *juanita.chen@trade.gov*.

Dated: March 7, 2022.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2022–05215 Filed 3–10–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–73–2021]

Foreign-Trade Zone (FTZ) 262—Southaven, Mississippi, Authorization of Production Activity, Avaya, Inc. (Kitting of Audio/Video Conferencing Equipment), Olive Branch, Mississippi

On November 5, 2021, Avaya, Inc., submitted a notification of proposed production activity to the FTZ Board for its facility within FTZ 262, in Olive Branch, Mississippi.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (86 FR 64182, November 17, 2021). On March 7, 2022, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including section 400.14.

Dated: March 7, 2022.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2022–05073 Filed 3–10–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–863]

Large Diameter Welded Pipe From Canada: Amended Final Results of Antidumping Duty Administrative Review; 2018–2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is amending the final results of the administrative review of the antidumping duty order on large diameter welded pipe from Canada to correct ministerial errors. The period of review (POR) is August 27, 2018, through April 30, 2020.

DATES: Applicable March 11, 2022.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6905.

SUPPLEMENTARY INFORMATION:

Background

On January 31, 2022, Commerce disclosed its calculations for the *Final Results* [1] to interested parties and provided interested parties with the opportunity to allege ministerial errors.[2] On February 7, 2022, Evraz Inc. NA (Evraz), the sole mandatory respondent, submitted an allegation of ministerial errors in the *Final Results*.[3] No other party made an allegation of ministerial errors. On February 11, 2022, the American Line Pipe Producers Association (ALPPA), a domestic interested party, rebutted Evraz's ministerial error allegation.[4]

Legal Framework

Section 751(h) of the Tariff Act of 1930, as amended (the Act), defines a ''ministerial error'' as including ''errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other unintentional error which the administering authority considers ministerial.'' With respect to final results of administrative reviews, 19 CFR 351.224(e) provides that Commerce ''will analyze any comments received and, if appropriate, correct any ministerial error by amending . . . the final results of review . . .''

Ministerial Error

We agree with Evraz that Commerce made a ministerial error in the *Final Results* within the meaning of section 751(h) of the Act and 19 CFR 351.224(f). In the *Final Results,* we intended to offset Evraz's reported section 232 duty expense by the reported section 232 duty revenue capped at the amount of the expense and to deduct the net amount from the export price as a movement expense.[5] However, in calculating the offset, we unintentionally used an erroneous capping formula. Accordingly, Commerce determines that it made a ministerial error in the *Final Results* pursuant to section 751(h) of the Act and 19 CFR 351.224(f) and has amended its calculations to apply the intended capping formula.

For a complete discussion of the ministerial error allegation, as well as Commerce's analysis, *see* the accompanying Ministerial Error Memorandum.[6] The Ministerial Error 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*.

Pursuant to 19 CFR 351.224(e), Commerce is amending the *Final Results* to reflect the correction of this ministerial error in the calculation of the weighted-average dumping margin

[1] *See Large Diameter Welded Pipe from Canada: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2018–2020,* 87 FR 6497 (February 4, 2022) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM).

[2] *See* Memorandum, ''Deadline for Ministerial Error Comments for the Final Results,'' dated February 1, 2022.

[3] *See* Evraz's Letter, ''Ministerial Error Comments,'' dated February 7, 2022.

[4] *See* ALPPA Letter, ''Response to Evraz's Ministerial Error Allegation,'' dated February 11, 2022.

[5] *See Final Results* IDM at Comment 6.

[6] *See* Memorandum, ''Administrative Review of the Antidumping Duty Order on Large Diameter Welded Pipe from Canada; 2018–2020: Ministerial Error Allegation in the Final Results,'' dated concurrently with this notice (Ministerial Error Memorandum).

assigned to Evraz in the *Final Results,* which changes from 15.29 percent to 7.90 percent. Furthermore, we are also revising the review-specific weighted-average dumping margin assigned to the non-examined companies under review, which is equal to Evraz's weighted-average dumping margin, consistent with the *Final Results.*

Amended Final Results

As a result of correcting the ministerial error, Commerce determines that the following weighted-average dumping margins exist for the period August 27, 2018, through April 30, 2020:

Exporter or producer	Weighted-average dumping margin (percent)
Evraz Inc. NA [7]	7.90
Non-Examined Companies [8]	7.90

Disclosure

We intend to disclose under administrative protective order the calculations performed to parties in this proceeding within five days after publication of these amended final results in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with these amended final results of review. Commerce intends to issue assessment instructions to CBP no earlier than 41 days after the date of publication of the amended final results of this review in the **Federal Register**, in accordance with 19 CFR 356.8(a).

Pursuant to 19 CFR 351.212(b)(1), we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales for which entered value was reported. Where an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Commerce's ''automatic assessment'' practice will apply to entries of subject merchandise during the POR produced by Evraz for which the company did not know that the merchandise it sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[9]

For the companies which were not selected for individual examination, we intend to direct CBP to assess antidumping duties at a rate equal to the weighted-average dumping margin determined for those companies in the amended final results.

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the companies listed above will be equal to the weighted-average dumping margin that is established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously investigated or reviewed companies not subject to this review, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of the proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers and exporters will continue to be 12.32 percent *ad valorem,* the all-others rate established in the LTFV investigation.[10]

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

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of 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 the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(h) and 777(i)(1) of the Act, and 19 CFR 351.224(e).

Dated: March 4, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

Review-Specific Rate Applicable to Companies Not Selected for Individual Examination

1. Acier Profile SBB Inc
2. Aciers Lague Steels Inc
3. Amdor Inc
4. BPC Services Group
5. Bri-Steel Manufacturing
6. Canada Culvert
7. Cappco Tubular Products Canada Inc
8. CFI Metal Inc
9. Dominion Pipe & Piling
10. Enduro Canada Pipeline Services
11. Fi Oilfield Services Canada
12. Forterra
13. Gchem Ltd
14. Graham Construction
15. Groupe Fordia Inc
16. Grupo Fordia Inc
17. Hodgson Custom Rolling
18. Hyprescon Inc
19. Interpipe Inc
20. K K Recycling Services
21. Kobelt Manufacturing Co

[7] In the underlying less-than-fair-value (LTFV) investigation, Commerce determined that Evraz Inc. NA, Evraz Inc. NA Canada, and the Canadian National Steel Corporation (collectively, Evraz) comprise a single entity. *See Large Diameter Welded Pipe from Canada: Antidumping Duty Order*, 84 FR 18775 (May 2, 2019) (*Order*). There is no information on this record of this review that requires reconsideration of this single entity determination.

[8] *See* Appendix.

[9] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[10] *See Order.*

22. Labrie Environment
23. Les Aciers Sofatec
24. Lorenz Conveying P
25. Lorenz Conveying Products
26. Matrix Manufacturing
27. MBI Produits De Forge
28. Nor Arc
29. Peak Drilling Ltd
30. Pipe & Piling Sply Ltd
31. Pipe & Piling Supplies
32. Prudental
33. Prudential
34. Shaw Pipe Protecction
35. Shaw Pipe Protection
36. Tenaris Algoma Tubes Facility
37. Tenaris Prudential
38. Welded Tube of Can Ltd

[FR Doc. 2022–05208 Filed 3–10–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

U.S. Department of Commerce Trade Finance Advisory Council

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The U.S. Department of Commerce Trade Finance Advisory Council (TFAC or the Council) will hold a virtual meeting on Tuesday, April 12, 2022. The meeting is open to the public with registration instructions provided below.

DATES: Tuesday, April 12, 2022, from approximately 1:00 p.m. to 3:00 p.m. Eastern Daylight Time (EDT). The deadline for members of the public to register, including requests to make comments during the meeting and for auxiliary aids, or to submit written comments for dissemination prior to the meeting, is 5:00 p.m. EDT on Thursday, April 7, 2022. Before March 31, 2022, registration, comments, and any auxiliary aid requests should be submitted via email to *Patrick.Zimet@trade.gov,* and after March 31, 2022, they should be submitted to *Yuki.Fujiyama@trade.gov.*

ADDRESSES: The meeting will be held virtually via Microsoft Teams video conferencing.

FOR FURTHER INFORMATION CONTACT: Before March 31, 2022, Patrick Zimet, Designated Federal Officer, Office of Finance and Insurance Industries (OFII), International Trade Administration, U.S. Department of Commerce at (202) 306–9474; email: *Patrick.Zimet@trade.gov.*

After March 31, 2022, contact Yuki Fujiyama at (202) 617–9599; email: *Yuki.Fujiyama@trade.gov.*

SUPPLEMENTARY INFORMATION:

Background: The TFAC was originally chartered on August 11, 2016, pursuant to discretionary authority and in accordance with the Federal Advisory Committee Act, as amended, 5 U.S.C. App., and was most recently re-chartered on August 7, 2020. The TFAC serves as the principal advisory body to the Secretary of Commerce on policy matters relating to access to trade finance for U.S. exporters, including small- and medium-sized enterprises, and their foreign buyers. The TFAC is the sole mechanism by which the Department of Commerce convenes private sector stakeholders to identify and develop consensus-based solutions to trade finance challenges. The Council is comprised of a diverse group of stakeholders from the trade finance industry and the U.S. exporting community, as well as experts from academia and public policy organizations.

On Tuesday, April 12, 2022, the TFAC will hold the third meeting of its 2020–2022 charter term. During the meeting, the TFAC will receive an update on the implementation status of previously adopted recommendations, the subcommittees will put forth recommendations for a vote by the full TFAC, and the TFAC will discuss potential future recommendations and its plan for the remainder of the charter term.

Meeting minutes will be available within 90 days of the meeting upon request or on the TFAC's website at *https://www.trade.gov/about-us/trade-finance-advisory-council-tfac.*

Public Participation: The meeting will be open to the public and there will be limited time permitted for public comments. Members of the public seeking to attend the meeting, make comments during the meeting, request auxiliary aids, or submit written comments for consideration prior to the meeting, are required to submit their requests electronically to *Patrick.Zimet@trade.gov* by 5:00 p.m. EDT on Friday, March 31, 2022, or *Yuki.Fujiyama@trade.gov* by 5:00 p.m. EDT on Thursday, April 7, 2022. Requests received after April 7, 2022 will be accepted but may not be possible to accommodate.

Members of the public may submit written comments concerning TFAC affairs at any time before or after a meeting. Comments may be submitted to Patrick Zimet or Yuki Fujiyama at the contact information indicated above. All comments and statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure.

Christopher Hoff,

Deputy Assistant Secretary for Services.

[FR Doc. 2022–05205 Filed 3–10–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–016]

Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2019–2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that producers or exporters of passenger vehicle and light truck tires (passenger tires) from the People's Republic of China (China) subject to this review made sales of subject merchandise at less than normal value during the period of review (POR), August 1, 2019, through July 31, 2020, or did not ship subject merchandise to the United States during the POR.

DATES: Applicable March 11, 2022.

FOR FURTHER INFORMATION CONTACT: Toni Page or Peter Shaw, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1938 or (202) 482–0697, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 7, 2021, we published the *Preliminary Results* and invited interested parties to comment.[1] The administrative review covers seven companies for which an administrative was initiated and not rescinded.[2] For

[1] *See Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; and Preliminary Determination of No Shipments; 2019–2020,* 86 FR 50029 (September 7, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] On October 6, 2020, we published a notice of initiation listing 28 companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 63081 (October 6, 2020). On January 27, 2021, we rescinded the administrative review regarding 21 companies. *See Passenger Vehicle and Light Truck Tires from the People's Republic of China: Rescission, in Part, of*

details regarding the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[3] We conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order [4]

The products covered by this *Order* are certain passenger vehicle and light truck tires from China. For a full description of the scope of the *Order, see* the Issues and Decision Memorandum.

Analysis of Comments Received

We addressed all issues raised in the case and rebuttal briefs filed by interested parties in the Issues and Decision Memorandum. A list of the issues discussed in the Issues and Decision Memorandum is attached to this notice as an appendix. 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 *http://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on our analysis of the comments received from interested parties and for the reasons explained in the Issues and Decision Memorandum, we made changes to the valuation of certain inputs and corrected certain ministerial errors in the calculation of mandatory respondent Sumitomo's [5] weighted-average dumping margin. For a discussion of these changes, *see* the Issues and Decision Memorandum.[6]

Final Determination of No Shipments

In the *Preliminary Results,* we found that Qingdao Fullrun Tyre Tech Corp., Ltd. (Qingdao Fullrun Tyre Tech) did not have shipments of subject merchandise during the POR.[7] No party commented on this preliminary finding. Therefore, for the final results of review, we continue to find that Qingdao Fullrun Tyre Tech did not have any shipments of subject merchandise during the POR.[8]

Separate Rates

In the *Preliminary Results,* we found that the evidence provided by two respondents, Zhaoqing Junhong Co., Ltd. and Qingdao Nexen Tire Corporation supported finding an absence of both *de jure* and *de facto* government control, and, therefore, we preliminarily granted a separate rate to these companies.[9] No parties commented on this preliminary finding. Therefore, we continue to grant a separate rate to these companies.[10]

In the *Preliminary Results,* we also found that the evidence provided by two respondents, Shandong Qilun Rubber Co., Ltd. (Shandong Qilun) and Qingdao Landwinner Tyre Co., Ltd (Landwinner) supported finding an absence of both *de jure* and *de facto* government control, and, therefore, we preliminarily granted a separate rate to these companies.[11] Since the issuance of the *Preliminary Results,* we received comments from the petitioner regarding Shandong Qilun and Landwinner's separate rate eligibility.[12] For the final results of review, we continue to find that Shandong Qilun and Landwinner are eligible to receive a separate rate in this review. For further discussion, *see* Issues and Decision Memorandum.[13]

Rate for Non-Examined Separate Rate Respondents

The statute and Commerce's regulations do not address what rate to apply to respondents not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for non-selected respondents that are not examined individually in an administrative review. Section 735(c)(5)(A) of the Act states that the all-others rate should be calculated by averaging the weighted-average dumping margins for individually examined respondents, excluding rates that are zero, *de minimis,* or based entirely on facts available. When the rates for individually examined companies are all zero, *de minimis,* or based entirely on facts available, section 735(c)(5)(B) of the Act provides that Commerce may use ''any reasonable method'' to establish the all-others rate.

We calculated a 2.06 percent dumping margin for the mandatory respondent, Sumitomo. We assigned the separate rate respondents a dumping margin equal to the dumping margin of Sumitomo, consistent with the guidance in section 735(c)(5)(A) of the Act.

Final Results of Review

We are assigning the following dumping margins to the firms listed below for the period August 1, 2019, through July 1, 2020:

Exporter	Weighted-average dumping margin (percent)
Sumitomo Rubber Industries Ltd.; Sumitomo Rubber (Hunan) Co., Ltd.; and Sumitomo Rubber (Changshu) Co., Ltd	2.06
Qingdao Landwinner Tyre Co., Ltd	2.06
Qingdao Nexen Tire Corporation	2.06
Shandong Qilun Rubber Co., Ltd	2.06
Zhaoqing Junhong Co., Ltd	2.06

Disclosure

Pursuant to 19 CFR 351.224(b), within five days of the publication this **Federal Register** notice, we will disclose to the parties to this proceeding the calculations that we performed for these final results.

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act, and 19 CFR 351.212(b), Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess,

Antidumping Duty Administrative Review; 2019–2020, 86 FR 7258 (January 27, 2021).

[3] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China and Final Determination of No Shipments; 2019–2020,'' dated concurrently with, and hereby adopted by, this notice (IDM).

[4] *See Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Amended Final Affirmative Antidumping Duty Determination and Antidumping Duty Order; and Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 80 FR 47902 (August 10, 2015) (*Order*).

[5] Sumitomo refers to a single entity, which includes Sumitomo Rubber (Hunan) Co., Ltd.; Sumitomo Rubber (Changshu) Co., Ltd.; and Sumitomo Rubber Industries Co., Ltd. (collectively, Sumitomo). *See* the Issues and Decision Memorandum at the section titled ''Affiliation and Single Entity.''

[6] *See* IDM at the section titled ''Changes Since the Preliminary Results.''

[7] *See Preliminary Results,* 86 FR 50029, and accompanying PDM at the section titled ''Preliminary Determination of No Shipments.''

[8] *See* IDM at the section titled ''Final Determination of No Shipments.''

[9] *See Preliminary Results,* 86 FR at 50030; *see also Preliminary Results* PDM at the section titled ''Discussion of the Methodology.''

[10] *See* IDM at the section titled ''Final Determination of No Shipments.''

[11] *See Preliminary Results,* 86 FR 50029; *see also Preliminary Results* PDM at the section titled ''Discussion of the Methodology.''

[12] *See* Issues and Decision Memorandum at the section titled ''Separate Rates.''

[13] *Id.*

antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. 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).

Where the respondent's weighted-average dumping margin is zero or *de minimis,* or where an importer- (or customer-) specific *ad valorem* or per-unit rate is zero or *de minimis,* Commerce will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[14] For entries that were not reported in the U.S. sales database submitted by an exporter individually examined during this review, but that entered under the case number of that exporter (*i.e.,* at the individually-examined exporter's cash deposit rate), Commerce will instruct CBP to liquidate such entries at the China-wide rate (*i.e.,* 76.46 percent).[15]

For any individually examined respondent whose weighted-average dumping margin is above *de minimis* (*i.e.,* 0.5 percent), we will calculate importer-specific assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for each importer's examined sales and the total entered value of the sales, in accordance with 19 CFR 351.212(b)(1).

For respondents not individually examined in this administrative review that qualified for a separate rate, the assessment rate will be the dumping margin assigned to the mandatory respondent in the final results of this review.

For the respondents not eligible for a separate rate and that are part of the China-wide entity, we intend to instruct CBP to apply an *ad valorem* assessment rate of 76.46 percent (*i.e.,* the China-wide entity rate) to all entries of subject merchandise during the POR that were exported by these companies.

Additionally, if Commerce determined that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under the exporter's case number will be liquidated at the China-wide rate.

Cash Deposit Requirements

The following cash deposit requirements will be effective for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date for the final results of review, as provided for by section 751 (a)(2)(C) of the Act: (1) For the exporters listed in the table above, the cash deposit rate will be the rate established in the final results of review that is listed for the exporter in the table; (2) for previously investigated or reviewed China and non-China exporters not listed in the table above that have separate rates, the cash deposit rate will continue to be the existing exporter-specific rate published for the most recent period; (3) for all China exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate previously established for the China-wide entity, which is 76.46 percent; and (4) for all non-China exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the China exporter that supplied that non-China exporter. The cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers Regarding the Reimbursement of Duties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping or countervailing 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, 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 which is subject to sanction.

We are issuing these final results of administrative review and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(h) and 351.221(b)(5).

Dated: March 4, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2022–05209 Filed 3–10–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–914]

Light-Walled Rectangular Pipe and Tube From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2019–2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that Hangzhou Ailong Metal Products Co., Ltd. (Ailong) made U.S. sales of light-walled rectangular pipe and tube (LWRPT) from the People's Republic of China (China) at less than normal value during the period of review (POR) August 1, 2019, through July 31, 2020.

DATES: Applicable March 11, 2022.

[14] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101, 8103 (February 14, 2012).

[15] *See Order,* 80 FR at 47904 n.19 and 47906.

FOR FURTHER INFORMATION CONTACT: Thomas Hanna, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0835.

SUPPLEMENTARY INFORMATION:

Background

On July 24, 2020, Commerce published the *Preliminary Results* and invited interested parties to comment.[1] For details regarding the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum. Commerce conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order [2]

The scope of the *Order* is certain welded carbon quality light-walled steel pipe and tube, of rectangular (including square) cross section, having a wall thickness of less than 4 millimeters. For a full description of the scope, *see* the Issues and Decision Memorandum.

Analysis of Comments Received

We addressed all issues raised in the case and rebuttal briefs filed in this administrative review in the Issues and Decision Memorandum, which is hereby adopted by this notice. A list of the sections in the Issues and Decision Memorandum is in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://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.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

We made no changes to the *Preliminary Results.*

Separate Rates

No parties commented on our preliminary separate rate findings. Therefore, we have continued to grant Ailong (the mandatory respondent) separate rate status.

Final Results of Review

We are assigning following dumping margin to the firm listed below for the period August 1, 2019, through July 31, 2020:

Producer or exporter	Weighted average dumping margin (percent)
Hangzhou Ailong Metal Products Co., Ltd	157.40

Disclosure

Normally, Commerce will disclose to the parties in a proceeding the calculations performed in connection with a final results of review within five days of the date of publication of the notice of final results in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, here, Commerce made no adjustments to the margin calculation methodology used in the *Preliminary Results;* therefore, there are no calculations to disclose for the final results.

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.[3] Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication date 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).

Where the respondent's weighted-average dumping margin is zero or de minimis, or where an importer- (or customer-) specific *ad valorem* or per-unit rate is zero or de minimis, Commerce will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[4] For entries that were not reported in the U.S. sales database submitted by an exporter individually examined during this review, but that entered under the case number of that exporter (*i.e.,* at the individually-examined exporter's cash deposit rate), Commerce will instruct CBP to liquidate such entries at the China-wide rate (*i.e.,* 264.64 percent).[5]

For any individually-examined respondent whose weighted-average dumping margin is above de minimis (*i.e.,* 0.50 percent), we will calculate importer-specific assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for each importer's examined sales and the total entered value of the sales, in accordance with 19 CFR 351.212(b)(1).[6]

For the respondents not eligible for a separate rate and that are part of the China-wide entity, we intend to instruct CBP to apply an *ad valorem* assessment rate of 264.64 percent (*i.e.,* the China-wide entity rate) to all entries of subject merchandise during the POR that were exported by these companies.

Additionally, if Commerce determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number will be liquidated at the China-wide rate.

Cash Deposit Requirements

The following cash deposit requirements will be effective for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of review, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed in the table above, the cash deposit rate will be the rate established in the final results of review that is listed for the exporter in the table; (2) for previously investigated or reviewed China and non-China exporters not listed in the table above that have separate rates, the cash deposit rate will continue to be the existing exporter-specific rate published for the most recent period; (3) for all China exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate previously established for the China-wide entity, which is 264.64 percent; and (4) for all non-China exporters of subject merchandise which

[1] *See Light-Walled Rectangular Pipe and Tube from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review; 2019–2020,* 86 FR 50054 (September 7, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See Light-Walled Rectangular Pipe and Tube from Mexico, the People's Republic of China, and the Republic of Korea: Antidumping Duty Orders; Light-Walled Rectangular Pipe and Tube from the Republic of Korea: Notice of Amended Final Determination of Sales at Less Than Fair Value,* 73 FR 45403 (August 5, 2008) (*Order*).

[3] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

[4] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

[5] *See Order,* 73 FR at 45403.

[6] *Id.*

have not received their own rate, the cash deposit rate will be the rate applicable to the China exporter that supplied that non-China exporter. The cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers Regarding the Reimbursement of Duties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant POR entries. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under an 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 sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(5).

Dated: March 7, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2022–05210 Filed 3–10–22; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–469–818]

Ripe Olives From Spain: Final Results of Countervailing Duty Administrative Review; 2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that certain producers/exporters of ripe olives from Spain received countervailable subsidies during the period of review (POR), January 1, 2019, through December 31, 2019.

DATES: Applicable March 11, 2022.

FOR FURTHER INFORMATION CONTACT: Mary Kolberg or Dusten Hom, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1785 and (202) 482–5075, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Preliminary Results* of this review on September 7, 2021, and invited comments from interested parties.[1] On December 6, 2021, Commerce extended the deadline for the final results of this administrative review until March 4, 2022.[2] For a complete description of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[3]

Scope of the Order

The products covered by the order are ripe olives from Spain. For a complete description of the scope of this order, *see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised by the interested parties in their case and rebuttal briefs are addressed in the Issues and Decision Memorandum. A list of these issues is identified in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and CVD Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on the comments received from interested parties, we revised the calculation of the net countervailable subsidy rates for the respondents: Agro Sevilla Aceitunas S.COOP Andalusia (Agro Sevilla) and Angel Camacho Alimentacion S.L. (Camacho). For a discussion of these issues, *see* the Issues and Decision Memorandum.

Methodology

Commerce conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found to be countervailable, we determine that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[4] The Issues and Decision Memorandum contains a full description of the methodology underlying Commerce's conclusions, including any determination that relied upon the use of facts otherwise available, including, adverse facts available, pursuant to sections 776(a) and (b) of the Act.

Rate for Non-Selected Companies Under Review

There are three companies for which a review was requested and not rescinded, and which were not selected as mandatory respondents or found to be cross owned with a mandatory respondent. For these companies, because the rates calculated for the mandatory respondents, Agro Sevilla and Camacho, were above *de minimis* and not based entirely on facts available, we are applying to the non-selected companies the weighted average of the net subsidy rates calculated for Agro Sevilla and Camacho, which we calculated using the publicly-ranged sales data submitted

[1] *See Ripe Olives from Spain: Preliminary Results of Countervailing Duty Administrative Review; 2019,* 86 FR 50022 (September 7, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Ripe Olives from Spain: Extension of Deadline for Final Results of Countervailing Duty Administrative Review; 2019,'' dated December 6, 2021.

[3] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Countervailing Duty Administrative Review of Ripe Olives from Spain; 2017–2018,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[4] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

by Agro Sevilla and Camacho.[5] This methodology to establish the all-others subsidy rate is consistent with our practice and section 705(c)(5)(A) of the Act.

Final Results of Review

We determine the following net countervailable subsidy rates for the POR January 1, 2019, through December 31, 2019:

Exporter/producer	Subsidy rate (percent *ad valorem*)
Agro Sevilla Aceitunas S.Coop And	4.98
Angel Camacho Alimentacion S.L. and its cross-owned affiliates[6]	2.43
Review-Specific Average Rate Applicable to the Following Companies[7]	
Aceitunas Guadalquivir, S.L	3.76
Alimentary Group Dcoop S. Coop. And	3.76
Internacional Olivarera, S.A	3.76

Disclosure

We intend to disclose to interested parties the calculations and analysis performed in the final results of this review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Assessment

In accordance with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(2), Commerce shall determine, and CBP shall assess, countervailing duties on all appropriate entries covered by this review. Commerce intends to issue appropriate assessment instructions to CBP no earlier than 35 days after the date of this 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

In accordance with section 751(a)(1) of the Act, Commerce also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown above for the above-listed companies with regard to shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results of review. For all non-reviewed firms, CBP will continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Administrative Protective Order

This notice serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is sanctionable violation.

Notification to Interested Parties

These final results are issued and published in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(5).

Dated: March 4, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2022–05212 Filed 3–10–22; 8:45 am]

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[5] With two respondents under examination, Commerce normally calculates (A) a weighted-average of the estimated subsidy rates calculated for the examined respondents; (B) a simple average of the estimated subsidy rates calculated for the examined respondents; and (C) a weighted-average of the estimated subsidy rates calculated for the examined respondents using each company's publicly-ranged U.S. sale quantities for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. *See, e.g., Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (September 1, 2010).

[6] Commerce found the following companies to be cross-owned with Angel Camacho Alimentación, S.L.: Grupo Angel Camacho, S.L., Cuarterola S.L., and Cucanoche S.L.

[7] This rate is based on the rates for the respondents that were selected for individual review, excluding rates that are zero, *de minimis,* or based entirely on facts available. *See* section 735(c)(5)(A) of the Act.

DEPARTMENT OF COMMERCE

[Docket No. ITA–2022–0001]

RIN 0605–XC047

Request for Comments on the Indo-Pacific Economic Framework

AGENCY: Department of Commerce.

ACTION: Request for comments.

SUMMARY: On October 27, 2021, President Joseph R. Biden announced that the United States would explore the development of an Indo-Pacific Economic Framework to deepen economic relations in the Indo-Pacific region and coordinate approaches to addressing global economic challenges. The Secretary of Commerce and the United States Trade Representative will co-chair the U.S. team leading the negotiations of the framework. The United States Trade Representative will lead the Framework's pillar on fair and resilient trade, and the Department of Commerce will lead the Framework's pillars on: (1) Supply chain resilience; (2) infrastructure, clean energy, and decarbonization; and (3) tax and anti-corruption. Accordingly, the Department of Commerce is seeking public comments on key areas of interest, including: Digital and emerging technologies; supply chain resilience; infrastructure, decarbonization, and clean energy; and tax and anti-corruption. This notice requests comments and information from the public to assist the Secretary of

Commerce in developing the U.S. position in these negotiations. To provide comments on the fair and resilient trade pillar on elements unrelated to the digital and emerging technologies, please see the relevant USTR request for comment.

DATES: Comments and supporting documents must be submitted on or before April 11, 2022.

ADDRESSES: Address all written comments in response to this notice to ''Indo-Pacific Economic Framework'' and file through the Federal eRulemaking Portal: *https://www.regulations.gov*. To submit comments via *https://www.regulations.gov,* enter docket number ITA–2022–0001 on the home page and click ''search.'' The site will provide a search results page listing all documents associated with this docket. Once you find this notice, click into it and click on the ''Comment'' icon, complete the required fields, and enter or attach your comments. (For further information on using *https://www.regulations.gov,* please consult the resources provided on the website by clicking on ''How to Use This Site.'')

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 the Department of Commerce. Commenters should include which of the nine topics they are addressing or indicate ''other issues of consideration.'' Commentors that self-identify as a small business (generally defined by the U.S. Small Business Administration as firms with fewer than 500 employees) or organizations representing small business members should indicate this.

FOR FURTHER INFORMATION CONTACT: Please direct general questions or questions concerning written comments to Eric Holloway, Deputy Director for the Office of East Asia, Oceania, and APEC, International Trade Administration, Department of Commerce at *Indo-Pacific.Economic.Framework@trade.gov* or at 202–482–3152.

SUPPLEMENTARY INFORMATION:

Background: On October 27, 2021, President Joseph R. Biden announced that the United States would explore the development of an Indo-Pacific Economic Framework (IPEF). The United States is seeking to include multiple pillars covering key areas of interest within the IPEF, including digital and emerging technologies; supply chain resilience; infrastructure, clean energy, and decarbonization; and tax and anti-corruption. Launching negotiations on these topics under the IPEF is an important step towards strengthening U.S. economic engagement in the Indo-Pacific region and presents a novel approach to promoting durable, broad-based economic growth.

Requirements for Written Content: The Department of Commerce is developing negotiating objectives and positions to shape cooperation with potential IPEF partners which could include various types of commitments, cooperative actions, and other measures. To that end, via this general solicitation, the Department of Commerce invites interested parties to comment on issues that the Department of Commerce should address in the negotiations, including whether those issues have particular relevance for any of the economies in the Indo-Pacific region. The Department of Commerce seeks broad input from all interested stakeholders—including industry, researchers, academia, labor, and civil society. To the extent commenters choose to respond to particular matters related to the negotiations, they may comment on any of the following:

1. General negotiating objectives for the IPEF.
2. Digital and emerging technologies-related issues.
3. Supply chain resilience-related issues.
4. Infrastructure-related issues.
5. Clean energy-related issues.
6. Decarbonization-related issues.
7. Tax-related issues.
8. Anti-corruption-related issues.
9. Issues of particular relevance to small and medium-sized businesses that should be addressed in the negotiations.
10. Other issues for consideration.

The Department of Commerce requests that small businesses (generally defined by the U.S. Small Business Administration as firms with fewer than 500 employees) or organizations representing small business members that submit comments to self-identify as such so that we may be aware of issues of particular interest to small businesses.

Request for Written Comments: The *https://www.regulations.gov* website allows users to provide comments by filling in a ''Type Comment'' field, or by attaching a document using an ''Upload File'' field. Commerce prefers comments be provided in an attached document. Commerce prefers submissions in Microsoft Word (.doc files) or Adobe Acrobat (.pdf files). If the submission is in an application format other than Microsoft Word or Adobe Acrobat, please indicate the name of the application in the ''Type Comment'' field. Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter within the comments. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file, so that the submission consists of one file instead of multiple files. Comments (both public comments and non-confidential versions of comments containing business confidential information) will be placed in the docket and open to public inspection. Comments may be viewed on *https://www.regulations.gov* by entering docket number ITA–2022–0001 in the search field on the home page. All filers should name their files using the name of the person or entity submitting the comments. Anonymous comments also will be accepted. Communications from agencies of the United States Government will not be made available for public inspection.

Anyone submitting business confidential information should clearly identify the business confidential portion at the time of submission, file a statement justifying nondisclosure and referring to the specific legal authority claimed, and provide a non-confidential version of the submission. The non-confidential version of the submission will be placed in the public file on *https://www.regulations.gov*. For comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters ''BC''. Any page containing business confidential information must be clearly marked ''BUSINESS CONFIDENTIAL'' on the top of that page. The non-confidential version must be clearly marked ''PUBLIC''. The file name of the non-confidential version should begin with the character ''P''. The ''BC'' and ''P'' should be followed by the name of the person or entity submitting the comments or rebuttal comments.

Dated: March 8, 2022.

Diane Farrell,

Deputy Under Secretary for International Trade, Department of Commerce.

[FR Doc. 2022–05206 Filed 3–10–22; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–836]

Light-Walled Rectangular Pipe and Tube From Mexico: Final Results of Antidumping Duty Administrative Review; 2019–2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that sales of light-walled rectangular pipe and tube from Mexico were made at less than normal value during the period of review (POR) August 1, 2019, through July 31, 2020.

DATES: Applicable March 11, 2022.

FOR FURTHER INFORMATION CONTACT: John Conniff or Kyle Clahane, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1009 or (202) 482–5449, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 7, 2021, Commerce published the preliminary results of this administrative review of the antidumping duty order on light-walled rectangular pipe and tube (LWRPT) from Mexico.[1] We invited interested parties to comment on the *Preliminary Results.* A summary of events that occurred since Commerce published the *Preliminary Results,* as well as a full discussion of the issues raised by parties for these final results, are discussed in the Issues and Decision Memorandum.[2] Commerce conducted this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order [3]

The product covered by the *Order* is light-walled rectangular pipe and tube from Mexico. For a full description of the scope, *see* the Issues and Decision Memorandum.

Analysis of Comments Received

We addressed all issues raised in the case and rebuttal briefs in the Issues and Decision Memorandum.[4] A list of the issues discussed in the Issues and Decisions Memorandum is attached in an appendix to this notice. The Issues and Decision Memorandum is a public document and is available electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on our analysis of the comments received from interested parties, a review of the record, and for the reasons explained in the Issues and Decision Memorandum, we made certain changes to the *Preliminary Results.* For detailed information, *see* the Issues and Decision Memorandum.

Rate for Non-Selected Companies

The Act and Commerce's regulations do not address the establishment of a weighted-average dumping margin to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a less-than-fair-value (LTFV) investigation, for guidance when calculating the weighted-average dumping margin for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding rates that are zero, *de minimis* (*i.e.,* less than 0.5 percent), or determined entirely on the basis of facts available.

Consistent with section 735(c)(5)(A) of the Act, we determined the weighted-average dumping margin for each of the non-selected companies based on the weighted-average dumping margins calculated for the mandatory respondents, Perfiles LM, S.A. de C.V. (Perfiles) and Regiomontana de Perfiles y Tubos S. de R.L. de C.V. (Regiopytsa) in this administrative review.[5]

Final Results of Review

As a result of this review, Commerce determines the following weighted-average dumping margins exist for the period August 1, 2019, through July 31, 2020.

Exporter or producer	Weighted-average dumping margin (percent)
Perfiles LM, S.A. de C.V	0.62
Regiomontana de Perfiles y Tubos S. de R.L. de C.V.[6]	1.09
Maquilacero S.A. de C.V	0.96
Nacional de Acero S.A. de C.V	0.96
Productos Laminados de Monterrey S.A. de C.V	0.96
Ternium Mexico S.A. de C.V	0.96

Disclosure

Commerce intends to disclose the calculations performed for these final results under administrative protective order within five days of the date of

[1] *See Light-Walled Rectangular Pipe and Tube from Mexico: Preliminary Results of Antidumping Duty Administrative Review; 2019–2020,* 86 FR 50025 (September 7, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, ''Light-Walled Rectangular Pipe and Tube from Mexico: Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review; 2019–2020,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See Light-Walled Rectangular Pipe and Tube from Mexico, the People's Republic of China, and the Republic of Korea: Antidumping Duty Orders; Light-Walled Rectangular Pipe and Tube from the Republic of Korea: Notice of Amended Final Determination of Sales at Less Than Fair Value,* 73 FR 45403 (August 5, 2008) (*Order*).

[4] *See* Issues and Decision Memorandum.

[5] *See* Memorandum, ''Antidumping Duty Administrative Review of Light-Walled Rectangular Pipe and Tube from Mexico: Calculation of Margin for Respondents Not Selected for Individual Examination,'' dated concurrently with this notice. In the case of two mandatory respondents, our practice is to calculate: (A) A weighted average of the weighted-average dumping margins calculated for the mandatory respondents using each company's business proprietary total sales value of the subject merchandise; (B) a simple average of the weighted-average dumping margins calculated for the mandatory respondents: And (C) a weighted average of the weighted-average dumping margins calculated for the mandatory respondents using each company's publicly ranged total sales value for the subject merchandise. We compare (B) and (C) to (A) and select the (B) or (C) rate that is closest to (A) as the most appropriate rate for the companies not selected for individual examination. *See Certain Crystalline Silicon Photovoltaic Products from Taiwan: Final Results of Antidumping Duty Administrative Review; 2014–2016,* 82 FR 31555, 31556 (July 7, 2017).

[6] *See Light-Walled Rectangular Pipe and Tube from Mexico: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2018–2019,* 85 FR 83886 (December 23, 2020), and accompanying Preliminary Decision Memorandum at 6, unchanged in *Light Walled Rectangular Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review; 2018–2019,* 86 FR 33646 (June 25, 2021), where Commerce determined that Regiomontana de Perfiles y Tubos S. de R.L. de C.V. is the successor-in-interest to Regiomontana de Perfiles y Tubos S.A. de C.V. The successor is merely a revision of the type of incorporation under Mexican law that did not impact the company's ownership, management, or operations. For the current review, the petitioner's review request included both the current and former versions of Regiopytsa's company name.

publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Patrol (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. In accordance with 19 CFR 351.212(b)(1), for Perfiles and Regiopytsa, the mandatory respondents, Commerce calculated importer-specific *ad valorem* antidumping duty assessment rates based on the ratio of the total amount of dumping calculated for each importer's examined sales to the total entered value of those same sales. Where either a respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Consistent with the reseller policy, for entries of subject merchandise during the POR produced by the mandatory respondents for which they did not know their merchandise was destined for the United States, we intend to instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[7]

The assessment rate for antidumping duties for each of the companies not selected for individual examination, will be equal to the weighted-average dumping margin identified above in the ''Final Results of Review'' section.

The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[8]

Commerce intends to issue assessment instructions to CBP no earlier than 41 days after the date of publication of the final results of this review in the **Federal Register**, in accordance with 19 CFR 356.8(a). If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

[7] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[8] *See* section 751(a)(2)(C) of the Act.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the companies listed above will be equal to the weighted-average dumping margin established in the final results of this administrative review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior completed segment of the proceeding, the cash deposit rate will continue to be the relevant company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the producer has been covered in a prior complete segment of this proceeding, then the cash deposit rate will be the rate established for the most recently-completed segment for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 3.76 percent,[9] the all-others rate established in the less-than-fair-value investigation.

These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). 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 the terms of an APO is a sanctionable violation.

[9] *See Order.*

Notification to Interested Parties

We are issuing and publishing these final results of administrative review in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.221(b)(5).

Dated: March 4, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2022–05211 Filed 3–10–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Review: Notice of NAFTA Panel Decision

AGENCY: United States Section, NAFTA Secretariat, International Trade Administration, Department of Commerce.

ACTION: Notice of NAFTA panel decision in the matter of Ammonium Sulphate from the United States of America. (Secretariat File Number: MEX–USA–2015–1904–01).

SUMMARY: On February 8, 2022, a NAFTA Binational Panel issued its Decision in the matter of Ammonium Sulphate from the United States of America (Determination on Remand). The Binational Panel remanded the Secretaria de Economia's (Economia) Third Determination on Remand and ordered Economia to issue a redetermination within 90 days.

FOR FURTHER INFORMATION CONTACT: Vidya Desai, Acting United States

Secretary, NAFTA Secretariat, Room 2061, 1401 Constitution Avenue NW, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Article 1904 of chapter 19 of NAFTA provides a dispute settlement mechanism involving trade remedy determinations issued by the Government of the United States, the Government of Canada, and the Government of Mexico. Following a Request for Panel Review, a Binational Panel is composed to provide judicial review of the trade remedy determination being challenged and then issue a binding Panel Decision. The NAFTA Binational Panel Decision is available publicly at *https://can-mex-usa-sec.org/secretariat/report-rapport-reporte.aspx?lang=eng.* There are established *NAFTA Rules of Procedure for Article 1904 Binational Panel Reviews* and the NAFTA Panel Decision has been notified in accordance with Rule 70. For the complete Rules, please see *https://can-mex-usa-sec.org/secretariat/agreement-accord-acuerdo/nafta-alena-tlcan/rules-regles-reglas/article-article-articulo_1904.aspx?lang=eng.*

Dated: March 8, 2022.

Garrett Peterson,

International Trade Specialist, NAFTA Secretariat.

[FR Doc. 2022–05169 Filed 3–10–22; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB797]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys Offshore From New York to Massachusetts

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

ACTION: Notice; issuance of Renewal incidental harassment authorization (IHA).

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given that NMFS has issued a Renewal incidental harassment authorization (IHA) to Ørsted to incidentally harass marine mammals incidental to marine site characterization surveys offshore from New York to Massachusetts.

DATES: This Renewal IHA is valid from the date of issuance through September 24, 2022.

FOR FURTHER INFORMATION CONTACT: Carter Esch, Office of Protected Resources, NMFS, (301) 427–8421. Electronic copies of the original application, renewal request, and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The Marine Mammal Protection Act (MMPA) prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed incidental take authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as ''mitigation measures''). Monitoring and reporting of such takings are also required. The meaning of key terms such as ''take,'' ''harassment,'' and ''negligible impact'' can be found in section 3 of the MMPA (16 U.S.C. 1362) and the agency's regulations at 50 CFR 216.103.

NMFS' regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods not to exceed one year for each reauthorization. In the notice of proposed IHA for the initial authorization, NMFS described the circumstances under which we would consider issuing a Renewal IHA for this activity, and requested public comment on a potential renewal under those circumstances. Specifically, on a case-by-case basis, NMFS may issue a one-time one-year Renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical, or nearly identical, activities as described in the Detailed Description of Specified Activities section of the initial IHA issuance notice is planned or (2) the activities as described in the Detailed Description of Specified Activities section of the initial IHA issuance notice would not be completed by the time the initial IHA expires and a renewal would allow for completion of the activities beyond that described in the **DATES** section of the initial IHA issuance, provided all of the following conditions are met:

(1) A request for renewal is received no later than 60 days prior to the needed Renewal IHA effective date (recognizing that the Renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).

(2) The request for renewal must include the following:

- An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).
- A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

(3) Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed

Renewal IHA. A description of the renewal process may be found on our website at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals.*

History of Request

On September 25, 2020, NMFS issued an IHA to Ørsted to take marine mammals incidental to marine site characterization survey activities offshore from New York to Massachusetts in the areas of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS–A 0486/0517, OCS–A 0487, and OCS–A 0500) (Lease Areas) and along potential submarine export cable routes (ECRs) to landfall locations from New York to Massachusetts (85 FR 63508, October 8, 2020), effective from September 25, 2020 through September 24, 2021. Work under the initial IHA was completed, and on July 8, 2021, NMFS received an application for the renewal of that initial IHA to cover a second year of identical work. Ørsted later communicated that marine site characterization surveys under the Renewal IHA would not begin until 2022. As described in the application for renewal, the activities for which incidental take is requested are identical to those covered by the initial authorization. As required, the applicant also provided a monitoring report (available at *https://www.fisheries.noaa.gov/action/incidental-take-authorization-orsted-wind-power-north-america-llc-site-characterization*) which confirms that the applicant has implemented the required mitigation and monitoring, and which also shows that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted. The notice of the proposed Renewal IHA was published on January 6, 2022 (87 FR 756).

Description of the Specified Activities and Anticipated Impacts

Ørsted plans to conduct a second year of marine site characterization surveys, using high-resolution geophysical (HRG) equipment, within the Lease Areas—located approximately 14 miles (mi) (22 kilometers (km)) south of Martha's Vineyard, Massachusetts at its closest point—and proposed ECRs from the Lease Areas to potential shore landing locations for submarine cables associated with offshore wind development along the coast from New York to Massachusetts. The purpose of the marine site characterization surveys is to support site assessment, siting, and engineering design of offshore project facilities, including wind turbine generators (WTGs), offshore substation(s), and submarine cables within the Lease and proposed ECR Areas. The activities covered under the initial IHA have been completed. Ørsted requested a renewal of the initial IHA issued by NMFS in September 2020 on the basis that they plan to conduct up to another year of identical activities in the same area as described in the Detailed Description of the Specified Activities section of the **Federal Register** notice for the initial proposed IHA (85 FR 48179, August 10, 2020), which can be found at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.*

In their 2020 IHA application, Ørsted estimated it would conduct surveys at a rate of 70 kilometers (km) per survey day. Ørsted defined a survey day as a 24-hour activity day, which could be the sum of multiple partial surveys if less than 70 km is surveyed in 24 hours. Based on the planned 24-hour operations, the survey activities for all survey areas would require 1,302 survey days if one vessel were surveying continuously. However, Ørsted proposed to use an estimated five vessels simultaneously from June 1 through December 31, with a maximum of no more than nine vessels. Therefore, Ørsted planned to complete all survey effort in one year, prior to the expiration of the initial IHA on September 24, 2021; all of the work addressed under the initial IHA was completed prior to the initial IHA expiration date. The Renewal IHA will authorize take, by Level B harassment only (in the form of behavioral disturbance), of 15 species/stocks of marine mammals for a second year of identical survey activities to be completed no later than September 24, 2022, in the same area, using survey methods identical to those described in the initial IHA application; therefore, the anticipated effects on marine mammals and the affected stocks also remain the same. The amount of take, by Level B harassment, requested for the Renewal IHA is identical to that authorized in the initial IHA. All active acoustic sources, mitigation, and monitoring measures are exactly as described in the **Federal Register** notices of the issued initial IHA (85 FR 63508, October 8, 2020; 85 FR 71058, November 6, 2020).

Detailed Description of the Activity

A detailed description of the marine site characterization survey activities for which incidental take is planned may be found in the **Federal Register** notice of the proposed IHA (85 FR 48179; August 10, 2020) for the initial authorization. As described above, Ørsted completed the survey activities analyzed for the initial IHA by the date the IHA expired (September 24, 2021). The surveys Ørsted plans to conduct under this renewal will be identical to those described in the initial IHA. The location and nature of the activities, including the types of equipment planned for use, are identical to those described in the previous notices.

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which take is authorized, including information on abundance, status, distribution, and hearing, may be found in the **Federal Register** notice of the proposed IHA for the initial authorization (85 FR 48179; August 10, 2020). NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports (SARs), Technical Reports (*e.g.,* Pace 2021), information on relevant Unusual Mortality Events (UMEs), and other scientific literature, and determined that neither this nor any other information alters which species or stocks have the potential to be affected or the pertinent information in the Description of the Marine Mammals in the Area of Specified Activity contained in the supporting documents for the initial IHA.

The draft 2021 SARs, available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*) state that estimated abundance has increased for the Western North Atlantic stocks of common dolphins (from 172,825 (CV = 0.21) to 172,974 (CV = 0.21)), and gray seals (from 27,131 (CV = 0.19) to 27,300 (CV = 0.22)). Abundance estimates have decreased for the following species: The Western North Atlantic stocks of fin whales (from 7,418 (CV = 0.25) to 6,802 (CV = 0.24)), Risso's dolphins (from 35,293 (CV = 0.19 to 35,215 (CV = 0.19)), harbor seals (from 75,834 (CV = 0.15) to 61,336 (CV = 0.22)), and the Canadian East coast stock of minke whales (from 24,202 (CV = 0.3) to 21,968 (CV=0.31)). The abundance estimate for the Western North Atlantic stock of North Atlantic right whales has also been updated in the draft 2021 SAR, which states that right whale abundance has decreased from 428 to 368 (95 percent CI 356–378) individuals (Hayes *et al.,* 2021).

NMFS has determined that neither the updated abundance information presented above nor any other new information affects which species or stocks have the potential to be affected or the pertinent information in the Description of the Marine Mammals in the Area of Specified Activity contained in the supporting documents for the initial IHA.

Potential Effects on Marine Mammals and Their Habitat

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which take is authorized may be found in the **Federal Register** notices of the proposed (85 FR 48179; August 10, 2020) and final (85 FR 63508, October 8, 2020; 85 FR 71058, November 6, 2020) initial IHAs. NMFS has reviewed the most recent information relevant to this Renewal IHA (monitoring data from the initial IHA, recent draft SARs, Technical Reports (*e.g.,* Pace 2021), information on relevant Unusual Mortality Events, and other scientific literature and data), and determined that there is no new information that affects our initial analysis of impacts on marine mammals and their habitat.

Estimated Take

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the Notices of the proposed (85 FR 48179; August 10, 2020) and final (85 FR 63508; October 8, 2020) IHAs for the initial authorization. Specifically, the acoustic source types, source levels, and days of operation applicable to this authorization remain unchanged from the previously issued initial IHA. Similarly, the methodology for calculating take, and thus stocks taken, methods of take and type of take (*i.e.,* Level B harassment in the form of behavioral disturbance) remain unchanged from the initial IHA, as do the number of takes for each species or stock, which are indicated below in Table 2.

TABLE 2—AUTHORIZED TAKE BY LEVEL B HARASSMENT

Species		Abundance estimate [1]	Authorized take	Percent population
North Atlantic right whale	*Eubalaena glacialis*	368	37	10.05
Humpback whale	*Megaptera novaeangliae*	1,396	21	1.50
Fin whale	*Balaenoptera physalus*	6,802	36	0.53
Sei whale	*Balaenoptera borealis*	6,292	2	0.0
Minke whale	*Balaenoptera acutorostrata*	21,968	13	0.06
Sperm whale	*Physeter macrocephalus*	4,349	3	0.07
Long-finned pilot whale	*Globicephala melas*	39,215	69	0.18
Bottlenose dolphin (W.N.A. offshore)	*Tursiops truncatus*	62,851	419	0.67
Common dolphin	*Delphinus delphis*	172,974	2,211	1.28
Atlantic white-sided dolphin	*Lagenorhynchus acutus*	93,233	418	0.45
Atlantic spotted dolphin	*Stenella frontalis*	35,215	7	0.02
Risso's dolphin	*Grampus griseus*	35,493	30	0.08
Harbor porpoise	*Phocoena phocoena*	95,543	916	0.96
Harbor seal	*Phoca vitulina*	61,336	215	0.36
Gray seal	*Halichoerus grypus*	27,300	215	0.79

W.N.A. = Western North Atlantic.
[1] Abundance estimates have been updated from the initial IHA (85 FR 63508; October 8, 2020) using the 2021 Draft SARs (Hayes *et al.,* 2021).

Description of Mitigation, Monitoring and Reporting Measures

The mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the **Federal Register** notice announcing the issuance of the initial IHA (85 FR 63508, October 8, 2020), and the discussion of the least practicable adverse impact included in that document and the notice of the proposed Renewal IHA remains applicable. All mitigation, monitoring, and reporting measures in the initial IHA are carried over to this Renewal IHA and summarized below:

- *Ramp-up:* A ramp-up procedure must be used for HRG equipment capable of adjusting energy levels at the start or re-start of survey activities.
- *Protected Species Observers (PSOs):* A minimum of one NMFS-approved PSO must be on duty and conducting visual observations at all times during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset), and two active duty PSOs must conduct observations 30 minutes prior to and during nighttime ramp-ups and operation of HRG equipment.
- *Exclusion Zones (EZ):* Marine mammal EZs must be established around the HRG survey equipment and monitored by PSOs during marine site characterization surveys as follows: A 500-m EZ for North Atlantic right whales during use of impulsive acoustic sources (*e.g.,* boomers and/or sparkers) and non-impulsive, non-parametric sub-bottom profilers (*e.g.,* Chirps); and a 100-m EZ for all other marine mammals during use of impulsive acoustic sources (*e.g.,* boomers and/or sparkers).
- *Pre-Operation Clearance Protocols:* Ørsted must implement a 30-minute pre-start clearance period of the specified clearance zones (CZs; 500 m for North Atlantic right whales, 100 m for all other marine mammals) prior to the initiation of ramp-up of boomers, sparkers, and non-impulsive, non-parametric sub-bottom profilers (*e.g.,* Chirps). During this period, the CZs must be monitored by PSOs using the appropriate visual technology. Ramp-up must not be initiated if any marine mammal(s) is within its respective CZ. If a marine mammal is observed within its respective CZ during the pre-start clearance period, ramp-up must not begin until the animal(s) has been observed exiting its respective CZ, or until an additional period has elapsed with no further sighting (*i.e.,* 15 minutes for small odontocetes and seals, and 30 minutes for all other species). Pre-clearance and ramp-up, but not shutdown, will be required when using only non-impulsive, non-parametric sub-bottom profilers (*e.g.,* Chirps), except in the case that a North Atlantic

right whale is observed within the 500-m CZ.

• *Shutdown of HRG Equipment:* If an HRG source is active and a marine mammal is observed entering or within a relevant EZ (as described above), an immediate shutdown of the HRG survey equipment is required. Note that this shutdown requirement is waived for certain genera of small delphinids. If a species for which authorization has not been granted, or, a species for which authorization has been granted but the authorized number of takes has been met, approaches or is observed within the Level B harassment zone (54 m, non-impulsive; 141 m impulsive), shutdown must occur.

• *Vessel strike avoidance measures:* Vessel strike avoidance measures include, but are not limited to, vessel separation distances for large whales (500 m North Atlantic right whales; 100 m other large whales; 50 m other cetaceans and pinnipeds), restricted vessel speeds, and operational maneuvers.

• *Seasonal Operating Requirements:* Ørsted must limit to three the number of survey vessels that operate concurrently from January 1 through May 31 within the Lease Areas (OSC–A 0486/0517, OCS–A 0487, and OCS–A 500) and ECR Area north of the Lease Areas up to, but not including, coastal and bay waters. Ørsted must operate either a single vessel, two vessels concurrently, or, for short periods, no more than three survey vessels concurrently in the areas described above from January 1 through May 31. This seasonal restriction will help to reduce both the number and intensity of North Atlantic right whale takes by Level B harassment.

• *Reporting:* Ørsted must submit a final technical report within 90 days following completion of the surveys. In the event that Ørsted personnel discover an injured or dead marine mammal, Ørsted must report the incident to NMFS Office of Protected Resources (OPR) (*PR.ITP.MonitoringReports@noaa.gov* and *itp.esch@noaa.gov*) and to the New England/Mid-Atlantic Regional Stranding Coordinator through the NOAA Fisheries Marine Mammal and Sea Turtle Stranding and Entanglement Hotline (866–755–6622) as soon as feasible. In the event of a ship strike of a marine mammal by any vessel involved in the activities covered by the authorization, Ørsted must report the incident immediately to NMFS OPR and to the New England/Mid-Atlantic Regional Stranding Coordinator through the NOAA Fisheries Marine Mammal and Sea Turtle Stranding and Entanglement Hotline. Ørsted must immediately cease all project activities until NMFS OPR is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the proposed Renewal IHA.

Comments and Responses

A notice of NMFS' proposal to issue a Renewal IHA to Ørsted was published in the **Federal Register** on January 6, 2022 (87 FR 756). That notice either described, or referenced descriptions of, Ørsted's activity, the marine mammal species that may be affected by the activity, anticipated effects on marine mammals and their habitat, estimated amount and manner of take, and proposed mitigation, monitoring and reporting measures. NMFS received comments from a group of environmental non-governmental organizations (ENGOs) including the Natural Resources Defense Council, Conservation Law Foundation, Defenders of Wildlife, Whale and Dolphin Conservation, National Wildlife Federation, NY4WHALES, and the Southern Environmental Law Center. However, the comments consisted of a short cover letter with a subject line and comments referring to the issuance of an IHA for the construction of a different project (87 FR 806; January 6, 2022), and an attached set of previously submitted recommendations related to right whale mitigation for the site assessment and characterization phases and construction phases of offshore wind development more generally. That other project occupies a small portion of Ørsted's survey area for this Renewal IHA, and the relevant issued IHA would be effective during a different time from when this Renewal IHA would be effective. NMFS thus did not receive any comments relevant to the issuance of this Renewal IHA. Nevertheless, given the more general nature of some of the issues raised in the ENGOs' appended recommendations, NMFS reviewed the comments. To the extent that some of the issues may be relevant to this Renewal IHA, the pertinent comments and our responses are summarized below.

Comment 1: The ENGOs objected to NMFS' process to consider extending any 1-year IHA with a truncated 15-day comment period, claiming that it is contrary to the MMPA.

Response: NMFS' IHA renewal process meets all statutory requirements. All IHAs issued, whether an initial IHA or a Renewal IHA, are valid for a period of not more than one year. The public has at least 30 days to comment on all proposed IHAs, with a cumulative total of 45 days for IHA Renewals. As noted above, the Request for Public Comments section in the notice of the proposed initial IHA made clear that the agency was seeking comment on both the proposed initial IHA and the potential issuance of a renewal for this project. Because any renewal (as explained in the Request for Public Comments section) is limited to another year of identical or nearly identical activities in the same location (as described in the Description of the Proposed Activity section) or the same activities that were not completed within the 1-year period of the initial IHA, reviewers have the information needed to effectively comment on both the immediate proposed IHA and a possible 1-year renewal, should the IHA holder choose to request one.

While there are additional documents submitted with a renewal request, for a qualifying renewal these are limited to documentation that NMFS will make available and use to verify that the activities are identical to those in the initial IHA, are nearly identical such that the changes would have either no effect on impacts to marine mammals or decrease those impacts, or are a subset of activities already analyzed and authorized but not completed under the initial IHA. NMFS will also confirm, among other things, that the activities will occur in the same location; involve the same species and stocks; provide for continuation of the same mitigation, monitoring, and reporting requirements; and that no new information has been received that would alter the prior analysis. The renewal request must also contain a preliminary monitoring report, but that is to verify that effects from the activities do not indicate impacts of a scale or nature not previously analyzed. The additional 15-day public comment period provides the public an opportunity to review these few documents, provide any additional pertinent information, and comment on whether they think the criteria for a renewal have been met. NMFS also will provide direct notice of the proposed renewal to those who commented on the initial IHA, to provide an opportunity to submit any additional comments. Between the initial 30-day comment period on these same activities and the additional 15 days, the total comment period for a renewal is 45 days.

In addition to the IHA Renewal process being consistent with all requirements under section 101(a)(5)(D), it is also consistent with Congress's intent for issuance of IHAs to the extent reflected in statements in the legislative history of the MMPA. Through the provision for renewals in the

regulations, description of the process and express invitation to comment on specific potential renewals in the Request for Public Comments section of each proposed IHA, the description of the process on NMFS' website, further elaboration on the process through responses to comments such as this, posting of substantive documents on the agency's website, and provision of 30 or 45 days for public review and comment on all proposed initial IHAs and renewals, respectively, NMFS has ensured that the public ''is invited and encouraged to participate fully in the agency decision-making process.''

In prior responses to comments about IHA Renewals (*e.g.,* 84 FR 52464, October 02, 2019; 85 FR 53342, August 28, 2020; 86 FR 33664, June 25, 2021; 87 FR 806, January 6, 2022), NMFS has explained how the renewal process, as implemented, is consistent with the statutory requirements contained in section 101(a)(5)(D) of the MMPA, provides additional efficiencies beyond the use of abbreviated notices, and, further, promotes NMFS' goals of improving conservation of marine mammals and increasing efficiency in the MMPA compliance process. Therefore, we intend to continue implementing the renewal process. For more information, NMFS has published a description of the renewal process on our website (available at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals*).

Comment 2: The ENGOs recommended that NMFS should require all project vessels to adhere to a 10-knot (18.5 km/hr) speed restriction at all times, and in all places except in limited circumstances where the best available scientific information demonstrates that whales do not occur in the area. As a mechanism for modifying this speed restriction, the ENGOs suggest that the project proponent develop and implement, in consultation with NMFS, an Adaptive Plan that is scientifically proven to be equally or more effective than a 10-knot (18.5 km/hr) speed restriction.

Response: Ørsted communicated to NMFS that marine site characterization vessels (both survey and supporting) travel at 10 knots or less while in transit and during the surveys. During active surveying, speeds are generally significantly less (in the range of 3–5 knots) although this is dependent on the type of equipment and survey.

NMFS has analyzed the potential for ship strike resulting from Ørsted's activity and has determined that the mitigation measures specific to ship strike avoidance are sufficient to avoid the potential for ship strike. These include, but are not limited to the survey vessel crew members responsible for navigation duties must receive site-specific training on marine mammal sighting/reporting and vessel strike avoidance measures; the vessel operator and crew must maintain a vigilant watch for all large whale species (including the North Atlantic right whale); a requirement that all vessel operators comply with the 10 knot (18.5 km/hour) or less speed restriction while underway in any established Seasonal Management Areas (SMAs), or Dynamic Management Areas (DMAs); a requirement that all vessel operators reduce vessel speed to 10 knots (18.5 km/hour) or less when any large whale, mother/calf pairs, pods, or large assemblages of non-delphinid cetaceans are observed within 100 m of an underway vessel; a requirement that all survey vessels maintain a separation distance of at least 500 m from any sighted North Atlantic right whale; a requirement that, if underway, vessels must steer a course away from any sighted North Atlantic right whale at 10 knots (18.5 km/hr) or less until the 500-m minimum separation distance has been established; a requirement that all vessels must maintain a minimum separation distance of 100 m from sperm whales and other baleen whales; and a requirement that all vessels must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m from all other marine mammals, with an understanding that at times this may not be possible (*e.g.,* for animals that approach the vessel). We have determined the existing ship strike avoidance measures are sufficient to ensure the least practicable adverse impact on species or stocks and their habitat. Further, NMFS is not aware of a wind industry vessel (*e.g.,* marine site characterization survey vessel or wind energy vessels used in European wind project construction and operation) reporting a ship strike to date.

Regarding the ENGOs' suggestion that project proponents should coordinate with NMFS to develop an Adaptive Plan for potential modification of vessel speed restrictions for future projects, NMFS will consider specific proposals for the development, quantitative evaluation, and implementation of such a Plan, should that information become available in the future.

Comment 3: The ENGOs recommend that NMFS prohibit site characterization surveys during times of highest risk to North Atlantic right whales, which they define as times of highest relative density of animals during foraging and migration, and times when mother-calf pairs, pregnant females, surface active groups, or aggregations of three or more whales are, or, are expected to be, present. The ENGOs suggest that these time periods should be defined based on the best available scientific information at the time of the survey activity. Finally, the ENGOs suggest that the development and scientific validation of a near real-time monitoring system and mitigation protocol for North Atlantic right whales and other large whale species could be used to dynamically manage the timing of site assessment and characterization activities to ensure that those activities are undertaken during times of lowest risk for all relevant larges whales species.

Response: NMFS is requiring Ørsted to operate no more than three concurrent survey vessels, with HRG survey equipment operating at or below 180 kHz, from January 1 through May 31 within the Lease Areas and ECRs, not including coastal and bay waters. This seasonal restriction aligns with the timeframe during which North Atlantic right whale densities are highest in the project area, based on Roberts (2020) and Robert *et al.* (2021), which incorporated more recent survey data (through 2018) and that for the first time included data from the 2011–2015 surveys of the MA and RI/MA wind energy areas (WEAs; Kraus *et al.* 2016) as well as the 2017–2018 continuation of those surveys, known as the Marine Mammal Surveys of the Wind Energy Areas (MMS–WEA) (Quintana *et al.,* 2018). We believe these models provide the best available scientific information to quantify temporal and spatial patterns of North Atlantic right whale occurrence in the project area. The seasonal restriction will limit the number and intensity of potential take by Level B harassment resulting from exposure to active HRG equipment (*i.e.,* boomers, sparkers, and Chirps). NMFS is also requiring Ørsted to comply with vessel speed restrictions associated with SMAs, and DMAs if any are established near the project area. Prior to and during survey operations, Ørsted must consult the NOAA Right Whale Sightings Advisory System and WhaleMap for situational awareness of recent sighting locations. Should North Atlantic right whales be observed while HRG survey equipment is active, Ørsted must abide by a mandatory 500-m shutdown zone, which is more than three times as large as the greatest distance to the Level B harassment isopleth (141 m). Finally, the ship strike avoidance and minimum separation requirements described in response to *Comment 2* further

minimize the potential impacts of site characterization surveys on North Atlantic rights whales.

The ENGOs suggested that a real-time monitoring system and mitigation protocol for North Atlantic right whales would be useful to dynamically manage the timing of site characterization survey activities, although it is not clear if the suggested system and protocol is based on acoustic or visual monitoring, or both. NMFS is generally supportive of these concepts. A network of near real-time baleen whale monitoring devices are active or have been tested in portions of New England and Canadian waters. These systems employ various digital acoustic monitoring instruments that have been placed on autonomous platforms including slocum gliders, wave gliders, profiling floats and moored buoys. Systems that have proven to be successful will likely see increased use as operational tools for many whale monitoring and mitigation applications. In 2020, NMFS convened a workshop to address objectives related to monitoring North Atlantic right whales. The NMFS publication ''Technical Memorandum NMFS-OPR-64: North Atlantic Right Whale Monitoring and Surveillance: Report and Recommendations of the National Marine Fisheries Service's Expert Working Group'', available at: *https://www.fisheries.noaa.gov/resource/document/north-atlantic-right-whale-monitoring-and-surveillance-report-and-recommendations,* summarizes information from the workshop and presents the Expert Working Group's recommendations for a comprehensive monitoring strategy to guide future analyses and data collection. Among the numerous recommendations found in the report, the Expert Working Group encouraged the widespread deployment of auto-buoys to provide near real-time detections of North Atlantic right whale calls that visual survey teams can then respond to for collection of identification photographs or biological samples.

The type of dynamic monitoring system and mitigation protocol suggested by the commenters has not been proposed by any applicant, including Ørsted, when applying for an IHA to conduct the type of work analyzed here. As discussed above, the seasonal restriction (January 1 through May 31) already serves to reduce temporal and spatial overlap between Ørsted's marine site characterization surveys and times during which North Atlantic right whale occurrence is expected to be highest in the project area. In addition, NMFS cannot require project proponents to be part of a monitoring network such as the one described above until such a network of monitoring devices is available. However, NMFS will consider how to best incorporate the use of such systems in the future should such a network be developed.

Comment 4: The ENGOs recommended that site characterization surveys should not be initiated within 1.5 hours of civil sunset or in times of low visibility when the visual clearance zone and exclusion zone cannot be visually monitored, as determined by the lead PSO.

Response: NMFS acknowledges the limitations inherent in detection of marine mammals at night. However, no injury is expected to result from exposure to HRG equipment, even in the absence of mitigation, given the characteristics of the sources planned for use (supported by the very small estimated Level A harassment zones; *i.e.,* <54 m for all impulsive sources). The ENGOs do not provide any support for the apparent contention that injury is a potential outcome of these activities. Regarding Level B harassment, any potential impacts would be limited to short-term behavioral responses. The commenters establish that the status of North Atlantic right whales in particular is precarious. NMFS agrees in general with the discussion of this status provided by the commenters. Note that NMFS considers impacts from this category of survey operations to be near de minimis, with the potential for Level A harassment for any species to be discountable and the severity of Level B harassment (and, therefore, the impacts of the take event on the affected individual), if any, to be low. Commenters provide no evidence to the contrary. NMFS is also requiring Ørsted to employ a PSO during nighttime hours who must have access to night-vision equipment (*i.e.,* night-vision goggles and/or infrared technology). Given these factors, NMFS has determined that more restrictive mitigation requirements are not warranted.

Restricting surveys in the manner suggested by the commenters may reduce marine mammal exposures by some degree in the short term, but would not result in any significant reduction in either intensity or duration of noise exposure over the course of the surveys. In fact, the restrictions recommended by the commenters could result in the surveys spending increased total time on the water introducing noise into the marine environment, which may result in greater overall exposure to sound for marine mammals; thus, the commenters have not demonstrated that such a requirement would result in a net benefit. Furthermore, restricting the ability of the applicant to begin operations only during daylight hours would have the potential to result in lengthy shutdowns of the survey equipment, which could result in the applicant failing to collect the data they have determined is necessary and, subsequently, the need to conduct additional surveys in the future. This would result in significantly increased costs incurred by the applicant. Thus, the restriction suggested by the commenters would not be practicable for the applicant to implement. In consideration of the likely effects of the activity on marine mammals absent mitigation, potential unintended consequences of the measures as proposed by the commenters, and practicability of the recommended measures for the applicant, NMFS has determined that restricting operations as recommended is not warranted or practicable in this case.

Comment 5: The ENGOs recommended that NMFS should require project proponents to implement visual clearance and exclusion zones of at least 500 m for all large whale species, except North Atlantic right whales, for which they recommended 1,000-m visual and acoustic clearance and exclusion zones. To the monitor the acoustic zones, the ENGOs recommend utilizing near real-time passive acoustic monitoring (PAM) from a vessel other than the dedicated survey vessel, or from a stationary unit.

Response: NMFS disagrees with these recommendations for this Renewal IHA. Regarding the clearance and shutdown zone recommendations, we note that the 500-m exclusion zone for North Atlantic right whales exceeds the modeled distance to the Level B harassment isopleth (141 m) by a substantial margin. Given that calculated Level B harassment isopleths are likely conservative, and NMFS considers impacts from HRG survey activities to be near de minimis, a 100-m shutdown zone for other marine mammal species (including large whales and strategic stocks of small cetaceans) is sufficiently protective to effect the least practicable adverse impact on those species and stocks. Further, no injury is expected to result even in the absence of mitigation, given the characteristics of the sources planned for use (supported by the very small estimated Level A harassment zones; *i.e.,* <36.5 m for all impulsive sources).

There are several reasons why we do not agree that use of PAM is warranted

for Ørsted's 24-hour HRG surveys. While NMFS agrees that PAM can be an important tool for augmenting detection capabilities in certain circumstances, its utility in further reducing impact for Ørsted's HRG survey activities is limited. We note first using a towed passive acoustic sensor(s) to detect baleen whales (including North Atlantic right whales) is not ideal for monitoring low-frequency vocalizing baleen whales because calls are masked by ship and flow noise, and vessel presence can alter vocal behavior of the study animals (Lesage *et al.,* 1999; Thode, 2004; Norris *et al.,* 2012; Guerra *et al.,* 2014; Heinemann *et al.,* 2016).

Vessels produce low-frequency noise, primarily through propeller cavitation, with the main energy in the 5–300 Hertz (Hz) frequency range. Source levels range from approximately 140 to 195 decibels (dB) re 1 micropascal (μPa) at 1 m (NRC, 2003; Hildebrand, 2009), depending on factors such as ship type, load, and speed, and ship hull and propeller design. Studies of vessel noise show that it appears to increase background noise levels in the 71–224 Hz range by 10–13 dB (Hatch *et al.,* 2012; McKenna *et al.,* 2012; Rolland *et al.,* 2012). PAM systems employ hydrophones towed in streamer cables approximately 500 m behind a vessel. Noise from water flow around the cables and from strumming of the cables themselves is also low frequency and typically masks signals in the same range (*i.e.,* most baleen whale vocalizations). Whales are routinely detected acoustically using moored systems and sonobuoys, or using autonomous gliders. However, these platforms are all quiet. Providers of observer services, including PAM, report that they have never detected a baleen whale (other than rare detections of humpback whales, which have significantly higher frequency content in their calls) using towed PAM.

Even if a right whale could be detected using towed PAM, the area expected to be ensonified above the Level B harassment threshold is relatively small (≤141 m) and, inasmuch as PAM will only detect a portion of any animals exposed within a zone, the overall probability of PAM detecting an animal in the harassment zone is low, supporting the limited value of PAM for use in reducing take with smaller zones. In addition, if a PAM system was deployed from a secondary vessel, that vessel will still have to travel at 4 knots to accompany the survey vessel, leading to the same limitations when using towed PAM. Finally, if a stationary PAM unit were deployed (assuming its location is within relatively close proximity to the starting position of the survey vessel), the unit would have to be equipped to localize North Atlantic right whale calls, for example, to positions within the clearance and exclusion zones (regardless of size) relative to the changing position of a transiting survey vessel. Even if localization is possible, it becomes impracticable once the vessel moves out of the detection and localization range of the stationary unit.

Many of the ENGO recommendations included acoustic monitoring of clearance and exclusion zones. Given that the effects to marine mammals from the types of surveys authorized in this IHA are expected to be limited to a small amount of low-level behavioral harassment, even in the absence of mitigation, the additional benefit anticipated for North Atlantic right whales by adding this detection method would be essentially non-existent. Given the lack of efficacy, the logistical challenges, and the cost of implementing a full-time PAM program, we have determined the current requirements for visual monitoring are sufficient to ensure the least practicable adverse impact on the affected species or stocks and their habitat. For the reasons described above, NMFS' responses to additional comments do not include references to acoustic monitoring during site characterization surveys. Please see the ENGOs' full comment letter for information regarding their general recommendations for acoustic monitoring, which can be found here: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-orsted-wind-power-north-america-llc-site-characterization*.

Comment 6: The ENGOs recommended that NMFS should require project proponents to (1) conduct visual monitoring of the clearance zone beginning 30 minutes prior to commencement or re-initiation of, and continuing throughout, survey activities, (2) delay survey activities if a North Atlantic right whale, or other large whale species, is detected within the relevant clearance zone, (3) shutdown survey activities upon a visual detection of any of these species within the species-specific exclusion zone and, if shutdown occurs, (4) resume or initiate survey activities only after the lead PSO confirms that no North Atlantic right whales or other large whale species have been visually detected in the relevant clearance zones for 30 minutes.

The ENGOs suggested that these measures should be implemented during site characterization activities with noise levels that could result in injury or harassment to large whales.

Response: No injury is expected to result from site characterization surveys, even in the absence of mitigation, given the characteristics of the sources planned for use (supported by the very small estimated Level A harassment zones; *i.e.,* <36.5 m for all impulsive sources). The ENGOs do not provide any support for the apparent contention that injury is a potential outcome of these activities. Only take by Level B harassment is anticipated and authorized.

NMFS does agree that monitoring of a clearance zone should begin 30 minutes prior to commencement or resumption of use of HRG survey equipment that may incidentally harass marine mammals following a delay or shutdown. NMFS also agrees that visual detection of a species (including North Atlantic right whales) within its respective clearance zone during the 30-minute clearance period or exclusion zone when acoustic sources are active should trigger a delay or shutdown, respectively, of survey activities. Finally, as suggested by the ENGOs, in order for survey activities to commence or resume, the lead PSO must confirm that no North Atlantic right whale or other baleen whale has been sighted in the clearance zone during the clearance period. Thus, these measures are required by all authorizations for take incidental to site characterization activities.

Comment 7: The ENGOs stated that it is their general view that NMFS must require a minimum of four PSOs on survey vessels following a two-on, two-off rotation, each responsible for scanning no more than 180° of the horizon.

Response: NMFS typically requires that a single PSO must be stationed at the highest vantage point and engaged in general 360-degree scanning during daylight hours. Although NMFS acknowledges that the single PSO cannot reasonably maintain observation of the entire 360-degree area around the vessel, it is reasonable to assume that the single PSO engaged in continual scanning of such a small area (*i.e.,* 500-m exclusion zone for North Atlantic right whales, which is more than three times the maximum 141-m Level B harassment zone) will be successful in detecting marine mammals that are available for observation at the surface. Further, Ørsted is required to deploy two PSOs for nighttime survey activities, during which the PSOs will have access to night vision devices.

The monitoring report for the initial IHA, as well as monitoring reports for

similar marine site assessment and characterization surveys (which can be found here *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable*), submitted to NMFS have demonstrated that PSOs active only during daylight operations are able to detect marine mammals and implement appropriate mitigation measures. Nevertheless, as night vision technology has continued to improve, NMFS has adapted its practice. NMFS has included a requirement in the initial IHA and this Renewal IHA that night-vision equipment (*i.e.,* night-vision goggles and/or infrared technology) must be available for use during nighttime monitoring. Under the issued Renewal IHA, survey operators are not required to provide PSOs with infrared devices during the day but observers are not prohibited from employing them. Given that use of infrared devices for detecting marine mammals during the day has been shown to be helpful under certain conditions, NMFS will consider requiring them to be made accessible for daytime PSOs in the future, as more information becomes available regarding this technology. NMFS is also requiring that all PSOs be equipped with binoculars and have the ability to estimate distances to marine mammals located in proximity to the vessel and/or exclusion zones. We have determined that the PSO requirements in the IHA are sufficient to ensure the least practicable adverse impact on the affected species or stocks and their habitat.

Comment 8: The ENGOs recommended that NMFS should require operation of sub-bottom profiling systems at the lowest practicable source level for the survey objectives.

Response: Ørsted has selected the equipment necessary to achieve their objectives. We have evaluated the effects expected as a result of use of this equipment, made the necessary findings, and imposed mitigation requirements sufficient to achieve the least practicable adverse impact on the affected species and stocks of marine mammals. It is not within NMFS' purview to make judgments regarding what constitutes the ''lowest practicable source level'' for an operator's survey objectives.

Comment 9: The ENGOs recommended that (1) NMFS require project proponents to report observation(s) of a North Atlantic right whale(s) to NMFS or the USCG as soon as possible, but no later than the end of the PSO shift during which the observation(s) occurred, and (2) Ørsted should be required to immediately report an entangled or dead North Atlantic right whale or other large whale species to NMFS OPR, NOAA Fisheries Marine Mammal and Sea Turtle Stranding and Entanglement Hotline (866–755–6622; also the North Atlantic Right Whale Sighting Advisory System), or the USCG via available reporting systems (*e.g.,* phone, app, radio). In addition, the ENGOs encourage project proponents to commit to supporting and participating in future advancing/streamlining efforts for methods of reporting. Finally, the ENGOs suggest that quarterly reports of PSO sightings data should be made publicly available to inform marine mammal science and protection.

Response: NMFS agrees with the ENGOs' first and second recommendations, hence the inclusion of these measures in both the initial and Renewal IHAs. Regarding reporting methods, NMFS agrees with the ENGOs and supports efforts to improve methods by which a sighting of a live North Atlantic right whale, or entangled or dead North Atlantic right whale (or other large whale), is reported by a project proponent and we welcome specific proposals to do so. Finally, NMFS does not concur with the suggestion that Ørsted should submit quarterly PSO sightings data reports, and that these reports be made publicly available. Ørsted is required to submit a final report to NMFS within 90 days after completion of survey activities or expiration of this IHA, whichever comes sooner. The report must fully document the methods and monitoring protocols, summarize the data recorded during monitoring, and describe, assess, and compare the effectiveness of monitoring and mitigation measures. The ENGOs did not provide specific examples regarding how making PSO sightings data publicly available on a quarterly basis would inform marine mammal science and protection in any meaningful way on this timescale. PSO sightings data (as well as all of the additional information required in a final report) are included in PSO monitoring reports from previous marine site characterization surveys, including the PSO monitoring report from the initial IHA that NMFS is renewing, which can be found here: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.* As noted above, Ørsted is already required to immediately report all North Atlantic right whale sightings to the NMFS North Atlantic Right Whale Sighting Advisory System (866) 755–6622) and to the U.S. Coast Guard via channel 16, providing mariners in the area with awareness of North Atlantic right whale locations and, thus, the opportunity to proactively reduce vessel speeds. In addition, daily visual and acoustic detections of North Atlantic right whales and other large whale species along the Eastern Seaboard, as well as Slow Zone locations, are publicly available on WhaleMap (*https://whalemap.org/WhaleMap/*). Further, recent acoustic detections of North Atlantic right whales and other large whale species are available to the public on NOAA's Passive Acoustic Cetacean Map website *https://apps-nefsc.fisheries.noaa.gov/pacm/#/narw.* Given the open access to the resources described above, NMFS does not concur that public access to quarterly PSO reports is warranted and we have not included this measure in the authorization.

Determinations

The survey activities proposed by Ørsted are identical to those analyzed in the initial IHA, including the planned number of days and location of activity, as are the method of taking and the effects of the action. Therefore, the amount of authorized take is equal to that authorized in the initial IHA. The mitigation measures and monitoring and reporting requirements, as described above, are identical to the initial IHA. The potential effect of Ørsted's activities remains limited to Level B harassment in the form of behavioral disturbance. In analyzing the effects of the activities in the initial IHA, NMFS determined that Ørsted's activities would have a negligible impact on the affected species or stocks and that the authorized take numbers of each species or stock were small relative to the relevant stocks (*e.g.,* less than one-third of the abundance of all stocks).

NMFS has concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. This includes consideration of Orsted's monitoring report, the estimated abundances of five stocks (North Atlantic right whales, fin whales, minke whales, Risso's dolphins, and harbor seals) decreasing, and the estimated abundances of two stocks (common dolphins and gray seals) increasing (Hayes *et al.,* 2021). Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) The required mitigation measures will effect the least practicable adverse impact on marine mammal species or stocks and

their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) Ørsted's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and; (5) appropriate monitoring and reporting requirements are included.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must evaluate our proposed action (*i.e.,* issuance of incidental harassment authorization) and alternatives with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 of the Companion Manual for NAO 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the Renewal IHA qualifies to be categorically excluded from further NEPA review.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the NMFS Greater Atlantic Regional Fisheries Office (GARFO), whenever we propose to authorize take of endangered or threatened species.

The NMFS Office of Protected Resources is authorizing the incidental take of four species of marine mammals that are listed under the ESA: The North Atlantic right, fin, sei and sperm whale. We requested initiation of consultation under Section 7 of the ESA with NMFS GARFO on July 1, 2020, for issuance of the initial IHA. Previously, BOEM consulted with NMFS GARFO under section 7 of the ESA on commercial wind lease issuance and site assessment activities on the Atlantic Outer Continental Shelf in Massachusetts, Rhode Island, New York and New Jersey Wind Energy Areas. The NMFS GARFO issued a Biological Opinion in 2013 concluding that these activities may adversely affect but are not likely to jeopardize the continued existence of the North Atlantic right, fin, sei and sperm whale. Upon request from the NMFS Office of Protected Resources, NMFS GARFO issued a Letter of Concurrence on September 24, 2020 concluding that the initial IHA issuance fell under the scope of the 2013 Biological Opinion and that the initial IHA issuance was not likely to adversely affect ESA-listed marine mammal species. The proposed Renewal IHA provides no new information about the effects of the action, nor does it change the extent of effects of the action, or any other basis to require reinitiation of consultation with NMFS GARFO; therefore, the consultation and determinations for the initial IHA remains valid.

Renewal

NMFS has issued a Renewal IHA to Ørsted for the take of marine mammals incidental to marine site characterization survey activities offshore from New York to Massachusetts in the areas of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS–A 0486/0517, OCS–A 0487, and OCS–A 0500) (Lease Areas) and along potential submarine ECRs to landfall locations from New York to Massachusetts, effective from the date of issuance through September 24, 2022.

Dated: March 7, 2022.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB879]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Fisheries and Ecosystem Monitoring and Research Activities

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

ACTION: Notice; receipt of application for letter of authorization; request for comments and information.

SUMMARY: NMFS has received a request from the California Department of Fish and Wildlife (CDFW), on behalf of the Interagency Ecological Program (IEP), for authorization to take marine mammals incidental to conducting fisheries and ecosystem monitoring and research activities within the San Francisco Bay-Delta Estuary, CA, over the course of five years. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of CDFW's request for the development and implementation of regulations governing the incidental taking of marine mammals. NMFS invites the public to provide information, suggestions, and comments on CDFW's application and request.

DATES: Comments and information must be received no later than April 11, 2022.

ADDRESSES: Comments on the application should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be sent to *ITP.Laws@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Availability

Electronic copies of CDFW's application and separate monitoring plan may be obtained online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities.* In case of problems accessing these documents, please call the contact listed above.

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term ''take'' means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On February 11, 2022, NMFS received an adequate and complete application from CDFW requesting authorization for take of marine mammals incidental to IEP monitoring and research activities in the San Francisco Bay-Delta Estuary, California. The requested regulations would be valid for 5 years. The proposed action includes the use of fishing research gear (*e.g.,* nets, trawls, setlines, and fykes) that may result in marine mammal interactions resulting in Level A harassment, serious injury or mortality. Therefore, CDFW requests authorization to incidentally take marine mammals.

Specified Activities

The IEP consists of multiple State and Federal agencies operating in the San Francisco Bay and Sacramento-San Joaquin Delta. The IEP has been conducting cooperative ecological investigations since the 1970s. IEP agencies partner with non-governmental organizations that work together to develop a better understanding of the Bay-Delta estuary's fish and wildlife, water quality, hydrodynamics and impacts of human activities on ecology. IEP's key studies specifically address the effects of the State Water Project and Federal Central Valley Project water project operations on the Delta and San Francisco Estuary. Many of the surveys monitor abundance and distribution of fish so to reduce entrainment risk at the water project export facilities in the south Delta.

IEP fish monitoring studies include use of various gears including midwater, otter, and Kodiak trawls (trawls), gill and trammel nets, purse seines and Lampara nets (nets), setlines and longlines (setlines), and hoop and fyke traps (fykes) that could result in incidental take via entanglement by net mesh, entrapment by fyke, or hooking by setlines. IEP studies also use a variety of other gears, such as backpack or boat mounted electrofishers, larval fish trawl nets, zooplankton nets, water samplers and instrumentation (acoustic receivers, water quality sondes, etc.) that are not expected to result in take of marine mammals.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning CDFW's request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by CDFW, if appropriate.

Dated: March 8, 2022.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–05225 Filed 3–10–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB870]

Atlantic Coastal Fisheries Cooperative Management Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an Exempted Fishing Permit application contains all of the required information and warrants further consideration. The Exempted Fishing Permit would allow commercial fishing vessels to fish outside fishery regulations in support of research conducted by the applicant. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act and the Atlantic Coastal Fisheries Cooperative Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed Exempted Fishing Permits.

DATES: Comments must be received on or before March 28, 2022.

ADDRESSES: You may submit written comments by the following method:

- *Email: nmfs.gar.efp@noaa.gov.* Include in the subject line ''AOLA Early Benthic-Phase Lobster Trap EFP.''

FOR FURTHER INFORMATION CONTACT: Laura Deighan, Fishery Management Specialist, *Laura.Deighan@noaa.gov,* (978) 281–9184.

SUPPLEMENTARY INFORMATION: The Atlantic Offshore Lobstermen's Association submitted a complete application for an Exempted Fishing Permit (EFP) to conduct commercial fishing activities that the regulations would otherwise restrict to pilot test a single early benthic-phase (EBP) lobster trap, which targets lobsters between 15- and 50-millimeter carapace length, to determine its feasibility for broader use in lobster surveys. This EFP would exempt the participating vessel from the Federal regulations described in Table 1.

TABLE 1—REQUESTED EXEMPTIONS

Citation	Regulation	Need for exemption
50 CFR 697.21(c) and § 697.21(d).	Gear specification requirements	To allow for the use a modified trap with no escape vents or ghost panels.
§ 697.19	Trap limit requirements	To allow for one additional trap.
§ 697.19(j)	Trap tag requirements	To allow for the use of an untagged trap.
§§ 697.20(a)(7), 697.20(a)(8), 697.20(b)(5), 697.20(b)(6), 697.20(d), and 697.20(g).	Possession restrictions	To allow for onboard biological sampling of undersized, oversized, v-notched, and egg-bearing lobsters.
§ 697.21(a)	Gear identification and marking requirements.	To allow for the use of an unmarked trap.

This project would use one federally permitted lobster vessel to pilot test the use of an EBP lobster trap in Lobster Management Area 3 (Statistical Areas 561, 562, and 522) between May 1, 2022, and November 1, 2022. The EBP trap is an 80-centimeter square trap based on a modified crawfish trap. It has four square openings, measuring less than two inches, which lead to ramps that drop the lobsters into a baited kitchen. Inside the trap, there are additional ramps that lead the lobsters to four cylindrical parlors with vertical openings. The trap is attached to cement runners that provide weight and maintain proper orientation.

The participants would place the EBP trap on one of their existing trawls and haul it every 7–14 days during the course of the vessel's normal fishing activity. At each haul, the participants would record and immediately release all bycatch and measure, sex, and release all lobsters from the EBP trap. The project would include no more than 26 experimental hauls. In addition to the EBP trap, the vessel would fish with its full allotted number of standard traps, but the total number of traps would remain less than the Area 3 trap cap. Participants would land and sell the legal catch from the standard traps.

The goal of this project is to test the selectivity of the EBP trap (versus ventless traps that often catch eel and crab) and the scalability of its use. If successful, EBP traps could be used in lobster surveys to provide information about larval settlement patterns and juvenile nursery grounds.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

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

Dated: March 7, 2022.

Ngagne Jafnar Gueye,

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

[FR Doc. 2022–05118 Filed 3–10–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB874]

Marine Mammals and Endangered Species

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

ACTION: Notice; issuance of permits.

SUMMARY: Notice is hereby given that permits have been issued to the following entities under the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA), as applicable.

ADDRESSES: The permits and related documents are available for review upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Erin Markin (Permit No. 25870) and Amy Hapeman (Permit No. 26024); at (301) 427–8401.

SUPPLEMENTARY INFORMATION: Notices were published in the **Federal Register** on the dates listed below that requests for a permit had been submitted by the below-named applicants. To locate the **Federal Register** notice that announced our receipt of the application and a complete description of the activities, go to *www.federalregister.gov* and search on the permit number provided in Table 1 below.

TABLE 1—ISSUED PERMITS

Permit No.	RTID	Applicant	Previous **Federal Register** notice	Issuance date
25870	0648–XB500	Harold Brundage, Environmental Research and Consulting, Inc., 325 Market Street, Lewes, DE 19958.	86 FR 56692; October 12, 2021.	2/8/2022
26024	0648–XB623	Ocean Futures Society, 513 De La Vina Street, Santa Barbara, CA 93101 (Responsible Party: Jean-Michel Cousteau).	86 FR 69632; December 8, 2021.	2/28/2022

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

As required by the ESA, as applicable, issuance of these permit was based on a finding that such permits: (1) Were applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) are consistent with the purposes and

policies set forth in Section 2 of the ESA.

Authority: The requested permits have been issued under the MMPA of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), as applicable.

Dated: March 7, 2022.

Julia M. Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–05165 Filed 3–10–22; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

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

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes product(s) from the Procurement List previously furnished by such agencies.

DATES: *Date added to and deleted from the Procurement List:* April 10, 2022.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 785–6404, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 7/9/2021 and 12/17/2021, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the product(s) and service(s) and impact of the additions on the current or most recent contractors, the Committee has determined that the product(s) and service(s) listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product(s) and service(s) to the Government.

2. The action will result in authorizing small entities to furnish the product(s) and service(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product(s) and service(s) proposed for addition to the Procurement List.

End of Certification

Accordingly, the following service(s) are added to the Procurement List:

Service(s)

Service Type: Logistics Support Service
Mandatory for: U.S. Coast Guard, Surface Forces Logistics Center, Baltimore, MD
Designated Source of Supply: Chimes District of Columbia, Baltimore, MD
Contracting Activity: U.S. COAST GUARD, SFLC PROCUREMENT BRANCH 3(00040)

The Committee finds good cause to dispense with the 30-day delay in the effective date normally required by the Administrative Procedure Act. See 5 U.S.C. 553(d). This addition to the Committee's Procurement List is effectuated because of the expiration of the U.S. Coast Guard Surface Forces Logistics Center Integrated Logistics Support Services contract. The Federal customer contacted and has worked diligently with the AbilityOne Program to fulfill this service need under the AbilityOne Program. To avoid performance disruption, and the possibility that the U.S. Coast Guard Surface Forces Logistics Center will refer its business elsewhere, this addition must be effective on March 27, 2022, ensuring timely execution for a March 28, 2022, start date while still allowing 16 days for comment. Pursuant to its own regulation 41 CFR 51–2.4, the Committee has been in contact with one of the affected parties, the incumbent of the expiring contract, since June 2021 and determined that no severe adverse impact exists. The Committee also published a notice of proposed Procurement List addition in the **Federal Register** on December 17, 2021 and did not receive any comments from any interested persons, including from the incumbent contractor. This addition will not create a public hardship and has limited effect on the public at large, but, rather, will create new jobs for other affected parties—people with significant disabilities in the AbilityOne program who otherwise face challenges locating employment. Moreover, this addition will enable Federal customer operations to continue without interruption.

Service Type: Storage, Management and Fulfillment of PPE
Mandatory for: Department of Homeland Security, Departmental Operations Acquisitions Division, Washington, DC
Designated Source of Supply: LC Industries, Inc., Durham, NC
Contracting Activity: OFFICE OF PROCUREMENT OPERATIONS, DEPT OPS ACQ DIV

The Committee finds good cause to dispense with the 30-day delay in the effective date normally required by the Administrative Procedure Act. See 5 U.S.C. 553(d). This addition to the Committee's Procurement List is effectuated because of the need for the Department of Homeland Security to award a contract. The Federal customer contacted and has worked diligently with the AbilityOne Program to fulfill this service need under the AbilityOne Program. To avoid performance disruption, and the possibility that the Department of Homeland Security will refer its business elsewhere, this addition must be effective on March 27, 2022, ensuring timely execution for a March 31, start date while still allowing 16 days for comment. The Committee also published a notice of proposed Procurement List addition in the **Federal Register** on July 9, 2021 and did not receive any comments from any interested persons, including from the incumbent contractor. This addition will not create a public hardship and has limited effect on the public at large, but, rather, will create new jobs for other affected parties—people with significant disabilities in the AbilityOne program who otherwise face challenges locating employment. Moreover, this addition will enable Federal customer operations to continue without interruption.

Deletions

On 9/17/2021, 10/1/2021, and 10/8/20212 (83 FR), the Committee for

Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3.

After consideration of the relevant matter presented, the Committee has determined that the product(s) and service(s) listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product(s) and service(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product(s) and service(s) deleted from the Procurement List.

End of Certification

Accordingly, the following product(s) and service(s) are deleted from the Procurement List:

Product(s)

NSN(s)—Product Name(s): 7510–01–600–8024—Dated 2020 12-Month 2-Sided Laminated Wall Planner, 24″ × 37″
Designated Source of Supply: Chicago Lighthouse Industries, Chicago, IL
Contracting Activity: GSA/FAS FURNITURE SYSTEMS MGT DIV, PHILADELPHIA, PA

NSN(s)—Product Name(s):
8105–LL–S05–0146—Bag, Polyethylene, Non-Asbestos Waste, 24″W × 48″L, Opaque Green with Black Printing
8105–LL–S05–0147—Bag, Polyethylene, Non-Asbestos Waste, 36″W × 48″L, Opaque Green with Black Printing
8105–LL–S05–0148—Bag, Polyethylene, Non-Asbestos Waste, 14″W × 48″L, Opaque Green with Black Printing
8105–LL–S04–7842—Bag, Polyethylene, Asbestos Waste, 24″W × 48″L, 6–10 MIL, Opaque Blue with White Printing
8105–LL–S04–7843—Bag, Polyethylene, Asbestos Waste, 36″W × 48″L, 6–10 MIL, Opaque Blue with White Printing
8105–LL–S05–0018—Bag, Polyethylene, Asbestos Waste, 12″W × 24″L, 6–10 MIL, Opaque Blue with White Printing
8105–LL–S04–8762—Bag, Polyethylene, PCB Waste, 24W″ × 10D″ × 36L″, Opaque White
8105–LL–S04–9869—Bag, Polyethylene, PCB Waste, 24W″ × 10D″ × 48L″, Opaque White
Designated Source of Supply: Open Door Center, Valley City, ND
Contracting Activity: DLA MARITIME—PUGET SOUND, BREMERTON, WA

Service(s)

Service Type: Property Management Services
Mandatory for: National Park Service, Horace M. Albright Training Center, Grand Canyon, AZ, 1 Albright Avenue, Grand Canyon, AZ
Designated Source of Supply: Trace, Inc., Boise, ID
Contracting Activity: NATIONAL PARK SERVICE, WASO WCP CONTRACTING

Michael R. Jurkowski,

Deputy Director, Business & PL Operations.

[FR Doc. 2022–05224 Filed 3–10–22; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Deletions

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

ACTION: Proposed deletions from the Procurement List.

SUMMARY: The Committee is proposing to delete product(s) from the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Comments must be received on or before: April 10, 2022.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 785–6404, or email *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Deletions

The following product(s) are proposed for deletion from the Procurement List:

Product(s)

NSN(s)—Product Name(s):
MR 13047—Container, Leakproof, On-the-Go, Clear, Lunch
MR 13048—Container, Leakproof, On-the-Go, Clear, Salad
MR 13036—Herb Keeper, Green Saver, Large, 2.8 Qt
Designated Source of Supply: CINCINNATI ASSOCIATION FOR THE BLIND AND VISUALLY IMPAIRED, Cincinnati, OH
Contracting Activity: Military Resale-Defense Commissary Agency

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2022–05228 Filed 3–10–22; 8:45 am]

BILLING CODE 6353–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, March 9, 2022; 10:00 a.m.

PLACE: This meeting will be conducted by remote means.

STATUS: Commission Meeting—Closed to the Public.

MATTER TO BE CONSIDERED: Briefing Matter.

CONTACT PERSON FOR MORE INFORMATION: Alberta E. Mills, Secretary, Division of the Secretariat, Office of the General Counsel, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814, (301) 504–7479 (Office) or 240–863–8938 (cell). The Commission unanimously determined by recorded vote to close the meeting and that agency business requires calling the meeting without seven calendar days advance public notice.

Dated: March 8, 2022.

Alberta E. Mills,

Secretary.

[FR Doc. 2022–05274 Filed 3–9–22; 11:15 am]

BILLING CODE 6355–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Undergraduate International Studies and Foreign Language Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education is issuing a notice inviting applications for fiscal year (FY) 2022 for the Undergraduate International Studies and Foreign Language (UISFL) program, Assistance Listing Number 84.016A. This notice relates to the approved information collection under OMB control number 1840–0796.

DATES:

Applications Available: March 11, 2022.

Deadline for Transmittal of Applications: May 31, 2022.

Preapplication Webinar Information: The Department will hold a preapplication meeting via webinar for prospective applicants. Detailed information regarding this webinar will be provided on the website for the UISFL program at *https://www2.ed.gov/programs/iegpsugisf/index.html.*

New potential grantees who are unfamiliar with grantmaking at the Department may read additional information about the discretionary grant process and funding basics resources at *https://www2.ed.gov/documents/funding-101/funding-101-basics.pdf (Funding 101 Basics).*

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 a Data Universal Numbering System (DUNS) number to the implementation of the Unique Entity Identifier (UEI) in *SAM.gov.* 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: Tanyelle H. Richardson, U.S. Department of Education, 400 Maryland Avenue SW, Room 258–14, Washington, DC 20222. Telephone: (202) 453–6391. Email: *UISFL@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 UISFL program provides grants for planning, developing, and carrying out projects to strengthen and improve undergraduate instruction in international studies and foreign languages in the United States.

Priorities: This notice contains two competitive preference priorities and one invitational priority. Competitive Preference Priority 1 is from the notice of final priority (NFP) published in the **Federal Register** on June 11, 2014 (79 FR 33432). Competitive Preference Priority 2 is from 34 CFR 658.35(a).

Note: Applicants must indicate in the recommended one-page abstract and on the FY 2022 UISFL program Profile Form in the application package whether they intend to address one or both of the competitive preference priorities and/or the invitational priority.

Competitive Preference Priorities: For FY 2022 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award an additional two or three points to an application that meets Competitive Preference Priority 1, depending on how well the application meets the priority, and an additional two points to an application that meets Competitive Preference Priority 2, for a maximum of five additional points.

These priorities are:

Competitive Preference Priority 1 (0, 2, or 3 points).

Applications from Minority-Serving Institutions (MSIs) (as defined in this notice) or community colleges (as defined in this notice), whether as individual applicants or as part of a consortium of institutions of higher education (IHEs) (consortium) or a partnership between nonprofit educational organizations and IHEs (partnership).

An application from a consortium or partnership that has an MSI or a community college as the lead applicant will receive more points under this priority than applications in which the MSI or community college is a member of a consortium or partnership but not the lead applicant.

A consortium or partnership must undertake activities designed to incorporate foreign languages into the curriculum of the MSI or community college and to improve foreign language and international or area studies instruction on the MSI or community college campus.

Note: We will award either two or three points to an application that meets this priority. If an MSI or a community college is a single applicant, or the lead applicant in a consortium or partnership, the application will receive three additional points. If an MSI or community college is a member of a consortium or partnership, but not the lead applicant, the application will receive two additional points. No application will receive more than three additional points for this priority.

Competitive Preference Priority 2 (0 or 2 points).

Applications from IHEs or consortia of these institutions that require entering students to have successfully completed at least two years of secondary school foreign language instruction or that require each graduating student to earn two years of postsecondary credit in a foreign language (or have demonstrated equivalent proficiency in the foreign language); or, in the case of a two-year degree granting institution, offer two years of postsecondary credit in a foreign language.

Invitational Priority: For FY 2022 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an invitational priority. Under 34 CFR 75.105(c)(1), we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Training in Less Commonly Taught Languages or Thematic Focus on Area Studies or International Studies Programs.

Applications that propose programs or activities focused on language training or the development of area or international studies programs focused on contemporary topics or themes in conjunction with training in any modern foreign languages, except French, German, or Spanish.

Definitions: The following definitions are from the NFP.

Community college means an institution that meets the definition in section 312(f) of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1058(f)); or an IHE (as defined in section 101 of the HEA) that awards degrees and certificates, more than 50 percent of which are not bachelor's degrees (or an equivalent) or master's, professional, or other advanced degrees.

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.

Note: The list of institutions currently designated as eligible under title III and title V is available at: *https://www2.ed.gov/about/offices/list/ope/idues/eligibility.*

Application Requirements: In addition to any other requirements outlined in the application package for this program, section 604(a)(7) of the HEA, 20 U.S.C. 1124(a)(7), requires that each application from an IHE, consortia, or partnership include—

(1) Evidence that the applicant has conducted extensive planning prior to submitting the application;

(2) An assurance that the faculty and administrators of all relevant departments and programs served by the applicant are involved in ongoing collaboration with regard to achieving the stated objectives of the application;

(3) An assurance that students at the applicant institutions, as appropriate, will have equal access to, and derive benefits from, the UISFL program;

(4) An assurance that each applicant, consortium, or partnership will use the Federal assistance provided under the UISFL program to supplement and not supplant non-Federal funds the institution expends for programs to improve undergraduate instruction in international studies and foreign languages;

(5) A description of how the applicant will provide information to students regarding federally funded scholarship programs in related areas;

(6) An explanation of how the activities funded by the grant will reflect diverse perspectives and a wide range of views, and generate debate on world regions and international affairs, where applicable; and

(7) A description of how the applicant will encourage service in areas of national need, as identified by the Secretary.

Program Authority: 20 U.S.C. 1124.

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, 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 34 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 34 CFR part 3474. (d) The regulations in 34 CFR parts 655 and 658. (e) The NFP.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants.

The Administration has requested $2,185,593 for new awards for this program for FY 2022. 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 before the end of the current fiscal year if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2023 from the list of unfunded applications from this competition.

Estimated Range of Awards:

For single applicant grants: $70,000–$100,000 for each 12-month budget period.

For consortia or partnership grants: $90,000–$120,000 for each 12-month budget period.

Estimated Average Size of Awards:

For single applicant grants: $83,603.

For consortia or partnership grants: $101,000.

Maximum Award: We will not make an award exceeding $100,000 for a single applicant for a single budget period of 12 months, or an award exceeding $120,000 for a consortium or partnership applicant for a single budget period of 12 months.

Estimated Number of Awards: 27.

Note: For applications from public and private nonprofit agencies and organizations, including professional and scholarly associations, the maximum award for a single budget period of 12 months is $100,000 if the entity applies alone and $120,000 if the entity applies with partner organizations.

Note: The Department is not bound by any estimates in this notice.

Project Period:

For single applicant grants: Up to 24 months.

For consortia or partnership grants: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* (a) IHEs; (b) consortia of IHEs; (c) partnerships between nonprofit educational organizations and IHEs; and (d) public and private nonprofit agencies and organizations, including professional and scholarly associations.

Note: If you are a nonprofit organization, under 34 CFR 75.51, you may demonstrate your nonprofit status by providing: (1) Proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code; (2) a statement from a State taxing body or the State attorney general certifying that the organization is a nonprofit organization operating within the State and that no part of its net earnings may lawfully benefit any private shareholder or individual; (3) a certified copy of the applicant's certificate of incorporation or similar document if it clearly establishes the nonprofit status of the applicant; or (4) any item described above if that item applies to a State or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate.

2. a. *Cost Sharing or Matching:* This program has a matching requirement under section 604(a)(3) of the HEA, 20 U.S.C. 1124(a)(3), and the regulations for this program in 34 CFR 658.41. UISFL program grantees must provide matching funds in either of the following ways: (i) Cash contributions from private sector corporations or foundations equal to one-third of the total project costs; or (ii) a combination of institutional and noninstitutional cash or in-kind contributions, including State and private sector corporation or foundation contributions, equal to one-half of the total project costs. The Secretary may waive or reduce the required matching share for institutions that are eligible to receive assistance under part A or part B of title III or under title V of the HEA that have submitted an application that demonstrates a need for a waiver or reduction.

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements, which are described in section 604(a)(7)(D) of the HEA, 20 U.S.C. 1124(a)(7)(D).

c. *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.*

d. *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:* Under 34 CFR 75.708(b) and (c), a grantee under this competition may award subgrants—to directly carry out project activities described in its application—to the following types of entities: IHEs, nonprofit organizations, professional organizations, or businesses. The grantee may award subgrants to entities

it has identified in the approved application or that it selects through a competition under procedures established by the grantee.

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 a DUNS number to the implementation of the UEI in *SAM.gov.* 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.*

2. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the UISFL grant competition, your application may include business information that you consider proprietary. In 34 CFR 5.11 we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended). Consistent with the process followed in the FY 2020 UISFL competition, we plan to post on our website a selection of funded abstracts and applications' narrative sections.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

4. *Funding Restrictions:* We specify unallowable costs in 34 CFR 658.40. We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

5. *Recommended Page Limit:* The application narrative (Part III) 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 to no more than 40 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, *except* titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or 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 Part I, the cover sheet; Part II, budget section, including the narrative budget justification; Part IV, the assurance and certifications; or the abstract, the resumes, the biography, or letters of support. However, the recommended page limit does apply to all of the application narrative.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 658.31, 658.32, 658.33, and 655.32. The maximum score for all the selection criteria, together with the maximum number of points awarded to applicants that address the competitive preference priorities, is 105 points for applications from IHEs, consortia, and partnerships; and 100 points for applications from public and private nonprofit agencies and organizations, including professional and scholarly associations. The maximum score for each criterion is indicated in parentheses.

All Applications. All applications will be evaluated based on the general selection criteria as follows:

(a) *Plan of operation (up to 15 points).* (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women; and

(C) Handicapped persons.

(b) *Quality of key personnel (up to 10 points).* (1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project. In the case of faculty, the qualifications of the faculty and the degree to which that faculty is directly involved in the actual teaching and supervision of students;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness (up to 10 points).*

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan (up to 20 points).* (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows methods of

evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources (up to 5 points).* (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) Other than library, facilities that the applicant plans to use are adequate (language laboratory, museums, etc.); and

(ii) The equipment and supplies that the applicant plans to use are adequate.

Applications from IHEs, Consortia, or Partnerships. Applications submitted by IHEs, consortia, or partnerships will also be evaluated based on the following criteria:

(f) *Commitment to international studies (up to 15 points).* (1) The Secretary reviews each application for information that shows the applicant's commitment to the international studies program.

(2) The Secretary looks for information that shows—

(i) The institution's current strength as measured by the number of international studies courses offered;

(ii) The extent to which planning for the implementation of the proposed program has involved the applicant's faculty, as well as administrators;

(iii) The institutional commitment to the establishment, operation, and continuation of the program as demonstrated by optimal use of available personnel and other resources; and

(iv) The institutional commitment to the program as demonstrated by the use of institutional funds in support of the program's objectives.

(g) *Elements of the proposed international studies program (up to 10 points).* (1) The Secretary reviews each application for information that shows the nature of the applicant's proposed international studies program.

(2) The Secretary looks for information that shows—

(i) The extent to which the proposed activities will contribute to the implementation of a program in international studies and foreign languages at the applicant institution;

(ii) The interdisciplinary aspects of the program;

(iii) The number of new and revised courses with an international perspective that will be added to the institution's programs; and

(iv) The applicant's plans to improve or expand language instruction.

(h) *Need for and prospective results of the proposed program (up to 15 points).* (1) The Secretary reviews each application for information that shows the need for and the prospective results of the applicant's proposed program.

(2) The Secretary looks for information that shows—

(i) The extent to which the proposed activities are needed at the applicant institution;

(ii) The extent to which the proposed use of Federal funds will result in the implementation of a program in international studies and foreign languages at the applicant institution;

(iii) The likelihood that the activities initiated with Federal funds will be continued after Federal assistance is terminated; and

(iv) The adequacy of the provisions for sharing the materials and results of the program with other IHEs.

Applications from Public and Private Nonprofit Agencies and Organizations, Including Professional and Scholarly Associations. Applications from public and private nonprofit agencies and organizations, including professional and scholarly associations, will also be evaluated based on the following criteria:

Need for and potential impact of the proposed project in improving international studies and the study of modern foreign language at the undergraduate level (up to 40 points).

(1) The Secretary reviews each application for information that shows the need for and potential impact of the applicant's proposed projects in improving international studies and the study of modern foreign language at the undergraduate level.

(2) The Secretary looks for information that shows—

(i) The extent to which the applicant's proposed apportionment of Federal funds among the various budget categories for the proposed project will contribute to achieving results;

(ii) The international nature and contemporary relevance of the proposed project;

(iii) The extent to which the proposed project will make an especially significant contribution to the improvement of the teaching of international studies or modern foreign languages at the undergraduate level; and

(iv) The adequacy of the applicant's provisions for sharing the materials and results of the proposed project with the higher education community.

Additional information regarding these criteria is in the application package for this program. The total number of points available under these selection criteria, combined with the competitive preference priorities, is as follows:

Selection criteria	UISFL IHEs	UISFL consortia and partnerships	UISFL public and private nonprofit agencies and organizations, including professional and scholarly associations
(a) Plan of Operation	15	15	15
(b) Quality of Key Personnel	10	10	10
(c) Budget and Cost Effectiveness	10	10	10
(d) Evaluation Plan	20	20	20
(e) Adequacy of Resources	5	5	5
(f) Commitment to International Studies	15	15	n/a
(g) Elements of Proposed International Studies Program	10	10	n/a
(h) Need for and Prospective Results of Proposed Program	15	15	n/a
(i) Need for and Potential Impact of the Proposed Project in Improving International Studies and the Study of Modern Foreign Languages at the Undergraduate Level	n/a	n/a	40
Sub-Total	100	100	100
Competitive Preference Priority #1 (Optional)	3	3	n/a
Competitive Preference Priority #2 (Optional)	2	2	n/a

Selection criteria	UISFL IHEs	UISFL consortia and partnerships	UISFL public and private nonprofit agencies and organizations, including professional and scholarly associations
Total Possible Points	105	105	100

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 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).

Separate rank order slates for applications from (1) IHEs, consortia, and partnerships; and (2) public and private nonprofit agencies and organizations will be developed and used to make funding recommendations. Each slate will include the peer reviewers' scores from the highest score to the lowest score. In cases where two or more applications have the same final score in the rank order listing, but there are insufficient funds to support all of the equally ranked applications, the applicant who has not received a UISFL award within the last five years will be recommended to receive the award.

In cases where the scores for two or more applications remain tied after using the above tie breaker, program staff will use the scores assigned for Criterion 8, *Need for and Potential Impact of the Proposed Project for institutional applications;* or the scores assigned for Criterion 10, *Need for and Potential Impact of the Proposed Project in Improving International Studies and the Study of Modern Foreign Languages at the Undergraduate Level for associations and organizations applications.*

The Secretary, to the extent practicable and consistent with the criterion of excellence, seeks to encourage diversity by ensuring that a variety of types of projects and institutions receive funding.

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 preexisting 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 preexisting 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.*

Performance reports for the UISFL program must be submitted electronically into the office of International and Foreign Language Education web-based reporting system, International Resource Information System (IRIS). For information about IRIS and to view the reporting instructions, please go to *http://iris.ed.gov/iris/pdfs/UISFL.pdf.*

5. *Performance Measures:* Established for the purpose of Department reporting under 34 CFR 75.110, the Department will use the following performance measures to evaluate the success of the UISFL program: Percentage of UISFL projects that added or enhanced courses in international studies in critical world areas and priority foreign languages; and percentage of UISFL projects that established certificate and/or undergraduate degree programs in international or foreign language studies.

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, Office of Postsecondary Education.

[FR Doc. 2022–05154 Filed 3–10–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2022–SCC–0036]

Agency Information Collection Activities; Comment Request; 2024 Teaching and Learning International Survey (TALIS 2024) Main Study Recruitment and Field Test

AGENCY: Institute of Educational Science (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a reinstatement with change of a previously approved information collection.

DATES: Interested persons are invited to submit comments on or before May 10, 2022.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2022–SCC–0036. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the PRA Coordinator of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208B, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Carrie Clarady, 202–245–6347.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: 2024 Teaching and Learning International Survey (TALIS 2024) Main Study Recruitment and Field Test.

OMB Control Number: 1850–0888.

Type of Review: A reinstatement with change of a currently approved information collection.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 2,683.

Total Estimated Number of Annual Burden Hours: 3,133.

Abstract: The Teaching and Learning International Survey (TALIS) is an international survey of teachers and principals focusing on the working conditions of teachers and the teaching and learning practices in schools. The United States will administer TALIS for the third time in 2024, having participated in 2013 and 2018. TALIS 2024 is sponsored by the Organization for Economic Cooperation and Development (OECD). TALIS is steered by the TALIS Governing Board (TGB), comprising representatives from the OECD member countries, and implemented internationally by organizations contracted by the OECD (referred to as the ''international consortium'' or ''IC''). In the U.S., TALIS 2024 is conducted by the National Center for Education Statistics (NCES) of the Institute of Education Sciences, U.S. Department of Education.

TALIS 2024 is focused on teachers' professional environment, teaching conditions, and their impact on school and teacher effectiveness. TALIS 2024 will address teacher training and professional development, teacher appraisal, school climate, school leadership, instructional approaches, pedagogical practices, and teaching experience with and support for teaching diverse populations.

OECD has scheduled the main study to occur in the Northern hemisphere from February through March 2024 and in the Southern hemisphere from June through August 2024. To prepare for the main study, several TALIS countries will conduct pilot studies in February 2022; the U.S. will not participate. Countries will also conduct a field test in the first quarter of 2023, primarily to evaluate newly developed questionnaire items and school recruitment materials; the U.S. will participate in the field test. To meet the international data collection schedule for the field test, U.S. recruitment activities need to begin by August 2022 and U.S. questionnaires must be finalized by December 2022.

TALIS 2024 includes the core TALIS teacher and principal surveys that are required for each participating country, as well as an optional Teacher Knowledge Survey (TKS). The TKS is intended to better understand the teacher pedagogical knowledge base at the national level. The US is including the TKS in the upcoming TALIS 2024 field test and will evaluate these results to determine the feasibility of including TKS as part of the US Main Study.

This submission requests approval for: Recruitment and pre-survey activities for the 2023 field test sample; administration of the field test; and school recruitment and pre-survey activities for the 2024 main study sample. The materials that will be used in the 2024 main study will be based upon the field test materials included in this submission. Additionally, this submission is designed to adequately justify the need for and overall practical utility of the full study and to present the overarching plan for all phases of the data collection, providing as much detail about the measures to be used as is available at the time of this submission. As part of this submission, NCES is publishing a notice in the **Federal Register** allowing first a 60- and then a 30-day public comment period. For the final proposal for the full study, after the field test NCES will publish a notice in the **Federal Register** allowing an additional 30-day public comment period on the final details of the 2024 main study.

Dated: March 8, 2022.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022–05219 Filed 3–10–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995, intends to extend for three years, an information collection request with the Office of Management and Budget (OMB).

DATES: Comments regarding this proposed information collection must be received on or before May 10, 2022. If you anticipate any difficulty in submitting comments within that period, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible.

ADDRESSES: Written comments may be sent to Rashida Jackson-McIlwain, Office of Talent Management, Office of the Chief Human Capital Officer, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585–1615, by email to *rashida.jackson-mcilwain@hq.doe.gov*; Ms. Jackson-McIlwain 202–586–1542.

FOR FURTHER INFORMATION CONTACT: Rashida Jackson-McIlwain, Office of Talent Management, Office of the Chief Human Capital Officer, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585–1615; 202–586–1542; *rashida.jackson-mcilwain@hq.doe.gov*; Ms. Jackson-McIlwain.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the extended collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions 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.

This information collection request contains:

(1) *OMB No.:* 1910–5193.

(2) *Information Collection Request Titled:* DOE's Applicant Portal.

(3) *Type of Review:* NEW.

(4) *Purpose:* The Department of Energy (DOE) will collect two broad types of data: Application Data and Demographic Data. Application Data will include a resume and information about a candidate's contact information, education, work experience, and work interests. DOE will use this information to evaluate an individual's qualifications for employment opportunities in support of the Infrastructure Investment and Jobs Act (IIJA) of 2021, Public Law 117–58 and other direct-hire authorities and to refer potential candidates to relevant application platforms. The Demographic Data requested is strictly voluntary. It will be used to evaluate agency marketing and outreach strategies to expand both the size and diversity of the applicant pool and assess the aggregate diversity of the applicant pool as candidates move through the evaluation process. Potential candidates are the most likely respondents to the Public Notice.

(5) *Annual Estimated Number of Respondents:* 60,000.

(6) *Annual Estimated Number of Total Responses:* 60,000.

(7) *Annual Estimated Number of Burden Hours:* 10,020.

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $590,278.

Statutory Authority: DOE is authorized to collect the information pursuant to its direct hire authorities, including Section 301 of the Infrastructure Investment and Jobs Act (IIJA) of 2021, Public Law 117–58; 5 CFR 337.201; and Office of Personnel Management GW–007, *Direct Hire Authorities* (October 11, 2018), for Scientific, Technical, Engineering, and Mathematics (STEM) positions. DOE is using existing hiring authorities, including government-wide direct hiring authorities, to identify potential candidates for positions. This information will be collected and maintained under the Privacy Act System of Records Notice OPM/GOVT–5, *Recruiting, Examining, and Placement Records.,* 79 FR 16834 (March 26, 2014), with a modification published in 80 FR 74815 (November 30, 2015) and OPM/GOVT–7 Applicant Race, Sex, National Origin, and Disability Status Records, 71 FR 35351 (June 19, 2006), amended 80 FR 74815 (Nov. 30, 2015).

Signing Authority

This document of the Department of Energy was signed on March 7, 2022, by Erin Moore, Chief Human Capital Officer, Office of the Chief Human Capital Officer, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC on March 8, 2022.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2022–05233 Filed 3–10–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

International Energy Agency Meetings

AGENCY: Department of Energy.

ACTION: Notice of meetings.

SUMMARY: The Industry Advisory Board (IAB) to the International Energy Agency (IEA) will meet on March 14, 16–17, 2022, through a webinar, in connection with a joint meeting of the IEA's Standing Group on Emergency Questions (SEQ) and the IEA's Standing Group on the Oil Market (SOM) which is scheduled at the same time.

DATES: March 14, 16–17, 2022.

ADDRESSES: The location details of the SEQ and SOM webinar meeting are under the control of the IEA Secretariat, located at 9 rue de la Fédération, 75015 Paris, France.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Reilly, Assistant General Counsel for International and National Security Programs, Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–5000.

SUPPLEMENTARY INFORMATION: In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)) (EPCA), the following notice of meetings is provided:

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held as a webinar, commencing at 12 noon, Central European Time (CET), on March 16, 2022. The purpose of this notice is to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions (SEQ), which is scheduled to be held via webinar at the same time. The IAB will also hold a preparatory meeting via webinar among company representatives at 14:00 CET on March 14, 2022. The agenda for this preparatory webinar meeting is to review the agenda for the SEQ meeting. The location details of the SEQ webinar meeting are under the control of the IEA Secretariat, located at 9 rue de la Fédération, 75015 Paris, France. The agenda of the SEQ meeting is under the control of the SEQ. It is expected that the SEQ will adopt the following agenda:

1. Adoption of the Agenda
2. Approval of the Summary Records of the 167th meeting
3. Status of Compliance with IEP Agreement Stockholding Obligations
4. ERR Belgium
5. Mid-term review Estonia
6. Industry Advisory Board Update
7. ERR of Hungary
8. Oral Reports by Administrations
9. ERR of Poland
10. Update on ERE Preparations
11. Any Other Business

Schedule of ERRs for 2021/2022

Schedule of SEQ & SOM Meetings for 2022:

—15–17 March 2022

—21–23 June 2022

—15–17 November 2022

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held as a webinar, commencing at 12 noon, Central European Time (CET), on March 17, 2022. The purpose of this notice is to permit attendance by representatives of U.S. company members of the IAB at a joint meeting of the IEA's Standing Group on Emergency Questions (SEQ) and the IEA's Standing Group on the Oil Market (SOM), which is scheduled to be held via webinar at the same time.

The location details of the SEQ webinar meeting are under the control of the IEA Secretariat, located at 9 rue de la Fédération, 75015 Paris, France. The agenda of the meeting is under the control of the SEQ. It is expected that the SEQ will adopt the following agenda:

1. Adoption of the Agenda
2. Approval of Summary Record of meeting of 16 November 2021

3. Reports on Recent Oil Market and Policy Developments in IEA Countries.
4. Update on the Current Oil Market Situation followed by Q&A
5. Presentation: ''Russia''
6. Presentation: ''OIL 2022—Forecast and analysis to 2027'' followed by Q&A
7. Any other business:

Date of next SEQ/SOM meetings: 21–23 June 2022

Close of meeting

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(ii)), the meetings of the IAB are open to representatives of members of the IAB and their counsel; representatives of members of the IEA's Standing Group on Emergency Questions and the IEA's Standing Group on the Oil Markets; representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of Congress, the IEA, and the European Commission; and invitees of the IAB, the SEQ, the SOM, or the IEA.

Signing Authority: This document of the Department of Energy was signed on March 7, 2022, by Thomas Reilly, Assistant General Counsel for International and National Security Programs, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, March 8, 2022.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2022–05231 Filed 3–10–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF22–3–000, Docket No. PF22–4–000]

Columbia Gas Transmission, LLC; Transcontinental Gas Pipe Line Company, LLC Supplemental Notice of Scoping Period Requesting Comments on Environmental Issues for the Planned Virginia Reliability Project and Commonwealth Energy Connector Project, and Notice of Public Scoping Session

On February 22, 2022 the staff of the Office of Energy Projects issued *the Notice of Scoping Period Requesting Comments on Environmental Issues for the Planned Virginia Reliability Project and Commonwealth Energy Connector Project, and Notice of Public Scoping Session.* It has come to our attention that addresses on our intended mailing list may not have received the correct notice. As such, we are issuing a Supplemental Notice of Scoping Period.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document that will discuss the environmental impacts of the Virginia Reliability Project and Commonwealth Energy Connector Project involving construction and operation of facilities by Columbia Gas Transmission, LLC (Columbia) and Transcontinental Gas Pipe Line Company, LLC (Transco), respectively. Columbia's project would be located in Greensville, Prince George, Sussex, Surry, Southampton, and Isle of Wight Counties, Virginia and in the cities of Suffolk and Chesapeake, Virginia. Transco's project would be located in Mecklenburg, Brunswick, and Greensville Counties, Virginia. Because of planned operational connections between the Virginia Reliability Project and the Commonwealth Energy Connector Project, the Commission will prepare a single environmental document as part of the National Environmental Policy Act (NEPA) review process. The Commission will use this environmental document in its decision-making process to determine whether the projects are in the public convenience and necessity.

This notice announces the extension of the scoping process the Commission will use to gather input from the public and interested agencies regarding the projects. As part of the 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. This 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 6, 2022. Comments may be submitted in written or oral 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 written or oral comments during the preparation of the environmental document.

If you submitted comments on either of these projects to the Commission before the opening of the dockets on December 1, 2021, you will need to file those comments in Docket Nos. PF22–3–000 (Virginia Reliability Project) or PF22–4–000 (Commonwealth Energy Connector Project) to ensure they are considered.

This notice is being sent to the Commission's current environmental mailing list for these projects. State and local government representatives should notify their constituents of these planned projects and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a representative from Columbia or Transco 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 easement 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 to the company. Therefore, if you and the company do not reach an easement agreement, the pipeline company could

initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge 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?'' addresses typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (*www.ferc.gov*) under the links to Natural Gas Questions or Landowner Topics.

Public Participation

There are four 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 staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.*

(1) You can file your comments electronically using the *eComment* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. 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, which is located 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 (PF22–3–000 for Virginia Reliability Project or PF22–4–000 for Commonwealth Energy Connector Project) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

(4) In lieu of sending written comments, the Commission invites you to attend a virtual public scoping session. As previously mentioned, on February 22, we issued a scoping notice titled *Notice of Scoping Period Requesting Comments on Environmental Issues for the Planned Virginia Reliability Project and Commonwealth Energy Connector Project, and Notice of Public Scoping Session* that identified a scoping period that ended March 24, 2022. Within that scoping period, we scheduled a comment meeting for March 15 at 5:00 p.m. eastern time. Since then, we have determined that some or all the notices were not delivered to our mailing list. As a result of being unable to determine the extent to which notices were delivered correctly, we intend to conduct the originally scheduled meeting and conduct a second meeting on March 29, 2022 at 5:00 p.m. eastern time. Directions for participation in both meetings is provided below. The Commission invites you to attend the virtual public scoping sessions its staff will conduct by telephone, scheduled as follows:

Date and time
Tuesday, March 15, 2022, 5:00 p.m. to 7:00 p.m. eastern time, Call in number: 800–779–8625, Passcode: 3472916.
Wednesday, March 30, 2022, 5:00 p.m. to 7:00 p.m. eastern time, Call in number: 877–917–3401, Passcode: 3537740.

Although there will not be a formal presentation, Commission staff will be available to answer questions you may have about the environmental review process. The primary goal of these scoping sessions are to have you identify the specific environmental issues and concerns that should be considered in the environmental document. Individual oral comments will be taken on a one-on-one basis with a court reporter present on the line. This format is designed to receive the maximum amount of oral comments, in a convenient way during the timeframe allotted, and is in response to the ongoing COVID–19 pandemic.

The scoping sessions are scheduled from 5:00 p.m. to 7:00 p.m. eastern time. You may call at any time after 5:00 p.m. at which time you will be placed on mute and hold. Calls will be answered in the order they are received. Once answered, you will have the opportunity to provide your comment directly to a court reporter with FERC staff or representative present on the line. A time limit of three minutes will be implemented for each commentor. Transcripts of all comments received during the scoping sessions will be publicly available on FERC's eLibrary system (see the last page of this notice for instructions on using eLibrary).

It is important to note that the Commission provides equal consideration to all comments received, whether filed in written form or provided orally at a virtual scoping sessions.

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 Projects

Virginia Reliability Project

Columbia plans to replace and expand existing facilities associated with its VM–107 and VM–108 pipelines in southeast Virginia. The Virginia Reliability Project would increase the capability of Columbia's existing pipeline facilities to provide incremental firm transportation service of 100,000 dekatherms per day (Dth/d), while increasing the reliability of Columbia's system by replacing 1950s vintage pipeline. According to Columbia, its project would meet the increasing market demand of residential, commercial, and industrial consumers in southeast Virginia.

The Virginia Reliability Project would consist of the following:

- Replacement of approximately 47.7 miles of existing, 1950s vintage 12-inch-diameter VM–107 and VM–108 pipelines with 24-inch-diameter pipeline mostly within Columbia's existing right-of-way, in the Counties of Sussex, Surry, Southampton, and Isle of Wight, as well as the cities of Suffolk and Chesapeake, Virginia;
- installation of one new 5,500 horsepower (HP) electric-drive compressor unit at the existing Emporia Compressor Station in Greensville County, Virginia;
- a facility upgrade involving additional gas cooling and an increase of 2,700 HP at the existing Petersburg Compressor Station in Prince George County, Virginia;

• expansion of the Emporia Point of Receipt in Greensville County, Virginia; RS–7423 Regulator Station in Prince George County, Virginia; and the MS–831010 Point of Delivery in the City of Chesapeake, Virginia; and

• eight mainline valve replacements, five new launcher/receiver installations, and other minor appurtenant facilities.

The general location of the project facilities is shown in appendix 1.[1]

Commonwealth Energy Connector Project

Transco plans to expand its existing natural gas transmission system to provide 105,000 Dth/d of incremental firm transportation capacity from its Compressor Station 165 in Pittsylvania County, Virginia to the existing Emporia delivery point in Greensville County, Virginia on the existing South Virginia Lateral B-Line Pipeline.

The Commonwealth Energy Connector Project would consist of the following:

• Construction of a 6.35-mile-long, 24-inch-diameter pipeline loop [2] (referred to as the Commonwealth Loop), including valve and launcher/receiver facilities, in Brunswick and Greensville Counties, Virginia;

• installation of a 30,500 HP electric motor-drive compressor unit at the existing Compressor Station 168 in Mecklenburg County, Virginia; and

• expansion of the existing Emporia Metering and Regulator Station in Greensville County, Virginia.

The general location of the project facilities is shown in appendix 1.

Land Requirements for Construction

Virginia Reliability Project

As a preliminary estimate, construction of the planned facilities for the Virginia Reliability Project would disturb about 814 acres of land for the aboveground facilities and the pipeline. Following construction, Columbia would maintain about 195 acres for permanent operation of the project's facilities; the remaining acreage would be restored. These acreages are subject to change pending further pipeline route refinement. The pipeline route, as currently planned, parallels Columbia's existing VM–107 and VM–108 pipelines.

Commonwealth Energy Connector Project

Construction of the planned facilities for the Commonwealth Energy Connector would disturb about 168 acres of land for the compressor station modifications and the pipeline. An additional amount, as yet to be quantified, would be disturbed for aboveground facilities. Following construction, Transco would maintain about 2.8 acres of new pipeline right-of-way for permanent operation of the project's facilities; the remaining acreage is either part of its existing permanent right-of-way or would be restored. The acreage that would be permanently affected by aboveground facilities outside of Transco's existing facilities has yet to be quantified. The pipeline route, as currently planned, parallels Transco's existing South Virginia Lateral A-Line.

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 projects under the relevant general resource areas:

• Geology and soils;
• water resources and wetlands;
• vegetation and wildlife;
• threatened and endangered species;
• cultural resources;
• socioeconomics and environmental justice;
• land use;
• air quality and noise;
• climate change; and
• reliability and safety.

Commission staff have already identified several issues that deserve attention based on a preliminary review of the planned facilities and the environmental information provided by Columbia and Transco for their respective projects. This preliminary list of issues may change based on your comments and our analysis:

• Lands administered by the Great Dismal Swamp National Wildlife Refuge and alternative alignments to reduce or avoid impacts;

• the Sunray Historic District in the city of Chesapeake, Virginia;

• residential, commercial, and industrial areas;

• agricultural lands;

• wetlands and waterbodies; and

• forested areas.

Commission staff will also evaluate reasonable alternatives to the planned projects or portions of the projects 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 for either project, Commission staff have already initiated a 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 Commission receives an application. As part of the pre-filing review, Commission staff will contact federal and state agencies to discuss their involvement in the scoping process and the preparation of the environmental document.

If formal applications are 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 Commission staff's 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 projects. If Commission staff prepares an EIS, a *Notice of Intent to Prepare an EIS/Notice of Schedule* will be issued once the applications are 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 [3] 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

[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.'' For instructions on connecting to eLibrary, refer to the last page of this notice. At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

[2] A pipeline loop is a segment of pipe constructed parallel to an existing pipeline to increase capacity.

[3] For instructions on connecting to eLibrary, refer to the last page of this notice.

email notification when the environmental document is issued.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues related to these projects to formally cooperate in the preparation of the environmental document.[4] 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.

Consultation 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 Virginia Department of Historic Resources, and to solicit its views and those of other government agencies, interested Indian tribes, and the public on the projects' potential effects on historic properties.[5] The environmental document for these projects will document our findings on the impacts on historic properties and 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; and other interested parties. 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 projects and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the planned projects.

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 PF22–03–000 for Virginia Reliability Project or PF22–04–000 for Commonwealth Energy Connector Project in your request. If you are requesting a change to your address, please be sure to include your name and the correct 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 Columbia and Transco file their applications 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 formal applications for the projects, after which the Commission will issue a public notice that establishes an intervention deadline.

Additional Information

Additional information about the projects 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 in the ''Docket Number'' field. 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 all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions 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.

Dated: March 7, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–05176 Filed 3–10–22; 8:45 am]

BILLING CODE 6717–01–P

[4] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.8.

[5] 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.

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: ER10–1819–032; ER10–1817–025; ER10–1818–028; ER10–1820–035.

Applicants: Northern States Power Company, a Wisconsin corporation, Public Service Company of Colorado, Southwestern Public Service Company, Northern States Power Company, a Minnesota corporation.

Description: Notice of Change in Status of Northern States Power Company, a Minnesota corporation, *et al.*

Filed Date: 3/3/22.

Accession Number: 20220303–5248.

Comment Date: 5 p.m. ET 3/24/22.

Docket Numbers: ER10–2783–017; ER10–2264–009; ER10–2359–010; ER10–2798–016; ER10–2799–016; ER10–2878–016; ER10–2879–016; ER10–2960–013; ER10–2969–017; ER18–2418–005; ER21–2423–004; ER21–2424–004.

Applicants: Generation Bridge M&M Holdings, LLC, Generation Bridge Connecticut Holdings, LLC, Great River Hydro, LLC, Oswego Harbor Power LLC, Astoria Generating Company, L.P., Montville Power LLC, Middleton Power LLC, Devon Power LLC, Connecticut Jet Power LLC, Sunrise Power Company, LLC, Long Beach Generation LLC, Arthur Kill Power LLC.

Description: Notice of Change in Status of Arthur Kill Power LLC, *et al.*

Filed Date: 3/3/22.

Accession Number: 20220303–5241.

Comment Date: 5 p.m. ET 3/24/22.

Docket Numbers: ER10–2794–035; ER12–1825–033; ER14–2672–020.

Applicants: EDF Energy Services, LLC, EDF Industrial Power Services (CA), LLC, EDF Trading North America, LLC.

Description: Notice of Change in Status of EDF Trading North America, LLC, *et al.*

Filed Date: 3/3/22.

Accession Number: 20220303–5245.

Comment Date: 5 pm ET 3/24/22.

Docket Numbers: ER11–2375–002.

Applicants: Consolidated Edison Company of New York, Inc.

Description: Notice of Non-Material Change in Status of Consolidated Edison Company of New York, Inc.

Filed Date: 3/3/22.

Accession Number: 20220303–5247.

Comment Date: 5 p.m. ET 3/24/22.

Docket Numbers: ER11–2753–008; ER12–1316–007.

Applicants: Silver State Solar Power North, LLC, Cedar Point Wind, LLC.

Description: Notice of Non-Material Change in Status of Cedar Point Wind, LLC, *et al.*

Filed Date: 3/3/22.

Accession Number: 20220303–5246.

Comment Date: 5 p.m. ET 3/24/22.

Docket Numbers: ER14–2140–012; ER14–2141–012; ER14–2465–014; ER14–2466–014; ER14–2939–011; ER15–632–013; ER15–634–013; ER15–1952–010; ER15–2728–013.

Applicants: Maricopa West Solar PV, LLC, Pavant Solar LLC, Cottonwood Solar, LLC, CID Solar, LLC, Imperial Valley Solar Company (IVSC) 2, LLC, RE Camelot LLC, RE Columbia Two LLC, Selmer Farm, LLC, Mulberry Farm, LLC.

Description: Notice of Non-Material Change in Status of CID Solar, LLC, *et al.*

Filed Date: 3/3/22.

Accession Number: 20220303–5244.

Comment Date: 5 p.m. ET 3/24/22.

Docket Numbers: ER17–1742–000; ER20–2510–000; ER13–2490–003; ER19–2671–000; ER19–2672–000; ER20–2512–000; ER20–2515–000; ER19–2595–000; ER19–2670–000; ER20–2663–000; ER17–311–000; ER20–1073–000; ER21–2408–000; ER21–2409–000; ER21–2407–000; ER21–2406–000; ER21–2638–000; ER17–1742–004; ER20–2510–002; ER13–2490–008; ER19–2671–003; ER19–2672–003; ER20–2512–002; ER20–2515–002; ER19–2595–003; ER19–2670–003; ER20–2663–002; ER17–311–004; ER20–1073–002; ER21–2408–001; ER21–2409–001; ER21–2407–001; ER21–2406–001; ER21–2638–001.

Applicants: SR Perry, LLC, Lancaster Solar LLC, SR Georgia Portfolio II Lessee, LLC, SR Snipesville II, LLC, SR Lumpkin, LLC, SR Terrell, LLC, SR South Loving LLC, SR Snipesville, LLC, SR Meridian III, LLC, SR Hazlehurst III, LLC, SR Georgia Portfolio I MT, LLC, SR Baxley, LLC, SR Arlington II MT, LLC, SR Arlington II, LLC, Simon Solar, LLC, Odom Solar LLC, Hattiesburg Farm, LLC.

Description: Notice of Change in Status of Hattiesburg Farm, LLC, *et al.*

Filed Date: 3/3/22.

Accession Number: 20220303–5242.

Comment Date: 5 p.m. ET 3/24/22.

Docket Numbers: ER18–140–008; ER11–3406–008; ER11–3407–008; ER12–1865–009; ER12–1923–007; ER12–1925–007; ER20–3036–001; ER20–3037–001.

Applicants: Vopak Industrial Infrastructure Americas St. Charles, LLC, Vopak Industrial Infrastructure Americas Plaquemine, LLC, Patton Wind Farm, LLC, Big Savage, LLC, Mustang Hills, LLC, Howard Wind LLC, Highland North LLC, Lackawanna Energy Center LLC.

Description: Notice of Change in Status of Lackawanna Energy Center LLC, *et al.*

Filed Date: 3/3/22.

Accession Number: 20220303–5249.

Comment Date: 5 p.m. ET 3/24/22.

Docket Numbers: ER21–1915–001.

Applicants: Big Sky Wind, LLC.

Description: Notice of Change in Status of Big Sky Wind, LLC.

Filed Date: 3/3/22.

Accession Number: 20220303–5243.

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: *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 7, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–05167 Filed 3–10–22; 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: RP22–678–000.

Applicants: Hummel Generation, LLC, *Hummel Generation, LLC* v. *UGI Sunbury, LLC.*

Description: Complaint of *Hummel Generation, LLC* v. *UGI Sunbury, LLC.*

Filed Date: 3/4/22.

Accession Number: 20220304–5238.

Comment Date: 5 p.m. ET 3/16/22.

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 7, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–05166 Filed 3–10–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1849–027; ER10–1852–062; ER12–895–026; ER12–1228–028; ER13–712–029; ER14–2707–023; ER15–1925–021; ER15–2676–020; ER16–1672–018; ER16–2190–017; ER16–2191–017; ER16–2275–016; ER16–2276–016; ER16–2453–018; ER17–2152–014; ER18–882–013; ER18–

1863–011; ER18–2003–012; ER18–2118–013; ER18–2182–012; ER20–1907–005; ER20–2064–006; ER21–2149–004; ER21–2296–003.

Applicants: Ensign Wind Energy, LLC, Minco Wind Energy II, LLC, High Majestic Wind I, LLC, Minco Wind I, LLC, Minco IV & V Interconnection, LLC, Armadillo Flats Wind Project, LLC, Lorenzo Wind, LLC, Coolidge Solar I, LLC, Elk City Renewables II, LLC, Cottonwood Wind Project, LLC, Brady Interconnection, LLC, Kingman Wind Energy II, LLC, Kingman Wind Energy I, LLC, Brady Wind II, LLC, Brady Wind, LLC, Chaves County Solar, LLC, Cedar Bluff Wind, LLC, Breckinridge Wind Project, LLC, Mammoth Plains Wind Project, LLC, Cimarron Wind Energy, LLC, High Majestic Wind II, LLC, Minco Wind Interconnection Services, LLC, Florida Power & Light Company, Elk City Wind, LLC.

Description: Notice of Change in Status of Elk City Wind, LLC (Part 1 of 2), et al.

Filed Date: 3/3/22.

Accession Number: 20220303–5255.

Comment Date: 5 p.m. ET 3/24/22.

Docket Numbers: ER10–1910–023; ER10–1911–023.

Applicants: Duquesne Power, LLC, Duquesne Light Company.

Description: Notice of Change in Status of Duquesne Light Company, et al.

Filed Date: 3/3/22.

Accession Number: 20220303–5256.

Comment Date: 5 p.m. ET 3/24/22.

Docket Numbers: ER11–2376–001; ER11–2376–002.

Applicants: Orange and Rockland Utilities, Inc.

Description: Notice of Non-Material Change in Status of Orange and Rockland Utilities, Inc.

Filed Date: 3/3/22.

Accession Number: 20220303–5251.

Comment Date: 5 p.m. ET 3/24/22.

Docket Numbers: ER17–1607–004; ER17–1608–004; ER20–27–004.

Applicants: Wright Solar Park LLC, Sunray Energy 3 LLC, Sunray Energy 2, LLC.

Description: Notice of Non-Material Change in Status of Sunray Energy 2, LLC, et al.

Filed Date: 3/3/22.

Accession Number: 20220303–5252.

Comment Date: 5 p.m. ET 3/24/22.

Docket Numbers: ER21–2652–004.

Applicants: Caddo Wind, LLC.

Description: Notice of Non-Material Change in Status of Caddo Wind, LLC.

Filed Date: 3/4/22.

Accession Number: 20220304–5288.

Comment Date: 5 p.m. ET 3/25/22.

Docket Numbers: ER21–2699–004; ER18–2066–007; ER11–4462–064; ER17–838–039; ER10–1951–042; ER16–2241–016; ER20–792–006; ER16–2297–016; ER14–2710–023; ER15–58–021; ER20–1991–006; ER18–1981–012; ER16–1440–017; ER19–1128–006; ER16–2240–017; ER14–2709–023; ER15–30–021; ER14–2708–024; ER18–2314–008; ER20–2603–006; ER20–780–006; ER20–2597–006; ER13–2474–022; ER20–2237–006; ER19–2495–008; ER18–2032–012; ER20–637–006; ER19–2513–008.

Applicants: Wilton Wind Energy II, LLC, Wilton Wind Energy I, LLC, Wildcat Ranch Wind Project, LLC, Wessington Springs Wind, LLC, Weatherford Wind, LLC, Steele Flats Wind Project, LLC, Soldier Creek Wind, LLC, Sooner Wind, LLC, Skeleton Creek Wind, LLC, Sholes Wind Energy, LLC, Seiling Wind, LLC, Seiling Wind Interconnection Services, LLC, Seiling Wind II, LLC, Rush Springs Wind Energy, LLC, Rush Springs Energy Storage, LLC, Roswell Solar, LLC, Pratt Wind, LLC, Ponderosa Wind, LLC, Palo Duro Wind Interconnection Services, LLC, Palo Duro Wind Energy, LLC, Osborn Wind Energy, LLC, Oklahoma Wind, LLC, Ninnescah Wind Energy, LLC, Gexa Energy L.L.C., NextEra Energy Marketing, LLC, NEPM II, LLC, Minco Wind IV, LLC, Minco Wind Energy III, LLC.

Description: Notice of Change in Status of Elk City Wind, LLC (Part 2 of 2), et al.

Filed Date: 3/3/22.

Accession Number: 20220303–5257.

Comment Date: 5 p.m. ET 3/24/22.

Docket Numbers: ER22–921–001.

Applicants: Public Service Company of Colorado.

Description: Tariff Amendment: 2022–03–07 PSC–CORE–SISA–670–Admin Update to be effective 1/29/2022.

Filed Date: 3/7/22.

Accession Number: 20220307–5133.

Comment Date: 5 p.m. ET 3/28/22.

Docket Numbers: ER22–1065–001.

Applicants: Rabbitbrush Solar, LLC.

Description: Tariff Amendment: Amendment to MBR Petition and Request for Expedited Action to be effective 2/17/2022.

Filed Date: 3/7/22.

Accession Number: 20220307–5170.

Comment Date: 5 p.m. ET 3/28/22.

Docket Numbers: ER22–1199–000.

Applicants: New York State Electric & Gas Corporation.

Description: New York State Electric & Gas Company submits a Request for Limited One-Time Prospective Waiver of Tariff Provisions with Expedited Consideration.

Filed Date: 3/3/22.

Accession Number: 20220303–5231.

Comment Date: 5 p.m. ET 3/24/22.

Docket Numbers: ER22–1203–000.

Applicants: Dominion Energy South Carolina, Inc.

Description: Compliance filing: Order 676–J Compliance filing to be effective 12/31/9998.

Filed Date: 3/7/22.

Accession Number: 20220307–5074.

Comment Date: 5 p.m. ET 3/28/22.

Docket Numbers: ER22–1207–000.

Applicants: New York Independent System Operator, Inc., Niagara Mohawk Power Corporation.

Description: § 205(d) Rate Filing: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: Joint 205 SGIA among NYISO, NMPC, KCE NY 6 for Battery Storage Project SA2673 to be effective 2/18/2022.

Filed Date: 3/7/22.

Accession Number: 20220307–5118.

Comment Date: 5 p.m. ET 3/28/22.

Docket Numbers: ER22–1208–000; ER21–1294–000; ER22–671–000.

Applicants: SunZia Transmission, LLC, Pattern Energy Group LP, SunZia Transmission, LLC, SunZia Transmission, LLC.

Description: SunZia Transmission, LLC et al. Request for Negotiated Rate Authorization and Filing of a Post-Selection Open Solicitation Report.

Filed Date: 3/1/22.

Accession Number: 20220301–5387.

Comment Date: 5 p.m. ET 3/22/22.

Docket Numbers: ER22–1209–000.

Applicants: AEP Texas Inc.

Description: § 205(d) Rate Filing: AEPTX-Louise Solar (Texana Solar) 1st A&R Generation Interconnection Agreement to be effective 2/22/2022.

Filed Date: 3/7/22.

Accession Number: 20220307–5135.

Comment Date: 5 p.m. ET 3/28/22.

Docket Numbers: ER22–1210–000.

Applicants: PacifiCorp.

Description: § 205(d) Rate Filing: RS 411 Black Hills PSA 3rd Amended to be effective 5/1/2022.

Filed Date: 3/7/22.

Accession Number: 20220307–5143.

Comment Date: 5 p.m. ET 3/28/22.

Docket Numbers: ER22–1211–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original NSA, SA No. 6376; Queue Nos. AC2–100 and AD1–131 to be effective 2/4/2022.

Filed Date: 3/7/22.

Accession Number: 20220307–5157.

Comment Date: 5 p.m. ET 3/28/22.

Docket Numbers: ER22–1212–000.

Applicants: Tucson Electric Power Company.

Description: Compliance filing: Revisions to Market-Based Rate Tariff Reflecting EIM Participation to be effective 5/3/2022.

Filed Date: 3/7/22.

Accession Number: 20220307–5173.

Comment Date: 5 p.m. ET 3/28/22.

Docket Numbers: ER22–1213–000.

Applicants: UNS Electric, Inc.

Description: Compliance filing: Revisions to Market-Based Rate Tariff Reflecting EIM Participation to be effective 5/3/2022.

Filed Date: 3/7/22.

Accession Number: 20220307–5174.

Comment Date: 5 p.m. ET 3/28/22.

Docket Numbers: ER22–1214–000.

Applicants: UniSource Energy Development Company.

Description: Compliance filing: Revisions to Market-Based Rate Tariff Reflecting EIM Participation to be effective 5/3/2022.

Filed Date: 3/7/22.

Accession Number: 20220307–5176.

Comment Date: 5 p.m. ET 3/28/22.

Docket Numbers: ER22–1215–000.

Applicants: Public Service Company of Colorado.

Description: Tariff Amendment: 2022–03–07 PSC–CORE–SISA–670–Admin–Cancel to be effective 3/8/2022.

Filed Date: 3/7/22.

Accession Number: 20220307–5183.

Comment Date: 5 p.m. ET 3/28/22.

Docket Numbers: ER22–1216–000.

Applicants: Public Service Company of New Mexico.

Description: § 205(d) Rate Filing: 4th Revised NTUA/NOA Agreements to be effective 3/1/2022.

Filed Date: 3/7/22.

Accession Number: 20220307–5187.

Comment Date: 5 p.m. ET 3/28/22.

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: *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 7, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–05168 Filed 3–10–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2079–111]

Placer County Water Agency; Notice of Application Accepted for Filing, 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. *Types of Application:* Non-capacity amendment of license.

b. *Project No.:* 2079–111.

c. *Date Filed:* January 27, 2022.

d. *Applicants:* Placer County Water Agency.

e. *Name of Projects:* Middle Fork American River.

f. *Location:* Placer and El Dorado Counties, California on the Middle Fork of the American River, the Rubicon River, and Duncan Creek and North and South Fork Long Canyon creeks.

g. *Filed Pursuant to:* 18 CFR 4.200.

h. *Applicant Contact:* General Manager, Placer County Water Agency, P.O. Box 6750, Auburn, CA 95604, (530) 823–4860.

i. *FERC Contact:* David Rudisail, (202) 502–6376, *david.rudisail@ferc.gov.*

j. Deadline for filing comments, motions to intervene, protests, and recommendations is 30 days from the issuance date of this notice by the Commission. The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, or recommendations 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). Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P–2079–111. Comments emailed to Commission staff are not considered part of the Commission record.

k. *Description of Request:* Placer County Water Agency proposes to install two pneumatic crest gates within the existing spillway, two micro-hydro units that will charge a battery pack for operation of the gates, and downstream fish passage structures. The modifications are necessary to comply with requirements of the project license issued June 8, 2020.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov/docs-filing/efiling.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* 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 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 and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene or protests should relate to project works which are the subject of the license proposed re-development. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener 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. 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 4.34(b) and 385.2010.

Dated: March 7, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–05175 Filed 3–10–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9647–01–OA; EPA–HQ–OA–2022–0050]

White House Environmental Justice Advisory Council; Notification of Virtual Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification for a public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), the U.S. Environmental Protection Agency (EPA) hereby provides notice that the White House Environmental Justice Advisory Council (WHEJAC) will meet on the dates and times described below. The meeting is open to the public. Members of the public are encouraged to provide comments relevant to the beta version of the Climate and Economic Justice Screening Tool that was developed by the Council on Environmental Quality (CEQ) and comments relevant to federal government agencies' implementation of the Justice40 Initiative. For additional information about registering to attend the meetings or to provide public comment, please see ''*Registration*'' under **SUPPLEMENTARY INFORMATION**. Pre-registration is required.

DATES: The WHEJAC will hold a virtual public meeting on Wednesday, March 30, 2022, and Thursday, March 31, 2022, from approximately 3:00 p.m.–7:00 p.m., Eastern Time each day. A public comment period relevant to the beta version of the Climate and Economic Justice Screening Tool and federal government agencies' implementation of the Justice40 Initiative will be considered by the WHEJAC during the meeting on March 30, 2022. (see **SUPPLEMENTARY INFORMATION**). Members of the public who wish to participate during the public comment period must pre-register by 11:59 p.m., Eastern Time, March 23, 2022.

FOR FURTHER INFORMATION CONTACT: Karen L. Martin, WHEJAC Designated Federal Officer, U.S. EPA; email: *whejac@epa.gov;* telephone: (202) 564–0203. Additional information about the WHEJAC is available at *https://www.epa.gov/environmentaljustice/white-house-environmental-justice-advisory-council.*

SUPPLEMENTARY INFORMATION: The meeting discussion will focus on the beta version of the Climate and Economic Justice Screening Tool developed by the CEQ and WHEJAC draft recommendations on the implementation of the Justice40 Initiative. These two charges were established through Executive Order 14008, ''Tackling the Climate Crisis at Home and Abroad.''

The Charter of the WHEJAC states that the advisory committee will provide independent advice and recommendations to the Chair of the CEQ and to the White House Environmental Justice Interagency Council (IAC). The WHEJAC will provide advice and recommendations about broad cross-cutting issues, related but not limited to, issues of environmental justice and pollution reduction, energy, climate change mitigation and resiliency, environmental health, and racial inequity. The WHEJAC's efforts will include a broad range of strategic, scientific, technological, regulatory, community engagement, and economic issues related to environmental justice.

Registration: Individual registration is required for the virtual public meeting. Information on how to register is located at *https://www.epa.gov/environmentaljustice/white-house-environmental-justice-advisory-council.* Registration for the meeting is available through the scheduled end time of the meeting. Registration to speak during the public comment period will close 11:59 p.m., Eastern Time, on March 23, 2022. When registering, please provide your name, organization, city and state, and email address for follow up. Please also indicate whether you would like to provide public comment during the meeting, and whether you are submitting written comments at the time of registration.

A. Public Comment

The WHEJAC is interested in receiving public comments relevant to the beta version of the Climate and Economic Justice Screening Tool that was developed by the CEQ and federal government agencies' implementation of the Justice40 Initiative. Every effort will be made to hear from as many registered public commenters during the time specified on the agenda. Individuals or groups providing remarks during the public comment period will be limited to three (3) minutes. Please be prepared to briefly describe your comments and recommendations on what you want the WHEJAC to advise CEQ and IAC to do regarding the beta version of the Climate and Economic Justice Screening Tool and federal government agencies' implementation of the Justice40 Initiative. Submitting written comments for the record are strongly encouraged. You can submit your written comments in three different ways, 1. by creating comments in the Docket ID No. EPA–HQ–OA–2022–0050 at *http://www.regulations.gov,* 2. by using the webform at *https://www.epa.gov/environmentaljustice/white-house-environmental-justice-advisory-council#whejacmeeting,* and 3. by sending comments via email to *wheja@epa.gov.* Written comments can be submitted through April 14, 2022.

B. Information About Services for Individuals With Disabilities or Requiring English Language Translation Assistance

For information about access or services for individuals requiring assistance, please contact Karen L. Martin, via email at *whejac@epa.gov* or contact by phone at (202) 564–0203. To request special accommodations for a disability or other assistance, please submit your request at least seven (7) working days prior to the meeting, to give EPA sufficient time to process your request. All requests should be sent to

the email listed in the **FOR FURTHER INFORMATION CONTACT** section.

Matthew Tejada,

Director for the Office of Environmental Justice.

[FR Doc. 2022–05180 Filed 3–10–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP–OFA–007]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly Receipt of Environmental Impact Statements (EIS)

Filed February 28, 2022 10 a.m. EST Through March 7, 2022 10 a.m. EST

Pursuant to 40 CFR 1506.9.

Notice: Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

EIS No. 20220029, Draft, FERC, PA, Regional Energy Access Expansion Project, Comment Period Ends: 04/25/2022, Contact: Office of External Affairs 866–208–3372.

Dated: March 7, 2022.

Cindy S. Barger,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2022–05204 Filed 3–10–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R07–OW–2021–0690; FRL–9548–01–R7]

Underground Injection Control Program; No Migration Petition Reissuance for Exemption From Hazardous Waste Disposal Restrictions of the Resource Conservation and Recovery Act Class I Hazardous Waste Injection; Occidental Chemical Corporation Wichita, Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final decision on no migration petition reissuance.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has approved the reissuance of an existing no migration petition (petition) by Occidental Chemical Corporation (OxyChem) under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act. OxyChem has adequately demonstrated to the satisfaction of EPA by the petition reissuance application and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous.

FOR FURTHER INFORMATION CONTACT: Ben Meissner, Lead Petition Reviewer, Water Division—Groundwater and Drinking Water Branch, Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: 913–551–7992; fax number: 913–551–9992; email address: *meissner.benjamin@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The existing petition allows for the subsurface disposal by OxyChem of specific restricted wastes via Class I hazardous waste injection wells at OxyChem's Wichita, Kansas facility and was approved by EPA with an effective date of October 24, 2008. In its renewal application, OxyChem requested that the petition reissuance include six Class I wells which would cover the five existing Class I injection wells in addition to a Class I well yet to be drilled. This action results in no change to the total volume of fluids to be injected. This final decision allows the underground injection by OxyChem of the specific wastes identified in the petition reissuance into injection wells Number 3, 8, 9 10, 11 and proposed number 14 at the Wichita, Kansas facility through January 2, 2040, unless EPA moves to terminate this exemption pursuant to 40 CFR 148.24. Included in this approval is the stipulation that OxyChem acquires and continues to maintain an approved permit from the Kansas Department of Health and Environment for all Class I injection wells. A public notice concerning the Agency's proposed action was issued on October 15, 2021, and the public comment period closed on December 3, 2021. In addition to soliciting written comments regarding the Agency's proposed approval, EPA conducted a virtual public availability session and a virtual formal public hearing on November 18, 2021. No comments were received during the comment period. This decision constitutes a final Agency action. There is no further administrative process to appeal this decision. This decision may be reviewed/appealed in compliance with the Administrative Procedure Act.

II. Electronic Access

You may access this **Federal Register** document electronically from the Government Printing Office under the ''**Federal Register**'' listings at FDSys (*http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR*).

Dated: March 3, 2022.

Edward H. Chu,

Acting Regional Administrator, Region 7.

[FR Doc. 2022–05130 Filed 3–10–22; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

Sunshine Act Meetings

TIME AND DATE: Tuesday, March 29th, 2022 from 2:00–4:30 p.m. ET.

PLACE: The meeting will be held virtually.

STATUS: Public Participation: The meeting will be open to public participation and time will be allotted for questions or comments submitted online. Members of the public may also file written statements before or after the meeting to *external@exim.gov.* Interested parties may register below for the meeting: *https://teams.microsoft.com/registration/PAFTuZHHMk2Zb1GDkIVFJw,5M1LfonJMEi2VFUgYRv6oQ,i145n2l9vkmDj5btNlkuGw,Zk6gqBB9XU2B7MJxTkDJAA,AS8JU-QbJUq_3I7uXiqo3w,ui5BwrlZVkGa7D1F2otyIg?mode=read&tenantId=b953013c-c791-4d32-996f-518390854527.*

MATTERS TO BE CONSIDERED: Discussion of EXIM policies and programs to provide competitive financing to expand United States exports and comments for inclusion in EXIM's Report to the U.S. Congress on Global Export Credit Competition.

CONTACT PERSON FOR MORE INFORMATION: For further information, contact India Walker, External Enagagement Specialist, at 202–480–0062 or at *india.walker@exim.gov.*

Joyce B. Stone,

Assistant Corporate Secretary.

[FR Doc. 2022–05321 Filed 3–9–22; 4:15 pm]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1270; FR ID 75543]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before May 10, 2022. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1270.

Title: Protecting National Security Through FCC Programs.

Form Number: FCC Form 5640.

Type of Review: Revision of a currently approved information collection.

Respondents: Business or other for profit.

Number of Respondents and Responses: 3,500 respondents; 10,325 responses.

Estimated Time per Response: 0.5–12 hours.

Frequency of Response: Annual, semi-annual and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 1603–1604.

Total Annual Burden: 27,475 hours.

Total Annual Cost: $1,125,000.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission is not requesting that respondents submit confidential information to the FCC. However, respondents may request confidential treatment of their information under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this information collection to the Office of Management and Budget (OMB) as a revision after this comment period to obtain the full three year clearance from OMB. Under this information collection, the Communications Act of 1934, as amended, requires the ''preservation and advancement of universal service.'' 47 U.S.C. 254(b). The information collection requirements reported under this collection are the result of the Federal Communications Commission's (the Commission) actions to promote the Act's universal service goals.

On November 22, 2019, the Commission adopted the *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs,* WC Docket No. 18–89, Report and Order, Order, and Further Notice of Proposed Rulemaking, 34 FCC Rcd 11423 (2019) (*Report and Order*). The *Report and Order* prohibits future use of Universal Service Fund (USF) monies to purchase, maintain, improve, modify, obtain, or otherwise support any equipment or services produced or provided by a company that poses a national security threat to the integrity of communications networks or the communications supply chain.

On March 12, 2020, the President signed into law the Secure and Trusted Communications Networks Act of 2019 (Secure Networks Act), Public Law 116–124, 133 Stat. 158 (2020) (codified as amended at 47 U.S.C. 1601–1609), which among other measures, directs the FCC to establish the Secure and Trusted Communications Networks Reimbursement Program (Reimbursement Program). This program is intended to provide funding to providers of advanced communications service for the removal, replacement and disposal of certain communications equipment and services that poses an unacceptable national security risk (*i.e.,* covered equipment and services) from their networks. The Commission has designated two entities—Huawei Technologies Company (Huawei) and ZTE Corporation (ZTE), along with their affiliates, subsidiaries, and parents—as covered companies posing such a national security threat. *See Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs—Huawei Designation,* PS Docket No. 19–351, Memorandum Opinion and Order, 35 FCC Rcd 14435 (2020); *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs—ZTE Designation,* PS Docket No. 19–352, Memorandum Opinion and Order, DA 20–1399 (PSHSB rel. Nov. 24, 2020).

On December 10, 2020, the Commission adopted the *Second Report and Order* implementing the Secure Networks Act, which contained certain new information collection requirements. *See Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs,* WC Docket No. 18–89, Second Report and Order, 35 FCC Rcd 14284 (2020) (*Second Report and Order*). These requirements will allow the Commission to receive, review and make eligibility determinations and funding decisions on applications to participate in the Reimbursement Program that are filed by certain providers of advanced communications service. These new information collection requirements will also assist the Commission in processing funding disbursement requests and in monitoring and furthering compliance with applicable program requirements to protect against waste, fraud, and abuse.

On December 27, 2020, the President signed into law the Consolidated Appropriations Act, 2021 (CAA), appropriating $1.9 billion to ''carry out'' the Reimbursement Program and amending the Reimbursement Program eligibility requirements to expand eligibility to include providers of advanced communications service with 10 million or fewer subscribers and making clear that schools, libraries, and health care providers are eligible to receive Reimbursement Program support to the extent they qualify as

providers of advanced communications services. *See* Public Law 116–260, Division N-Additional Coronavirus Response and Relief, Title IX-Broadband internet Access Service, §§ 901, 906, 134 Stat. 1182 (2020). The Commission has interpreted the term ''provider of advanced communications service'' to mean ''facilities-based providers, whether fixed or mobile, with a broadband connection to end users with at least 200 kbps in one direction.'' *Second Report and Order,* 35 FCC Rcd at 14332, para. 111. Participation in the Reimbursement Program is voluntary but compliance with the new information collection requirements is required to obtain Reimbursement Program support. The Commission adopted a *Third Report and Order* on July 13, 2021, implementing the amendments to the Secure Networks Act by the CAA for the Reimbursement Program. *See Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs,* WC Docket No. 18–89, Third Report and Order, FCC 21–86 (rel. July 14, 2021) (*Third Report and Order*).

Separate from the Reimbursement Program, the Secure Networks Act requires all providers of advanced communications service to annually report, with exception, on whether they have purchased, rented, leased or otherwise obtained covered communications equipment or service on or after certain dates. 47 U.S.C. 1603(d)(2)(B). The *Second Report and Order* adopted a new information collection requirement to implement this statutory mandate. *See* Secure Networks Act § 5. If the provider certifies it does not have any covered equipment and services, then the provider is not required to subsequently file an annual report, unless it later obtains covered equipment and services. *Second Report and Order,* 35 FCC Rcd at 14370, at para. 215.

The Commission therefore propose to revise this information collection, as well as Form 5460, to reflect this new requirement contained in the *Public Notice* released by the Bureau on August 3, 2021. This Public Notice, among other things, requires providers participating in the Reimbursement Program to notify the Commission of ownership changes using the FCC Form 5640 to ensure the accuracy of information on file for program participants when there is a change in ownership.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2022–05120 Filed 3–10–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[PS Docket No. 22–90, FCC 22–18; FRS 75229]

Secure Internet Routing

AGENCY: Federal Communications Commission.

ACTION: Request for comments.

SUMMARY: In this document, the Federal Communications Commission (FCC or the Commission) seeks comment on vulnerabilities threatening the security and integrity of the Border Gateway Protocol (BGP), which is central to the Internet's global routing system, its impact on the transmission of data from email, e-commerce, and bank transactions to interconnected Voice-over Internet Protocol (VoIP) and 9–1–1 calls, and how best to address them.

DATES: Comments are due on or before April 11, 2022; and reply comments are due on or before May 10, 2022.

ADDRESSES: You may submit comments, identified by PS Docket No. 22–90, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically by accessing ECFS at *https://www.fcc.gov/ecfs.*
- *Paper Filers:* Paper filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail.
- *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

For detailed instructions for submitting comments and additional information on this proceeding, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact James Wiley of the Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, at *james.wiley@fcc.gov* or (202) 418–1678 or Minsoo Kim of the Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, at *minsoo.kim@fcc.gov* or (202) 418–1739.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Inquiry, FCC 22–18, released February 28, 2022. The full text of this document is available at *https://www.fcc.gov/document/fcc-launches-inquiry-internet-routing-vulnerabilities.*

Ex Parte Rules. This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Although the rules do not generally require *ex parte* presentations to be treated as ''permit but disclose'' in Notice of Inquiry proceedings, the Commission exercises its discretion in this instance, and finds that the public interest is served by making *ex parte* presentations available to the public, in order to encourage a robust record. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with Rule 1.1206(b), 47 CFR 1.1206(b). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Confidentiality. The Commission recognizes that some comments could contain information that the submitter believes should not be made available to the general public because of commercial or national security reasons. Parties may request that such information be kept confidential, identifying the specific information sought to be kept confidential, providing the reasons for the request, and otherwise following the procedures set forth in section 0.459 of the

Commission's rules. If a party requests confidential treatment of a comment, it must file an original and one copy of the confidential version of the comment on paper, following the procedures below, and a public version of the filing that omits only the confidential information and is otherwise identical to the confidential version, using either the electronic filing or the filing-by-paper procedures below.

Comment Filing Procedures. Interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by paper. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. Paper filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. *See* FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, 35 FCC Rcd 2788 (2020), *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.*
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.

Availability of Documents. Comments, reply comments, and *ex parte* submissions will be publicly available online via ECFS. These documents will also be available for public inspection during regular business hours in the FCC Reference Information Center, when FCC Headquarters reopen to the public.

People with Disabilities. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Synopsis

1. The Commission plays an important role in protecting the security of America's communications networks and critical infrastructure. The Commission, in tandem with its federal partners, has urged the communications sector to defend against cyber threats, while also taking measures to reinforce our Nation's readiness and to strengthen the cybersecurity of vital communications services and infrastructure, especially in light of Russia's escalating actions inside of Ukraine. Today, the Commission builds on those efforts. With this *Notice of Inquiry* (*Notice*), the Commission seeks comment on vulnerabilities threatening the security and integrity of the Border Gateway Protocol (BGP), which is central to the internet's global routing system, its impact on the transmission of data from email, e-commerce, and bank transactions to interconnected Voice-over Internet Protocol (VoIP) and 9–1–1 calls, and how best to address them.

2. BGP is the routing protocol used to exchange reachability information amongst independently managed networks on the internet. These independently managed networks (also termed ''domains'') loosely map to one or more ''Autonomous Systems'' (so termed because the administration of the network is the sole responsibility of a single, independent entity). BGP's initial design, which remains widely deployed today, does not include security features to ensure trust in the information that it is used to exchange. BGP was designed at a time when the number of independently managed networks on the internet was low and the trust among them was high. As a result, a bad network actor may deliberately falsify BGP reachability information to redirect traffic to itself or through a specific third-party network, and prevent that traffic from reaching its intended recipient. When a bad actor directs traffic to be dropped in this way, it is commonly referred to as a ''blackhole.'' These ''BGP hijacks'' expose U.S. citizens' personally identifiable information, enable theft, extortion, and state-level espionage, and disrupt otherwise-secure transactions. The Commission uses the term ''BGP hijacking'' to refer to any deliberate injection of routing information away from the optimal (or most secure) route, including both false route origination and path interception attacks.

3. Congress created the Commission, among other reasons, ''for the purpose of the national defense [and] for the purpose of promoting safety of life and property through the use of wire and radio communications.'' To obtain ''maximum effectiveness from the use of radio and wire communications in connection with the safety of life and property,'' the Communications Act of 1934, as amended, directs the Commission to ''investigate and study all phases of the problem and the best methods of obtaining the cooperation and coordination'' of such systems.''

4. The Commission has taken targeted steps to protect the nation's communications infrastructure from potential security threats. Most recently, the Commission encouraged communications companies to review cybersecurity practices to defend against threats to critical infrastructure, sought comment on how the Commission can leverage its equipment authorization program to encourage device manufacturers to consider cybersecurity standards and guidelines, and acted in the public interest to deny and revoke the section 214 authority of certain carriers to provide telecommunications service in the United States.

5. Independently managed networks are essential to the daily functioning of critical infrastructure such as transportation, gas and electric power, water, and financial markets. These networks can be vulnerable to attack if they deploy a version of BGP at their borders that cannot verify the integrity or authenticity of routing information. These vulnerabilities have two main causes: (1) Validating a route's origin; and (2) securing and validating the correct BGP path to a given destination. BGP's vulnerabilities allow a network operator to accidentally or maliciously misconfigure its BGP routers to falsely advertise that its network contains the intended destination for certain internet traffic, or is on the path to that destination. By advertising incorrect routing information, a bad actor could spread incorrect information to other networks and cause traffic intended for the advertised destination to be misrouted to, or through, the bad actor's network. Causing internet traffic to depart from its most efficient path is termed ''BGP hijacking.'' Although BGP hijacking can occur anywhere on the global internet, the Commission has an interest in minimizing or eliminating opportunities for it within its jurisdiction because it can potentially harm U.S. citizens, commerce, and public safety operations.

6. Russian network operators have been suspected of exploiting BGP's

vulnerability to hijacking, including instances in which traffic has been redirected through Russia without explanation. In late 2017, for example, traffic sent to and from Google, Facebook, Apple and Microsoft was briefly routed through an internet service provider in Russia. That same year, traffic from a number of financial institutions, including MasterCard, Visa, and others was also routed through a Russian government-controlled telecommunications company under ''unexplained'' circumstances.

7. Over the past two decades, internet stakeholders have developed new standards, specifications, and best practice recommendations intended to address the security risk that BGP poses. The Internet Engineering Task Force (IETF), the principal authority responsible for internet standards, has finalized several standards to reduce BGP vulnerabilities, including BGPsec, an extension to BGP that provides security for the path through which reachability information passes. The National Institute of Standards and Technology (NIST) has released a practice guide proposing a method of validating routes' origins and recommendations for resilient exchange between independently managed networks. In 2017, the Internet Society launched Mutually Agreed Norms for Routing Security (MANRS), an organizational initiative with membership including over 700 network operators, Internet Service Providers, and enterprises, which aims to reduce or prevent route hijacking and denial of service attacks by requiring network operators to implement available tools and applicable IETF Best Common Practice standards. MANRS focuses on improving routing security by filtering routing advertisements to include only those likely to be relevant to the customer BGP router; enabling source IP address validation for customer networks; coordinating and sharing contact information for network operations center contacts through regional internet registries, and enabling routing information to be validated on a global scale. MANRS offers a tool called ''MANRS Observatory'' that aggregates data from trusted sources into a dashboard to help network operators improve the security of their networks. Similarly, the Commission's Communications Security, Reliability, and Interoperability Council (CSRIC) has reported on best practices and recommendations to improve the security of BGP. The roman numerals following the name of federal advisory committee, ''CSRIC,'' enumerate the successive years during which the Commission has chartered CSRIC to provide recommendations on selected topics. CSRIC III recommended that network operators ensure that BGP routers' internet routing registries are accurate, complete, and up-to-date, and that network operators use a standards-based approach for providing cryptographically secure registries of internet resources and routing authorizations, a Resource Public Key Infrastructure (RPKI). In this connection, the FCC sought comment on the implementation and effectiveness of the CSRIC III recommendations and/or alternatives that stakeholders have developed since the time of the CSRIC's original work to address these challenges. CSRIC VI recommended that network operators support MANRS and IETF Best Common Practice standards. Notwithstanding this work, available information suggests that the voluntary adoption and deployment of such measures has been such that many of the independently managed networks that comprise the internet remain vulnerable because they have not taken advantage of these measures.

8. *Scope of Inquiry.* In this *Notice,* the Commission seeks comment on any steps that the Commission should consider taking to help protect and strengthen the nation's communications network and other critical infrastructure from vulnerabilities posed by BGP, and how the Commission can best facilitate the implementation of industry standards and best practices to mitigate the potential harms posed by these vulnerabilities. In order to better understand the BGP ecosystem, the Commission seeks comment on the extent to which Internet Service Providers, public Internet Exchange Providers, and providers of interconnected VoIP service have deployed BGP routers in their networks. Do content delivery networks, and providers of cloud services operate BGP routers in their networks as well? What other types of entities operate BGP routers? The Commission recognizes that there are entities that do not operate BGP routers, but that are otherwise well positioned to support the development and implementation of BGP security practices. For example, there are several regional, national, and local internet registries that manage the allocation and registration of internet number resources, and support RPKIs. As an example, one such regional internet registry, the American Registry for Internet Numbers (ARIN) supports the roles of a digital certificate authority and acts as a repository for routing information and as a validator of RPKI data. Additionally, the Internet Corporation for Assigned Names and Numbers (ICANN), through its affiliate, Internet Assigned Numbers Authority (IANA), has responsibility for coordinating the internet's unique identifiers. The Commission seeks comment on what role these and other entities, including vendors of BGP routers or other networking equipment, have in supporting the development and implementation of BGP security practices. What threats to internet routing should the Commission consider within the scope of this inquiry in addition to BGP hijacking? For example, to what extent could BGP security measures prevent pervasive monitoring?

9. *Measuring BGP Security.* The Commission seeks comment on whether industry has defined metrics for identifying BGP routing security incidents and for quantifying their scope and impact. To what extent are available tools, such as NIST's RPKI Monitor, Automatic and Real-Time dEtection and Mitigation System (ARTEMIS), BGPstream, BGPMon, Kentik, and Traceroute, able to rapidly and accurately detect BGP hijacks or router misconfigurations? To what extent do these tools distinguish malicious routing changes from accidental ones? Do artificial intelligence and machine learning tools promise advancements in this area?

10. *Deployment of BGP Security Measures.* The Commission seeks comment on the security measures that have been developed and deployed by industry to secure BGP. In addition to the measures recommended by CSRIC III and VI (RPKI, MANRS, and applicable IETF Best Common Practice standards), BGPsec, and the NIST practice guide, what other standards, specifications, or best practices have been developed to address potential attacks that exploit BGP vulnerabilities? The Commission seeks comment on the extent to which network operators have implemented any of the available BGP security measures developed by industry. How effective are these measures in practice? The Commission seeks comment on how to assess, measure, demonstrate, or increase the effectiveness of these security measures. To the extent that network operators have not implemented security measures, the Commission seeks comment on why such measures have not been implemented. To the extent that network operators have implemented security measures, how effective have they been at mitigating

the vulnerability? What obstacles have prevented them from doing so?

11. The Commission seeks comment on the extent to which RPKI, as implemented by other regional internet registries, effectively prevents BGP hijacking. To what extent do network operators take advantage of the RPKI services that regional internet registries offer by implementing RPKI in their networks? To what extent, if any, do network operators' service level agreements affect the ability of network operators to drop traffic that RPKI deems invalid? How do regional internet registries maintain the certificate authority for the RPKIs in a way that mitigates the risk of a single point of failure vulnerable to distributed denial of service attacks? How do regional internet registries prevent conflicts among distributed RPKI trust anchors?

12. The Commission seeks comment on whether and to what extent network operators anticipate integrating BGPsec-capable routers into their networks. The specification for the BGPsec extension to BGP became available in 2017, but it appears that BGPsec has not been widely deployed despite BGP's known vulnerabilities. Why have network operators not taken more aggressive steps to adopt BGPsec? What particular obstacles or concerns about BGPsec have slowed their adoption? To what extent does the introduction of BGPsec routers potentially introduce compatibility issues among managed networks or introduce delays?

13. For network operators that currently participate in MANRS and comply with its requirements, including support for IETF Best Common Practice standards, the Commission seeks comment on the efficacy of such measures for preventing BGP hijacking. To what extent do the network operators that participate in MANRS support both its required and recommended routing security actions, as well as applicable IETF Best Common Practice standards on which those actions are based? To what extent do network operators participate in MANRS' various programs, including its equipment vendor program, launched in 2021, which aims to enable routing security features on network equipment and provide support and training guidance to use them, or take advantage of the MANRS Observatory.

14. *Commission's Role.* Ensuring continued U.S. leadership requires that the Commission explores opportunities to spur trustworthy innovation for more secure communications and critical infrastructure. The Commission has sought to promote the security of U.S. networks and network equipment both by drawing attention to available resources and through exercise of its regulatory authority. Other federal agencies are engaged in cybersecurity and specifically BGP security, including NIST, the Department of Homeland Security, and the National Telecommunications and Information Administration. The Commission seeks comment on steps the Commission, in coordination with other federal agencies, could take to prevent BGP hijacking or otherwise promote secure internet routing. The Commission seeks comment on whether the Commission has a role in helping U.S. network operators deploy BGP security measures. If so, how can the Commission be most helpful? The Commission seeks comment on its authority to promote the security of internet routing through regulation, including as it may apply to wireless and wireline Internet Service Providers, Internet Exchange Providers, interconnected VoIP providers, operators of content delivery networks, cloud service providers, and other enterprise and organizational stakeholders. The Commission seeks comment on whether regulatory clarity could help network operators prioritize investments in the security of their networks.

15. The Commission seeks comment on the extent to which other nations' telecommunications regulators and multistakeholder organizations have issued rules, guidance, or otherwise encouraged network operators, network security organizations, and equipment vendors to implement BGP security measures and on any lessons learned from those endeavors. The Commission seeks comment on the extent to which the effectiveness of BGP security measures may be related to international participation and coordination.

16. *Costs and Benefits.* The Commission seek comments on the one-time and ongoing costs of implementing the BGP security measures discussed herein. What capital and operational expenditures attend their implementation? Does the availability of a protocol for RPKI keep implementation costs low? Would network operators need to replace existing routers to support the BGPsec extension? Could support be enabled through a software upgrade, particularly for routers that are not considered to be ''end-of-life''? To what extent can network operators support MANRS' required and recommended actions by updating their policies and practices, and without equipment replacement or software updates? What costs would consumer likely experience from BGP security implementations, such as higher service costs or speed reductions?

17. The Commission seeks comment on whether the Commission should encourage industry to prioritize the deployment of BGP security measures within the networks on which critical infrastructure and emergency services rely, as a means of helping industry to control costs otherwise associated with a network-wide deployment. Would this or another phased or gradual implementation of BGP security measures be effective and help network operators to plan for and control implementation costs?

18. The Commission also seeks comment on the national security, economic, and public safety benefits of more secure internet routing, both within the U.S. and globally. What entities are particularly affected by threats to BGP security? To what extent would the security measures discussed herein be effective in mitigating BGP hijacking? What is the potential impact of mitigating BGP hijacking on U.S. national security and the U.S. economy? Have stakeholders attempted to quantify the benefits that secure internet routing could convey by protecting critical infrastructure, sensitive communications, and personally identifiable information? Have stakeholders attempted to quantify the benefits of secure internet routing in terms of the potential loss of Intellectual Property, communications delays, or disruptions that BGP's unmitigated vulnerability represents? Have stakeholders attempted to measure or quantify the extent to which BGP hijacking poses a threat to life and property by disrupting 9–1–1 calls carried by providers of interconnected VoIP service? What other benefits could potentially accrue from this inquiry?

19. *Digital Equity and Inclusion.* Finally, the Commission, as part of its continuing effort to advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations and benefits (if any) that may be associated with the proposals and issues discussed herein. Section 1 of the Communications Act of 1934 as amended provides that the FCC ''regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the

people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex.'' The term ''equity'' is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. Specifically, the Commission seeks comment on how its proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

20. Authority for this Notice of Inquiry may be found in sections 1, 4(i)–(j), 4(n), 7, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)–(j), 154(n), 157 and Section 1.430 of the Commission's rules, 47 CFR 1.430.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2022–05121 Filed 3–10–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 76259]

SES Performance Review Board

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: As required by the Civil Service Reform Act of 1978, Chairwoman Jessica Rosenworcel has appointed the following executives to the Senior Executive Service (SES) Performance Review Board (PRB):

Trent Harkrader

Debra Jordan

Holly Saurer

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

[FR Doc. 2022–05229 Filed 3–10–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1298; FR ID 75434]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before May 10, 2022. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1298.

Title: Volunteer Service Agreement Form, FCC Form A–384.

Form No.: FCC Form A–384.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households.

Number of Respondents and Responses: 140 respondents and 140 responses.

Estimated Time Per Response: 0.25 hours.

Frequency of Response: One-time reporting requirement.

Obligation to Respond: Mandatory. The statutory authority to collect this information derives from 5 U.S.C. 3111, Acceptance of volunteer service. Certification of compliance with COVID–19 vaccine requirements for Federal workers derives from several sources, including most recently Executive Order 13991, Protecting the Federal Workforce and Requiring Mask-Wearing; Executive Order 14043, Requiring Coronavirus Disease 2019 Vaccination for Federal Employees; and OMB Memorandum M 21–15, COVID–19 Safe Federal Workplace: Agency Model Safety Principles (Jan. 24, 2021), as amended.

Total Annual Burden: 35 hours.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: Yes. Records of current and former Federal employees as defined in 5 U.S.C. 2105, including volunteers, grantees, and contract employees on whom the agency maintains records, are covered by OPM's governmentwide System of Records Notice (SORN) OPM/GOVT–1 General Personnel Records, posted at *https://www.opm.gov/information-management/privacy-policy/sorn/opm-sorn-govt-1-general-personnel-records.pdf.* The Privacy Impact Assessment (PIA) for the Electronic Official Personnel Folder is posted at *https://www.opm.gov/information-management/privacy-policy/privacy-policy/eopf-pia.pdf.*

Nature and Extent of Confidentiality: As Privacy Act-protected records, these records are kept confidential and will not be disclosed except under applicable Privacy Act exceptions, including the routine uses identified in the OPM/GOVT–1 SORN.

Needs and Uses: The Civil Service Reform Act of 1978 authorized Federal agencies to establish programs designed to provide educationally related work assignments for students in a non-pay status. The Act provides that heads of agencies may accept, subject to regulations issued by the Office of Personnel Management, volunteer service for the United States if the service (1) is performed by a student,

with permission of the institution at which the student is enrolled; (2) is to be uncompensated; and (3) will not displace any employee. Form A–384 establishes the responsibility of students, their institutions, and the FCC as a precondition to accepting individuals as unpaid volunteers.

One such precondition now included on Form A–384, for which the FCC previously received Emergency approval, is the requirement that students comply with regulations and policies pertaining to COVID–19 vaccination requirements for Federal workers. On September 9, 2021, the President issued Executive Order (E.O.) 14043, ''Requiring Coronavirus Disease 2019 Vaccination for Federal Employees,'' requiring all Federal employees, as defined by 5 U.S.C. 2105, to be vaccinated against COVID–19, with exceptions only as required by law. Although the vaccination requirement is currently the subject of a nationwide injunction, the FCC will continue to develop and implement health and safety protocols to ensure and maintain the safety of all occupants during standard operations and public health emergencies or similar health and safety incidents, such as a pandemic. As relevant here, this includes requiring unpaid employees to report their vaccination status.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2022–05155 Filed 3–10–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Sunshine Act Meetings

TIME AND DATE: March 16, 2022; 10:00 a.m.

PLACE: This meeting will be held by video-conference only.

STATUS: Part of the meeting will be open to the public and available to view, streamed live, accessible from *www.fmc.gov.* The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portions Open to the Public:

1. Commissioner Sola, Update on Fact Finding 30: COVID–19 Impact on Cruise Industry
2. Staff Briefing on Ongoing Enforcement Activities

Portions Closed to the Public:

1. Staff Briefing on Ongoing Enforcement Activities
2. Area Representative Regional Activity Updates

CONTACT PERSON FOR MORE INFORMATION: William Cody, Secretary, (202) 523–5725.

William Cody,

Secretary.

[FR Doc. 2022–05261 Filed 3–9–22; 11:15 am]

BILLING CODE 6730–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Supplemental Evidence and Data Request on Postpartum Care for Women Up to One Year After Pregnancy

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Request for supplemental evidence and data submissions.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is seeking scientific information submissions from the public. Scientific information is being solicited to inform our review on *Postpartum Care for Women Up to One Year After Pregnancy,* which is currently being conducted by the AHRQ's Evidence-based Practice Centers (EPC) Program. Access to published and unpublished pertinent scientific information will improve the quality of this review.

DATES: *Submission Deadline* on or before April 11, 2022.

ADDRESSES:

Email submissions: epc@ahrq.hhs.gov.

Print submissions:

Mailing Address: Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, Attn: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E53A, Rockville, MD 20857.

Shipping Address (FedEx, UPS, etc.): Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E77D, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Jenae Benns, Telephone: 301–427–1496 or Email: *epc@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Agency for Healthcare Research and Quality has commissioned the Evidence-based Practice Centers (EPC) Program to complete a review of the evidence for *Postpartum Care for Women Up to One Year After Pregnancy.* AHRQ is conducting this technical brief pursuant to Section 902 of the Public Health Service Act, 42 U.S.C. 299a.

The EPC Program is dedicated to identifying as many studies as possible that are relevant to the questions for each of its reviews. In order to do so, we are supplementing the usual manual and electronic database searches of the literature by requesting information from the public (*e.g.,* details of studies conducted). We are looking for studies that report on *Postpartum Care for Women Up to One Year After Pregnancy,* including those that describe adverse events. The entire research protocol is available online at: *https://effectivehealthcare.ahrq.gov/products/postpartum-care-one-year/protocol.*

This is to notify the public that the EPC Program would find the following information on *Postpartum Care for Women Up to One Year After Pregnancy* helpful:

- A list of completed studies that your organization has sponsored for this indication. In the list, please *indicate whether results are available on ClinicalTrials.gov along with the ClinicalTrials.gov trial number.*
- *For completed studies that do not have results on ClinicalTrials.gov,* a summary, including the following elements: Study number, study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, primary and secondary outcomes, baseline characteristics, number of patients screened/eligible/enrolled/lost to follow-up/withdrawn/analyzed, effectiveness/efficacy, and safety results.
- *A list of ongoing studies that your organization has sponsored for this indication.* In the list, please provide the *ClinicalTrials.gov* trial number or, if the trial is not registered, the protocol for the study including a study number, the study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, and primary and secondary outcomes.
- Description of whether the above studies constitute *ALL Phase II and above clinical trials* sponsored by your organization for this indication and an index outlining the relevant information in each submitted file.

Your contribution is very beneficial to the Program. Materials submitted must be publicly available or able to be made public. Materials that are considered confidential; marketing materials; study types not included in the review; or information on indications not included in the review cannot be used by the EPC Program. This is a voluntary request for information, and all costs for complying

with this request must be borne by the submitter.

The draft of this review will be posted on AHRQ's EPC Program website and available for public comment for a period of 4 weeks. If you would like to be notified when the draft is posted, please sign up for the email list at: *https://www.effectivehealthcare.ahrq.gov/email-updates.*

The systematic review will answer the following questions. This information is provided as background. AHRQ is not requesting that the public provide answers to these questions.

Key Questions (KQ)

KQ 1: What healthcare delivery strategies affect postpartum healthcare utilization and improve maternal outcomes within 1 year postpartum?

a. Do the healthcare delivery strategies affect postpartum healthcare utilization and improve maternal outcomes within 3 months postpartum? Does this relationship differ by timing of outcomes, specifically within 6 days postpartum, between 1 to 6 weeks postpartum, and between 6 weeks and 3 months postpartum?

b. Do the healthcare delivery strategies affect postpartum healthcare utilization and improve maternal outcomes between 3 months and 1 year postpartum?

KQ 2: Does extension of health insurance coverage or improvements in access to healthcare affect postpartum healthcare utilization and improve maternal outcomes within 1 year postpartum?

PICOTSD (Populations, Interventions, Comparators, Outcomes, Timing, Settings, and Design)

Key Question 1 (Strategies for Healthcare Delivery)

Populations

- Individuals (of any age) who are in the postpartum period (defined as within 1 year after giving birth).
  - For this review, ''giving birth'' is defined as a live birth, intrauterine fetal death (IUFD)/stillbirth, or induced abortion that occurred at 20 or more weeks of gestation (*i.e.,* the duration of gestation that is commonly considered to denote the viability of the fetus).
- Eligible populations
  - Healthy individuals (general population)
  - Individuals at increased risk of postpartum complications due to pregnancy-related conditions (*e.g.,* hypertensive disorders of pregnancy, gestational diabetes)
  - Individuals at increased risk of postpartum complications due to incident or newly diagnosed conditions postpartum (*e.g.,* postpartum hypertension, postpartum depression, new-onset diabetes)
- *Exclude:*
  - *Individuals with specific health conditions not typically managed by providers of pregnancy and postpartum care, (e.g., multiple sclerosis, HIV, cancer, substance use disorders other than tobacco).*
  - *Individuals with diagnosed chronic conditions—pre-existing (non-gestational) diabetes, cardiac disease/risk factors (e.g., cardiomyopathy, pre-existing [non-gestational] hypertension), mood disorders (e.g., major depression, anxiety), stress urinary incontinence, and dyspareunia.*

Content of Interventions Provided (note that these are *not* the interventions being compared in the review).

Categories of interventions include components of the ACOG Postpartum Care Plan: [18]

- Counseling, support, and education regarding
  - Infant care and feeding
  - Reproductive life planning and contraception
  - Adverse pregnancy outcomes associated with cardiometabolic disease
  - Risks and behaviors associated with poor postpartum health
- Screening or prevention of:
  - Pregnancy complications
  - Common chronic health conditions (*e.g.,* hypertension, diabetes)
  - Mental health conditions (*e.g.,* depression, anxiety)
  - Common gynecologic problems (*e.g.,* sexually transmitted infections, cervical cancer)
  - Common postpartum problems (*e.g.,* stress urinary incontinence, dyspareunia)
- *Exclude:*
  - *Treatments for acute or emergency postpartum conditions (e.g., for mastitis, urinary tract infections, other infections)*
  - *Treatments or other interventions for conditions unrelated to pregnancy (e.g., HIV, schizophrenia)*
  - *Treatments or other interventions for acute conditions during pregnancy or occurring around the time of giving birth (e.g., for postpartum hemorrhage, preeclampsia with severe features)*
  - *Treatments or other interventions directed at the infant (e.g., well-child visits, otitis media, colic)*
  - *Referral-only interventions (e.g., lactation consultants for specific lactation problems)*

Delivery Strategies

- Where healthcare is delivered—*e.g.,* hospital, clinic, home visit, community health center, birth center, virtual care/telehealth, Women Infants and Children (WIC) program office/site
- How healthcare is delivered—*e.g.,* dedicated postpartum care visit, as part of well-child visit, group visit
- When healthcare is delivered—*e.g.,* timing before giving birth, after giving birth, or at postpartum visits
- Who provides healthcare/support
  - *Predominantly health system-based care—e.g.,* OB/GYN, midwife, pediatrician, family physician, internist, physician assistant, nurse practitioner, nurse, lactation consultant (when integrated as part of the care), clinical psychologist or other mental health professional
  - *Predominantly community-based care—e.g.,* doula support, community health worker, lay support, social worker/support, peer support, case manager
- Healthcare coordination and management of care—*e.g.,* patient navigators, creation and implementation of post-birth care plans, strategies for continuity of care/care transitions, strategies to facilitate access to appointments/scheduling, postpartum specialty care clinics, multidisciplinary care models (*e.g.,* maternal and child health centers, maternity care homes), evidence-based care protocols, incentives for care completion
- Information and communication technology—*e.g.,* bidirectional telemedicine, virtual televisits, phone visits, bidirectional texting, real-time chat-bots, smartphone or computer applications designed to enhance provision of postpartum healthcare
  - *Exclude: Social media or support groups (without provider involvement), web or device applications aimed at general health maintenance*
- Interventions targeted at healthcare providers or systems—*e.g.,* interventions to improve guideline-adherent care, clinical decision support tools, interventions to help reduce healthcare inequities (*e.g.,* promoting respectful care)
- *Exclude:*
  - *Referral-only interventions (e.g., lactation consultants for specific lactation problems)*

- *Treatments for specific ailments or conditions (e.g., pelvic floor physical therapy, urinary incontinence treatment, contraception, pain treatment, cognitive behavioral therapy)*
- *Insurance extension (which is covered in KQ 2)*

Comparator Delivery Strategies

- Standard delivery strategy
- Alternative delivery strategy

Outcomes (* and bold font denotes important outcomes that will be used when developing Strength of Evidence tables)

- *Intermediate and healthcare utilization outcomes*
  - Attendance at postpartum visits *
  - Unplanned care utilization (*e.g.,* unplanned readmissions, emergency room visits) *
  - Adherence to condition-specific screening/testing (*e.g.,* blood pressure monitoring, glucose tolerance testing) or treatment *
  - Transition to primary care provider for long-term care *
- *Clinical outcomes* (as appropriate, outcomes include incidence, prevalence/continuation, severity, and resolution)
  - Maternal mortality *
  - Symptoms or diagnosis of mental health conditions (*e.g.,* anxiety, depression, substance use) *
  - Patient-reported outcomes
    - Quality of life (using validated measures) *
    - Perceived stress *
    - Pain
    - Sleep quality
    - Fatigue
    - Sexual well-being and satisfaction
    - Awareness of risk factors for long-term ill health
  - Physical health/medical outcomes
    - Postpartum onset of preeclampsia or hypertension
    - Infections (*e.g.,* mastitis, wound infections)
    - Severe maternal morbidity
  - Cardiovascular disorders (*e.g.,* cardiomyopathy)
  - Cerebrovascular disorders (*e.g.,* stroke)
  - Bleeding
  - Venous thromboembolism
  - Other
  - Interpregnancy interval
  - Unintended pregnancies
  - Contraceptive initiation and continuation
  - Breastfeeding intention, initiation, duration, and exclusivity
  - Reduction in health inequities (*e.g.,* by race, ethnicity, geography, disability status)
- *Harms*
  - Health inequities *
  - Perceived discrimination *
  - Over-utilization of healthcare
  - Patient burden regarding postpartum care

Potential Effect Modifiers

- *Patient-level factors*
  - Age
  - Race/ethnicity
  - Gender identity
  - Sexual identity
  - Physical disability status
  - Socioeconomic status
  - Immigration status
  - Barriers to transportation to healthcare facility
  - Paid family leave policies (*e.g.,* presence versus absence, different durations of leave)
  - Access to internet (for virtual care/telehealth questions)
  - Substance use/substance use disorder
  - Type of insurance coverage (insured versus uninsured, private versus public [*e.g.,* Medicaid], insurance coverage of postpartum care, Medicaid insurance coverage extension or expansion)
  - Presence versus absence of disorders of pregnancy (*e.g.,* hypertensive, cardiovascular, gestational diabetes mellitus) or peripartum complications that increase risk of postpartum complications
  - Preterm versus term delivery
  - Live birth versus stillbirth/spontaneous abortion/induced abortion
  - Number of infants (singleton versus twins/triplets, etc.)
  - Presence versus absence of a supportive partner
  - Infant health (*e.g.,* neonatal intensive care unit [NICU] admission, congenital anomalies)
- *Setting factors*
  - Country (U.S. versus other high-income countries)
  - Geographic location (urban versus suburban versus rural)
  - Different levels of neighborhood vulnerability (*e.g.,* social vulnerability index)
  - Volume of facility/hospital (high versus low)
  - Type of facility/hospital (private versus public)
  - Racial/ethnic concordance between provider and patient
  - Language concordance between provider and patient

Timing

- *Delivery strategy and comparator delivery strategy:* Antenatal or postpartum (or both)
  - If the service is delivered antenatally, the strategy must be aimed at postpartum health (not just that the outcome was measured during the postpartum period).
- *Outcome measurement:* For KQ 1a: Within 3 months after giving birth. For KQ 1b: 3 months to 1 year after giving birth (except interpregnancy interval, unintended pregnancies, and chronic diseases [*e.g.,* diabetes, hypertension], which can be later)

Settings

- High-income countries (as classified by the World Bank—see *https://datahelpdesk.worldbank.org/knowledgebase/articles/906519-world-bank-country-and-lending-groups*)
- Outpatient care
- *Exclude: Institutionalized settings (e.g., prisons)*

Design

- Randomized controlled trials (N ≥10 participants per group)
- Nonrandomized comparative studies, longitudinal (prospective or retrospective) (N ≥30 participants per group)
- Case-control studies (N ≥30 participants per group)
- *Exclude: Single-group (noncomparative) studies, comparative cross-sectional studies (without a discernable time-period between implementation of strategy for intervention and measurement of outcomes), qualitative studies*

Key Question 2 (Extension of Healthcare or Insurance Coverage)

Populations

- Individuals (of any age) who are in the postpartum period (defined as within 1 year after giving birth).
  - For this review, ''giving birth'' is defined as a live birth, intrauterine fetal death (IUFD)/stillbirth, or induced abortion that occurred at 20 or more weeks of gestation (*i.e.,* the duration of gestation that is commonly considered to denote the viability of the fetus).
- Eligible populations
  - Healthy individuals (general population)
  - Individuals at increased risk of postpartum complications due to pregnancy-related conditions (*e.g.,* hypertensive disorders of pregnancy, gestational diabetes)
  - Individuals at increased risk of postpartum complications due to incident or newly diagnosed conditions postpartum (*e.g.,* postpartum hypertension,

postpartum depression, new-onset diabetes)
- *Exclude:*
  - *Individuals with specific health conditions not typically managed by providers of pregnancy and postpartum care, (e.g., multiple sclerosis, HIV, cancer, substance use disorders other than tobacco).*
  - *Individuals with diagnosed chronic conditions—pre-existing (non-gestational) diabetes, cardiac disease/risk factors (e.g., cardiomyopathy, pre-existing [non-gestational] hypertension), mood disorders (e.g., major depression, anxiety), stress urinary incontinence, and dyspareunia.*

Interventions

- More comprehensive insurance coverage
- Extended duration of insurance coverage
- More continuous insurance coverage
- Better/more continuous access to care as the result of a targeted program at the state, system, or provider level (*e.g.,* Medicaid expansion)

Comparators

- Less comprehensive level of or no insurance coverage
- Less continuous insurance coverage
- Worse, less continuous, or no access to healthcare

Outcomes (* and bold font denotes important outcomes that will be used when developing Strength of Evidence tables)
- *Intermediate and healthcare utilization outcomes*
  - Attendance at postpartum visits *
  - Unplanned care utilization (*e.g.,* readmissions, emergency room visits) *
  - Adherence to condition-specific screening/testing (*e.g.,* blood pressure monitoring, glucose tolerance testing) or treatment *
  - Transition to primary care provider for long-term care *
- *Clinical outcomes* (as appropriate, outcomes include incidence, prevalence/continuation, severity, and resolution)
  - Maternal mortality *
  - Symptoms or diagnosis of mental health conditions (*e.g.,* anxiety, depression, substance use) *
  - Patient-reported outcomes
    - Quality of life (using validated measures) *
    - Perceived stress *
    - Pain
    - Sleep quality
    - Fatigue
    - Sexual well-being and satisfaction
    - Awareness of risk factors for long-term ill health
  - Physical health/medical outcomes
    - Postpartum onset of preeclampsia or hypertension
    - Infections (*e.g.,* mastitis, wound infections)
    - Severe maternal morbidity
  - Cardiovascular disorders (*e.g.,* cardiomyopathy)
  - Cerebrovascular disorders (*e.g.,* stroke)
  - Bleeding
  - Venous thromboembolism
  - Other
  - Interpregnancy interval
  - Unintended pregnancies
  - Contraceptive initiation and continuation
  - Breastfeeding intention, initiation, duration, and exclusivity
  - Reduction in health inequities (*e.g.,* by race, ethnicity, geography, disability status)
- *Harms*
  - Health inequities *
  - Perceived discrimination *
  - Over-utilization of healthcare
  - Patient burden regarding postpartum care

Potential Effect Modifiers

- *Patient-level factors*
  - Age
  - Race/ethnicity
  - Gender identity
  - Sexual identity
  - Physical disability status
  - Socioeconomic status
  - Immigration status
  - Barriers to transportation to healthcare facility
  - Paid family leave policies (*e.g.,* presence versus absence, different durations of leave)
  - Substance use/substance use disorder
  - Type of insurance coverage (insured versus uninsured, private versus public [*e.g.,* Medicaid], insurance coverage of postpartum care, Medicaid insurance coverage extension or expansion)
  - Presence versus absence of disorders of pregnancy (*e.g.,* hypertensive, cardiovascular, gestational diabetes mellitus) or peripartum complications that increase risk of postpartum complications
  - Preterm versus term delivery
  - Live birth versus stillbirth/spontaneous abortion/induced abortion
  - Number of infants (singleton versus twins/triplets, etc.)
  - Presence versus absence of a supportive partner
  - Infant health (*e.g.,* neonatal intensive care unit [NICU] admission, congenital anomalies)
- *Setting factors*
  - Geographic location (urban versus suburban versus rural)
  - Different levels of neighborhood vulnerability (*e.g.,* social vulnerability index)
  - Volume of facility/hospital (high versus low)
  - Type of facility/hospital (private versus public)
  - Racial/ethnic concordance between provider and patient
  - Language concordance between provider and patient

Timing

- *Interventions and Comparators:* Within 1 year after giving birth
- *Outcome measurement:* Up to 1 year after giving birth (except interpregnancy interval, unintended pregnancies, and chronic diseases [*e.g.,* diabetes, hypertension], which can be later)

Settings

- U.S. only
- Outpatient care
- *Exclude: Institutionalized settings (e.g., prisons)*

Design

- Randomized controlled trials (N ≥10 participants per group)
- Nonrandomized comparative studies, longitudinal (prospective or retrospective) or cross-sectional (N ≥30 participants per group)
- Case-control studies (N ≥30 participants per group)
- *Exclude: Single-group (noncomparative) studies, comparative cross-sectional studies (without a discernable time-period between intervention and measurement of outcomes), qualitative studies*

Dated: March 7, 2022.

Marquita Cullom,

Associate Director.

[FR Doc. 2022–05141 Filed 3–10–22; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Patient Safety Organizations: Voluntary Relinquishment for the QCMetrix PSO

AGENCY: Agency for Healthcare Research and Quality (AHRQ), Department of Health and Human Services (HHS).

ACTION: Notice of delisting.

SUMMARY: The Patient Safety and Quality Improvement Final Rule (Patient Safety Rule) authorizes AHRQ, on behalf of the Secretary of HHS, to list as a patient safety organization (PSO) an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' by the Secretary if it is found to no longer meet the requirements of the Patient Safety and Quality Improvement Act of 2005 (Patient Safety Act) and Patient Safety Rule, when a PSO chooses to voluntarily relinquish its status as a PSO for any reason, or when a PSO's listing expires. AHRQ accepted a notification of proposed voluntary relinquishment from the QCMetrix PSO, PSO number P0166, of its status as a PSO, and has delisted the PSO accordingly.

DATES: The delisting was effective at 12:00 Midnight ET (2400) on February 11, 2022.

ADDRESSES: The directories for both listed and delisted PSOs are ongoing and reviewed weekly by AHRQ. Both directories can be accessed electronically at the following HHS website: *http://www.pso.ahrq.gov/listed*.

FOR FURTHER INFORMATION CONTACT: Cathryn Bach, Center for Quality Improvement and Patient Safety, AHRQ, 5600 Fishers Lane, MS 06N100B, Rockville, MD 20857; Telephone (toll free): (866) 403–3697; Telephone (local): (301) 427–1111; TTY (toll free): (866) 438–7231; TTY (local): (301) 427–1130; Email: *pso@ahrq.hhs.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Patient Safety Act, 42 U.S.C. 299b–21 to 299b–26, and the related Patient Safety Rule, 42 CFR part 3, published in the **Federal Register** on November 21, 2008 (73 FR 70732–70814), establish a framework by which individuals and entities that meet the definition of provider in the Patient Safety Rule may voluntarily report information to PSOs listed by AHRQ, on a privileged and confidential basis, for the aggregation and analysis of patient safety work product.

The Patient Safety Act authorizes the listing of PSOs, which are entities or component organizations whose mission and primary activity are to conduct activities to improve patient safety and the quality of health care delivery.

HHS issued the Patient Safety Rule to implement the Patient Safety Act. AHRQ administers the provisions of the Patient Safety Act and Patient Safety Rule relating to the listing and operation of PSOs. The Patient Safety Rule authorizes AHRQ to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' if it is found to no longer meet the requirements of the Patient Safety Act and Patient Safety Rule, when a PSO chooses to voluntarily relinquish its status as a PSO for any reason, or when a PSO's listing expires. Section 3.108(d) of the Patient Safety Rule requires AHRQ to provide public notice when it removes an organization from the list of PSOs.

AHRQ has accepted a notification of proposed voluntary relinquishment from the QCMetrix PSO to voluntarily relinquish its status as a PSO. Accordingly, the QCMetrix PSO, PSO number P0166, was delisted effective at 12:00 Midnight ET (2400) on February 11, 2022.

QCMetrix PSO has patient safety work product (PSWP) in its possession. The PSO will meet the requirements of section 3.108(c)(2)(i) of the Patient Safety Rule regarding notification to providers that have reported to the PSO and of section 3.108(c)(2)(ii) regarding disposition of PSWP consistent with section 3.108(b)(3). According to section 3.108(b)(3) of the Patient Safety Rule, the PSO has 90 days from the effective date of delisting and revocation to complete the disposition of PSWP that is currently in the PSO's possession.

More information on PSOs can be obtained through AHRQ's PSO website at *http://www.pso.ahrq.gov*.

Dated: March 7, 2022.

Marquita Cullom,

Associate Director.

[FR Doc. 2022–05163 Filed 3–10–22; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Plan for Foster Care and Adoption Assistance—Title IV–E (OMB #0970–0433)

AGENCY: Children's Bureau, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Children's Bureau (CB), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is requesting a 3-year extension of the Plan for Foster Care and Adoption Assistance—Title IV–E, (OMB#: 0970–0433, expiration 11/30/2022). This plan also incorporates the plan requirements for the optional Guardianship Assistance Program, the Title IV–E prevention services plan and the Title IV–E Kinship Navigator program. There are no changes requested to the form.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing *infocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: A title IV–E plan is required by section 471, Part IV–E of the Social Security Act (the Act) for each public child welfare agency requesting federal funding for foster care, adoption assistance, and guardianship assistance under the Act. Section 479B of the Act provides for an Indian tribe, tribal organization, or tribal consortium (tribe) to operate a title IV–E program in the same manner as a state with minimal exceptions. The tribe must have an approved Title IV–E Plan. The Title IV–E Plan provides assurances the programs will be administered in conformity with the specific requirements stipulated in Title IV–E. The plan must include all applicable state or tribal statutory, regulatory, or policy references and citations for each requirement as well as supporting documentation. A title IV–E agency may use the pre-print format prepared by CB, or a different format, on the condition that the format used includes all of the Title IV–E Plan requirements.

Title IV–E of the Act was amended by Public Law 115–123, which included the Family First Prevention Services Act (FFPSA). FFPSA authorized new optional Title IV–E funding for time-limited (1 year) prevention services for mental health/substance abuse and in-home parent skill-based programs for (1) a child who is a candidate for foster care (as defined in section 475(13) of the Act), (2) pregnant/parenting foster youth, and (3) the parents/kin caregivers of those children and youth (sections 471(e), 474(a)(6), and 475(13) of the Act). Title IV–E prevention services must be rated as promising, supported, or well supported in accordance with HHS criteria and be approved by HHS (section 471(e)(4)(C) of the Act) as part of the Title IV–E Prevention Services Clearinghouse (section 476(d)(2) of the

Act). A state or tribal Title IV–E agency electing to participate in the program must submit a 5-year Title IV–E Prevention Program Plan that meets the statutory requirements. (See Program Instructions ACYF–CB–PI–18–09 and ACYF–CB–PI–18–10 for more information.)

FFPSA also amended section 474(a)(7) of the Act to reimburse state and tribal Title IV–E agencies for a portion of the costs of operating kinship navigator programs that meet certain criteria. To qualify for funding under the Title IV–E Kinship Navigator Program, the program must meet the requirements of a kinship navigator program described in section 427(a)(1) of the Act. The Kinship Navigator Program must meet practice criteria of promising, supported, or well-supported in accordance with HHS criteria and be approved by HHS (section 471(e)(4)(C) of the Act). To begin participation in the Title IV–E Kinship Navigator Program, a Title IV–E agency must submit an attachment to its Title IV–E plan that specifies the kinship navigator model it has chosen to implement and the date on which the provision of program services began or will begin, and provide an assurance that the model meets the requirements of section 427(a)(1) of the Act, as well as a brief narrative describing how the program will be operated. (Please see Program Instruction ACYF–CB–PI–18–11 for additional information: *https://www.acf.hhs.gov/cb/policy-guidance/pi-18-11*.)

Respondents: State and tribal Title IV– E agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
Title IV–E Plan	17	1	16	272
Title IV–E prevention services plan	12	1	5	60
Attachment to Title IV–E plan for Kinship Navigator Program	15	1	1	15

Estimated Total Annual Burden Hours: 347.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: Title IV–E of the Social Security Act as amended by Public Law 115– 123 enacted February 9, 2018.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–05194 Filed 3–10–22; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Solicitation for Nominations To Serve on the Advisory Council To Support Grandparents Raising Grandchildren

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Principal Deputy Administrator of the Administration for Community Living (ACL) seeks nominations for individuals to serve on the Advisory Council to Support Grandparents Raising Grandchildren.

DATES: Nominations must be submitted electronically by 11:59 p.m., Eastern on April 11, 2022 to be considered for appointment.

Method of Submission: Nominations, including all requested information (see *Nomination Process* below) and attachments, must be submitted electronically to: *SGRG.mail@acl.hhs.gov*.

SUPPLEMENTARY INFORMATION: The Advisory Council to Support Grandparents Raising Grandchildren is authorized by the Supporting Grandparents Raising Grandchildren Act (Pub. L. 115–196) of 2018. The Advisory Council identifies, promotes, coordinates, and disseminates to the public information, resources, and the best practices available to help grandparents and other older relatives both meet the needs of the children in their care; and maintain their own physical and mental health and emotional well-being. The Advisory Council is specifically directed to consider the needs of those affected by the opioid crisis, as well as the needs of members of Native American Tribes.

The Administration for Community Living has been delegated the authority to execute the requirements and responsibilities as outlined in the Act.

The Advisory Council is made up of the following (or their designees): The Administrator of the Administration for Community Living (ACL); the Secretary of Education; the Assistant Secretary for Mental Health and Substance Use; the Assistant Secretary for the Administration for Children and Families; and, as appropriate, the heads of other federal departments or agencies with responsibilities related to current issues affecting grandparents or other older relatives raising children.

The Advisory Council also must include at least one grandparent who is raising a grandchild, and an older relative (kinship) caregiver caring for children. Given the Biden administration's commitment to equity and inclusion, ACL anticipates selecting up to ten (10) non-federal members to serve on the Advisory Council who will be reflective of the diversity of grandparents and older relative/kinship caregivers and the professionals working on their behalf, with particular emphasis placed on individuals representing racially and ethnically diverse communities, tribal communities, and those families impacted by the opioid crisis.

Advisory Council Responsibilities: The Advisory Council's efforts will build on the accomplishments of the previous council, whose term expires in August 2022. In this regard, the Advisory Council will support the information gathering for, and preparation of, updates to the initial Report to Congress. The Advisory Council will provide input to update the sections of the National Family Caregiving Strategy pertaining to grandparents and older relative (kinship) caregiver support. The

Advisory Council may also be called upon to inform the work of, and collaborate with, the newly established Grandfamilies and Kinship Support Network: A National Technical Assistance Center.

The Advisory Council, or its individual members, may be engaged to author/co-author articles and other materials; engage with print and electronic media; and deliver presentations, workshops, webinars and other forms of educational opportunities designed to highlight the Administration's commitment to supporting kin and grandparent caregivers.

As needed, and where appropriate, this Advisory Council will coordinate its efforts with those of the Family Caregiving Advisory Council. Such coordination might include joint meetings, presentations, and other activities undertaken in fulfillment of the requirements of the RAISE Act.

The Advisory Council will meet virtually (via Zoom or similar platform), up to three times each year, beginning in September/October 2022. Council meetings will generally be held from 12:30 to 4:30 p.m., Eastern Time. All meetings of the Council will be open to the public and recorded for posting on the ACL website. Advisory Council members will be expected to participate in at least one subcommittee, which will meet, as needed, between Advisory Council meetings to develop and review materials and conduct other activities related to the Advisory Council's mission and purpose.

The completion of all described activities is dependent upon the continued availability of federal funding for the purposes of carrying out the legislation.

Nomination Process: Any person or organization may nominate one or more qualified individuals for membership. Current Advisory Council members whose terms are expiring may also submit a nomination for consideration. Nomination packages must include:

(1) A nomination letter not to exceed one (1) page that provides ALL the following information:

a. The reason(s) for nominating the individual;

b. The constituency being represented:

i. A grandparent raising a grandchild; or

ii. An older relative caregiver of children;

iii. A grandparent or older relative caregiver whose family has been impacted by opioid misuse; or

iv. A grandparent or older relative caregiver who is a member of Native American tribe; or

v. Another expert and/or advocate engaged in programs, services, and supports to kinship families and grandfamilies.

c. The nominee's particular, relevant experience and/or professional expertise;

d. Contact information for the nominee (name, title (if applicable), address, phone, and email address); and

e. The nominee's resume (not to exceed two (2) pages) if the nomination is based on their professional capacity or qualifications. A resume is optional otherwise.

Nominees will be selected for appointment based on their demonstrated knowledge, qualifications, and professional or personal experience related to the purpose and scope of the Advisory Council.

(2) Members will be appointed for a period not to exceed three years. Members appointed to fill subsequent vacancies will serve for the remainder of the current term of the Advisory Council.

Dated: March 4, 2022.

Alison Barkoff,

Principal Deputy Administrator, Administration for Community Living.

[FR Doc. 2022–05153 Filed 3–10–22; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Solicitation for Nominations To Serve on the Family Caregiving Advisory Council

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Principal Deputy Administrator of the Administration for Community Living (ACL) seeks nominations for individuals to serve on the Family Caregiving Advisory Council.

DATES: Nominations must be submitted electronically by 11:59 p.m., Eastern on April 11, 2022 to be considered for appointment.

ADDRESSES: *Method of Submission:* Nominations, including all requested information (see Nomination Process below) and attachments, must be submitted electronically to: *RAISE.mail@acl.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Family Caregiving Advisory Council (the Advisory Council) is authorized under Section 4 of the Recognize, Assist, Include, Support, and Engage Family Caregivers Act of 2017 (Pub. L. 115–119), commonly referred to as the ''RAISE Family Caregivers Act.'' The Advisory Council studies and prepares findings, conclusions, and makes recommendations to the Administrator of ACL/Assistant Secretary for Aging on matters pertaining to: (a) Evidence-based or promising practices and innovative models for the provision of care by family caregivers or support for family caregivers; and (b) Improving coordination across federal government programs. The Advisory Council advises and provides recommendations to the Administrator on recognizing and supporting family caregivers. The Advisory Council consists of at least three ex officio federal members: The Administrator of the Centers for Medicare & Medicaid Services (or the Administrator's designee); the Administrator of the Administration for Community Living (or the Administrator's designee who has experience with both aging and disability); and the Secretary of Veterans Affairs (or the Secretary's designee). Heads of other federal departments or agencies (or their designees) also may be appointed as ex officio members. In addition, the ACL Administrator will appoint a maximum of fifteen non-federal voting members, with at least one from each of the following constituencies: Family caregivers; older adults who need long-term services and supports; individuals with disabilities; health care and social service providers; providers of long-term services and supports; employers; paraprofessional workers; state and local officials; accreditation bodies; veterans; and as appropriate, other experts and advocates engaged in family caregiving.

Additionally, in keeping with the Biden administration's commitment to equity and inclusion, voting members selected to serve on the Advisory Council will reflect the diversity of family caregivers and those persons receiving services and supports. Nominations are sought from individuals representing the aging and disability communities, tribes, racial and ethnically diverse communities, LGBTQ, and other underrepresented or underserved populations.

Advisory Council Responsibilities: The Advisory Council's efforts will build on the accomplishments of the previous council, whose term expires in August 2022. In this regard, the Advisory Council will support the information gathering for, and preparation of, biennial updates to the

initial Report to Congress, including new developments, challenges, opportunities, and solutions to better recognize and support family caregivers along with recommendations for priority actions to update, improve, and keep current the National Family Caregiving Strategy, as appropriate.

The Advisory Council will submit an annual report on the development, maintenance, and updating of the National Family Caregiving Strategy. The report will include a description of the implementation of the actions recommended in the initial report, as appropriate. This report will be provided to the Secretary, Congress, and the state agencies responsible for carrying out family caregiver programs.

The Advisory Council, or its individual members, may also be engaged to author/co-author articles and other materials; engage with print and electronic media; and deliver presentations, workshops, webinars and other forms of educational opportunities designed to highlight the Administration's commitment to supporting families and family caregivers.

As needed, and where appropriate, this Advisory Council will coordinate its efforts with those of the Advisory Council to Support Grandparents Raising Grandchildren. Such coordination might include joint meetings, presentations and other activities undertaken in fulfillment of the requirements of the RAISE Act.

The Advisory Council will meet virtually (via Zoom or similar platform), at least three times each year, beginning in September/October 2022. Council meetings will generally be held from 12:30 to 4:30 p.m., Eastern Time. All meetings of the Council will be open to the public and recorded for posting on the ACL website. Advisory Council members will be expected to participate in at least one subcommittee, which will meet, as needed, between Advisory Council meetings to develop and review materials and conduct other activities related to the Advisory Council's mission and purpose.

The completion of all described activities is dependent upon the continued availability of federal funding for the purposes of carrying out the legislation.

Nomination Process: Any person or organization may nominate one or more qualified individuals for membership. Current Advisory Council members whose terms are expiring may also submit a nomination for consideration. Nomination packages must include:

(1) A nomination letter not to exceed one (1) page that provides ALL of the following information:

a. The reason(s) for nominating the individual;

b. The constituency being represented (from the list above; may be more than one);

c. The nominee's particular, relevant experience and/or professional expertise or lived experience;

d. Contact information for the nominee [name, title (if applicable), address, phone, and email address]; and

e. The nominee's resume (not to exceed two (2) pages) if the nomination is based on their professional capacity or qualifications. A resume is optional otherwise.

Nominees will be selected for appointment based on their demonstrated knowledge, qualifications, and professional or personal experience related to the purpose and scope of the Advisory Council.

(2) Members will be appointed for a period not to exceed three years. Members appointed to fill subsequent vacancies will serve for the remainder of the current term of the Advisory Council.

Dated: March 4, 2022.

Alison Barkoff,

Principal Deputy Administrator, Administration for Community Living.

[FR Doc. 2022–05152 Filed 3–10–22; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

"Low Income Levels" Used for Various Health Professions and Nursing Programs Authorized in Titles III, VII, and VIII of the Public Health Service Act

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HRSA is updating income levels used to identify a ''low-income family'' for the purpose of determining eligibility for programs that provide health professions and nursing training to individuals from disadvantaged backgrounds. These various programs are authorized in Titles III, VII, and VIII of the Public Health Service Act. HHS periodically publishes in the **Federal Register** low-income levels to be used by institutions receiving grants or cooperative agreement awards to determine eligibility for programs providing training for (1) disadvantaged individuals, (2) individuals from disadvantaged backgrounds, or (3) individuals from low-income families.

SUPPLEMENTARY INFORMATION: Many health professions and nursing grant and cooperative agreement awardees use the low-income levels to determine whether potential program participants are from economically disadvantaged backgrounds and would be eligible to participate in the program, as well as to determine the amount of funding individuals receive. Awards are generally made to accredited schools of medicine, osteopathic medicine, public health, dentistry, veterinary medicine, optometry, pharmacy, allied health, podiatric medicine, nursing, and chiropractic; public or private nonprofit schools which offer graduate programs in behavioral health and mental health practice; and other public or private nonprofit health or educational entities to assist individuals from disadvantaged backgrounds and disadvantaged students to enter and graduate from health professions and nursing schools. Some programs provide for the repayment of health professions or nursing education loans for students from disadvantaged backgrounds and disadvantaged students.

A ''low-income family/household'' for programs included in Titles III, VII, and VIII of the Public Health Service Act is defined as having an annual income that does not exceed 200 percent of HHS's poverty guidelines. A family is a group of two or more individuals related by birth, marriage, or adoption who live together.

Most HRSA programs use the income of a student's parent(s) to compute low income status. However, a ''household'' may potentially be only one person. Other HRSA programs, depending upon the legislative intent of the program, the programmatic purpose related to income level, as well as the age and circumstances of the participant, will apply these low income standards to the individual student to determine eligibility, as long as the individual is not listed as a dependent on the tax form of their parent(s). Each program includes the rationale and methodology for determining low income levels in program funding opportunities or applications.

Low-income levels are adjusted annually based on HHS's poverty guidelines. HHS's poverty guidelines are based on poverty thresholds published by the U.S. Census Bureau, adjusted annually for changes in the Consumer Price Index. The income

figures below have been updated to reflect HHS's 2022 poverty guidelines as published in the **Federal Register** at 87 FR 3315. See *https://www.federalregister.gov/documents/2022/01/21/2022-01166/annual-update-of-the-hhs-poverty-guidelines.*

LOW INCOME LEVELS BASED ON THE 2022 POVERTY GUIDELINES FOR THE 48 CONTIGUOUS STATES AND THE DISTRICT OF COLUMBIA

Persons in family/household *	Income level **
1	$27,180
2	36,620
3	46,060
4	55,500
5	64,940
6	74,380
7	83,820
8	93,260

For families with more than 8 persons, add $9,440 for each additional person.

* Includes only dependents listed on federal income tax forms.

** Adjusted gross income for calendar year 2021.

LOW INCOME LEVELS BASED ON THE 2022 POVERTY GUIDELINES FOR ALASKA

Persons in family/household *	Income level **
1	$33,980
2	45,780
3	57,580
4	69,380
5	81,180
6	92,980
7	104,780
8	116,580

For families with more than 8 persons, add $11,800 for each additional person.

* Includes only dependents listed on federal income tax forms.

** Adjusted gross income for calendar year 2021.

LOW INCOME LEVELS BASED ON THE 2022 POVERTY GUIDELINES FOR HAWAII

Persons in family/household *	Income level **
1	$31,260
2	42,120
3	52,980
4	63,840
5	74,700
6	85,560
7	96,420
8	107,280

For families with more than 8 persons, add $10,860 for each additional person.

* Includes only dependents listed on federal income tax forms.

** Adjusted gross income for calendar year 2021.

Separate poverty guidelines figures for Alaska and Hawaii reflect Office of Economic Opportunity administrative practice beginning in the 1966–1970 period since the U.S. Census Bureau poverty thresholds do not have separate figures for Alaska and Hawaii. The poverty guidelines are not defined for Puerto Rico or other jurisdictions. Puerto Rico and other jurisdictions shall use income guidelines for the 48 Contiguous States and the District of Columbia.

Carole Johnson,

Administrator.

[FR Doc. 2022–05234 Filed 3–10–22; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request Health Center Workforce Survey OMB No. 0906–XXXX–New

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than May 10, 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 acting 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: Health Center Workforce Survey OMB No. 0906–XXXX–New.

Abstract: The Health Center Program, authorized by section 330 of the Public Health Service Act, 42 U.S.C. 254b, and administered by HRSA, Bureau of Primary Health Care, supports the provision of community-based preventive and primary health care services to millions of medically underserved and vulnerable people. Health centers employ over 400,000 health care staff (*i.e.,* physicians, medical, dental, mental and behavioral health, vision services, pharmacy, enabling services, quality improvement, and facility and non-clinical support staff.)

Provider and non-provider staff well-being is essential to recruiting and retaining staff, thus supporting access to quality health care and services through the Health Center Program. HRSA has created a nationwide Health Center Workforce Survey to identify and address challenges related to provider and staff well-being. The survey will be administered to all full-time and part-time health center staff in the fall of 2022 to identify conditions and circumstances that affect staff well-being at HRSA-funded health centers, including the scope and nature of workforce well-being, job satisfaction, and burnout. This information can inform efforts to improve workforce well-being and maintain high-quality patient care.

The Health Center Workforce Survey aims to collect and analyze data from no less than 85 percent of health center staff. HRSA will utilize stakeholder engagement strategies to support survey completion targets. The HRSA contractor will request email addresses for all health center staff from health center leadership. Using the email addresses provided, the contractor will administer the online survey to ensure data quality and respondent confidentiality. Participation in the Health Center Workforce Survey is voluntary for all health center staff. The contractor will analyze the responses and provide analytic reports. HRSA will disseminate the summary level data for public use, including preparing preliminary findings and analytic reports.

Need and Proposed Use of the Information: Health care workforce burnout has been a challenge even prior to COVID–19 and other recent public health crises. Clinicians and health care staff have reported experiencing alarming rates of burnout, characterized as a high degree of emotional exhaustion, depersonalization, and a

low sense of personal accomplishment at work.[1] Understanding the factors impacting workforce well-being and satisfaction, reducing burnout, and applying evidence-based technical assistance and other quality improvement strategies around workforce well-being is essential as the health center program health care workforce continues to respond to and recover from the COVID–19 pandemic and prepare for future health care delivery challenges.

Administration of the Health Center Workforce Survey will provide a comprehensive baseline assessment of health center workforce well-being and identify opportunities to improve workforce well-being and bolster technical assistance and other strategies. These efforts will further HRSA's goal of providing access to quality health care and supporting a robust primary care workforce.

Likely Respondents: Health center staff in HRSA-funded health centers.

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
Health Center Workforce Survey	400,000	1	400,000	.50	200,000
Health Center Leader Support Activities	1,400	1	1,400	2.00	2,800
	401,400	.....	401,400	.....	202,800

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. 2022–05077 Filed 3–10–22; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program: Revised Amount of the Average Cost of a Health Insurance Policy

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HRSA is publishing an updated monetary amount of the average cost of a health insurance policy as it relates to the National Vaccine Injury Compensation Program (VICP).

FOR FURTHER INFORMATION CONTACT: George Reed Grimes, Director, Division of Injury Compensation Programs, Health Systems Bureau, HRSA, HHS by mail at 5600 Fishers Lane, 08N186B, Rockville, Maryland 20857; call 1–800–338–2382 or email *vaccinecompensation@hrsa.gov.*

SUPPLEMENTARY INFORMATION: Section 100.2 of the VICP's implementing regulation (42 CFR part 100) states that the revised amount of an average cost of a health insurance policy, as determined by the Secretary of HHS (the Secretary), is effective upon its delivery by the Secretary to the United States Court of Federal Claims (the Court), and will be published periodically in a notice in the **Federal Register**. The Secretary delegated this responsibility to the HRSA Administrator. This figure is calculated using the most recent Medical Expenditure Panel Survey-Insurance Component (MEPS–IC) data available as the baseline for the average monthly cost of a health insurance policy. This baseline is adjusted by the annual percentage increase/decrease obtained from the most recent annual Kaiser Family Foundation (KFF) Employer Health Benefits Survey or other authoritative sources that may be more accurate or appropriate.

In 2021, MEPS–IC, available at *www.meps.ahrq.gov,* published the annual 2020 average total single premium per enrolled employee at private-sector establishments that provide health insurance. The figure published was $7,149. This figure is divided by 12 to determine the cost per month of $595.75. The $595.75 figure is increased or decreased by the percentage change reported by the most recent KFF Employer Health Benefits Survey, available at *www.kff.org.* The increase from 2020 to 2021 was 4.0 percent. By adding this percentage increase, the calculated average monthly cost of a health insurance policy for a 12-month period is $619.58.

Therefore, the revised average cost of a health insurance policy under the VICP is $619.58 per month. In accordance with § 100.2, the revised amount was effective upon its delivery to the Court.

Carole Johnson,

Administrator.

[FR Doc. 2022–05220 Filed 3–10–22; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

[1] West, C.P., Dyrbye, L.N., Satele, D.V, Sloan, J.A., & Shanafelt, T.D. (2012). Concurrent validity of single-item measures of emotional exhaustion and depersonalization in burnout assessment. *J Gen Intern Med, 27 (11 PG–1445–52), 1445–1452. https://doi.org/10.1007/s11606-012-2015-7.*

ACTION: Notice.

SUMMARY: Findings of research misconduct have been made against Terry Magnuson, Ph.D. (Respondent), Kay M. & Van L. Weatherspoon Eminent Distinguished Professor, Department of Genetics, School of Medicine (SOM), University of North Carolina at Chapel Hill (UNC). Respondent engaged in research misconduct in research included in one (1) grant application for U.S. Public Health Service (PHS) funds, specifically National Cancer Institute (NCI), National Institutes of Health (NIH), grant application R01 CA267946–01A1. The administrative actions, including supervision from February 25, 2022–January 5, 2024, are detailed below.

FOR FURTHER INFORMATION CONTACT: Wanda K. Jones, Dr.P.H., Acting Director, Office of Research Integrity, 1101 Wootton Parkway, Suite 240, Rockville, MD 20852, (240) 453–8200.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

Terry Magnuson, Ph.D., University of North Carolina at Chapel Hill: Based on the report of an assessment conducted by UNC, Respondent's admission, and additional analysis conducted by ORI in its oversight review, ORI found that Dr. Terry Magnuson, Kay M. & Van L. Weatherspoon Eminent Distinguished Professor, Department of Genetics, SOM, UNC, engaged in research misconduct in research included in one (1) grant application for PHS funds, specifically NCI, NIH, grant application R01 CA267946–01A1.

ORI found that Respondent engaged in research misconduct by intentionally, knowingly, or recklessly plagiarizing text from the following three (3) online articles and one (1) published paper:

- Comprehensive Guide to Understanding and Using CUT&Tag Assay. November 4, 2020. *https://www.activemotif.com/blog-cut-tag* (hereafter referred as ''*Blog cut&tag* 2020'').
- Complete Guide to Understanding and Using ATAC-Seq. February 9, 2021. *https://www.activemotif.com/blog-atac-seq* (hereafter referred as ''*Blog ATAC-Seq* 2021'').
- Illumina CATCH–IT. *https://www.illumina.com/science/sequencing-method-explorer/kits-and-arrays/catch-it.html* (hereafter referred as ''*Illumina Catch-it*'').
- Modeling Physiological Events in 2D vs. 3D Cell Culture. *Physiology (Bethesda)* 2017 Jul;32(4):266–277; doi: 10.1152/physiol.00036.2016 (hereafter referred as ''*Physiology (Bethesda)* 2017'').

Plagiarized text was included in:

- Grant application R01 CA267946–01A1, ''Genome-wide dynamics of chromatin modifiers,'' submitted to NCI, NIH, on March 1, 2021 (hereafter referred as ''R01 CA267946–01A1'')

Specifically, ORI found that Respondent knowingly, intentionally, or recklessly plagiarized from:

- The introduction (p. 266) and techniques (p. 267) sections of *Physiology (Bethesda*) 2017 to compose subsection ''ii. Identifying changes to SWI/SNF composition driven by cell state changes'' of Specific Aim 1 of R01 CA267946–01A1
- the introduction and sections ''What is CUT&Tag'' and ''Before CUT&Tag, There Was CUT&RUN'' of *Blog cut&tag* 2020 to compose the ''CHIP-seq protocols'' description in R01 CA267946–01A1
- the ''What is ATAC-Seq?'' section of *Blog ATAC-Seq* 2021 to compose the ''ATAC-seq protocols'' description in R01 CA267946–01A1
- the web page ''*Illumina Catch-it*'' describing the CATCH–IT technology to compose the ''Pitfalls & Alternatives'' section of Specific Aim 1 in R01 CA267946–01A1

Dr. Magnuson entered into a Voluntary Settlement Agreement (Agreement) and voluntarily agreed to the following:

(1) Respondent will have his research supervised from February 25, 2022–January 5, 2024 (the ''Supervision Period''). Prior to the submission of an application for PHS support for a research project on which Respondent's participation is proposed and prior to Respondent's participation in any capacity in PHS-supported research, Respondent will submit a plan for supervision of Respondent's duties to ORI for approval. The supervision plan must be designed to ensure the integrity of Respondent's research. Respondent will not participate in any PHS-supported research until such a supervision plan is approved by ORI. Respondent will comply with the agreed-upon supervision plan.

(2) The requirements for Respondent's supervision plan are as follows:

i. The respondent will submit his grant applications seeking PHS support to the Vice Dean, UNC SOM, thirty (30) days prior to the grant application submission deadline. The SOM Office of Research (OR) will review Respondent's grant applications to check for plagiarism and ensure compliance with acceptable scientific practice for citation of prior work. SOM OR will not recruit Respondent's supervisor or collaborators to review his grant applications. SOM OR will submit a report to ORI at six (6) month intervals setting forth the committee meeting dates and Respondent's compliance with appropriate research standards and confirming the integrity of Respondent's research.

ii. SOM OR will conduct an advance review of any report, manuscript, or abstract involving PHS-supported research in which Respondent is involved. The review will include a discussion with Respondent of the primary data represented in those documents and will include a certification to ORI that the data presented and the text in the report, manuscript, or abstract is supported by the research record and not plagiarized.

(3) During the Supervision Period, Respondent will ensure that any institution employing him submits, in conjunction with each application for PHS funds, or report, manuscript, or abstract involving PHS-supported research in which Respondent is involved, a certification to ORI that the data provided by Respondent are based on actual experiments or are otherwise legitimately derived and that the data, procedures, and methodology are accurately reported and not plagiarized in the application, report, manuscript, or abstract.

(4) If no supervision plan is provided to ORI, Respondent will provide certification to ORI at the conclusion of the Supervision Period that his participation was not proposed on a research project for which an application for PHS support was submitted and that he has not participated in any capacity in PHS-supported research.

Dated: March 8, 2022.

Wanda K. Jones,

Acting Director, Office of Research Integrity, Office of the Assistant Secretary for Health.

[FR Doc. 2022–05217 Filed 3–10–22; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Impact of Health Misinformation in the Digital Information Environment in the United States Throughout the COVID–19 Pandemic Request for Information (RFI); Correction

AGENCY: Office of the Surgeon General, Department of Health and Human Services.

ACTION: Notice; correction.

SUMMARY: The Office of the Surgeon General published a document in the **Federal Register** of March 7, 2022, requesting information regarding the Impact of Health Information Misinformation in the Digital Information Environment in the United States Throughout the COVID–19 Pandemic. The document included a hyperlink in which the public will not be able to access.

FOR FURTHER INFORMATION CONTACT: Max Lesko at *COVIDMisinfoRFI@hhs.gov* or at (202) 893–5020.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of March 7, 2022, in FR Doc. 2022–04777, on page 12713, in the third column, correct the section which reads, ''a. Starting with, but not limited to, *these common examples* of COVID–19 vaccine misinformation documented by the Centers for Disease Control and Prevention (CDC), any aggregate data and analysis on the prevalence of COVID–19 misinformation on individual platforms including exactly how many users saw or may have been exposed to instances of COVID–19 misinformation.'' to read, ''a. Starting with but not limited to *https://www.cdc.gov/coronavirus/2019-ncov/vaccines/facts.html* of COVID–19 vaccine misinformation documented by the Centers for Disease Control and Prevention (CDC), any aggregate data and analysis on the prevalence of COVID–19 misinformation on individual platforms including exactly how many users saw or may have been exposed to instances of COVID–19 misinformation.''

Max Lesko,

Chief of Staff, Office of the Surgeon General.

[FR Doc. 2022–05132 Filed 3–10–22; 8:45 am]

BILLING CODE 4150–28–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; American Women: Assessing Risk Epidemiologically (AWARE) (R01 Clinical Trial Optional).

Date: April 5, 2022.

Time: 11:00 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 3G22B, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Kristina S. Wickham, 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 3G22B, Rockville, MD 20852, 301–761–5390, *kristina.wickham@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 7, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–05136 Filed 3–10–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK Data Coordinating Center.

Date: April 5, 2022.

Time: 12:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health/NIDDK, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Elena Sanovich, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7351, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, 301–594–8886, *sanoviche@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 7, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–05135 Filed 3–10–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of an Exclusive Patent License: Development and Commercialization of Fusion Proteins for the Treatment of Growth Disorders and Diseases of Cartilage Degeneration

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The *Eunice Kennedy Shriver* National Institute of Child Health and Human Development and the National Cancer Institute, both institutes of the National Institutes of Health, Department of Health and Human Services, are contemplating the grant of an Exclusive Patent License to practice the inventions embodied in the Patents and Patent Applications listed in the Supplementary Information section of this Notice to Cavalry Biosciences, Inc. of San Francisco, CA.

DATES: Only written comments and/or applications for a license which are received by the National Cancer Institute's Technology Transfer Center on or before March 28, 2022 will be considered.

ADDRESSES: Requests for copies of the patent applications, inquiries, and comments relating to the contemplated Exclusive Patent License should be directed to: Richard T. Girards, Jr., Esq., MBA, Senior Technology Transfer Manager, National Institutes of Health,

NCI Technology Transfer Center by email (*richard.girards@nih.gov*) or phone (240–276–6825).

Intellectual Property

E–003–2014: Agents That Specifically Bind Matrilin-3 and Their Use/Cartilage Targeting Agents and Their Use

1. United States Provisional Patent Application No. 61/927,904, filed 15 January 2014 (HHS Reference No. E–003–2014–0–US–01);
2. United States Patent No. 10,323,083, issued 18 June 2019 (HHS Reference No. E–003–2014–0–US–06);
3. United States Patent No. 10,954,291, issued 23 March 2021 (HHS Reference No. E–003–2014–0–US–07);
4. United States Patent Application No. 17/177,644, filed 17 February 2021 (HHS Reference No. E–003–2014–0–US–12);
5. International Patent Application No. PCT/US2015/011433, filed 14 January 2015 (HHS Reference No. E–003–2014–0–PCT–02);
6. Australia Patent No. 2015206515, issued 26 March 2020 (HHS Reference No. E–003–2014–0–AU–03);
7. Canada Patent Application No. 2931005, filed 14 January 2015 (HHS Reference No. E–003–2014–0–CA–04);
8. European Patent No. 3 094 350 B1, issued 04 March 2020 (HHS Reference No. E–003–2014–0–EP–05) and all of its national validations;
9. European Patent Application No. 19219282.1, filed 14 January 2015 (HHS Reference No. E–003–2014–0–EP–11); and
10. any and all other U.S. and ex-U.S. patents and patent applications claiming priority to any one of the foregoing, now or in the future.

The patent and patent application rights in these inventions have been assigned and/or exclusively licensed to the government of the United States of America.

The prospective exclusive license territory may be worldwide and the fields of use may be limited to the following: The manufacture, distribution, sale and use of fusion proteins for the treatment of (a) growth disorders and (b) diseases of cartilage degeneration.

These technologies disclose, *e.g.,* monoclonal antibodies and antibody fragments that specifically bind to matrilin-3, conjugates including these molecules, and nucleic acid molecules encoding the antibodies, antigen binding fragments and conjugates. Also disclosed are compositions including the disclosed antibodies, antigen binding fragments, conjugates, and nucleic acid molecules. Methods of treating or inhibiting a cartilage disorder in a subject, as well as methods of increasing chondrogenesis in cartilage tissue are further provided. The methods can be used, for example, for treating or inhibiting a growth plate disorder in a subject, such as a skeletal dysplasia or short stature.

This Notice is made in accordance with 35 U.S.C. 209 and 37 CFR 404. The prospective exclusive license will be royalty bearing, and the prospective exclusive license may be granted unless within fifteen (15) days from the date of this published Notice, the National Cancer Institute receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.

In response to this Notice, the public may file comments or objections. Comments and objections, other than those in the form of a license application, will not be treated confidentially, and may be made publicly available.

License applications submitted in response to this Notice will be presumed to contain business confidential information and any release of information from these license applications will be made only as required and upon a request under the Freedom of Information Act, 5 U.S.C. 552.

Dated: March 7, 2022.

Richard U. Rodriguez,

Associate Director, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2022–05140 Filed 3–10–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Advancing Gender Inclusive Excellence (AGIE)—Coordinating Center U54.

Date: April 8, 2022.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Shivani Sharma, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, (240) 507–7661, *shivani.sharma@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Initiative Research in Hematology.

Date: April 11, 2022.

Time: 2:00 p.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Larry Pinkus, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214, *pinkusl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Endocrinology, Metabolism, Nutrition and Reproductive Sciences.

Date: April 14, 2022.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Baskaran Thyagarajan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 800B, Bethesda, MD 20892, (301) 867–5309, *thyagarajanb2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Virology.

Date: April 15, 2022.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Kumud Singh, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesa, MD 20892, (301) 761–7830, *kumud.singh@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 7, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–05139 Filed 3–10–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; NIDA L Conflict SEP.

Date: March 29, 2022.

Time: 11:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Sheila Pirooznia, Ph.D., Scientific Review Officer, Division of Extramural Review, Scientific Review Branch, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 496–9350, *sheila.pirooznia@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: March 7, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–05137 Filed 3–10–22; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; NINDS Contract Review.

Date: April 4, 2022.

Time: 11:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Marilyn Moore-Hoon, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, National Institute of Neurological Disorders and Stroke, 6001 Executive Boulevard, Bethesda, MD 20892, 301–827–9087, *mooremar@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 7, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–05138 Filed 3–10–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2022–0155]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0122

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0122, Cargo Securing Manuals; without change. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before May 10, 2022.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2022–0155] to the Coast Guard using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public participation and request for comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–6P), ATTN: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, STOP 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 3501 *et seq.,* chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical

utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology.

In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2022–0155], and must be received by May 10, 2022.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Information Collection Request

Title: Cargo Securing Manuals.

OMB Control Number: 1625–0122.

Summary: The information is used by the Coast Guard to review/approve new or updated cargo securing manuals (CSM).

Need: 46 U.S.C. 2103 and 3306 authorizes the Coast Guard to establish these regulations. 33 CFR 97 prescribes the CSM regulations.

Forms: None.

Respondents: Owners, operators, and masters of certain cargo vessels.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has increased from 226 hours to 280 hours a year, due to an increase in the estimated annual number CSM submissions.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: March 7, 2022.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2022–05129 Filed 3–10–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2022–0154]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0117

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0117, Towing Vessels; without change. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before May 10, 2022.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2022–0154] to the Coast Guard using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public participation and request for comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–6P), ATTN: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, STOP 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 3501 *et seq.,* chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology.

In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2022–0154], and must be received by May 10, 2022.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Information Collection Request

Title: Towing Vessels—Title 46 CFR Subchapter M.

OMB Control Number: 1625–0117.

Summary: The Coast Guard uses the information to document that towing vessels meet inspection requirements of 46 CFR Subchapter M. The information aids in the administration and enforcement of the towing vessel inspection program.

Need: Under the authority of 46 U.S.C. 3306, the Coast Guard prescribed regulations for the design, construction, alteration, repair and operation of towing vessels. The Coast Guard uses the information in this collection to ensure compliance with the requirements.

Forms: None.

Respondents: Owners and operators of towing vessels, and third party organizations.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has decreased from 151,219 hours to 127,729 hours a year, due to a decrease in the estimated annual number of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: March 7, 2022.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2022–05131 Filed 3–10–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2022–0152]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0099

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0099, Requirements for the Use of Liquefied Petroleum Gas and Compressed Natural Gas as Cooking Fuel on Passenger Vessels; without change. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before May 10, 2022.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2022–0152] to the Coast Guard using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public participation and request for comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–6P), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 3501 *et seq.,* chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology.

In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2022–0152], and must be received by May 10, 2022.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Information Collection Request

Title: Requirements for the Use of Liquefied Petroleum Gas and Compressed Natural Gas as Cooking Fuel on Passenger Vessels.

OMB Control Number: 1625–0099.

Summary: The collection of information requires passenger vessels to post two placards that contain safety and operating instructions on the use of cooking appliances that use liquefied gas or compressed natural gas.

Need: 46 U.S.C. 3306(a)(5) and 4302 authorizes the Coast Guard to prescribe regulations for the use of vessel stores of a dangerous nature. These regulations are prescribed in both uninspected and inspected passenger vessel regulations.

Forms: None.

Respondents: Owners and operators of passenger vessels.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has increased from 6,758 hours to 7,232 hours a year, due to an increase in the estimated annual number of respondents.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: March 4, 2022.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2022–05078 Filed 3–10–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. CISA–2021–0022]

Notice of Cybersecurity and Infrastructure Security Agency Cybersecurity Advisory Committee Meeting

AGENCY: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

ACTION: Notice of *Federal Advisory Committee Act* (FACA) meeting; request for comments.

SUMMARY: CISA is publishing this notice to announce the following CISA Cybersecurity Advisory Committee meeting.

DATES:

Meeting Registration: Registration to attend the meeting is required and must be received no later than 5:00 p.m. Eastern Time (ET) on March 29, 2022. For more information on how to participate, please contact *CISA_CybersecurityAdvisoryCommittee@cisa.dhs.gov.*

Speaker Registration: Registration to speak during the meeting's public comment period must be received no later than 5:00 p.m. ET on March 29, 2022.

Written Comments: Written comments must be received no later than 5:00 p.m. ET on March 29, 2022.

Meeting Date: The CISA Cybersecurity Advisory Committee will meet on March 31, 2022, from 2:00 p.m. to 4:00 p.m. ET. The meeting may close early if the committee has completed its business.

ADDRESSES: The CISA Cybersecurity Advisory Committee's meeting will be open to the public, per 41 CFR 102–3.150(a0(4), and held via conference call. For access to the conference call bridge, information on services for individuals with disabilities, or to request special assistance, please email *CISA_CybersecurityAdvisoryCommittee@cisa.dhs.gov* by 5:00 p.m. ET on March 29, 2022.

Comments: Members of the public are invited to provide comment on issues that will be considered by the committee as listed in the **SUPPLEMENTARY INFORMATION** section below. Associated materials that may be discussed during the meeting will be made available for review at *https://www.cisa.gov/cisa-cybersecurity-advisory-committee-meeting-resources* on March 16, 2022. Comments should be submitted by 5:00 p.m. ET on March 29, 2022 and must be identified by Docket Number CISA–2021–0022. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Please follow the instructions for submitting written comments.
- *Email: CISA_CybersecurityAdvisoryCommittee@cisa.dhs.gov.* Include the Docket Number CISA–2021–0022 in the subject line of the email.

Instructions: All submissions received must include the words ''Cybersecurity and Infrastructure Security Agency'' and the Docket Number for this action. Comments received will be posted without alteration to *www.regulations.gov,* including any personal information provided.

Docket: For access to the docket and comments received by the CISA Cybersecurity Advisory Committee, please go to *www.regulations.gov* and enter docket number CISA–2021–0022.

A public comment period is scheduled to be held during the meeting from 3:40 p.m. to 3:50 p.m. ET. Speakers who wish to participate in the public comment period must email *CISA_CybersecurityAdvisoryCommittee@cisa.dhs.gov* to register. Speakers should limit their comments to 3 minutes and will speak in order of registration. Please note that the public comment period may end before the time indicated, following the last request for comments.

FOR FURTHER INFORMATION CONTACT: Megan Tsuyi, 202–594–7374, *CISA_CybersecurityAdvisoryCommittee@cisa.dhs.gov.*

SUPPLEMENTARY INFORMATION: The CISA Cybersecurity Advisory Committee was established under the National Defense Authorization Act for Fiscal Year 2021, Public Law 116–283. Notice of this meeting is given under FACA, 5 U.S.C. Appendix (Pub. L. 92–463). The CISA Cybersecurity Advisory Committee advises the CISA Director on matters related to the development, refinement, and implementation of policies, programs, planning, and training pertaining to the cybersecurity mission of the Agency.

Agenda: The CISA Cybersecurity Advisory Committee will hold a conference call on Thursday, March 31, 2022, to discuss current CISA Cybersecurity Advisory Committee activities and the Government's ongoing cybersecurity initiatives. The focus of this meeting is for the members to hear updates and discuss progress as it relates to the CISA Cybersecurity Advisory Committee's six subcommittees, to include: (1) Transforming the Cyber Workforce Subcommittee; (2) Turning the Corner on Cyber Hygiene Subcommittee; (3) Igniting the Hacker Community Subcommittee; (4) Protecting Critical Infrastructure from Misinformation and Disinformation Subcommittee; (5) Building Resilience and Reducing Systemic Risk to Critical Infrastructure Subcommittee; and (6) Strategic Communications Subcommittee.

Megan Tsuyi,

Designated Federal Officer, CISA Cybersecurity Advisory Committee, Cybersecurity and Infrastructure Security Agency, Department of Homeland Security.

[FR Doc. 2022–05119 Filed 3–10–22; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7056–N–09]

60-Day Notice of Proposed Information Collection: Builder's Certification of Plans, Specifications, & Site, OMB Control No. 2502–0496

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, 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 10, 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, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal 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 Information Collection: Builder's Certification of Plans, Specifications, and Site.

OMB Approval Number: 2502–0496.

OMB Expiration Date: 07/31/2022.

Type of Request: Extension of currently approved collection.

Form Number: HUD–92541.

Description of the need for the information and proposed use: Builders use the form to certify that a property does not have adverse conditions and is not located in a special flood hazard area. The certification is necessary so that HUD does not insure a mortgage on property that poses a risk to the health and safety of the occupant.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 166,080.

Estimated Number of Responses: 201,736.

Frequency of Response: Occasional with 0.66 for builders and 7.61 for new construction lenders.

Average Hours per Response: 0.075.

Total Estimated Burden: 15,130.

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. 3507.

Janet M. Golrick,

Acting Chief of Staff for Housing.

[FR Doc. 2022–05158 Filed 3–10–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7060–N–01]

60-Day Notice of Proposed Information Collection: Manufactured Housing Survey; OMB Control No.: 2528–0029

AGENCY: Office of Policy Development and Research, 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 10, 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: Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–5534 (this is not a toll-free number) or email at *Anna.P.Guido@hud.gov* for a copy of the proposed forms or other available information.

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Anna P. Guido at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Guido.

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: Manufactured Housing Survey.

OMB Approval Number: 2528–0029.

Type of Request: Extension of a currently approved collection.

Form Number: C–MH–9A.

Description of the need for the information and proposed use: The Manufactured Housing Survey collects data monthly on the characteristics of newly manufactured homes placed for residential use. Key data collected includes sales price and the number of units placed and sold. A letter is sent to the dealer—4 months after the—shipment date. Other selected housing characteristics collected include size, location, and titling. HUD uses the statistics to respond to a Congressional mandate in the Housing and Community Development Act of 1980, 42 U.S.C. 5424 note, which authorizes HUD to use its discretion to take actions necessary ensure that the public is fully aware of the distinctions between the various types of manufactured housing. Accordingly, HUD collects, reports manufactured home sales, and price information for the nation, census regions, states, and selected metropolitan areas and monitors whether new manufactured homes are being placed on owned rather than rented lots. HUD also used these data to monitor total housing production and its affordability. Furthermore, the Manufactured Housing Survey serves as the basis for HUD's mandated indexing of loan limits. Section 2145(b) of the

Housing and Economic Recovery Act of 2008 (HERA), Public Law 110–289, 122 Stat. § 2844–2845, requires HUD to develop a method of indexing to annually adjust Title I manufactured home loan limits. This index is based on manufactured housing price data collected by -the United States Census Bureau using this survey. Section 2145(b) of the Housing and Economic Recovery Act of 2008 (HERA), Public Law 110–289, 122 Stat. § 2844–2845 also amends the maximum loan limits for manufactured home loans insured under Title I. In Title I Letter TI–480, HUD implemented the revised loan limits, as shown below, for all manufactured home loans for which applications are received on or after March 3, 2009.

Loan type	Purpose	Old loan limit	New loan limit
MANUFACTURED HOME IMPROVEMENT LOAN.	For financing alterations, repairs and improvements upon or in connection with existing manufactured homes.	$17,500	$25,090
MANUFACTURED HOME UNIT(S)	To purchase or refinance a Manufactured Home unit(s)	48,600	69,678
LOT LOAN	To purchase and develop a lot on which to place a manufactured home unit.	16,200	23,226
COMBINATION LOAN FOR LOT AND HOME.	To purchase or refinance a manufactured home and lot on which to place the home.	64,800	92,904

Method of Collection: The methodology for collecting information on new manufactured homes involves contacting dealers from a monthly sample of new manufactured homes shipped by manufacturers. The units are sampled from lists obtained from the Institute for Building Technology and Safety. A file of all manufactured homes sections shipped during the month is provided to the Census Bureau by the Institute for Building Technology and Safety (IBTS) on a monthly basis. Dealers that take shipment of the selected homes are mailed a survey form four months after shipment for recording the status of the manufactured home.

Respondents: Business firms or other for-profit institutions.

Respondent's Obligation: Voluntary.

Estimated Number of Respondents: 4,860.

Frequency of Response: Once.

Average Hours per Response: 20 minutes per response (.33 hour).

Estimated Total Annual Burden Hours: 1,620.

Hourly Cost per Response: $31.45 (hourly rate for typical respondent: Occupational code 41–4010: Sales Representatives, Wholesale and Manufacturing).

Estimated Total Annual Cost: $50,949. (This is not a direct financial cost of respondents' time, but rather the associated cost burden of the respondents' voluntary responses.)

TOTAL ESTIMATED BURDENS

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Manufactured Housing Survey	4,860.00	1.00	4,860.00	0.33	1,620	$31.45	$50,949.00
Total	4,860.00				1,620		50,949.00

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 and Title 42 U.S.C. 5424 note, Title 13 U.S.C. Section 8(b), and Title 12, U.S.C., Section 1701z–1.

Todd M. Richardson,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 2022–05184 Filed 3–10–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2022–N223; FXES11140200000–212–FF02ENEH00]

Conservation Efforts To Protect Lesser Prairie-Chicken, Dunes Sagebrush Lizard, and Texas Kangaroo Rat; Comment Period Extensions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notices of availability; public comment period extensions.

SUMMARY: The U.S. Fish and Wildlife Service (Service) is extending the public comment periods for three notices, due to temporary website outages that affected the public's access to the documents that the notices are making available for comment. The notices pertained to a combined candidate conservation agreement (CCA)\ candidate conservation agreements with

assurances (CCAA) amendment, an oil and gas habitat conservation plan (HCP), and a new CCAA. The affected species include the lesser prairie-chicken (*Tympanuchus pallidicinctus*), the dunes sagebrush lizard (*Sceloporus arenicolus*), and the Texas kangaroo rat (*Dipodomys elator*).

DATES: The comment periods for the following notices of availability of documents are extended. See **SUPPLEMENTARY INFORMATION**, below, for the document titles:

- *FWS–R2–ES–2021–N196 (87 FR 7492, February 9, 2022):* Please submit comments by March 18, 2022.
- *FWS–R2–ES–2021–N195 (87 FR 8031, February 11, 2022):* Please submit comments by March 21, 2022.
- *FWS–R2–ES–2021–N028 (87 FR 9637, February 22, 2022):* Please submit comments by March 31, 2022.

ADDRESSES:

Obtaining documents and submitting comments: See **SUPPLEMENTARY INFORMATION**, below, for the document titles. If you have previously submitted comments, you need not resubmit them. For more information, see Public Availability of Comments.

- *FWS–R2–ES–2021–N196 (87 FR 7492, February 9, 2022):* Obtain documents at *https://www.fws.gov/media/new-mexico-cca-ccaa-lpc-dsl-amendment* and *https://www.fws.gov/media/new-mexico-cca-ccaa-lpc-dsl-ea-amendment.* Submit written comments by email to *nmesfo@fws.gov.* Please note that your comment is in reference to the ''CCA/CCAA for Lesser Prairie-Chicken and Dunes Sagebrush Lizard.''
- *FWS–R2–ES–2021–N195 (87 FR 8031, February 11, 2022):* Obtain documents at *https://www.fws.gov/media/oil-and-gas-hcp-and-draft-ea-lesser-prairie-chicken.* Submit written comments by email to *arles@fws.gov.* Please note that your comment is in reference to the ''LPC Oil and Gas HCP''.
- *FWS–R2–ES–2021–N028 (87 FR 9637, February 22, 2022):* Obtain documents by any of the following means. In your request for documents, please reference the ''Texas Kangaroo Rat CCAA.''

➢ *Internet: https://www.fws.gov/media/texas-kangaroo-rat-draft-ccaa-and-nepa-documents.*

➢ *U.S. mail:* You may obtain a CD–ROM (limited supply) or printed copies by contacting Ms. Debra T. Bills, 2005 Northeast Green Oaks Boulevard, Suite 140, Arlington, TX 76006.

➢ *Email: arles@fws.gov.*

Submit written comments by one of the following methods. In your comments, please reference ''Texas Kangaroo Rat CCAA.''

➢ *Email: arles@fws.gov.*

➢ *U.S. mail:* Debra T. Bills (street address above).

➢ *Fax:* 817–277–1129.

We request that you send comments by only one of the above methods.

FOR FURTHER INFORMATION CONTACT:

- *FWS–R2–ES–2021–N196:* Shawn Sartorius, 505–761–4781.
- *FWS–R2–ES–2021–N195* and *FWS–R2–ES–2021–N028:* Debra T. Bills, 817–277–1100.

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), are extending the public comment periods for three recent **Federal Register** notices. For each of the notices, please submit any comments by the appropriate date set forth above in **DATES**. If you already submitted comments or information on the originally published notices, please do not resubmit them. Any such comments are incorporated as part of the public record of the action, and we will fully consider them in the preparation of any final determinations. For more information, please see the published notices:

- *FWS–R2–ES–2021–N196:* Draft Environmental Assessment for Amendments to the Candidate Conservation Agreement/Candidate Conservation Agreement With Assurances for the Lesser Prairie-Chicken (*Tympanuchus pallidicinctus*) and Dunes Sagebrush Lizard (*Sceloporus arenicolus*) in New Mexico (87 FR 7492, February 9, 2022)
- *FWS–R2–ES–2021–N195:* Application for an Incidental Take Permit; Oil and Gas Habitat Conservation Plan for the Lesser Prairie-Chicken; Colorado, Kansas, New Mexico, Oklahoma, and Texas (87 FR 8031, February 11, 2022)
- *FWS–R2–ES–2021–N028:* Draft Low Effect Screening Form for a Categorical Exclusion and Candidate Conservation Plan; Texas Kangaroo Rat Candidate Conservation Agreement With Assurances, Montague, Clay, Wichita, Archer, Wilbarger, Baylor, Hardeman, Foard, Childress, Cottle, and Motley Counties, Texas (87 FR 9637, February 22, 2022)

Public Availability of Comments

All comments we receive become part of the public record associated with the action. Requests for copies of comments will be handled in accordance with the Freedom of Information Act, the National Environmental Policy Act (NEPA), and Service and Department of the Interior policies and procedures. 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 to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We issue this notice pursuant to section 10(c) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22 and 17.32) and NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6 and 43 CFR 46.305).

Amy L. Lueders,

Regional Director, Southwest Region, U.S. Fish and Wildlife Service.

[FR Doc. 2022–05161 Filed 3–10–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2022–N222; FXES11130600000–223–FF06E00000]

Endangered and Threatened Species; Receipt of Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation or survival of endangered species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we

will take into consideration any information that we receive during the public comment period.

DATES: We must receive your written comments by April 11, 2022.

ADDRESSES: *Document availability and comment submission:* Use one of the following methods to request documents or submit comments. Requests and comments should specify the applicant name(s) and application number(s) (*e.g.,* Smith, PER0123456 or ES056001):

- *Email: permitsR6ES@fws.gov*.
- *U.S. Mail:* Chief, Division of Ecological Services, U.S. Fish and Wildlife Service, 134 Union Blvd., Suite 670, Lakewood, CO 80228.

FOR FURTHER INFORMATION CONTACT: Robert Krijgsman, Recovery Permits Coordinator, Ecological Services, 303–236–4347 (phone), or *permitsR6ES@fws.gov* (email). 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, invite the public to comment on applications for permits under section 10(a)(1)(A) of the Endangered Species Act, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The requested permits would allow the applicants to conduct activities intended to promote recovery of species that are listed as endangered or threatened under the ESA.

Background

The Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), prohibits certain activities with endangered and threatened species unless authorized by a Federal permit. The ESA and our implementing regulations in part 17 of title 50 of the Code of Federal Regulations (CFR) provide for the issuance of such permits and require that we invite public comment before issuing permits for activities involving endangered species.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild. The ESA requires that we invite public comment before issuing these permits. Accordingly, we invite local, State, and Federal agencies; Tribes; and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies.

Application No.	Applicant	Species	Location	Take activity	Permit action
ES049623	Department of Army, Fort Riley DPW—Environmental Division, Conservation Branch, Fort Riley, KS.	• Topeka shiner (*Notropis topeka*).	KS	• Capture, electrofish, handle, and release.	Renew.
ES047250	Montana Department of Fish, Wildlife, and Parks, Helena, MT.	• Black-footed ferret (*Mustela nigripes*).	MT	• Capture, handle, release, track reintroduced individuals, anesthetize, vaccinate, mark, and collect tissue samples.	Renew.
ES056003	Detroit Zoological Society, Royal Oak, MI.	• Wyoming Toad (*Bufo hemiophrys baxteri*).	WY, MI	• Capture, handle, mark, release, propagate in captivity, transport, display for educational purposes, provide general husbandry, and research.	Renew and Amend.
ES66511C	Milu Velardi, Santa Fe, NM	• New Mexico meadow jumping mouse (*Zapus hudsonius luteus*).	AZ, CO, NM	• Capture, handle, and release	Renew and Amend.
PER0034947	Jesse Boulerice, Clancy, Montana.	• Black-footed ferret (*Mustela nigripes*).	AZ, CO, MT, SD, TX, WY.	• Capture, handle, collect biological samples, anesthetize, mark, and release.	New.
ES047290	Colorado Parks and Wildlife, Alamosa, Colorado.	• Bonytail (*Gila elegans*) ..... • Colorado pikeminnow (=squawfish) (*Ptychocheilus lucius*). • Razorback sucker (*Xyrauchen texanus*).	CO, NM, UT, WY, CA, AZ, CA.	• Capture, handle, propagate and rear in captivity, provide general husbandry, transport, tag, collect biological samples, display for educational purposes, and release.	Renew.
ES06556C	Bowen Collins & Associates, Draper, Utah.	• Southwestern willow flycatcher (*Empidonax traillii extimus*).	UT	• Play taped vocalizations	Renew.
ES27486B	Wetland Dynamics, LLC., Monte Vista, Colorado.	• Southwestern willow flycatcher (*Empidonax traillii extimus*).	CO	• Play taped vocalizations	Renew.
PER0033598	Aimee Way, Durango, Colorado	• Southwestern willow flycatcher (*Empidonax traillii extimus*).	CO, UT, AZ, NM.	• Play taped vocalizations	New.

Public Availability of Comments

Written comments we receive become part of the administrative record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions

from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

If we decide to issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Stephen Small,

Assistant Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 2022–05226 Filed 3–10–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCA930000–L14400000–ET0000; CACA–59497 et al. MO#4500160635]

Notice of Proposed Withdrawal Extension of 10 Secretary's Orders, 2 Public Land Orders and 1 Bureau of Land Management Order, as Modified by Public Land Order No. 7262, and Public Meeting, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed extension.

SUMMARY: The Secretary of the Interior proposes to extend for an additional 20-year term, subject to valid existing rights, 10 Secretary's Orders (SO), 2 Public Land Orders (PLO), and 1 Bureau of Land Management Order (BLMO), as modified by PLO No. 7262, affecting 145,644.03 acres of Federal lands for the All-American Canal, Boulder Canyon, Colorado River Storage, Senator Wash Pump Storage, and Yuma Reclamation Projects. The lands would remain closed to surface entry and mining but have been and will remain open to mineral leasing. This notice provides a public comment period and announces that the Bureau of Reclamation (USBR) and the Bureau of Land Management (BLM) will host a public meeting regarding this proposal.

DATES: The BLM must receive all comments by June 9, 2022. The BLM and USBR will hold a virtual public meeting in connection with the proposed withdrawal extension on April 25, 2022, at 5 p.m. Pacific Time. The BLM will publish the date and instructions for access to the online public meeting in a local paper newspaper a minimum of 30 days prior to the meeting.

ADDRESSES: All comments should be sent to the BLM California State Director, 2800 Cottage Way W–1928, Sacramento, CA 95825–1886. Records, maps, and copies of the legal descriptions relating to the application are available through mailed request by contacting the BLM Public Room at: Bureau of Land Management California State Office, Public Room, 2800 Cottage Way W–1928, Sacramento, CA 95825–1886.

FOR FURTHER INFORMATION CONTACT: Heather Daniels, BLM California State Office, telephone: (916) 978–4674, email: *hdaniels@blm.gov;* or Luis Rodriguez, USBR Yuma Area Office, telephone: (928) 343–8275, email: *lrodriguez@usbr.gov,* during regular business hours, 8:00 a.m. to 4:30 p.m. Monday through Friday, except holidays.

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 Ms. Daniels. 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 USBR submitted a petition/application to the Secretary of the Interior that the Secretary extend the withdrawals modified by PLO No. 7262, effective July 7, 1997 (62 FR 30613), as corrected on July 16, 2003 (68 FR 42128), for an additional 20-year term pursuant to Section 204 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2751, 43 U.S.C. 1714.), subject to valid existing rights. PLO 7262 modified the following 10 SOs, 2 PLOs, and 1 BLMO:

(a) SO dated October 24, 1944 (CACA 7074);

(b) SO dated October 16, 1931 (CACA 7101);

(c) SO dated February 19, 1929 (CACA 7103);

(d) SO dated January 31, 1903 (CACA 7231);

(e) SO dated April 2, 1909 (CACA 7232);

(f) SO dated February 28, 1918 (CACA 7234);

(g) SO dated March 15, 1919 (CACA 7235);

(h) SO dated October 19, 1920 (CACA 7236);

(i) SO dated July 26, 1929 (CACA 7238);

(j) SO dated June 4, 1930 (CACA 7239);

(k) PLO No. 3262 dated October 29, 1963 (CARI 01051);

(l) PLO No. 4690 dated September 15, 1969 (CARI 07752);

(m) BLMO dated July 23, 1947 (CACA 7073).

The Deputy Secretary approved this petition/application; therefore, the request has become a Secretarial proposal for withdrawal extension.

The land description for this application is as follows:

San Bernardino Meridian, California

All-American Canal Project

SO of February 19, 1929 (c)(CACA 7103)

T. 5 S., R. 23 E.,
Sec. 14, E½;
Sec. 27, N½, SW¼, N½SE¼, and SW¼SE¼;
Sec. 28, lots 1 thru 4, W½NE¼, W½SE¼, and W½;
Sec. 33, lots 1 thru 5;
Sec. 34, NW¼NW¼.

The areas described for Secretary's Order of February 19, 1929, aggregate 1,804.09 acres.

The total areas described for the All-American Canal Project aggregate 1,804.09 acres in Riverside County, California.

Boulder Canyon Project

PLO No. 4690 of September 15, 1969 (l)(CARI 07752)

T. 7 S., R. 7 E.,
Sec. 10, NE¼NE¼, NE¼NW¼NE¼, E½SE¼NE¼, and E½NE¼SE¼.

The areas described for PLO No. 4690 of September 15, 1969, contain 90.00 acres.

The total areas described for the Boulder Canyon Project contain 90.00 acres in Riverside County, California.

Colorado River Storage Project

BLMO of July 23, 1947 (m)(CACA 7073)

T. 7 S., R. 10 E.,
Sec. 34, E½SW¼.

The areas described for Bureau of Land Management Order of July 23, 1947, contain 80.00 acres.

SO of October 24, 1944 (a)(CACA 7074)

T. 8 N., R. 22 E.,
Sec. 18, lots 1 thru 4, E½NW¼, E½SW¼, and E½.

The areas described for Secretary's Order of October 24, 1944, contain 627.22 acres.

SO of October 16, 1931 (b)(CACA 7101)

T. 10 N., R. 22 E.,
Sec. 7, lots 1 thru 4, E½NW¼, E½SW¼, and E½.
T. 3 S., R. 23 E.,
Secs. 15 and 22.
T. 9 N., R. 23 E.,
Sec. 30, lot 2.

The areas described for Secretary's Order of October 16, 1931, aggregate 1,945.98 acres.

SO of July 26, 1929 (i)(CACA7238)

T. 15 S., R. 23 E.,
Sec. 21, all;
Sec. 22, S½.

The areas described for Secretary's Order of July 26, 1929, contain 960.00 acres.

SO of June 4, 1930 (j) (CACA7239)

T. 1 S., R. 24 E.,
Sec. 32, lots 12, 14, 15, 18, and W½NW¼.
T. 7 S., R. 10 E.,
Sec. 32, S½NE¼, S½NW¼, and S½;
Sec. 34, W½SW¼.
T. 11 S., R. 15 E.,
Sec. 6, lot 3;
Sec. 8, N½NE¼, SE¼NE¼;
Sec. 18, SE¼SE¼;
Sec. 20, SW¼NW¼;
Secs. 22 and 26;
Sec. 28, SW¼NW¼.
T. 12 S., R. 16. E.,
Sec. 6, lot 9 and lots 14 thru 18;
Sec. 18, E½;
Sec. 20, all;
Sec. 21, NW¼SW¼ and S½SW¼;
Sec. 27, S½SW¼ and NW¼SW¼;
Sec. 28, S½, S½NE¼, NW¼NE¼, and NW¼;
Sec. 29, NE¼, NE¼NW¼, and NE¼SE¼;
Sec. 30, lot 7, lots 11 thru 14, and E½SW¼;
Sec. 31, lots 3 thru 6, and E½NW¼;
Sec. 34, E½, N½NW¼, SE¼NW¼;
Sec. 35, SW1/4.
T. 13 S., R. 17 E.,
Sec. 5, SW¼SW¼;
Sec. 6, lots 14 thru 16, lots 21 thru 25, lots 27 thru 29, N½SE¼, and SE¼SE¼;
Sec. 7, NE¼NE¼;
Sec. 8, SE¼SW¼NE¼, N½SW¼NE¼, SW¼SW¼NE¼, NW¼, E½SW¼, NW¼SE¼, and S½SE¼;
Sec. 17, N½NE¼ and SE¼NE¼;
Sec. 21, NE¼, NE¼NW¼, E½SE¼, and NW¼SE¼;
Sec. 22, S½SW¼ and NW¼SW¼;
Sec. 26, SW¼SW¼;
Sec. 27, W½NE¼, N½NW¼, SE¼NW¼, NE¼SW¼, and SE¼;
Sec. 34, E½NE¼;
Sec. 35, W½NW¼, SE¼NW¼, N½SW¼, SE¼SW¼, and SE¼.
T. 14 S., R. 18 E.,
Sec. 7, lots 2 thru 4 and SE¼SW¼;
Sec. 17, SW¼SW¼;
Sec. 18, lot 1, NE¼SW¼, SW¼NE¼, and E½NW¼;
Sec. 19, E½NE¼;
Sec. 20, SE¼SW¼, N½SW¼, W½SE¼, S½NW¼, and NW¼NW¼;
Sec. 28, SW¼ and SW¼NW¼;
Sec. 29, NE¼SE¼ and NE¼;
Sec. 33, SE¼SE¼, N½SE¼, NW¼NE¼, S½NE¼, E½NW¼, and NW¼NW¼;
Sec. 34, W½SW¼.

The areas described for Secretary's Order of June 4, 1930, aggregate 9,768.21 acres.

The total areas described for the Colorado River Storage Project aggregate 13,381.41 acres in Imperial and Riverside Counties, California.

Senator Wash Pump Storage Project

PLO No. 3262 of October 29, 1963 (k) (CARI–01051)

T. 14 S., R. 23 E.,
Sec. 36, SE¼SE¼SE¼.
T. 14½ S., R. 23 E.,
Sec. 36, N½NE¼NE¼ and NE¼NW¼NE¼.

The areas described for Public Land Order 3262 of October 29, 1963, contain 40.00 acres.

The total areas described for the Senator Wash Pump Storage Project contain 40.00 acres in Imperial County, California.

Yuma Reclamation Project

SO of January 31, 1903, as Modified by SOs of April 9, 1909, and April 5, 1910 (d) (CACA 7231)

T. 13 S., R. 16 E.,
Sec. 1, lots 2, 3, 6, 7, lots 9 thru 11, lots 14 thru 18, and lots 23 thru 25;
Sec. 5, lots 15 and 25;
Sec. 9, W½NW¼ and SE¼SW¼;
Sec. 21, SE¼SE¼;
Sec. 34, SE¼NE¼;
Sec. 35, SW¼SW¼.
T. 14 S., R. 16 E.,
Sec. 2, lot 4 and SE¼SW¼;
Sec. 11, lot 3;
Sec. 23, E½SW¼;
Sec. 26, E½NW¼ and E½SW¼;
Sec. 35, E½NW¼ and E½SW¼.
T. 15 S., R. 16 E.,
Sec. 2, lot 3, SE¼NW¼, and E½SW¼;
Sec. 11, lot 6 and NE¼NW¼;
Sec. 23, SE¼SE¼;
Sec. 25, W½NW¼ and W½SW¼SW¼;
Sec. 26, E½NE¼.
T. 16 S., R. 16 E.,
Sec. 1, lot 11;
Sec. 12, E½NW¼ and SW¼SE¼;
Sec. 13, lots 1 and 14, and SW¼SE¼;
Sec. 24, W½W½NE¼;
Sec. 25, NE¼NW¼.
T. 17 S., R. 16 E.,
Sec. 1, SE¼;
Sec. 10, NW¼SE¼;
Sec. 11, lot 17;
Sec. 12, lots 1 thru 4, N½, N½SE¼, and N½SW¼;
Sec. 13, lot 1;
Sec. 14, lot 1.
T. 14 S., R. 17E.,
Sec. 1, SW¼, S½NW¼, and SW¼SE¼;
Sec. 2, lots 3 and 4, S½NE¼, and NE¼SE4¼;
Sec. 12, E½NW¼, NE¼, N½SE¼, and SE¼SE¼.
T. 16 S., R. 17 E.,
Sec. 31, S½SE¼ and SE¼SW¼;
Sec. 32, S½SE¼, S½SW¼, and S½N½SW¼.
T. 16 S., R. 18 E.,
Sec. 31, lots 5 and 6, NE¼SW¼, N½SE¼, and S½NW¼;
Sec. 32, S½NE¼, S½NW¼, N½N½SW¼, and N½SE¼;
Sec. 33, SW¼ and S½SE¼;
Sec. 34, S½SE¼ and S½SW¼;
Sec. 35, S½SE¼ and S½SW¼.
T. 17 S., R. 17 E.,
Secs. 1 thru 5;
Sec. 6, lots 5 and 6, E½SW¼ and E½;
Sec. 7, lots 3 thru 9, NE¼, E½NW¼, NE¼SW¼, and N½SE¼;
Sec. 8, lots 1 thru 4, N½, N½SE¼, and N½SW¼;
Sec. 9, lots 1 thru 4 and N½;
Sec. 10, lots 1 thru 4 and N½;
Sec. 11, lots 1 thru 4 and N½;
Sec. 12, lots 1 thru 4, N½NE¼, and N½NW¼.
T. 15 S., R. 18 E.,
Sec. 3, lots 5 and 6, SE¼, SW¼NE¼, NE¼SW¼, and S½NW¼;
Sec. 4, lot 3;
Sec. 10, N½NE¼ and SE¼NE¼;
Sec. 11, SW¼SE¼, SW¼, NW¼NW¼, and S½NW¼;
Sec. 13, W½SW¼ and SE¼SW¼;
Sec. 14, N½SE¼, SE¼SE¼, NE¼, and NE¼NW¼;
Sec. 24, SE¼SE¼, N½SE¼, S½NE¼, NW¼NE¼, N½NW¼, and SE¼NW¼.
T. 17 S., R. 18 E.,
Sec. 1, lots 3 thru 5, N½, N½NE¼, N½NW¼, and SW¼SW¼;
Secs. 2 thru 5;
Sec. 6, lots 3 thru 6, E½, E½NW¼, and E½SW¼;
Sec. 7, lots 3 thru 7, N½NE¼, and NE¼NW¼;
Sec. 8, lots 1 thru 4, N½NE¼, and N½NW¼;
Sec. 9, lots 1 thru 4;
Sec. 10, lots 1 thru 4;
Sec. 11, lots 1 thru 4;
Sec. 12, lots 1 and 2.
T. 16 S., R. 19 E.,
Sec. 2, SW¼SW¼;
Sec. 3, lots 3 and 4, SW¼NE¼, S½NW¼, and S½;
Sec. 4, lots 1 thru 4, S½NE¼, S½NW¼, and S½;
Sec. 5, lots 3 thru 5, and SE¼NE¼;
Sec. 10, NE¼NE¼;
Sec. 11, all;
Sec. 12, SW¼SW¼;
Sec. 13, NW¼NW¼, S½NW¼, SW¼, and SW¼SE¼;
Sec. 14, E½NE¼ and NE¼NW¼NE¼;
Sec. 24, E½ and E½NW¼;
Sec. 25, NE¼NE¼ and S½;
Sec. 26, SE¼;
Sec. 31, lot 6, SE¼SW¼, and E½;
Sec. 32, all;
Sec. 33, S½SE¼ and S½SW¼;
Sec. 34, S½SE¼ and S½SW¼;
Sec. 35, S½SW¼ and E½.
T. 17 S., R. 19 E.,
Sec. 1, lots 1 thru 4, N½NE¼, N½NW¼, and S½NW¼;
Sec. 2, lots 1 thru 4, and N½;
Sec. 3, lots 1 thru 4, and N½;
Sec. 4, lots 1 thru 4, and N½;
Sec. 5, lots 1 thru 4, N½, N½SE¼, and N½SW¼;
Sec. 6, lots 1 thru 7, NE¼, E½NW¼, NE¼SW¼, N½SE¼.

The areas described for Secretary's Order of January 31, 1903, as modified by Secretary's Orders of April 9, 1909, and April 5, 1910, aggregate 25,784.45 acres.

SO of April 2, 1909, as Modified by SOs of April 5, 1910, and February 11, 1920 (e) (CACA 7232)

T. 9 S., R. 12 E.,
Sec. 30, portions of lots 1 and 2 of NW¼ south and west of State Highway 111, lots 1 and 2 of SW¼, portions of N½SE¼ south and west of State Highway 111, and S½SE¼;
Secs. 32 and 34;
T. 10 S., R. 12 E.,

Sec. 2, lots 1 and 2 of NE¼, lots 1 and 2 of NW¼, and S½;
Sec. 4, lots 1 and 2 of NE¼, lots 1 and 2 of NW¼, and S½;
Sec. 6, lots 1 and 2 of NE¼, lots 1 and 2 of NW¼, lots 1 and 2 of SW¼, and SE¼;
Secs. 8, 10, and 12.
T. 10 S., R. 15 E.,
Sec. 30, lot 6.
T. 12 S., R. 15 E.,
Sec. 2, SW¼SW¼.

The areas described for Secretary's Order of April 2, 1909, as modified by Secretary's Orders of April 5, 1910, and February 11, 1920, aggregate 5,540.76 acres.

SO of February 28, 1918 (f) (CACA 7234)

T. 15 S., R. 19 E.,
Sec. 19, lots 3 and 4, SE¼SW¼, and SW¼SE¼;
Sec. 29, SW¼NW¼, SW¼, and SW¼SE¼;
Sec. 30, NE¼SE¼, NE¼, and NE¼NW¼;
Sec. 32, NE¼NW¼ and NE¼;
Sec. 33, NW¼NW¼, S½NW¼, N½SW¼, SE¼SW¼, NW¼SE¼, and S½SE¼.

The areas described for Secretary's Order of February 28, 1918, contain 1,198.92 acres.

SO of March 15, 1919 (g) (CACA 7235)

T. 16 S., R. 20 E.,
Sec. 19, SW¼SW¼;
Sec. 21, SE¼, unsurveyed;
Sec. 22, SW¼, unsurveyed;
Sec. 26, NW¼NW¼, unsurveyed;
Sec. 27, N½, unsurveyed;
Secs 28 and 29;
Sec. 30, NW¼NW¼, S½NW¼, SW¼, and SW¼SE¼;
Secs. 31, 32, 33, and 36;
Secs. 44, 45, 49, 50, 51, 52, and 54 unsurveyed;
Sec. 55, NE¼ and N½NW¼, unsurveyed;
Sec. 60, lots 1 thru 4, N½NE¼, and N½NW¼.
T. 17 S., R. 20 E.,
Sec. 5, lots 1 thru 4, N½NW¼;
Sec. 6, lots 1 thru 4, N½NE¼, and N½NW¼.
T. 16. S., R. 21 E.,
Sec. 27, lots 1 thru 14, SE¼NW¼, SW¼NE¼, E½SW¼, and W½SE¼;
Sec. 31, lots 1 thru 7, NE¼, E½NW¼, NE¼SW¼, and N½SE¼;
Sec. 32, lots 3 thru 9, W½NE¼, NW¼, N½SW¼, and NW¼SE¼;
Sec. 33, lots 5 thru 20;
Sec. 34, lots 5 thru 14, W½NE¼, NW¼, N½SW¼, and NW¼SE¼.

The areas described for Secretary's Order of March 15, 1919, contains 12,439.00 acres

SO of October 19, 1920 (h)(CACA 7236)

T. 5 S., R. 7 E.,
Sec. 2, N½SW¼, SE¼SW¼, and SE¼;
Sec. 12, NW¼SE¼.
T. 6 S., R. 7 E.,
Sec. 20, NE¼NW¼, SE¼SW¼, and SW¼SE¼;
Sec. 28, W½NW¼, W½SW¼, and SE¼SW¼.
T. 5 S., R. 8 E.,
Sec. 18, E½SE¼.
T. 6 S., R. 8 E.,
Sec. 2, E½NW¼SE¼ and E½SE¼;
Sec. 12, W½.
T. 7 S., R. 8 E.,
Sec. 32, NE¼NE¼, E½NW¼NE¼, N½SE¼NE¼, and SE¼SE¼NE¼.
T. 6 S., R. 9 E.,
Sec. 18, lots 2 thru 4;
Sec. 20, S½NW¼ and SW¼;
Sec. 28, SW¼SW¼;
Sec. 34, SW¼SW¼.
T. 7 S., R. 9 E.,
Sec. 28, SE¼;
Sec. 32, S½NE¼ and SE¼.
T. 8 S., R. 9 E.,
Secs. 16 and 36.
T. 9 S., R. 9 E.,
Sec. 10, NE¼.
T. 8 S., R. 10 E.,
Sec. 2, portions of unnumbered lots of NW¼ south and west of State Highway 111, portions of SW¼ south and west of State Highway 111, and portions of SE¼ south and west of State Highway 111;
Sec. 4, all;
Sec. 6, lots 1 and 2 of SW¼, SE¼, and N½;
Secs. 8 and 10;
Sec. 12, portions of W½NW¼ south and west of State Highway 111, portions of W½SW¼ south and west of State Highway 111, and portions of NE¼SW¼ south and west of State Highway 111;
Sec. 14, W½NE¼, SE¼NE¼, W½NW¼, SE¼NW¼, and S½;
Sec. 16, E½, W½NW¼, SE¼NW¼, and SW¼;
Sec. 18, lots 1 and 2 of NW¼, lots 1 and 2 of SW¼, and E½;
Secs. 20, 22, 24, 26, and 28;
Sec. 30, lots 1 and 2 of NW¼, lots 1 and 2 of SW¼, and E½;
Sec. 32, lots 1 and 2 of SE¼, N½, SW¼, and N½SE¼;
Sec. 34, lots 1 thru 4, N½, N½SE¼, and N½SW¼;
Sec. 36, lots 1 thru 4, N½, N½SE¼, and N½SW¼.
T. 9 S., R. 10 E.,
Secs. 1 thru 5, unsurveyed;
Sec. 6, lots 1 and 2 of NW¼, lots 1 and 2 of SW¼, and E½, partly unsurveyed;
Sec. 8, all, partly unsurveyed;
Secs. 9 thru 13, unsurveyed;
Sec. 14, all, partly unsurveyed;
Sec. 15, N½, partly unsurveyed;
Sec. 16, all;
Sec. 18, lots 1 and 2 of NW¼, lots 1 and 2 of SW¼, and E½;
Secs. 20 and 22;
Sec. 24, all, partly unsurveyed;
Secs. 26 and 28;
Sec. 30, lots 1 and 2 of NW¼, lots 1 and 2 of SW¼, and E½;
Secs. 32, 34, and 36.
T. 10 S., R. 10 E.,
Sec. 2, lots 1 and 2 of NE¼, lots 1 and 2 of NW¼, and S½;
Sec. 4, lots 1 and 2 of NE¼, lots 1 and 2 of NW¼, and S½;
Secs. 10, 12, 14, and 24.
T. 8 S., R. 11 E.,
Sec. 2, N½, NE¼SW¼, S½SW¼, and SE¼;
Sec. 6, lots 1 and 2 of SW¼, N½, and SE¼;
Sec. 18, portions of lot 2 south and west of State Highway 111;
Sec. 20, portions of W½SW¼ south and west of State Highway 111 and portions of SE¼SW¼ south and west of State Highway 111;
Sec. 28, W½ and SE¼;
Sec. 30, lots 1 and 2 of NW¼, lots 1 and 2 of SW¼, E½;
Sec. 32, all.
T. 8 S., R. 12 E.,
Sec. 6, lots 3 thru 28;
Sec. 8, lots 8 and 12 thru 16, NW¼NW¼, and SE¼SW¼;
Sec. 20, lots 1 and 2 and SE¼NE¼;
Sec. 22, lots 14 thru 20;
Sec. 26, lots 10, 11, 12, 14 thru 17, 24 thru 29, and 31 thru 34.
T. 9 S., R 11 E.,
Sec. 4, SW¼SW¼;
Sec. 6, lots 1 and 2 of NE¼, lots 1 and 2 of NW¼, lots 1 and 2 of SW¼, and SE¼;
Sec. 7, SW¼ partly unsurveyed;
Sec. 8, all;
Sec. 10, portions of SW¼NE¼ south and west of State Highway 111, S½NW¼, SW¼, portions of N½SE¼ south and west of State Highway 111, and S½SE¼;
Sec. 14, portions of N½NW¼ south and west of State Highway 111, portions of the SE¼ south and west of State Highway 111, S½NW¼, and SW¼;
Secs. 18, 19, 20, and 22, unsurveyed;
Sec. 24, portions of SW¼NW¼NW¼ south and west of State Highway 111, portions of S½NW¼ south and west of State Highway 111, portions of SW¼ south and west of State Highway 111, portions of W½SE¼ south and west of State Highway 111, and portions of SE¼SE¼, south and west of State Highway 111;
Sec. 26, all;
Sec. 28, all, partly unsurveyed;
Secs. 29 thru 34, unsurveyed.
T. 10 S., R. 11 E.,
Sec. 2, lots 1 and 2 of NE¼, lots 1 and 2 of NW¼, and S½;
Sec. 4, lots 1 and 2 of NE¼, lots 1 and 2 of NW¼, and S½;
Sec. 6, lots 1 and 2 of NE¼, lots 1 and 2 of NW¼, lots 1 and 2 of SW¼, and SE¼;
Secs. 8, 10, 12, and 14;
Sec. 18, lots 1 and 2 of NW¼, lots 1 and 2 of SW¼, and E½;
Secs. 20, 22, 24, 26, and 28;
Sec. 30, lots 1 and 2 of NW¼, lots 1 and 2 of SW¼, and E½;
Secs. 32, 34 and 36.
T. 11 S., R. 11 E.,
Sec. 2, lots 1 and 2 of NE¼, lots 1 and 2 of NW¼, and S½;
Sec. 4, lots 1 and 2 of NE¼, lots 1, and 2 of NW¼, and S½;
Sec. 6, lots 1 and 2 of NE¼, lots 1 and 2 of NW¼, lots 1 and 2 of SW¼, and SE¼;
Secs. 8, 10, 12, and 14;
Sec. 16, NE¼, E½NW¼, N½SE¼, and SE¼SE¼;
Sec. 18, lots 1 and 2 of NW¼, lots 1 and 2 of SW¼, and E½;
Secs. 20, 22, 24, 26, and 28;
Sec. 30, lots 1 and 2 of NW¼, lots 1 and 2 of SW¼, and E½;
Secs. 32 and 34.
T. 12 S., R. 11 E.,
Sec. 2, lots 3 thru 7;
Sec. 4, lots 1 and 2 of NE¼, lots 1 and 2 of NW¼, N½SW¼, and SW¼SW¼;
Sec. 12, lot 1.

T. 11 S., R. 12 E.,
Sec. 2, lots 1 and 2 of NE¼, lots 1 and 2 of NW¼, and S½;
Sec. 4, lots 1 and 2 of NE¼, lots 1 and 2 of NW¼, and S½;
Sec. 6, lots 1 and 2 of NE¼, lots 1 and 2 of NW¼, lots 1 and 2 of SW¼, and SE¼;
Secs. 8, 10, 12, 14, and 16;
Sec. 18, lots 1 and 2 of NW¼, lots 1 and 2 of SW¼, and E½;
Secs. 20, 22, 24, 26, and 28;
Sec. 30, lots 1 and 2 of NW¼, lots 1 and 2, of SW¼, and E½;
Secs. 32 and 34.
T. 12 S., R. 12 E.,
Sec. 2, lots 3 thru 6, S½NE¼, S½NW¼, and SW¼;
Sec. 4, lots 1 and 2 of NE¼, lots 1 and 2 of NW¼, and S½;
Sec. 6, lots 1 and 2 of NE¼, lots 1 and 2 of NW¼, lots 1 and 2 of SW¼, and SE¼.
T. 15 S., R. 12 E.,
Sec. 31, N½N½SE¼, S½S½NE¼.
T. 16 S., R. 12 E.,
Sec. 29, S½SE¼;
Sec. 33, SW¼NE¼, NE¼NW¼, and NE¼SE¼;
Sec. 34, NW¼SW¼.
T. 14 S., R. 13 E.,
Sec. 7, NE¼SE¼;
Sec. 32, lot 1 and SE¼SE¼;
Sec. 33, N½SW¼, NW¼NW¼, and SE¼NW¼.
T. 17 S., R. 13 E.,
Sec. 17, SW¼NW¼.

The areas described for Secretary's Order of October 19, 1920, aggregate 85,365.40 acres.

The total areas described for Yuma Reclamation Project aggregate 130,328.53 acres in Imperial and Riverside Counties, California.

The Areas Described Aggregate 145,644.03 Acres in Imperial, and Riverside Counties, California

The use of a rights-of-way or an interagency or cooperative agreement would not adequately constrain non-discretionary uses that may result in disturbance of the lands embraced within the Reclamation project areas.

There are no suitable alternative sites as the described lands contain the resource values to be protected.

No additional water rights will be needed to fulfill the purpose of the requested withdrawal.

For a period until June 9, 2022, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal extensions may present their views in writing to the BLM State Director at the address indicated earlier.

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. Individuals who submit written comments may request confidentiality by asking us in your comment to withhold your personal identifying information from public review; however, we cannot guarantee that we will be able to do so.

Notice is hereby given that a virtual (online) public meeting in connection with the proposed withdrawal extensions will be held on April 25, 2022, at 5 p.m. PT. The BLM will publish a notice of the time and online venue in a local newspaper a minimum of 30 days before the scheduled date of the meeting.

The withdrawal proposal will be processed in accordance with the regulation set-forth in 43 CFR part 2300.

(Authority: 43 CFR 2310.3–1(a))

Karen E. Mouritsen,

California State Director.

[FR Doc. 2022–05117 Filed 3–10–22; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–HAFE–NPS0033248; PPWOWMADL3, PPMPSAS1Y.TD0000 (222): OMB Control Number 1024–0284]

Agency Information Collection Activities; National Park Service Common Learning Portal

AGENCY: National Park Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the National Park Service (NPS) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before May 10, 2022.

ADDRESSES: Please provide a copy of your comments to the NPS Information Collection Clearance Officer (ADIR–ICCO), 12201 Sunrise Valley Drive, (MS –242) Reston, VA 20191 (mail); or *phadrea_ponds@nps.gov* (email). Please include ''1024–0284'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Ryan Jennings, by email at *ryan_jennings@nps.gov,* or by telephone at 304–535–5057. Please reference OMB Control Number 1024–0284 in the subject line of your comments. Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility.

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used.

(3) Ways to enhance the quality, utility, and clarity of the information to be collected.

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The NPS is authorized by Service Employee Training (54 U.S.C. 101321) and Management Development and Training (54 U.S.C. 101322) to maintain the Common Learning Portal (CLP). As an online training platform for NPS employees and public users, the CLP website serves as a centralized repository of national, regional, and park specific training opportunities and

programs offered by the NPS. The CLP provides instructional videos, access to subject matter experts and establishes communities of learning for non NPS employees. The public may visit the CLP website to learn about upcoming training events without creating a user account. However, users must register for an account. The purpose of this information collection is to register users of the CLP website. The information we collect as part of the registration process enables non-NPS persons to participate in community forums and discussions and to interact with others within the community. Registering for an account requires the user provide their name, email address, and username.

Title of Collection: National Park Service Common Learning Portal.

OMB Control Number: 1024–0284.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individuals (non-federal employees).

Total Estimated Number of Annual Respondents: 250.

Total Estimated Number of Annual Responses: 250.

Estimated Completion Time per Response: 5 minutes.

Total Estimated Number of Annual Burden Hours: 21.

Respondent's Obligation: Voluntary.

Frequency of Collection: One time.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Phadrea Ponds,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2022–05133 Filed 3–10–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0033497; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Nevada State Museum, Carson City, NV

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Nevada State Museum, Carson City has completed an inventory of human remains, in consultation with the appropriate Indian Tribes, and has determined that there is no cultural affiliation between the human remains and any present-day Indian Tribes. Representatives of any Indian Tribe not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Nevada State Museum, Carson City. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribes stated in this notice may proceed.

DATES: Representatives of any Indian Tribe not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Nevada State Museum, Carson City at the address in this notice by April 11, 2022.

FOR FURTHER INFORMATION CONTACT: Anna J. Camp, Nevada State Museum, 600 North Carson Street, Carson City, NV 89701, telephone (775) 687–4810 Ext. 261, email *acamp@nevadaculture.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Nevada State Museum, Carson City, NV. The human remains were removed from the shore of the American River near Watt Avenue, in Sacramento, Sacramento County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Nevada State Museum professional staff in consultation with representatives of the Buena Vista Rancheria of Me-Wuk Indians of California; Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California; United Auburn Indian Community of the Auburn Rancheria of California; and the Wilton Rancheria, California. The Chicken Ranch Rancheria of Me-Wuk Indians of California was invited to consult but did not participate. Hereafter, all the Indian Tribes listed in this section are referred to as ''The Consulted and Invited Tribes''.

History and Description of the Remains

In 1963, human remains representing, at minimum, one individual were removed from the banks of the American River near Watt Avenue, in Sacramento, Sacramento County, CA. The human remains include one complete cranium of an approximately 40-year-old Native American male. The cranium is complete, and five of the maxillary teeth are present. The cranium was donated to the Churchill County Museum in 1963. Sometime in the 1990s, it was transferred to the Nevada State Museum. No known individual was identified. No associated funerary objects are present.

Determinations Made by the Nevada State Museum, Carson City

Officials of the Nevada State Museum have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on morphological analyses by a biological anthropologist.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains were removed is the aboriginal land of the Buena Vista Rancheria of Me-Wuk Indians of California; Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California; United Auburn Indian Community of the Auburn Rancheria of California; and the Wilton Rancheria, California (hereafter referred to as ''The Tribes'').
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains were removed is the aboriginal land of The Tribes.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to The Tribes.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Anna J. Camp, Nevada

State Museum, Carson City, 600 North Carson Street, Carson City, NV 89701, telephone (775) 687–4810 Ext. 261, email *acamp@nevadaculture.org,* by April 11, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Tribes may proceed.

The Nevada State Museum, Carson City is responsible for notifying The Consulted and Invited Tribes that this notice has been published.

Dated: March 2, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–05062 Filed 3–10–22; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–670 and 731–TA–1570 (Final)]

Freight Rail Coupler Systems and Components From China; Scheduling of the Final Phase of Countervailing Duty and Anti-Dumping Duty Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping and countervailing duty investigation Nos. 701–TA–670 and 731–TA–1570 (Final) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of freight rail coupler systems and components from China, provided for in subheading 8607.30.10 [1] of the Harmonized Tariff Schedule of the United States, preliminarily determined by the Department of Commerce (''Commerce'') to be subsidized.

DATES: February 28, 2022.

FOR FURTHER INFORMATION CONTACT: Stamen Borisson (202) 205–3125), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter 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 (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Scope.—For purposes of these investigations, Commerce has defined the subject merchandise as ''freight rail car coupler systems and certain components thereof. Freight rail car coupler systems are composed of, at minimum, four main components (knuckles, coupler bodies, coupler yokes, and follower blocks, as specified below) but may also include other items (*e.g.,* coupler locks, lock lift assemblies, knuckle pins, knuckle throwers, and rotors). Subject freight rail car coupler systems and components are included within the scope whether finished or unfinished, whether imported individually or with other subject or non-subject components, whether assembled or unassembled, whether mounted or unmounted, or if joined with non-subject merchandise, such as other non-subject system parts or a completed rail car.'' For Commerce's complete scope and tariff treatment, see 87 FR 12662, March 7, 2022.

Background.—The final phase of these investigations is being scheduled pursuant to sections 705(b) and 731(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)), as a result of an affirmative preliminary determination by Commerce that certain benefits which constitute subsidies within the meaning of § 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in China of freight rail coupler systems and components. The investigations were requested in petitions filed on September 29, 2021, by the Coalition of Freight Coupler Producers consisting of McConway & Torley LLC (''M&T), Pittsburgh, PA, and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO, CLC (''USW'').[2]

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

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.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on April 28, 2022, and a public version will be issued thereafter, pursuant to § 207.22 of the Commission's rules.

[1] Unfinished subject merchandise may also enter under subheading 7326.90.86. Subject merchandise attached to finished rail cars may also enter under subheadings 8606.10.00, 8606.30.00, 8606.91.00, 8606.92.00, 8606.99.01 or under subheading 9803.00.50 if imported as an Instrument of International Traffic.

[2] Initially, Petitioner was M&T and another domestic producer. However, the other domestic producer withdrew, and USW was added to the petitions.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on May 12, 2022. Information about the place and form of the hearing, including about how to participate in and/or view the hearing, will be posted on the Commission's website at *https://www.usitc.gov/calendarpad/calendar.html.* Interested parties should check the Commission's website periodically for updates. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before May 9, 2022. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on May 10, 2022. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.23 of the Commission's rules; the deadline for filing is May 5, 2022. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.25 of the Commission's rules. The deadline for filing posthearing briefs is May 20, 2022. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before May 20, 2022. On June 8, 2022, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before June 10, 2022, but such final comments must not contain new factual information and must otherwise comply with § 207.30 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

Additional written submissions to the Commission, including requests pursuant to § 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

By order of the Commission.

Issued: March 8, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–05236 Filed 3–10–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–663–664 and 731–TA–1555–1556 (Final)]

Granular Polytetrafluoroethylene (PTFE) Resin From India and Russia; Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that an industry in the United States is materially injured by reason of imports of granular polytetrafluoroethylene (''PTFE'') resin from India and Russia, provided for in subheadings 3904.61.00 and 3904.69.50 of the Harmonized Tariff Schedule of the United States, that have been found by the U.S. Department of Commerce (''Commerce'') to be sold in the United States at less than fair value (''LTFV''), and to be subsidized by the governments of India and Russia.[2] [3]

Background

The Commission instituted these investigations effective January 27, 2021, following receipt of petitions filed with the Commission and Commerce by Daikin America, Inc., Orangeburg, New York. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of granular PTFE resin from India and Russia were subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and sold at LTFV within the meaning of 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on September 15, 2021 (86 FR 51378). In light of the restrictions on access to the Commission building due to the COVID–19 pandemic, the Commission conducted its hearing through written testimony and videoconference held on January 19, 2022. All persons who requested the opportunity were permitted to participate.

The Commission made these determinations pursuant to §§ 705(b) and 735(b) of the Act (19 U.S.C. 1671d(b) and 19 U.S.C. 1673d(b)). It completed and filed its determinations in these investigations on March 8, 2022. The views of the Commission are contained in USITC Publication 5285 (March 2022), entitled *Granular Polytetrafluoroethylene (PTFE) Resin from India and Russia: Investigation Nos. 701–TA–663–664 and 731–TA–1555–1556 (Final).*

By order of the Commission.

Issued: March 8, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–05183 Filed 3–10–22; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 87 FR 3764, 87 FR 3765, 87 FR 3772, and 87 FR 3774 (January 25, 2022).

[3] The Commission also finds that imports subject to Commerce's affirmative critical circumstances determination are not likely to undermine seriously the remedial effect of the countervailing and antidumping duty orders on granular PTFE resin from India.

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1305]

Certain Electronic Exercise Systems, Stationary Bicycles and Components Thereof and Products Including Same; 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 3, 2022, under section 337 of the Tariff Act of 1930, as amended, on behalf of iFIT Inc. (FKA ICON Health & Fitness, Inc. of Logan, Utah). A supplement was filed on February 18, 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 electronic exercise systems, stationary bicycles and components thereof and products including same by reason of infringement of certain claims of U.S. Patent No. 11,013,960 (''the '960 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute. The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and a cease and desist order.

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) 205–8624.

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 7, 2022, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1–5, 7–10, and 12–20 of the '960 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 ''exercise systems that include stationary bicycles including free weight cradles and provide workouts that alternate between bicycling portions and weightlifting portions'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: iFIT Inc. (FKA ICON Health & Fitness, Inc.); 1500 South 1000 West, Logan, Utah 84321.

(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:

Peloton Interactive, Inc., 158 West 27th Street, New York, New York 10001

Peloton Interactive UK Ltd., 9th Floor, 107 Cheapside, London, England EC2V 6DN

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations is not participating as a party in this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: March 7, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–05143 Filed 3–10–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1306]

Certain Barcode Scanners, Mobile Computers With Barcode Scanning Capabilities, Scan Engines, RFID Printers, Components Thereof, and Products Containing the Same; 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 4, 2022, under section 337 of the Tariff Act of 1930, as amended, on behalf of Zebra Technologies Corporation of Lincolnshire, Illinois and Symbol Technologies, LLC of Holtsville, New York. A supplement to the complaint was filed on February 25, 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 barcode scanners, mobile computers with barcode scanning capabilities, scan engines, RFID printers, components thereof, and

products containing the same by reason of infringement of certain claims of U.S. Patent No. 7,498,942 (''the '942 patent''); U.S. Patent No. 8,411,177 (''the '177 patent''); and U.S. Patent No. 10,667,219 (''the '219 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 a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Jessica Mullan, Office of the Secretary, Docket Services Division, U.S. International Trade Commission, telephone (202) 205–1802.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2021).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on March 7, 2022, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1–8 and 10–26 of the '942 patent; claims 1–10 of the '177 patent; and claims 1, 4–6, and 11–18 of the '219 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 ''barcode scan engines and scanners (handheld and stationary scanners), mobile computers with barcode scanning capabilities (handheld, tablet, and wearable computers), RFID printer (printers with RFID encoding capabilities), and components thereof (circuit boards with barcode scanning, RFID encoding or RFID decoding capabilities)'';

(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:

Zebra Technologies Corporation, 3 Overlook Point, Lincolnshire, Illinois 60069

Symbol Technologies, LLC, 1 Zebra Plaza, Holtsville, New York 11742

(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:

Honeywell International Inc., 855 S. Mint Street, Charlotte, North Carolina 28202

Hand Held Products, Inc., 855 S. Mint Street, Charlotte, North Carolina 28202

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations is not participating as a party in 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 respondents 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 7, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–05142 Filed 3–10–22; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Southwest Research Institute-Cooperative Research Group on Mechanical Stratigraphy and Natural Deformation in the Permian Strata of Texas and New Mexico: Implications for Exploitation of the Permian Basin—Phase 2

Notice is hereby given that, on February 14, 2022, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute—Cooperative Research Group on Mechanical Stratigraphy and Natural Deformation in the Permian Strata of Texas and New Mexico: Implications for Exploitation of the Permian Basin—Phase 2 (''Permian Basin—Phase 2'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Noble Energy, Inc. changed its name to Chevron U.S.A. Inc.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Permian Basin—Phase 2 intends to file additional written notifications disclosing all changes in membership.

On August 15, 2019, Permian Basin—Phase 2 filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice

in the **Federal Register** pursuant to Section 6(b) of the Act on September 13, 2019 (84 FR 48377).

The last notification was filed with the Department on January 10, 2020. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on January 31, 2020 (85 FR 5719).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–05203 Filed 3–10–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Institute of Electrical and Electronics Engineers, Inc.

Notice is hereby given that, on December 16, 2021, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), The Institute of Electrical and Electronics Engineers, Inc. (''IEEE'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 16 new standards have been initiated and 10 existing standards are being revised. More detail regarding these changes can be found at: *https://standards.ieee.org/about/sasb/sba/dec2021.html.* The following pre-standards activities associated with IEEE Industry Connections Activities were launched or renewed: *https://standards.ieee.org/about/bog/smdc/december2021.html.*

On September 17, 2004, IEEE filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 3, 2004 (69 FR 64105).

The last notification was filed with the Department on October 14, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 24, 2021 (86 FR 67081).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–05196 Filed 3–10–22; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to The National Cooperative Research and Production Act of 1993—Medical Technology Enterprise Consortium

Notice is hereby given that, on February 4, 2022, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Medical Technology Enterprise Consortium (''MTEC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Children's Hospital Los Angeles, Los Angeles, CA; CytoSorbents Corporation, Monmouth Junction, NJ; and Fast BioMedical, Indianapolis, IN; Felix Biotechnology, Inc., South San Francisco, CA; MitoSense, Inc., Great Falls, VA; Neurotrauma Sciences LLC, Alpharetta, GA; NIRSense LLC, Richmond, VA; Pneumeric, Inc., Rochester, MN; SiDx, Inc., Seattle, WA; Tao Treasures LLC dba Nanobiofab, Frederick, MD; The Research Foundation for the State University of New York on behalf of the Univ. at Buffalo, Amherst, NY; have been added as parties to this venture.

Also, Initiate Government Solutions LLC, North Palm Beach, FL; and Perspecta Enterprise Solutions LLC, Herndon, VA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and MTEC intends to file additional written notifications disclosing all changes in membership.

On May 9, 2014, MTEC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 9, 2014 (79 FR 32999).

The last notification was filed with the Department on November 29, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on January 13, 2022 (87 FR 2178).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–05187 Filed 3–10–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act Of 1993—UHD Alliance, Inc.

Notice is hereby given that, on January 4, 2022, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), UHD Alliance, Inc. (''UHD Alliance'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, TCL Moka International Limited, Sha Tin, Hong Kong–China been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and UHD Alliance intends to file additional written notifications disclosing all changes in membership.

On June 17, 2015, UHD Alliance filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 17, 2015 (80 FR 42537).

The last notification was filed with the Department on November 2, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 26, 2021 (86 FR 67493).

Suzanne Morris,

Chief, Premerger and Division Statistics Antitrust Division.

[FR Doc. 2022–05173 Filed 3–10–22; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Z-Wave Alliance, Inc.

Notice is hereby given that, on December 28, 2021, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Z-Wave Alliance, Inc. (the ''Joint Venture'') filed written notifications simultaneously with the Attorney General and the Federal Trade

Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, Bluesalve Partners LLC, Ashburn, VA; Shipshape Solutions Inc, Austin, TX; Octo Telematics SpA, Rome, ITALY; SoftAtHome, Colombes, FRANCE; *ZWaveProducts.com,* Randolph, NJ; Simon Holding SL, Barcelona, SPAIN; and KWSM Group, Bridgeman Downs, AUSTRALIA have joined as parties to the venture.

Also, Base2 Managed It Pty Ltd, Sydney, AUSTRALIA; HAB Home Intelligence, North Richland Hills, TX; TIM S.p.A. (TELECOM ITALIA), Milano, ITALY; 3MANTECH, South Haven, MS; Automate Asia, Oxley Bizhub 2 Sin, SINGAPORE; Aware Care Network, Plano, TX; Clare Controls LLC, Sarasota, FL; Intermatic Incorporated, Spring Grove, IL; Plexus Solutions Pty Ltd, Brighton, AUSTRALIA; Shenzhen Kaadas Intelligent Technology Co., Ltd, Shenzhen, PEOPLE'S REPUBLIC OF CHINA; Smart Lifestyle Solutions Pty Ltd, Pagewood, AUSTRALIA; and WeBeHome, Bromma, SWEDEN have withdrawn as parties to the venture.

In addition, an existing member, Ningbo Dooya Mechanic & Electronic Technology Co., Ltd., Ningbo, PEOPLE'S REPUBLIC OF CHINA, name was spelled incorrectly on the notification filed on December 1, 2020.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Joint Venture intends to file additional written notifications disclosing all changes in membership.

On November 19, 2020, the Joint Venture filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 1, 2020 (85 FR 77241).

The last notification was filed with the Department on October 6, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 8, 2021 (86 FR 61791).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–05107 Filed 3–10–22; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Information Warfare Research Project Consortium

Notice is hereby given that, on February 22, 2022, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Information Warfare Research Project Consortium (''IWRP'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, EpiSys Science, Inc., Poway, CA; EFW, Inc., Fort Worth, TX; Intelsat General Communications LLC, McLean, VA; ITA International LLC, Newport News, VA; Barbaricum LLC, Washington, DC; Red Balloon Security, Inc., New York, NY; Rhombus Power, Inc., Mountain View, CA; Akira Technologies, Washington, DC; BCG Federal Corp, Bethesda, MD; Tiami LLC, Elk Grove, CA; Everactive, Inc., Santa Clara, CA; KSA Integration LLC, Stafford, VA; Roberson and Associates LLC, Schumburg, IL; Chip Scan, Inc., Rockaway Beach, NY; Falconwood, Arlington, VA; Rebellion Defense, Inc., Washington, DC; Optiv Federal, Inc., Denver, CO; Highlight Technologies, Fairfax, VA; Tyto Government Solutions, Inc., Herndon, VA; Clear Ridge Defense LLC, Baltimore, MD; Kryptowire LLC, McLean, VA; and Modern Intelligence, Inc., Austin, TX have been added as parties to this venture.

Also, ADI Technologies, Inc., Chantilly, VA; Assurance Technology Corporation, Carlisle, MA; Aurotech, Inc., Silver Spring, MD; Axon Enterprise, Inc., Scottsdale, GA; Azimuth Corporation, Beavercreek, OH; Belle Artificial Intelligence Corporation, Cambridge, MA; Blue Arc LLC, Aberdeen Proving Ground, MD; Canvass Labs, Inc., La Jolla, CA; CDW Government LLC, Vernon Hills, IL; Cintel, Inc., Huntsville, AL; Cirrus LLC, Walla Walla, WA; Cobham Advanced Electronic Solutions, Tampa, FL; CohesionForce, Inc., Huntsville, AL; Converged Security Solutions LLC, Reston, VA; Critical Frequency Design LLC, Melbourne, FL; Cyber COAST, Inc., Arlington, VA; Cypher Analytics, Inc., San Diego, CA; DataDirect Networks Federal LLC, Columbia, MD; Decision Sciences Incorporated, Ft. Walton Beach, FL; DY4, Inc. dba Curtiss-Wright, Ashburn, VA; Dynamic Integrated Services LLC, Pensacola, FL; Enveil, Inc., Fulton, MD; f5 Government Solutions LLC, Reston, VA; FragCity, Inc., Fredericksburg, VA; Frontier Technology, Inc., Beavercreek, OH; Future Tense LLC Calypso AI, Ashburn, VA; GuidePoint Security Government Solutions, Herndon, VA; Hitachi Vantara Federal Corporation, Reston, VA; Immersion CyKor LLC, Annapolis, MD; Infor, Inc., Alpharetta, GA; Ionic Security, Inc., Atlanta, GA; ITT Enidine, Inc., Orchard Park, NY; Jireh Consulting LLC, Suffolk, VA; Juniper Networks, Inc., Sunnyvale, CA; King Technologies, Inc., San Diego, CA; Klas Telecom Government, Herndon, VA; Maga Design Group, Inc., Washington, DC; Mission Solutions Group, Mt. Pleasant, SC; Netizen Corporation, Allentown, PA; Next Tier Concepts, Inc., Vienna, VA; OneGlobe LLC, Ashburn, VA; PDC America, Seneca, SC, Phacil, Inc., Arlington, VA; PortOne Technology Group LLC, Summerville, SC; Presidio Networked Solutions LLC, Fulton, MD; Qlik Technologies, Inc., King of Prussia, PA; QuickFlex, Inc., San Antonio, TX; r4 Technologies, Inc., Ridgefield, CT; SailPoint Technologies, Inc., Austin, TX; Secure Channels, Inc., Irvine, CA; Sev1Tech, Inc., Woodbridge, VA; Shadow-Soft LLC, Sandy Springs, GA; Stardog Union, Arlington, VA; STEALTHbits Technologies, Inc., Hawthorne, NJ; Systematic, Inc., Centreville, VA; Telecommunication Solutions Group, Inc., Raleigh, NC; The Cameron Bell Corporation dba Gov Solutions Group, Charleston, SC; The Design Knowledge Company, Fairborn, OH; ThoughtSpot, Inc., Palo Alto, CA; Totus Ventures LLC dba Totus Imaging, Summerville, SC; Trewon Technologies LLC, Stafford, VA; Trilogic Systems Corporation, Gloucester, MA; Triumph Enterprises, Inc., Vienna, VA; Tygart Technology, Inc., Fairmont, WV; UBERETHER, Inc., Sterling, VA; Unisys Corporation, Reston, VA; Velocity Works LLC, Pittsburgh, PA; Wireless Systems Solutions LLC, Cary, NC; The Regents of the University of Colorado, Boulder, CO; and Vigilant Technologies, Tempe, AZ, have withdrawn from this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IWRP intends to file additional written notifications disclosing all changes in membership.

On October 15, 2018, IWRP filed its original notification pursuant to Section

6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 23, 2018 (83 FR 53499).

The last notification was filed with the Department on November 10, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 22, 2021 (86 FR 72629).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–05202 Filed 3–10–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Utility Broadband Alliance, Inc.

Notice is hereby given that, on January 28, 2022, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Utility Broadband Alliance, Inc. (''UBBA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Redline Communications, Markham, Canada; Intel, Santa Clara, CA; Itron, Liberty Lake, WA; and Verizon, Basking Ridge, NJ, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and UBBA intends to file additional written notifications disclosing all changes in membership.

On May 4, 2021, UBBA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 10, 2021 (86 FR 30981).

The last notification was filed with the Department on October 20, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 24, 2021 (86 FR 67083).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–05178 Filed 3–10–22; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ASTM International Standards

Notice is hereby given that on December 14, 2021 pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), ASTM International (''ASTM'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ASTM has provided an updated list of current, ongoing ASTM activities originating between September 15, 2021 and December 14, 2021 designated as Work Items. A complete listing of ASTM Work Items, along with a brief description of each, is available at *http://www.astm.org.*

On September 15, 2004, ASTM filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 10, 2004 (69 FR 65226).

The last notification with the Department was filed on September 16, 2021. A notice was filed in the **Federal Register** on October 22, 2021 (86 FR 58690).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–05199 Filed 3–10–22; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to The National Cooperative Research and Production Act of 1993—Naval Surface Technology & Innovation Consortium

Notice is hereby given that, on December 02, 2021, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Naval Surface Technology & Innovation Consortium (''NSTIC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, AI.Reverie, Inc., New York, NY; Art Anderson Associates, Inc., Bremerton, WA; ATI, Inc., Nicholasville, NJ; BlackBar Engineering LLC, Tucson, AZ; BlackSky Geospatial Solutions, Inc., Herndon, VA; BluePath Labs LLC, Washington, DC; BMORE VIRTUAL, LLC, Baltimore, MD; Bowhead Turnkey Manufacturing LLC, Plano, TX; C3.AI, Inc., Redwood City, CA; Chip Design System Inc., Hockessin, DE; Coda Octopus Colmek, Inc., Murray, UT; Columbus Technologies and Services, Inc., Greenbelt, MD; DataCrunch Lab, LLC, Cary, NC; DKW Consulting LLC, Tallahassee, FL; Eos Energetics, Inc., Penrose, CO; FIDELIUM LLC, Virginia Beach, VA; Gryphon Technologies, Washington, DC; Hanley Industries, Inc., Alton, IL; Intrepid LLC, Huntsville, AL; Invariant Corporation, Huntsville, AL; Iowa State University, Ames, IA; JRC Integrated Systems, Inc, Washington, DC; KG Made, LLC dba KGM Technologies, Peachtree Corners, GA ; Knight Technical Solutions LLC, Huntsville, AL; Marine Electric Systems, Inc., South Hackensack, NJ; Memsel Inc., Haltom City, TX; MicroStrategy, Tysons, VA; Mustang Vacuum Systems, Inc., Sarasota, FL; Next Offset Solutions, Inc., West Lafayette, IN; Onyx Aerospace, Inc., Huntsville, AL; Opal Soft, Inc., Sunnyvale, CA; Perikin Enterprise, LLC, Albuquerque, NM; Physical Sciences Inc., Andover, MD; Production Systems Automation LLC, Duryea, PA; Rescue Rover, LLC dba AlphaBravo, Gaithersburg, MD; SECOTEC, Inc., Huntsville, AL; Sentient Digital, Inc. dba Entrust Government Solutions, New Orleans, LA; SGSD PARTNERS, LLC DBA ELEVATE GOVERNMENT

SOLUTIONS, Washington, DC; Solid State Scientific Corporation, Hollis, NH; University of Michigan, Ann Arbor, MI; and VT Milcom Inc. (VTG), Virginia Beach, VA have been added as a party to this venture. Also, Exact Solutions Scientific Consulting LLC, Morristown, NJ has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NSTIC intends to file additional written notifications disclosing all changes in membership.

On October 8, 2019, NSTIC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 12, 2019 (84 FR 61071).

The last notification was filed with the Department on May 13, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 10, 2021 (86 FR 30981).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–05185 Filed 3–10–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum

Notice is hereby given that, on February 2, 2022, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Petroleum Environmental Research Forum (''PERF'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, TRC Environmental Corporation, Fort Collins, CO, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PERF intends to file additional written notifications disclosing all changes in membership.

On February 10, 1986, PERF filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 14, 1986 (51 FR 8903).

The last notification was filed with the Department on July 8, 2020. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 31, 2020 (85 FR 46179).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–05197 Filed 3–10–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—PXI Systems Alliance, Inc.

Notice is hereby given that, on February 24, 2022, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), PXI Systems Alliance, Inc. (''PXI Systems'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Hewlett Packard Enterprise, Houston, TX, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PXI Systems intends to file additional written notifications disclosing all changes in membership.

On November 22, 2000, PXI Systems filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 8, 2001 (66 FR 13971).

The last notification was filed with the Department on September 16, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 5, 2021 (86 FR 55003).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–05198 Filed 3–10–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open RF Association, Inc.

Notice is hereby given that, on January 7, 2022 pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Open RF Association, Inc. filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Unisoc (Shanghai) Technologies Co., Ltd, Shanghai, PEOPLE'S REPUBLIC OF CHINA; and SmartDV Technologies, Bangalore, INDIA have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Open RF Association, Inc. intends to file additional written notifications disclosing all changes in membership.

On February 21, 2020, Open RF Association, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 11, 2020 (85 FR 14247).

The last notification was filed with the Department on May 25, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 26, 2021 (86 FR 40078).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–05098 Filed 3–10–22; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cooperative Research Group on Energy Storage for Electric Grid

Notice is hereby given that, on February 4, 2022, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Cooperative Research Group on Energy Storage for Electric Grid (''ESEG'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: Central Research Institute of Electric Power Industry (CRIEPI), Kanagawa, JAPAN; EN BW Energie Württemberg AG, Karlsruhe, GERMANY; CEZ, a.s., Prague, CZECH REPUBLIC; Tokyo Electric Power Company Holdings, Inc., Tokyo, JAPAN; and ENGIE SA, Courbevoie, FRANCE. The general area of ESEG's planned activity is to have as its major goal testing and modeling specific aspects of performance degradation and fire potential in a generic battery energy storage system.

Suzanne Morris,

Chief, Premerger and Division Statistics Antitrust Division.

[FR Doc. 2022–05179 Filed 3–10–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to The National Cooperative Research and Production Act of 1993 Cooperative Research Group on Particle Sensor Performance and Durability

Notice is hereby given that, on February 8, 2022, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute—Cooperative Research Group on Particle Sensor Performance and Durability (''PSPD–II'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Coorstek Sensors, LLC, Grand Junction, CO, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PSPD–II intends to file additional written notifications disclosing all changes in membership.

On March 15, 2017, PSPD–II filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 14, 2017 (82 FR 18012).

The last notification was filed with the Department on March 12, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 20, 2021 (86 FR 20522).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–05188 Filed 3–10–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Consortium for Execution of Rendezvous and Servicing Operations

Notice is hereby given that, on January 1, 2022, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Consortium for Execution of Rendezvous and Servicing Operations (''CONFERS'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Allocation.Space, Orlando, FL and Virgin Orbit, Long Beach, CA have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CONFERS intends to file additional written notifications disclosing all changes in membership.

On September 10, 2018, CONFERS filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 19, 2018 (77 FR 36292).

The last notification was filed with the Department on November 2, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 26, 2021 (86 FR 67494).

Suzanne Morris,

Chief, Premerger and Division Statistics Antitrust Division.

[FR Doc. 2022–05182 Filed 3–10–22; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—R Consortium, Inc.

Notice is hereby given that, on February 2, 2022, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), R Consortium, Inc. (''R Consortium'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Swiss Re Management Ltd., Adliswil, Switzerland; American Statistical Association, Alexandria, VA; Lander Analytics, New York, NY; and Novo Nordisk A/S, Hovedstaden, Denmark, have been added as parties to this venture.

Also, ThinkR, Aubervilliers, France, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and R Consortium intends to file additional written notifications disclosing all changes in membership.

On September 15, 2015, R Consortium filed its original notification pursuant to Section 6(a) of the Act. The Department

of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 2, 2015 (80 FR 59815).

The last notification was filed with the Department on November 9, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 22, 2021 (86 FR 72629).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2022–05174 Filed 3–10–22; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–NEW]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; New Collection; Visitor Access Request—ATF Form 8620.71

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ) will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for an additional 30 days until April 11, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the 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;

—Evaluate whether and, if so, how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *The Title of the Form/Collection:* Visitor Access Request.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: ATF Form 8620.71.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: State, Local or Tribal Government.

Other: Federal Government.

Abstract: The Visitor Access Request—ATF Form 8620.71 will be used to determine if representatives from other Federal, State, and local agencies can be granted access to ATF facilities to conduct official business.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 2,000 respondents will use this form once annually, and it will take each respondent 5 minutes to complete their responses.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 167 hours, which is equal to 2,000 (total respondents) * 1 (# of response per respondent) * .833333 (5 minutes or the time taken to prepare each response).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, Mail Stop 3.E–405A, Washington, DC 20530.

Dated: March 8, 2022.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2022–05156 Filed 3–10–22; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2006–0028]

MET Laboratories, Inc.: Grant of Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the final decision to expand the scope of recognition for MET Laboratories, Inc., as a Nationally Recognized Testing Laboratory (NRTL).

DATES: The expansion of the scope of recognition becomes effective on March 11, 2022.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration; telephone: (202) 693–2110; email: *robinson.kevin@dol.gov.* OSHA's web page includes information about the NRTL Program (see *http://www.osha.gov/dts/otpca/nrtl/index.html*).

SUPPLEMENTARY INFORMATION:

I. Notice of Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition of MET Laboratories, Inc. (MET), as a NRTL. MET's expansion covers the addition of one test standard to the NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified by 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use

products properly approved by the NRTL to meet OSHA standards that require testing and certification of the products.

The agency processes applications by a NRTL for initial recognition, or for expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides the preliminary finding and, in the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL that details the scope of recognition. These pages are available from the agency's website at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

MET submitted one application dated September 25, 2018 (OSHA–2006–0028–0080), to add one test standard to MET's NRTL scope of recognition. OSHA staff performed a detailed analysis of the application packet and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to the application.

OSHA published the preliminary notice announcing MET's expansion application in the **Federal Register** on January 26, 2022 (87 FR 4051). The agency requested comments by February 10, 2022, but it received no comments in response to this notice. OSHA now is proceeding with this final notice to grant expansion of MET's scope of recognition.

To obtain or review copies of all public documents pertaining to MET's application, go to *http://www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor. Docket No. OSHA–2006–0028 contains all materials in the record concerning MET's recognition. Please note: Due to the COVID–19 pandemic, the Docket Office is closed to the public at this time but can be contacted at (202) 693–2350 (TTY (877) 889–5627).

II. Final Decision and Order

OSHA staff examined MET's expansion application, the capability to meet the requirements of the test standard, and other pertinent information. Based on the review of this evidence, OSHA finds that MET meets the requirements of 29 CFR 1910.7 for expansion of the NRTL scope of recognition, subject to the limitation and conditions listed below. OSHA, therefore, is proceeding with this final notice to grant MET's scope of recognition. OSHA limits the expansion of MET's recognition to testing and certification of products for demonstration of conformance to the test standard listed in Table 1.

TABLE 1—LIST OF APPROPRIATE TEST STANDARD FOR INCLUSION IN MET'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 62109–1.	Standard for Safety of Power Converters for Use in Photovoltaic Power Systems—Part 1: General requirements.

OSHA's recognition of any NRTL for a particular test standard is limited to equipment or materials for which OSHA standards require third-party testing and certification before using them in the workplace. Consequently, if a test standard also covers any products for which OSHA does not require such testing and certification, a NRTL's scope of recognition does not include these products.

The American National Standards Institute (ANSI) may approve the test standards listed above as American National Standards. However, for convenience, the use of the designation of the standards-developing organization for the standard as opposed to the ANSI designation may occur. Under the NRTL Program's policy (see OSHA Instruction CPL 01–00–004, Chapter 2, Section VIII), only standards determined to be appropriate test standards may be approved for NRTL recognition. Any NRTL recognized for a particular test standard may use either the proprietary version of the test standard or the ANSI version of that standard. Contact ANSI to determine whether a test standard is currently ANSI-approved.

A. Conditions

In addition to those conditions already required by 29 CFR 1910.7, MET must abide by the following conditions of the recognition:

1. MET must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in their operations as a NRTL, and provide details of the change(s);

2. MET must meet all the terms of the NRTL recognition and comply with all OSHA policies pertaining to this recognition; and

3. MET must continue to meet the requirements for recognition, including all previously published conditions on MET's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the scope of recognition of MET, subject to the limitations and conditions specified above.

III. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8–2020 (85 FR 58393, Sept. 18, 2020)), and 29 CFR 1910.7.

Signed at Washington, DC, on February 28, 2022.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2022–05195 Filed 3–10–22; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

National Council on the Arts 206th Meeting

AGENCY: National Endowment for the Arts.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that a meeting of the National Council on the Arts will be held open to the public by videoconference or teleconference.

DATES: See the **SUPPLEMENTARY INFORMATION** section for meeting time and date. The meeting is Eastern time and the ending time is approximate.

ADDRESSES: The National Endowment for the Arts, Constitution Center, 400 Seventh Street SW, Washington, DC 20560. This meeting will be held by videoconference or teleconference. Please see *arts.gov* for the most up-to-date information.

FOR FURTHER INFORMATION CONTACT: Sonia Tower, Office of Public Affairs, National Endowment for the Arts, Washington, DC 20506, at 202/682–5606.

SUPPLEMENTARY INFORMATION: If, in the course of the open session discussion, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session

pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b, and in accordance with the September 10, 2019 determination of the Chair. Additionally, discussion concerning purely personal information about individuals, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c) (6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, to Council discussions and reviews that are open to the public. If you need special accommodations due to a disability, please contact Beth Bienvenu, Office of Accessibility, National Endowment for the Arts, at 202/682–5532 or *accessibility@arts.gov,* at least seven (7) days prior to the meeting.

The upcoming meeting is: National Council on the Arts 206th Meeting.

This meeting will be held by videoconference or teleconference.

Date and time: March 24, 2022; 3:15 p.m. to 4:15 p.m.

There will be opening remarks and voting on recommendations for grant funding and rejection, followed by updates from the NEA Chair.

Register in advance for this webinar: https://arts.zoomgov.com/webinar/register/WN_1IzFiabNTyKXJGYW0SjB-w.

Dated: March 8, 2022.

Sherry Hale.

Staff Assistant, National Endowment for the Arts.

[FR Doc. 2022–05189 Filed 3–10–22; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[IA–21–062; NRC–2022–0055]

In the Matter of Mr. Joseph Berkich

AGENCY: Nuclear Regulatory Commission.

ACTION: Order; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an Order prohibiting involvement in NRC-licensed activities to Mr. Joseph Berkich. Mr. Berkich, the former owner of Steel City Gamma, LLC (SCG), engaged in deliberate misconduct that caused SCG to be in violation of NRC requirements.

DATES: The Order prohibiting involvement in NRC-licensed activities became effective on March 2, 2022.

ADDRESSES: Please refer to Docket ID NRC–2022–0055 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–2022–0055. 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 Document collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The Order prohibiting involvement in NRC-licensed activities is available in ADAMS under Accession No. ML22046A014.
- *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. (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Leelavathi Sreenivas, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–001; telephone: 301–287–9249, email: *Leelavathi.Sreenivas@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the Order is attached.

Dated: March 8, 2022.

For the Nuclear Regulatory Commission.

Mark D. Lombard,

Director, Office of Enforcement.

Attachment—Order Prohibiting Involvement in NRC-Licensed Activities

United States of America

Nuclear Regulatory Commission

In the Matter of Mr. Joseph Berkich.
IA–21–062

Order Prohibiting Involvement in NRC-Licensed Activities

I

At the time of the events discussed below, Joseph Berkich was the owner of Steel City Gamma, LLC (SCG), an industrial radiography company located in Pennsylvania. On May 14, 2019, SCG was issued Commonwealth of Pennsylvania radioactive materials license No. PA–1633, which authorized SCG to possess and utilize byproduct material in up to three (3) devices for the purposes of industrial radiography. During the relevant time periods discussed below, SCG did not possess a specific license issued by the Nuclear Regulatory Commission under 10 CFR part 30, but as an Agreement State licensee, SCG could conduct radiography in NRC jurisdiction under the general NRC license granted pursuant to 10 CFR 150.20.

II

On April 2, 2020, the NRC was notified by the Pennsylvania Department of Environmental Protection (PA DEP) that SCG had been conducting licensed activities (industrial radiography) under the company name A&B Testing Services (ABT) for Mid-Atlantic Fabrication (MAF) at MAF's facility in Pleasant Valley, West Virginia. PA DEP also informed the NRC that on March 10, 2020, PA DEP had issued Administrative Orders to SCG and to Mr. Berkich as an individual. The Administrative Order to SCG amended the company's PA license to authorize possession and storage only. On April 21, 2020, the U.S. Regulatory Commission (NRC), Office of Investigations (OI), Region I field office initiated an investigation to determine whether Steel City Gamma, LLC and/or A & B Testing Services, LLC (ABT) deliberately conducted unauthorized and/or unlicensed radiography activities within NRC jurisdiction.

Based on the evidence gathered during the investigation, the NRC concluded that two apparent violations of NRC requirements occurred. First, on December 18, 2019, and from approximately January 1, 2020, through March 9, 2020, SCG performed radiographic operations in NRC jurisdiction without first filing for reciprocity, in violation of 10 CFR 150.20(a)(1). Second, from March 10, 2020, until April 9, 2020, SCG performed radiographic operations in NRC jurisdiction without a valid NRC or agreement state license, in violation of 10 CFR 30.3(a). The NRC also concluded that Mr. Berkich's actions appeared to

constitute deliberate misconduct in violation of 10 CFR 30.10(a)(1).

The OI investigation found that ABT is a PA business entity formed in early January 2020 by an associate of Mr. Berkich. During the time period in question, ABT was not licensed by PA DEP or the NRC to perform industrial radiography. Beginning on or about January 1, 2020, and continuing into April 2020, Mr. Berkich represented himself to MAF as an employee of ABT, conducted radiography and directed others to conduct radiography at the MAF site in West Virginia, and provided reports of those radiographic operations, using ABT's company name and information, to MAF. This radiography work was performed using SCG's equipment.

The investigation also revealed that SCG's work at the MAF site in West Virginia from January 2020 until March 10, 2020, using the company name ABT, was performed without first filing for reciprocity with the NRC or paying the appropriate fees. In addition, on December 18, 2019, SCG, using its own company name, performed radiography work for Porter Testing Services (PTS) at the MAF site in West Virginia without filing for reciprocity or paying the appropriate fees. Mr. Berkich was aware of the requirement to file for reciprocity when working in NRC jurisdiction based on his prior work experience with another company, during which he filed several reciprocity requests with the NRC for work in West Virginia.

Finally, the investigation found that SCG's work at the MAF site after March 10, 2020, was performed without SCG possessing a valid NRC or PA license authorizing SCG to conduct radiography. Mr. Berkich was aware of the requirements for licensing based on his work experience and prior interactions with PA DEP. Mr. Berkich was also aware of the terms of the PA DEP March 10, 2020 Administrative Order, which modified SCG's license to possession and storage only. After receiving the Administrative Order during an in-person meeting with PA DEP officials, Mr. Berkich went to the MAF site and conducted radiography later that day, and he continued to conduct radiography at the MAF site on numerous other occasions between March 10 and April 9, 2020.

In a letter dated December 2, 2021, the NRC informed Mr. Berkich that the NRC was considering escalated enforcement action against him for apparent violations of NRC's deliberate misconduct rule, 10 CFR 30.10(a)(1). Specifically, the NRC concluded that Mr. Berkich apparently engaged in deliberate misconduct that caused SCG to be in violation of 10 CFR 150.20(b)(1) when he engaged in, or directed others to engage in, industrial radiography at the MAF facility in West Virginia without first filing for reciprocity. Additionally, the NRC concluded that Mr. Berkich apparently engaged in deliberate misconduct that caused SCG to be in violation of 10 CFR 30.3(a) when he engaged in, or directed others to engage in, industrial radiography at the MAF site in West Virginia knowing that SCG did not possess a specific or general NRC license authorizing such activities. In the letter, the NRC offered Mr. Berkich the opportunity to attend a Predecisional Enforcement Conference (PEC) to present his perspective on the apparent violations. A PEC was conducted on February 3, 2022.

During the PEC, Mr. Berkich stated that he did not dispute the violations. With regard to the work for PTS in December 2019, he stated that he filled out the reciprocity forms and provided them to the owner of PTS to provide dates and payment information. Mr. Berkich also stated that after receiving the Administrative Order from PA DEP he kept working to bring money in because the financial goal was more than the penalty, and he acknowledged knowing at the time that performing radiography under these conditions was not in accordance with the regulations.

Based on the results of the OI investigation, and information provided during the PEC, the NRC concluded that Mr. Berkich engaged in deliberate misconduct in violation of 10 CFR 30.10(a)(1).

III

Based on the above, the NRC has concluded that Mr. Joseph Berkich engaged in deliberate misconduct in violation of 10 CFR 30.10(a)(1) that caused Steel City Gamma to be in violation of 10 CFR 150.20(b)(1) and 10 CFR 30.3(a). The NRC must be able to rely on companies working within NRC jurisdiction and their employees to comply with NRC requirements. Mr. Berkich's actions have raised serious doubt as to whether he can be relied upon to comply with NRC requirements.

Consequently, the NRC lacks the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements, and that the health and safety of the public will be protected if Mr. Berkich were permitted at this time to be involved in NRC-licensed activities. Therefore, the public's health, safety, and interest require that Mr. Berkich be prohibited from any involvement in NRC-licensed activities for a period of five years from the date of this Order. Additionally, Mr. Berkich is required to notify the NRC of his first involvement in NRC-licensed activities for a period of one year following the expiration of the five-year prohibition period.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, and 10 CFR 30.10, *it is hereby ordered that:*

1. Mr. Joseph Berkich is prohibited for five years from the date of this Order from conducting, supervising, directing, or in any other way engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If Mr. Joseph Berkich is currently involved in NRC-licensed activities, he must immediately cease those activities; inform the NRC of the name, address, and telephone number of the employer or other entity for whom he is conducting NRC-licensed activities; and provide a copy of this Order to the employer or other entity.

3. For a period of one year after the five-year prohibition on engaging in NRC-licensed activities has expired, Mr. Joseph Berkich shall, within 20 days of accepting his first employment offer involving NRC-licensed activities or otherwise first becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555–0001, of the name, address, and telephone number of the employer or other entity for whom he will be participating in or conducting the NRC-licensed activities. In the notification, Mr. Berkich shall include a statement of his commitment to compliance with regulatory requirements and the basis for why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, or designee, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Joseph Berkich of good cause.

V

In accordance with 10 CFR 2.202, Mr. Berkich must submit a written answer to this Order under oath or affirmation within 30 days of its publication in the

Federal Register. Mr. Berkich's failure to respond to this Order could result in additional enforcement action in accordance with the Commission's Enforcement Policy. In addition, Mr. Berkich and any other person adversely affected by this Order may request a hearing on this Order within 30 days of its publication in the **Federal Register**. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, and include a statement of good cause for the extension.

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. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps 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., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)–(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

If a person other than Mr. Berkich requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by Mr. Berkich or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 30 days from the date this Order is published in the **Federal Register** without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

For the Nuclear Regulatory Commission.

/RA/

Mark D. Lombard,

Director, Office of Enforcement.

Dated this 2nd day of March 2022.

[FR Doc. 2022–05160 Filed 3–10–22; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94368; File No. SR–EMERALD–2022–09]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Emerald Fee Schedule To Amend the Excessive Quoting Fee

March 7, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 24, 2022, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Emerald Fee Schedule (the ''Fee Schedule'') to amend Section 1)c), Excessive Quoting Fee, to increase in the inbound quote limit.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/emerald,* at MIAX's principal office, 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 Section 1)c), Excessive Quoting Fee, to increase the inbound quote limit for the Excessive Quoting Fee. The Exchange does not propose to amend the fee amount or how the quotes are counted. The proposed rule change is immediately effective as of February 24, 2022.

Background

On February 22, 2021, the Exchange filed its proposal to amend the Fee Schedule to adopt the Excessive Quoting Fee.[3] The Exchange adopted the Excessive Quoting Fee as a result of a significant upgrade to the MIAX Emerald System's [4] network architecture, based on customer demand, which resulted in the Exchange's network environment becoming more transparent and deterministic. Pursuant to the Excessive Quoting Fee, the Exchange will assess a fee of $10,000 per day to any Market Maker [5] that exceeds 2.5 billion inbound quotes [6] sent to the Exchange on that particular day. In counting the total number of quotes for the purposes of the Excessive Quoting Fee, the Exchange excludes messages that are generated as a result of sending a mass purge message to the Exchange. The 2.5 billion inbound quote limit for the Excessive Quoting Fee resets each trading day.

Proposal

The Exchange now proposes to amend the Excessive Quoting Fee to increase the inbound quote limit before the Exchange will assess the Excessive Quoting Fee. In particular, the Exchange proposes to increase the inbound quote limit from 2.5 billion to 3.5 billion for inbound quotes sent to the Exchange on a particular trading day. In counting the total number of quotes for the purposes of the Excessive Quoting Fee, the Exchange will continue to exclude messages that are generated as a result of sending a mass purge message to the Exchange and the proposed 3.5 billion inbound quote limit will continue to reset each trading day.

The purpose of the proposed change is to continue to ensure that Market Makers do not over utilize the Exchange's System by sending excessive quotes to the Exchange, to the detriment of all other Members of the Exchange, while balancing the interests of Market Makers sending quotes to the System in light of the recent significant increase in market volatility. Market Makers that send an excessive number of quotes to the Exchange on any particular day have the potential residual effect of exhausting System resources, bandwidth, and capacity. In turn, this may create latency and impact other Members' and non-Members' ability to send messages to the Exchange and receive timely executions. The Exchange believes that due to significant increases in market volatility, it is appropriate to increase the inbound quote limit for Market Markers.

The Exchange's high performance network provides unparalleled system throughput and the capacity to handle approximately 38 million messages per second. On an average day, the Exchange handles over approximately 11 billion total messages. These billions of messages per day consume the Exchange's resources, particularly storage capabilities. The combination of (i) Member quoting behavior, (ii) increased volatility in the marketplace, and (iii) increased number of options products quoted on the Exchange has a significant impact on the total number of quotes sent each trading day, resulting in additional storage capacity. The Exchange believes this proposal will continue to reduce the potential for market participants to engage in excessive quoting behavior that would require the Exchange to increase its storage capacity and will encourage quotes to be made in good faith, while balancing the interests of Market Makers facing increased market volatility in recent days.

Recognizing that orders and executions often occur in large numbers, the purpose of this proposal is to continue to focus on activity that is truly disproportionate while fairly allocating costs. The proposal

[3] *See* Securities Exchange Act Release No. 91406 (March 24, 2021), 86 FR 16795 (March 31, 2021) (SR–EMERALD–2021–10) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Emerald Fee Schedule To Adopt an Excessive Quoting Fee).

[4] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[5] The term ''Market Maker'' refers to ''Lead Market Maker'' (''LMM''), ''Primary Lead Market Maker'' (''PLMM'') and ''Registered Market Maker'' (''RMM''), collectively. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[6] The term ''quote'' or ''quotation'' means a bid or offer entered by a Market Maker that is firm and may update the Market Maker's previous quote, if any. The Rules of the Exchange provide for the use of different types of quotes, including Standard quotes and eQuotes, as more fully described in Rule 517. A Market Maker may, at times, choose to have multiple types of quotes active in an individual option. *See* the Definitions Section of the Fee Schedule.

contemplates that a Market Maker would have to exceed the high threshold of 3.5 billion inbound quotes before that Market Maker would be charged the proposed fee on that particular trading day. The Exchange believes that it is in the interests of all Members and market participants who access the Exchange to not allow other market participants to exhaust System resources, but to encourage efficient usage of network capacity.

The Exchange notes that this concept is not new or novel.[7] The Exchange's proposal is not intended to raise revenue; rather, it is intended to encourage efficient quoting behavior so that market participants do not exhaust System resources while balancing the increase in quotes as a result of current market volatility.

The Exchange believes the proposal will continue to protect the integrity of the MIAX Emerald market and benefit all market participants of MIAX Emerald by ensuring that the Exchange's System is not overloaded from excessive quotes being sent to it each day. The Exchange notes that it provides Market Makers with daily reports, free of charge, which detail their quoting activity in order for those firms to be fully aware of the number of quotes they are sending to the Exchange. This allows firms to monitor if their quoting behavior is approaching the proposed 3.5 billion inbound quote limit.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(4) of the Act[9] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among its Members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act[10] in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general protects investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that its proposal is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers because it will continue to encourage efficient utilization of the Exchange's highly deterministic and transparent network architecture. The Exchange also believes the proposal will balance the interests of Market Makers sending quotes to the Exchange in light of extreme market volatility. The Exchange believes that unfettered usage of System capacity and network resource consumption can have a detrimental effect on all market participants who are potentially compelled to send quote messages to the Exchange on an unlimited basis, to the detriment of all other market participants who access and use the Exchange. Further, the proposed increase to the inbound quote limit will apply equally to all Market Makers who send quotes to the Exchange in excess of 3.5 billion inbound quotes on any particular trading day.

The Exchange believes that the proposal is not unfairly discriminatory due to the substantial quote limit that the proposal contemplates before the Excessive Quoting Fee is applied, as well as the normal Market Maker quote traffic that the Exchange has experienced since it began operations in March of 2019 and in light of recent extreme market volatility that has resulted in above average number of quotes being sent to the Exchange. The Exchange does not anticipate that any Market Maker will exceed the proposed 3.5 billion inbound quote limit and become subject to the proposed fee.

The Exchange further believes that its proposal is reasonable, equitably allocated and not unfairly discriminatory because it is not intended to raise revenue for the Exchange; rather, it is intended to ensure that Market Makers are using their quoting methodologies in the most efficient manner possible in light of the Exchange's highly deterministic and transparent infrastructure and in light of the recent increase in market volatility, resulting in more quotes being sent to the Exchange. The Exchange believes that the proposed increased quote limit is reasonable, equitably allocated and not unfairly discriminatory because this proposal will continue to reduce the potential for market participants to engage in excessive quoting behavior that would require the Exchange to increase its storage capacity and will continue to encourage quotes to be made in good faith. The Exchange notes that other exchanges have implemented similar fees and capacity type-limits in order to deter their firms from over-utilizing their trading systems and exhausting system resources, while encouraging the efficient usage of system resources.[11]

The Exchange therefore believes that the proposed increased inbound quote limit for the Excessive Quoting Fee appropriately reflects the benefits to different firms of being able to send quotes into the Exchange's System and facilitates the Commission's goal of ensuring that critical market infrastructure has ''levels of capacity, integrity, resiliency, availability, and security adequate to maintain their operational capability and promote the maintenance of fair and orderly markets.'' [12]

The Exchange will continue to review the quoting behavior of all firms on a regular basis to ensure that the inbound quote limit remains significantly higher than the average firm quoting behavior, while taking into account varying market conditions. The Exchange will continue to regularly monitor prevailing market conditions to ensure that the inbound quote limit is sufficiently flexible and could not inadvertently result in higher than anticipated fees being charged to firms that are providing liquidity in volatile, high volume markets. The Exchange does not want to discourage such liquidity provision and believes that it should be able to adjust the inbound quote limit on a monthly basis if need be.

[7] *See* Securities Exchange Act Release No. 60117 (June 16, 2009), 74 FR 30190 (June 24, 2009) (SR–AMEX–2009–25) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Schedule of Fees and Charges for Exchange Services by Adding a Ratio Threshold Fee); 64655 (June 13, 2011), 76 FR 35495 (June 17, 2011) (SR–AMEX–2011–37) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Amex Options Fee Schedule To Establish a New Fee Designed To Encourage Efficient Use of Bandwidth by ATP Firms and To Rename a Related Existing Fee); 53522 (March 20, 2006), 71 FR 14975 (March 24, 2006) (SR–ISE–2006–09) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Session/API Fees); 55941 (June 21, 2007), 72 FR 35535 (June 28, 2007) (SR–ISE–2007–36) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change as Modified by Amendment No. 1 Thereto Relating to API Fees); 84963 (December 26, 2018), 84 FR 830 (January 31, 2019) (SR–CboeBZX–2018–095) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the BZX Equities Fee Schedule).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78f(b)(5).

[11] *See supra* note 7.

[12] *See* Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72251 (December 5, 2014) (File No. S7–01–13) (Regulation SCI Adopting Release).

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.

Intra-Market Competition

The Exchange believes that the proposal does not put any market participants at a relative disadvantage compared to other market participants because the proposed increased quote limit will apply equally to all Market Makers who send quotes to the Exchange in excess of 3.5 billion inbound quotes on any particular trading day. The Exchange also believes that the proposed change neither favors nor penalizes one or more categories of market participants in a manner that would impose an undue burden on competition. Rather, the proposal seeks to benefit all market participants by encouraging the efficient utilization of the Exchange's highly deterministic and transparent network architecture while taking into account increased market volatility that may impact the number of quotes being sent to the Exchange by Market Makers. The Exchange does not anticipate that any Market Maker will exceed the proposed 3.5 billion inbound quote limit and become subject to the proposed fee. Accordingly, the Exchange believes that the proposed Excessive Quoting Fee does not favor certain categories of market participants in a manner that would impose a burden on competition.

Inter-Market Competition

The Exchange believes the proposal does not place an undue burden on competition on other self-regulatory organizations that is not necessary or appropriate because of the availability of numerous substitute options exchanges. There are 15 other options exchanges where market participants can become members and send quotes if they deem the 3.5 billion inbound quote limit to be too restrictive for their quoting behavior. In addition, the Exchange does not believe the proposal will impose any burden on inter-market competition as the proposal does not address any competitive issues; rather, it is intended to protect all market participants of MIAX Emerald by ensuring that the Exchange's System is not overloaded from excessive quotes being sent to it each day.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[13] and Rule 19b–4(f)(2)[14] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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–EMERALD–2022–09 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–EMERALD–2022–09. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EMERALD–2022–09 and should be submitted on or before April 1, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–05145 Filed 3–10–22; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR 240.19b–4(f)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94372; File No. SR–CboeBZX–2021–078]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Introduce a New Data Product To Be Known as the Short Volume Report

March 7, 2022.

I. Introduction

On November 17, 2021, Cboe BZX Exchange, Inc. (''BZX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 11.22(f) to introduce a new data product to be known as the Short Volume Report. The proposed rule change was published for comment in the **Federal Register** on

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

December 7, 2021.[3] On January 20, 2022, pursuant to Section 19(b)(2) of the Act,[4] 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 disapprove the proposed rule change.[5] This order institutes proceedings pursuant to Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change.

II. Description of and Comments on the Proposed Rule Change

A. Description of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 11.22(f) to provide for a new data product to be known as the Short Volume Report, which will be available for purchase to Members and non-Members.[7] Specifically, the Exchange proposes to describe the Short Volume Report as ''an end-of-day report that summarizes equity trading activity on the Exchange, including trade count and volume by symbol for buy, sell, sell short, and sell short exempt trades.'' [8] The Exchange proposes that the end-of-day report will include the following information: Trade date, symbol, total volume, buy volume, buy trade count, sell volume, sell trade count, sell short volume, sell short trade count, sell short exempt volume, and sell short exempt trade count.[9] The Exchange proposes that the Short Volume Report will be available on a monthly subscription basis.[10] The Exchange states subscribers will receive a daily end-of-day file that will be delivered after the conclusion of the After Hours Trading Session.[11]

In support of the proposal, the Exchange states that the proposed product includes substantially similar information as that included in comparable products offered on the Nasdaq Stock Market LLC (''Nasdaq'') and the New York Stock Exchange (''NYSE'') except that the Exchange proposes to also include buy and sell volume as well as trade counts for buy, sell, sell short, and sell short exempt volume.[12] The Exchange states that while the proposed product offers volume and trade counts which are not offered in the comparable NYSE and Nasdaq short sale volume reports, similar data is otherwise available or determinable in other NYSE data product offerings.[13] Specifically, the Exchange states that the NYSE Trade and Quote (''TAQ'') product provides trade and quote information for orders entered on the NYSE affiliated equity exchanges, which include buy, sell, and sell short volume.[14] Thus, according to the Exchange, subscribers to NYSE TAQ could determine volume and trade counts from such data.[15] Additionally, the Exchange states that the NYSE Monthly Short Sales report provides a record of every short sale transaction on NYSE during the month, which includes a size and short sale indicator.[16] Thus, according to the Exchange, subscribers to the NYSE Monthly Short Sales report could determine the sell short and sell short exempt volume and trade count, albeit on a monthly basis rather than a daily basis.[17]

The Exchange states that the additional data points will benefit market participants because they will allow market participants to better understand the changing risk environment on a daily basis.[18] The Exchange states that the proposed Short Volume Report would further broaden the availability of U.S. equity market data to investors, promoting increased transparency and better informed trading, specifically by allowing market participants to identify the source of selling pressure and whether it is long or short.[19]

B. Comments on the Proposed Rule Change

One commenter states that the proposed rule text and the Exchange's description of the content of the proposed Short Volume Report are unclear.[20] Specifically, the commenter states that the difference between ''total volume'' and ''buy volume'' is difficult to understand, ''since every trade always includes a buyer.'' [21] The commenter also states that the phrase ''buy and sell volume as well as trade counts for buy, sell, sell short, and sell short exempt volume'' is confusing, and questions how, for example, buy volume for sell short exempt trades and sell volume for short exempt trades would be any different.[22] The commenter states that in order to be sensible ''buy and sell volume'' must either mean simply ''trade volume'' or else it describes splitting out buyer and seller-initiated trade volume or total buy and sell order volume.[23] The commenter states that ''the public deserves to be told'' with greater clarity what data the proposed Short Volume Report contains and ''deserves a chance to comment before approval.'' [24] In addition, the commenter states that the proposal could involve the provision and sale of ''sensitive'' or ''regulatory'' data and could reveal ''quite a bit about who is doing what in the markets.'' [25]

This commenter also states that the data contained in the proposed Short Volume Report is substantially different from the data contained in products offered by other national securities exchanges, despite the Exchange's assertion that the proposed Short Volume Report is similar to those

[3] *See* Securities Exchange Act Release No. 93688 (December 1, 2021), 86 FR 69319 (''Notice''). The comment letters received on the proposed rule change are available on the Commission's website at: *https://www.sec.gov/comments/sr-cboebzx-2021-078/srcboebzx2021078.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 94010, 87 FR 4075 (January 26, 2022). The Commission designated March 7, 2022 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Notice, *supra* note 3, at 69320. The Exchange states that it intends to submit a separate rule filing to adopt fees for the Short Volume Report product. *See* Notice, *supra* note 3, at 69320.

[8] *See* proposed Rule 11.22(f).

[9] *See* Notice, *supra* note 3, at 69320.

[10] *See id.*

[11] Additionally, the Exchange proposes to make historical Short Volume Reports dating as far back as January 2, 2015 available for purchase on an ad hoc basis in monthly increments. According to the Exchange, the subscription files and historical files will include the same data points. *See id.*

[12] Specifically, the Exchange states that the Nasdaq daily short sale volume file reflects the aggregate number of shares executed on Nasdaq, Nasdaq BX, Inc. and Nasdaq PHLX LLC. According to the Exchange, the Nasdaq daily short volume report provides the following information: Trade date, symbol, volume during regular trading hours, and CTA market identifier. Additionally, the Exchange states that the NYSE Group Short Volume daily file reflects a summary of short sale volume for securities traded on NYSE, NYSE American LLC, NYSE Arca, Inc., NYSE National, Inc., and NYSE Chicago, Inc. According to the Exchange, the NYSE Group Short Volume product provides the following information: Trade date, symbol, short exempt volume, short volume, total volume all transactions, and market identifier. *See id.* at 69320–69321.

[13] *See id.* at 69321.

[14] *See id.*

[15] *See id.*

[16] *See id.*

[17] *See id.*

[18] *See id.*

[19] *See id.*

[20] Letter from R.T. Leuchtkafer to Vanessa Countryman, Secretary, Commission, dated December 27, 2021, at 2–3.

[21] *Id.* at 2.

[22] *Id.*

[23] *Id.* Specifically, the commenter states that ''the phrase 'buy and sell volume as well as trade counts for buy, sell, sell short, and sell short exempt volume' makes more sense if understood as (a) 'buy[er-initiated] and sell[er-initiated] volume as well as trade counts for buy, sell, sell short, and sell short exempt volume' or (b) 'buy [order] and sell [order] volume as well as trade counts for buy, sell, sell short, and sell short exempt volume.''' *Id.*

[24] *Id.* at 2–3. For example, the commenter states that listed companies and investors may want to comment to the extent that the proposed Short Volume Report is intended to convey to high frequency trading firms, on a daily basis for every stock, the level of aggressive short selling or short sale order volume. *Id.*

[25] *Id.* at 1, 5–6.

products.[26] Specifically, the commenter states that the Exchange's description of the NYSE TAQ data that it points to as precedent is inaccurate.[27] According to the commenter, contrary to the Exchange's statements in the proposal, the TAQ data does not contain information that would enable subscribers to determine short sale volume or trade counts.[28]

III. Proceedings To Determine Whether To Approve or Disapprove SR–CboeBZX–2021–078 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [29] to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposal. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[30] the Commission is providing notice of the grounds for disapproval under consideration. As described above, the Exchange has proposed to amend its rules to provide for a new data product to be known as the Short Volume Report. The Commission has received comment letters that express concerns regarding the content of the proposed Short Volume Report, including the clarity of the Exchange's description of the proposed product.

The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the consistency of the proposal with Section 6(b)(5) [31] of the Act. Section 6(b)(5) of the Act requires that the rules of a national securities exchange be designed, among other things, to promote just and equitable principles of 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

V. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their data, views, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of data, views, and arguments, the Commission will consider, pursuant to Rule 19b–4 under the Act,[32] any request for an opportunity to make an oral presentation.[33]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by April 1, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by April 15, 2022.

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, and any other issues raised by the proposed rule change under the Act. In particular, the Commission seeks commenters' views regarding whether the Exchange has adequately described the proposed new data product for the Commission to make a determination under Section 6(b)(5) of 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 No. SR–CboeBZX–2021–078 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 No. SR–CboeBZX–2021–078. 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. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-CboeBZX–2021–078 and should be submitted by April 1, 2022. Rebuttal comments should be submitted by April 15, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–05148 Filed 3–10–22; 8:45 am]

BILLING CODE 8011–01–P

[26] *Id.* at 2–4.

[27] *Id.* at 3–4.

[28] *Id.* This commenter also submitted a second comment letter which objects to certain redactions made to the commenter's first letter, stating that the redactions diminished the commenter's ''pointed criticism[s]'' of the Commission's performance in reviewing the proposal. *See* letter from R.T. Leuchtkafer to Vanessa Countryman, Secretary, Commission, dated January 4, 2022.

[29] 15 U.S.C. 78s(b)(2)(B).

[30] *Id.*

[31] 15 U.S.C. 78f(b)(5).

[32] 17 CFR 240.19b–4.

[33] Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29 (June 4, 1975), grants to the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[34] 17 CFR 200.30–3(a)(12); 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94369; File No. SR–CboeEDGX–2021–049]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Introduce a New Data Product To Be Known as the Short Volume Report

March 7, 2022.

I. Introduction

On November 17, 2021, Cboe EDGX Exchange, Inc. (''EDGX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 13.8(h) to introduce a new data product to be known as the Short Volume Report. The proposed rule change was published for comment in the **Federal Register** on December 7, 2021.[3] On January 20, 2022, pursuant to Section 19(b)(2) of the Act,[4] 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 disapprove the proposed rule change.[5] This order institutes proceedings pursuant to Section 19(b)(2)(B) of the Act [6] to determine whether to approve or disapprove the proposed rule change.

II. Description of and Comments on the Proposed Rule Change

A. Description of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 13.8(h) to provide for a new data product to be known as the Short Volume Report, which will be available for purchase to Members and non-Members.[7] Specifically, the Exchange proposes to describe the Short Volume Report as ''an end-of-day report that summarizes equity trading activity on the Exchange, including trade count and volume by symbol for buy, sell, sell short, and sell short exempt trades.'' [8] The Exchange proposes that the end-of-day report will include the following information: Trade date, symbol, total volume, buy volume, buy trade count, sell volume, sell trade count, sell short volume, sell short trade count, sell short exempt volume, and sell short exempt trade count.[9] The Exchange proposes that the Short Volume Report will be available on a monthly subscription basis.[10] The Exchange states subscribers will receive a daily end-of-day file that will be delivered after the conclusion of the Post-Closing Session.[11]

In support of the proposal, the Exchange states that the proposed product includes substantially similar information as that included in comparable products offered on the Nasdaq Stock Market LLC (''Nasdaq'') and the New York Stock Exchange (''NYSE'') except that the Exchange proposes to also include buy and sell volume as well as trade counts for buy, sell, sell short, and sell short exempt volume.[12] The Exchange states that while the proposed product offers volume and trade counts which are not offered in the comparable NYSE and Nasdaq short sale volume reports, similar data is otherwise available or determinable in other NYSE data product offerings.[13] Specifically, the Exchange states that the NYSE Trade and Quote (''TAQ'') product provides trade and quote information for orders entered on the NYSE affiliated equity exchanges, which include buy, sell, and sell short volume.[14] Thus, according to the Exchange, subscribers to NYSE TAQ could determine volume and trade counts from such data.[15] Additionally, the Exchange states that the NYSE Monthly Short Sales report provides a record of every short sale transaction on NYSE during the month, which includes a size and short sale indicator.[16] Thus, according to the Exchange, subscribers to the NYSE Monthly Short Sales report could determine the sell short and sell short exempt volume and trade count, albeit on a monthly basis rather than a daily basis.[17]

The Exchange states that the additional data points will benefit market participants because they will allow market participants to better understand the changing risk environment on a daily basis.[18] The Exchange states that the proposed Short Volume Report would further broaden the availability of U.S. equity market data to investors, promoting increased transparency and better informed trading, specifically by allowing market participants to identify the source of selling pressure and whether it is long or short.[19]

B. Comments on the Proposed Rule Change

One commenter states that the proposed rule text and the Exchange's description of the content of the proposed Short Volume Report are unclear.[20] Specifically, the commenter states that the difference between ''total volume'' and ''buy volume'' is difficult to understand, ''since every trade always includes a buyer.'' [21] The commenter also states that the phrase ''buy and sell volume as well as trade counts for buy, sell, sell short, and sell short exempt volume'' is confusing, and questions how, for example, buy volume for sell short exempt trades and sell volume for short exempt trades would be any different.[22] The commenter

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 93696 (December 1, 2021), 86 FR 69306 (''Notice''). The comment letters received on the proposed rule change are available on the Commission's website at: *https://www.sec.gov/comments/sr-cboeedgx-2021-049/srcboeedgx2021049.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 94008, 87 FR 4069 (January 26, 2022). The Commission designated March 7, 2022 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Notice, *supra* note 3, at 69306. The Exchange states that it intends to submit a separate rule filing to adopt fees for the Short Volume Report product. *See id.*

[8] *See* proposed Rule 13.8(h). In addition, the Exchange proposes to change the name of Rule 13.8 from ''EDGX Book Feeds'' to ''Data Products'' and add a preamble to Rule 13.8 to conform to Cboe BZX Exchange, Inc. and Cboe BYX Exchange, Inc. Rule 11.22. *See* Notice, *supra* note 3, at 69306–69307. Specifically, the Exchange proposes to add language stating: ''The Exchange offers the following data products free of charge, unless otherwise noted in the Exchange's fee schedule.'' *See id.* at 69307.

[9] *See id.* at 69306.

[10] *See id.*

[11] Additionally, the Exchange proposes to make historical Short Volume Reports dating as far back as January 2, 2015 available for purchase on an ad hoc basis in monthly increments. According to the Exchange, the subscription files and historical files will include the same data points. *See id.* at 69306–07.

[12] Specifically, the Exchange states that the Nasdaq daily short sale volume file reflects the aggregate number of shares executed on Nasdaq, Nasdaq BX, Inc. and Nasdaq PHLX LLC. According to the Exchange, the Nasdaq daily short volume report provides the following information: Trade date, symbol, volume during regular trading hours, and CTA market identifier. Additionally, the Exchange states that the NYSE Group Short Volume daily file reflects a summary of short sale volume for securities traded on NYSE, NYSE American LLC, NYSE Arca, Inc., NYSE National, Inc., and NYSE Chicago, Inc. According to the Exchange, the NYSE Group Short Volume product provides the following information: Trade date, symbol, short exempt volume, short volume, total volume all transactions, and market identifier. *See id.* at 69307.

[13] *See id.*

[14] *See id.*

[15] *See id.*

[16] *See id.*

[17] *See id.*

[18] *See id.*

[19] *See id.*

[20] Letter from R.T. Leuchtkafer to Vanessa Countryman, Secretary, Commission, dated December 27, 2021, at 2–3.

[21] *Id.* at 2.

[22] *Id.*

states that in order to be sensible ''buy and sell volume'' must either mean simply ''trade volume'' or else it describes splitting out buyer and seller-initiated trade volume or total buy and sell order volume.[23] The commenter states that ''the public deserves to be told'' with greater clarity what data the proposed Short Volume Report contains and ''deserves a chance to comment before approval.'' [24] In addition, the commenter states that the proposal could involve the provision and sale of ''sensitive'' or ''regulatory'' data and could reveal ''quite a bit about who is doing what in the markets.'' [25]

This commenter also states that the data contained in the proposed Short Volume Report is substantially different from the data contained in products offered by other national securities exchanges, despite the Exchange's assertion that the proposed Short Volume Report is similar to those products.[26] Specifically, the commenter states that the Exchange's description of the NYSE TAQ data that it points to as precedent is inaccurate.[27] According to the commenter, contrary to the Exchange's statements in the proposal, the TAQ data does not contain information that would enable subscribers to determine short sale volume or trade counts.[28]

Another commenter states that the proposal is ''worded in a way to convince regulators to change the name of the regulation in an attempt to conceal its actual meaning'' and that this ''further[s] various entities agendas to keep in the moment, pertinent public information hidden.'' [29]

[23] *Id.* Specifically, the commenter states that ''the phrase 'buy and sell volume as well as trade counts for buy, sell, sell short, and sell short exempt volume' makes more sense if understood as (a) 'buy[er-initiated] and sell[er-initiated] volume as well as trade counts for buy, sell, sell short, and sell short exempt volume' or (b) 'buy [order] and sell [order] volume as well as trade counts for buy, sell, sell short, and sell short exempt volume.' '' *Id.*

[24] *Id.* at 2–3. For example, the commenter states that listed companies and investors may want to comment to the extent that the proposed Short Volume Report is intended to convey to high frequency trading firms, on a daily basis for every stock, the level of aggressive short selling or short sale order volume. *Id.*

[25] *Id.* at 1, 5–6.

[26] *Id.* at 2–4.

[27] *Id.* at 3–4.

[28] *Id.* This commenter also submitted a second comment letter which objects to certain redactions made to the commenter's first letter, stating that the redactions diminished the commenter's ''pointed criticism[s]'' of the Commission's performance in reviewing the proposal. *See* letter from R.T. Leuchtkafer to Vanessa Countryman, Secretary, Commission, dated January 4, 2022.

[29] Letter from Sean McComiskie, dated February 11, 2022.

III. Proceedings To Determine Whether To Approve or Disapprove SR–CboeEDGX–2021–049 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [30] to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposal. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[31] the Commission is providing notice of the grounds for disapproval under consideration. As described above, the Exchange has proposed to amend its rules to provide for a new data product to be known as the Short Volume Report. The Commission has received comment letters that express concerns regarding the content of the proposed Short Volume Report, including the clarity of the Exchange's description of the proposed product.

The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the consistency of the proposal with Section 6(b)(5) [32] of the Act. Section 6(b)(5) of the Act requires that the rules of a national securities exchange be designed, among other things, to promote just and equitable principles of 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

V. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their data, views, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of data, views, and arguments, the Commission will consider, pursuant to Rule 19b–4 under the Act,[33] any request for an opportunity to make an oral presentation.[34]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by April 1, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by April 15, 2022.

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, and any other issues raised by the proposed rule change under the Act. In particular, the Commission seeks commenters' views regarding whether the Exchange has adequately described the proposed new data product for the Commission to make a determination under Section 6(b)(5) of 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 No. SR–CboeEDGX–2021–049 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 No. SR–CboeEDGX–2021–049. 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. The Commission will post all comments on the Commission's

[30] 15 U.S.C. 78s(b)(2)(B).

[31] *Id.*

[32] 15 U.S.C. 78f(b)(5).

[33] 17 CFR 240.19b–4.

[34] Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29 (June 4, 1975), grants to the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CboeEDGX–2021–049 and should be submitted by April 1, 2022. Rebuttal comments should be submitted by April 15, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–05146 Filed 3–10–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94367; File No. SR–CboeEDGA–2021–025]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Introduce a New Data Product To Be Known as the Short Volume Report

March 7, 2022.

I. Introduction

On November 17, 2021, Cboe EDGA Exchange, Inc. (''EDGA'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 13.8(h) to introduce a new data product to be known as the Short Volume Report. The proposed rule change was published for comment in the **Federal Register** on December 7, 2021.[3] On January 20, 2022, pursuant to Section 19(b)(2) of the Act,[4] 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 disapprove the proposed rule change.[5] This order institutes proceedings pursuant to Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change.

II. Description of and Comments on the Proposed Rule Change

A. Description of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 13.8(h) to provide for a new data product to be known as the Short Volume Report, which will be available for purchase to Members and non-Members.[7] Specifically, the Exchange proposes to describe the Short Volume Report as ''an end-of-day report that summarizes equity trading activity on the Exchange, including trade count and volume by symbol for buy, sell, sell short, and sell short exempt trades.''[8] The Exchange proposes that the end-of-day report will include the following information: Trade date, symbol, total volume, buy volume, buy trade count, sell volume, sell trade count, sell short volume, sell short trade count, sell short exempt volume, and sell short exempt trade count.[9] The Exchange proposes that the Short Volume Report will be available on a monthly subscription basis.[10] The Exchange states subscribers will receive a daily end-of-day file that will be delivered after the conclusion of the Post-Closing Session.[11]

In support of the proposal, the Exchange states that the proposed product includes substantially similar information as that included in comparable products offered on the Nasdaq Stock Market LLC (''Nasdaq'') and the New York Stock Exchange (''NYSE'') except that the Exchange proposes to also include buy and sell volume as well as trade counts for buy, sell, sell short, and sell short exempt volume.[12] The Exchange states that while the proposed product offers volume and trade counts which are not offered in the comparable NYSE and Nasdaq short sale volume reports, similar data is otherwise available or determinable in other NYSE data product offerings.[13] Specifically, the Exchange states that the NYSE Trade and Quote (''TAQ'') product provides trade and quote information for orders entered on the NYSE affiliated equity exchanges, which include buy, sell, and sell short volume.[14] Thus, according to the Exchange, subscribers to NYSE TAQ could determine volume and trade counts from such data.[15] Additionally, the Exchange states that the NYSE Monthly Short Sales report provides a record of every short sale transaction on NYSE during the month, which includes a size and short sale indicator.[16] Thus, according to the Exchange, subscribers to the NYSE Monthly Short Sales report could determine the sell short and sell short

[35] 17 CFR 200.30–3(a)(12); 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 93694 (December 1, 2021), 86 FR 69299 (''Notice''). The comment letters received on the proposed rule change are available on the Commission's website at: *https://www.sec.gov/comments/sr-cboeedga-2021-025/srcboeedga2021025.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 94007, 87 FR 4072 (January 26, 2022). The Commission designated March 7, 2022 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Notice, *supra* note 3, at 69299. The Exchange states that it intends to submit a separate rule filing to adopt fees for the Short Volume Report product. *See id.* at 69300.

[8] *See* proposed Rule 13.8(h). In addition, the Exchange proposes to change the name of Rule 13.8 from ''EDGA Book Feeds'' to ''Data Products'' and add a preamble to Rule 13.8 to conform to Cboe BZX Exchange, Inc. and Cboe BYX Exchange, Inc. Rule 11.22. *See* Notice, *supra* note 3, at 69299–69300. Specifically, the Exchange proposes to add language stating: ''The Exchange offers the following data products free of charge, unless otherwise noted in the Exchange's fee schedule.'' *See id.* at 69300.

[9] *See id.* at 69299.

[10] *See id.* at 69300.

[11] Additionally, the Exchange proposes to make historical Short Volume Reports dating as far back as January 2, 2015 available for purchase on an ad hoc basis in monthly increments. According to the Exchange, the subscription files and historical files will include the same data points. *See id.*

[12] Specifically, the Exchange states that the Nasdaq daily short sale volume file reflects the aggregate number of shares executed on Nasdaq, Nasdaq BX, Inc. and Nasdaq PHLX LLC. According to the Exchange, the Nasdaq daily short volume report provides the following information: Trade date, symbol, volume during regular trading hours, and CTA market identifier. Additionally, the Exchange states that the NYSE Group Short Volume daily file reflects a summary of short sale volume for securities traded on NYSE, NYSE American LLC, NYSE Arca, Inc., NYSE National, Inc., and NYSE Chicago, Inc. According to the Exchange, the NYSE Group Short Volume product provides the following information: Trade date, symbol, short exempt volume, short volume, total volume all transactions, and market identifier. *See id.*

[13] *See id.*

[14] *See id.*

[15] *See id.*

[16] *See id.*

exempt volume and trade count, albeit on a monthly basis rather than a daily basis.[17]

The Exchange states that the additional data points will benefit market participants because they will allow market participants to better understand the changing risk environment on a daily basis.[18] The Exchange states that the proposed Short Volume Report would further broaden the availability of U.S. equity market data to investors, promoting increased transparency and better informed trading, specifically by allowing market participants to identify the source of selling pressure and whether it is long or short.[19]

B. Comments on the Proposed Rule Change

One commenter states that the proposed rule text and the Exchange's description of the content of the proposed Short Volume Report are unclear.[20] Specifically, the commenter states that the difference between ''total volume'' and ''buy volume'' is difficult to understand, ''since every trade always includes a buyer.'' [21] The commenter also states that the phrase ''buy and sell volume as well as trade counts for buy, sell, sell short, and sell short exempt volume'' is confusing, and questions how, for example, buy volume for sell short exempt trades and sell volume for short exempt trades would be any different.[22] The commenter states that in order to be sensible ''buy and sell volume'' must either mean simply ''trade volume'' or else it describes splitting out buyer and seller-initiated trade volume or total buy and sell order volume.[23] The commenter states that ''the public deserves to be told'' with greater clarity what data the proposed Short Volume Report contains and ''deserves a chance to comment before approval.'' [24] In addition, the commenter states that the proposal could involve the provision and sale of ''sensitive'' or ''regulatory'' data and could reveal ''quite a bit about who is doing what in the markets.'' [25]

This commenter also states that the data contained in the proposed Short Volume Report is substantially different from the data contained in products offered by other national securities exchanges, despite the Exchange's assertion that the proposed Short Volume Report is similar to those products.[26] Specifically, the commenter states that the Exchange's description of the NYSE TAQ data that it points to as precedent is inaccurate.[27] According to the commenter, contrary to the Exchange's statements in the proposal, the TAQ data does not contain information that would enable subscribers to determine short sale volume or trade counts.[28]

III. Proceedings To Determine Whether To Approve or Disapprove SR–CboeEDGA–2021–025 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [29] to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposal. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[30] the Commission is providing notice of the grounds for disapproval under consideration. As described above, the Exchange has proposed to amend its rules to provide for a new data product to be known as the Short Volume Report. The Commission has received comment letters that express concerns regarding the content of the proposed Short Volume Report, including the clarity of the Exchange's description of the proposed product.

The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the consistency of the proposal with Section 6(b)(5) [31] of the Act. Section 6(b)(5) of the Act requires that the rules of a national securities exchange be designed, among other things, to promote just and equitable principles of 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

V. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their data, views, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of data, views, and arguments, the Commission will consider, pursuant to Rule 19b–4 under the Act,[32] any request for an opportunity to make an oral presentation.[33]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by April 1, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by April 15, 2022.

The Commission asks that commenters address the sufficiency of

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[17] *See id.*

[18] *See id.*

[19] *See id.*

[20] Letter from R.T. Leuchtkafer to Vanessa Countryman, Secretary, Commission, dated December 27, 2021, at 2–3.

[21] *Id.* at 2.

[22] *Id.*

[23] *Id.* Specifically, the commenter states that ''the phrase 'buy and sell volume as well as trade counts for buy, sell, sell short, and sell short exempt volume' makes more sense if understood as (a) 'buy[er-initiated] and sell[er-initiated] volume as well as trade counts for buy, sell, sell short, and sell short exempt volume' or (b) 'buy [order] and sell [order] volume as well as trade counts for buy, sell, sell short, and sell short exempt volume.' '' *Id.*

[24] *Id.* at 2–3. For example, the commenter states that listed companies and investors may want to comment to the extent that the proposed Short Volume Report is intended to convey to high frequency trading firms, on a daily basis for every stock, the level of aggressive short selling or short sale order volume. *Id.*

[25] *Id.* at 1, 5–6.

[26] *Id.* at 2–4.

[27] *Id.* at 3–4.

[28] *Id.* This commenter also submitted a second comment letter which objects to certain redactions made to the commenter's first letter, stating that the redactions diminished the commenter's ''pointed criticism[s]'' of the Commission's performance in reviewing the proposal. *See* letter from R.T. Leuchtkafer to Vanessa Countryman, Secretary, Commission, dated January 4, 2022.

[29] 15 U.S.C. 78s(b)(2)(B).

[30] *Id.*

[31] 15 U.S.C. 78f(b)(5).

[32] 17 CFR 240.19b–4.

[33] Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29 (June 4, 1975), grants to the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

the Exchange's statements in support of the proposal, and any other issues raised by the proposed rule change under the Act. In particular, the Commission seeks commenters' views regarding whether the Exchange has adequately described the proposed new data product for the Commission to make a determination under Section 6(b)(5) of 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 No. SR–CboeEDGA–2021–025 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 No. SR–CboeEDGA–2021–025. 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. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CboeEDGA–2021–025 and should be submitted by April 1, 2022. Rebuttal comments should be submitted by April 15, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–05144 Filed 3–10–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94373; File No. SR–CboeBYX–2021–028]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Introduce a New Data Product To Be Known as the Short Volume Report

March 7, 2022.

I. Introduction

On November 22, 2021, Cboe BYX Exchange, Inc. (''BYX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 11.22(f) to introduce a new data product to be known as the Short Volume Report. The proposed rule change was published for comment in the **Federal Register** on December 7, 2021.[3] On January 20, 2022, pursuant to Section 19(b)(2) of the Act,[4] 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 disapprove the proposed rule change.[5] This order institutes proceedings pursuant to Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change.

II. Description of and Comments on the Proposed Rule Change

A. Description of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 11.22(f) to provide for a new data product to be known as the Short Volume Report, which will be available for purchase to Members and non-Members.[7] Specifically, the Exchange proposes to describe the Short Volume Report as ''an end-of-day report that summarizes equity trading activity on the Exchange, including trade count and volume by symbol for buy, sell, sell short, and sell short exempt trades.''[8] The Exchange proposes that the end-of-day report will include the following information: Trade date, symbol, total volume, buy volume, buy trade count, sell volume, sell trade count, sell short volume, sell short trade count, sell short exempt volume, and sell short exempt trade count.[9] The Exchange proposes that the Short Volume Report will be available on a monthly subscription basis.[10] The Exchange states subscribers will receive a daily end-of-day file that will be delivered after the conclusion of the After Hours Trading Session.[11]

In support of the proposal, the Exchange states that the proposed product includes substantially similar information as that included in comparable products offered on the Nasdaq Stock Market LLC (''Nasdaq'') and the New York Stock Exchange (''NYSE'') except that the Exchange proposes to also include buy and sell volume as well as trade counts for buy, sell, sell short, and sell short exempt volume.[12] The Exchange states that

[34] 17 CFR 200.30–3(a)(12); 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 93689 (December 1, 2021), 86 FR 69335 (''Notice''). The comment letters received on the proposed rule change are available on the Commission's website at: *https://www.sec.gov/comments/sr-cboebyx-2021-028/srcboebyx2021028.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 94009, 87 FR 4098 (January 26, 2022). The Commission designated March 7, 2022 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Notice, *supra* note 3, at 69335. The Exchange states that it intends to submit a separate rule filing to adopt fees for the Short Volume Report product. *See* Notice, *supra* note 3, at 69336.

[8] *See* proposed Rule 11.22(f).

[9] *See* Notice, *supra* note 3, at 69336.

[10] *See id.*

[11] Additionally, the Exchange proposes to make historical Short Volume Reports dating as far back as January 2, 2015 available for purchase on an ad hoc basis in monthly increments. According to the Exchange, the subscription files and historical files will include the same data points. *See id.*

[12] Specifically, the Exchange states that the Nasdaq daily short sale volume file reflects the aggregate number of shares executed on Nasdaq, Nasdaq BX, Inc. and Nasdaq PHLX LLC. According to the Exchange, the Nasdaq daily short volume report provides the following information: Trade date, symbol, volume during regular trading hours, and CTA market identifier. Additionally, the Exchange states that the NYSE Group Short Volume daily file reflects a summary of short sale volume for securities traded on NYSE, NYSE American LLC, NYSE Arca, Inc., NYSE National, Inc., and NYSE Chicago, Inc. According to the Exchange, the NYSE Group Short Volume product provides the following information: Trade date, symbol, short exempt volume, short volume, total volume all transactions, and market identifier. *See id.*

while the proposed product offers volume and trade counts which are not offered in the comparable NYSE and Nasdaq short sale volume reports, similar data is otherwise available or determinable in other NYSE data product offerings.[13] Specifically, the Exchange states that the NYSE Trade and Quote (''TAQ'') product provides trade and quote information for orders entered on the NYSE affiliated equity exchanges, which include buy, sell, and sell short volume.[14] Thus, according to the Exchange, subscribers to NYSE TAQ could determine volume and trade counts from such data.[15] Additionally, the Exchange states that the NYSE Monthly Short Sales report provides a record of every short sale transaction on NYSE during the month, which includes a size and short sale indicator.[16] Thus, according to the Exchange, subscribers to the NYSE Monthly Short Sales report could determine the sell short and sell short exempt volume and trade count, albeit on a monthly basis rather than a daily basis.[17]

The Exchange states that the additional data points will benefit market participants because they will allow market participants to better understand the changing risk environment on a daily basis.[18] The Exchange states that the proposed Short Volume Report would further broaden the availability of U.S. equity market data to investors, promoting increased transparency and better informed trading, specifically by allowing market participants to identify the source of selling pressure and whether it is long or short.[19]

B. Comments on the Proposed Rule Change

One commenter states that the proposed rule text and the Exchange's description of the content of the proposed Short Volume Report are unclear.[20] Specifically, the commenter states that the difference between ''total volume'' and ''buy volume'' is difficult to understand, ''since every trade always includes a buyer.'' [21] The commenter also states that the phrase ''buy and sell volume as well as trade counts for buy, sell, sell short, and sell short exempt volume'' is confusing, and questions how, for example, buy volume for sell short exempt trades and sell volume for short exempt trades would be any different.[22] The commenter states that in order to be sensible ''buy and sell volume'' must either mean simply ''trade volume'' or else it describes splitting out buyer and seller-initiated trade volume or total buy and sell order volume.[23] The commenter states that ''the public deserves to be told'' with greater clarity what data the proposed Short Volume Report contains and ''deserves a chance to comment before approval.'' [24] In addition, the commenter states that the proposal could involve the provision and sale of ''sensitive'' or ''regulatory'' data and could reveal ''quite a bit about who is doing what in the markets.'' [25]

This commenter also states that the data contained in the proposed Short Volume Report is substantially different from the data contained in products offered by other national securities exchanges, despite the Exchange's assertion that the proposed Short Volume Report is similar to those products.[26] Specifically, the commenter states that the Exchange's description of the NYSE TAQ data that it points to as precedent is inaccurate.[27] According to the commenter, contrary to the Exchange's statements in the proposal, the TAQ data does not contain information that would enable subscribers to determine short sale volume or trade counts.[28]

III. Proceedings To Determine Whether To Approve or Disapprove SR–CboeBYX–2021–028 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [29] to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposal. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[30] the Commission is providing notice of the grounds for disapproval under consideration. As described above, the Exchange has proposed to amend its rules to provide for a new data product to be known as the Short Volume Report. The Commission has received comment letters that express concerns regarding the content of the proposed Short Volume Report, including the clarity of the Exchange's description of the proposed product.

The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the consistency of the proposal with Section 6(b)(5) [31] of the Act. Section 6(b)(5) of the Act requires that the rules of a national securities exchange be designed, among other things, to promote just and equitable principles of 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

V. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their data, views, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the

[13] *See id.*

[14] *See id.*

[15] *See id.*

[16] *See id.*

[17] *See id.*

[18] *See id.*

[19] *See id.*

[20] Letter from R.T. Leuchtkafer to Vanessa Countryman, Secretary, Commission, dated December 27, 2021, at 2–3.

[21] *Id.* at 2.

[22] *Id.*

[23] *Id.* Specifically, the commenter states that ''the phrase 'buy and sell volume as well as trade counts for buy, sell, sell short, and sell short exempt volume' makes more sense if understood as (a) 'buy[er-initiated] and sell[er-initiated] volume as well as trade counts for buy, sell, sell short, and sell short exempt volume' or (b) 'buy [order] and sell [order] volume as well as trade counts for buy, sell, sell short, and sell short exempt volume.' '' *Id.*

[24] *Id.* at 2–3. For example, the commenter states that listed companies and investors may want to comment to the extent that the proposed Short Volume Report is intended to convey to high frequency trading firms, on a daily basis for every stock, the level of aggressive short selling or short sale order volume. *Id.*

[25] *Id.* at 1, 5–6.

[26] *Id.* at 2–4.

[27] *Id.* at 3–4.

[28] *Id.* This commenter also submitted a second comment letter which objects to certain redactions made to the commenter's first letter, stating that the redactions diminished the commenter's ''pointed criticism[s]'' of the Commission's performance in reviewing the proposal. *See* letter from R.T. Leuchtkafer to Vanessa Countryman, Secretary, Commission, dated January 4, 2022.

[29] 15 U.S.C. 78s(b)(2)(B).

[30] *Id.*

[31] 15 U.S.C. 78f(b)(5).

proposed rule change is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of data, views, and arguments, the Commission will consider, pursuant to Rule 19b–4 under the Act,[32] any request for an opportunity to make an oral presentation.[33]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by April 1, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by April 15, 2022.

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, and any other issues raised by the proposed rule change under the Act. In particular, the Commission seeks commenters' views regarding whether the Exchange has adequately described the proposed new data product for the Commission to make a determination under Section 6(b)(5) of 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 No. SR–CboeBYX–2021–028 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 No. SR–CboeBYX–2021–028. 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. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CboeBYX–2021–028 and should be submitted by April 1, 2022. Rebuttal comments should be submitted by April 15, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–05149 Filed 3–10–22; 8:45 am]

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[32] 17 CFR 240.19b–4.

[33] Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29 (June 4, 1975), grants to the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[34] 17 CFR 200.30–3(a)(12); 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94374; File No. SR–CboeBZX–2022–017]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change Relating to Amend BZX Rule 11.17, Clearly Erroneous Executions

March 7, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 7, 2022, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (''BZX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (the ''Commission'') a proposed rule change to amend BZX Rule 11.17, Clearly Erroneous Executions. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend BZX Rule 11.17, Clearly Erroneous Executions. Specifically, the Exchange proposes to: (1) Make the current clearly erroneous pilot program permanent; and (2) limit the circumstances where clearly erroneous review would continue to be available during Regular Trading Hours,[3] when the LULD Plan to Address Extraordinary Market Volatility (the ''LULD Plan'')[4] already provides similar protections for trades occurring at prices that may be deemed erroneous. The Exchange believes that these changes are appropriate as the LULD Plan has been approved by the Commission on a

[3] The term ''Regular Trading Hours'' means the time between 9:30 a.m. and 4:00 p.m. Eastern Time. *See* BZX Rule 1.5(w).

[4] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012).

permanent basis,[5] and in light of amendments to the LULD Plan, including changes to the applicable Price Bands [6] around the open and close of trading.

Proposal To Make the Clearly Erroneous Pilot Permanent

On September 10, 2010, the Commission approved, on a pilot basis, changes to BZX Rule 11.17 that, among other things: (i) Provided for uniform treatment of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (ii) reduced the ability of the Exchange to deviate from the objective standards set forth in the rule.[7] In 2013, the Exchange adopted a provision designed to address the operation of the LULD Plan.[8] Finally, in 2014, the Exchange adopted two additional provisions providing that: (i) A series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information resulting in a severe valuation error for all such transactions; and (ii) in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of an Exchange, another SRO, or responsible single plan processor in connection with the transmittal or receipt of a trading halt, an Officer, acting on his or her own motion, shall nullify any transaction that occurs after a trading halt has been declared by the primary listing market for a security and before such trading halt has officially ended according to the primary listing market.[9] These changes are currently scheduled to operate for a pilot period that would end at the close of business on April 20, 2022.[10]

When it originally approved the clearly erroneous pilot, the Commission explained that the changes were ''being implemented on a pilot basis so that the Commission and the Exchanges can monitor the effects of the pilot on the markets and investors, and consider appropriate adjustments, as necessary.'' [11] In the 12 years since that time, the Exchange and other national securities exchanges have gained considerable experience in the operation of the rule, as amended on a pilot basis. Based on that experience, the Exchange believes that the program should be allowed to continue on a permanent basis so that equities market participants and investors can benefit from the increased certainty provided by the amended rule.

The clearly erroneous pilot was implemented following a severe disruption in the U.S. equities markets on May 6, 2010 (''Flash Crash'') to ''provide greater transparency and certainty to the process of breaking trades.'' [12] Largely, the pilot reduced the discretion of the Exchange, other national securities exchanges, and Financial Industry Regulatory Authority (''FINRA'') to deviate from the objective standards in their respective rules when dealing with potentially erroneous transactions. The pilot has thus helped afford greater certainty to Members and investors about when trades will be deemed erroneous pursuant to self-regulatory organization (''SRO'') rules, and has provided a more transparent process for conducting such reviews. The Exchange proposes to make the current pilot permanent so that market participants can continue to benefit from the increased certainty afforded by the current rule.

Amendments to the Clearly Erroneous Rules

When the Participants to the LULD Plan filed to introduce the Limit Up-Limit Down (''LULD'') mechanism, itself a response to the Flash Crash, a handful of commenters noted the potential discordance between the clearly erroneous rules and the Price Bands used to limit the price at which trades would be permitted to be executed pursuant to the LULD Plan. For example, two commenters requested that the clearly erroneous rules be amended so the presumption would be that trades executed within the Price Bands would not be not subject to review.[13] While the Participants acknowledged that the potential to prevent clearly erroneous executions would be a ''key benefit'' of the LULD Plan, the Participants decided not to amend the clearly erroneous rules at that time.[14] In the years since, industry feedback has continued to reflect a desire to eliminate the discordance between the LULD mechanism and the clearly erroneous rules so that market participants would have more certainty that trades executed with the Price Bands would stand. For example, the Equity Market Structure Advisory Committee (''EMSAC'') Market Quality Subcommittee included in its April 19, 2016 status report a preliminary recommendation that clearly erroneous rules be amended to conform to the Price Bands—*i.e.,* ''any trade that takes place within the band would stand and not be broken and trades outside the LU/LD bands would be eligible for the consideration of the Clearly Erroneous rules.'' [15]

The Exchange believes that it is important for there to be some mechanism to ensure that investors' orders are either not executed at clearly erroneous prices, or are subsequently busted as needed to maintain a fair and orderly market. At the same time, the Exchange believes that the LULD Plan, as amended, would provide sufficient protection for trades executed during Regular Trading Hours. Indeed, the LULD mechanism could be considered to offer superior protection as it prevents potentially erroneous trades from being executed in the first instance. After gaining experience with the LULD Plan, the Exchange now believes that it is appropriate to largely eliminate clearly erroneous review during Regular Trading Hours when Price Bands are in effect. Thus, as proposed, trades executed within the Price Bands would stand, barring one of a handful of identified scenarios where such review may still be necessary for the protection of investors. The Exchange believes that this change would be beneficial for the U.S. equities markets as it would ensure that trades executed within the Price Bands are subject to clearly erroneous review in only rare circumstances, resulting in greater certainty for Members and investors.

The current LULD mechanism for addressing extraordinary market volatility is available solely during Regular Trading Hours. Thus, trades

[5] *See* Securities Exchange Act Release No. 84843 (December 18, 2018), 83 FR 66464 (December 26, 2018) (''Notice''); 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (File No. 4–631) (''Amendment Eighteen'').

[6] ''Price Bands'' refers to the term provided in Section V of the LULD Plan.

[7] *See* Securities Exchange Act Release No. 62886 (Sept. 10, 2010), 75 FR 56613 (Sept. 16, 2010) (SR–BATS–2010–016).

[8] *See* Securities Exchange Act Release No. 68797 (Jan. 31, 2013), 78 FR 8635 (Feb. 6, 2013) (SR–BATS–2013–008).

[9] *See* Securities Exchange Act Release No. 72434 (June 19, 2014), 79 FR 36110 (June 25, 2014) (SR–BATS–2014–014).

[10] *See* Securities Exchange Act Release No. 93342 (October 15, 2021), 86 FR 58332 (October 21, 2021) (SR–CboeBZX–2021–070).

[11] *See* Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–BATS–2010–016).

[12] *Id.*

[13] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4–631) (n. 33505).

[14] *Id.*

[15] *See* EMSAC Market Quality Subcommittee, Recommendations for Rulemaking on Issues of Market Quality (November 29, 2016), available at *https://www.sec.gov/spotlight/emsac/emsac-recommendations-rulemaking-market-quality.pdf.*

during the Exchange's Early Trading,[16] Pre-Opening,[17] or After Hours Sessions [18] would not benefit from this protection, and could ultimately be executed at prices that may be considered erroneous. For this reason, the Exchange proposes that transactions executed during the Early Trading, Pre-Opening, or After Hours Sessions would continue to be reviewable as clearly erroneous. Continued availability of the clearly erroneous rule during pre- and post-market trading sessions would therefore ensure that investors have appropriate recourse when erroneous trades are executed outside of the hours where similar protection can be provided by the LULD Plan. Further, the proposal is designed to eliminate the potential discordance between clearly erroneous review and LULD Price Bands, which does not exist outside of Regular Trading Hours because the LULD Plan is not in effect. Thus, the Exchange believes that it is appropriate to continue to allow transactions to be eligible for clearly erroneous review if executed outside of Regular Trading Hours.

On the other hand, there would be much more limited potential to request that a transaction be reviewed as potentially erroneous during Regular Trading Hours. With the introduction of the LULD mechanism in 2013, clearly erroneous trades are largely prevented by the requirement that trades be executed within the Price Bands. In addition, in 2019, Amendment Eighteen to the LULD Plan eliminated double-wide Price Bands: (1) At the Open, and (2) at the Close for Tier 2 NMS Stocks 2 with a Reference Price above $3.00.[19] Due to these changes, the Exchange believes that the Price Bands would provide sufficient protection to investor orders such that clearly erroneous review would no longer be necessary during Regular Trading Hours. As the Participants to the LULD Plan explained in Amendment Eighteen: ''Broadly, the Limit Up-Limit Down mechanism prevents trades from happening at prices where one party to the trade would be considered 'aggrieved,' and thus could be viewed as an appropriate mechanism to supplant clearly erroneous rules.'' While the Participants also expressed concern that the Price Bands might be too wide to afford meaningful protection around the open and close of trading, amendments to the LULD Plan adopted in Amendment Eighteen narrowed Price Bands at these times in a manner that the Exchange believes is sufficient to ensure that investors' orders would be appropriately protected in the absence of clearly erroneous review. The Exchange therefore believes that it is appropriate to rely on the LULD mechanism as the primary means of preventing clearly erroneous trades during Regular Trading Hours.

At the same time, the Exchange is cognizant that there may be limited circumstances where clearly erroneous review may continue to be appropriate, even during Regular Trading Hours. Thus, the Exchange proposes to amend its clearly erroneous rules to enumerate the specific circumstances where such review would remain available during the course of Regular Trading Hours, as follows. All transactions that fall outside of these specific enumerated exceptions would be ineligible for clearly erroneous review.

First, pursuant to proposed paragraph (c)(1)(A), a transaction executed during Regular Trading Hours would continue to be eligible for clearly erroneous review if the transaction is not subject to the LULD Plan. In such case, the Numerical Guidelines set forth in paragraph (c)(2) of Rule 11.17 will be applicable to such NMS Stock. While the majority of securities traded on the Exchange would be subject to the LULD Plan, certain equity securities, such as rights and warrants, are explicitly excluded from the provisions of the LULD Plan and would therefore be eligible for clearly erroneous review instead.[20] Similarly, there are instances, such as the opening auction on the primary listing market,[21] where transactions are not ordinarily subject to the LULD Plan, or circumstances where a transaction that ordinarily would have been subject to the LULD Plan is not—due, for example, to some issue with processing the Price Bands. These transactions would continue to be eligible for clearly erroneous review, effectively ensuring that such review remains available as a backstop when the LULD Plan would not prevent executions from occurring at erroneous prices in the first instance.

Second, investors would also continue to be able to request review of transactions that resulted from certain systems issues pursuant to proposed paragraphs (c)(1)(B) and (c)(1)(C). In each case, these limited exceptions would help to ensure that trades that should not have been executed would continue to be subject to clearly erroneous review. Specifically, as proposed, transactions executed during Regular Trading Hours would be eligible for clearly erroneous review pursuant to proposed paragraph (c)(1)(B) if the transaction involves a disruption or malfunction in the operation of any electronic communications and trading facilities of the Exchange pursuant to BZX Rule 11.17(f). A transaction subject to review pursuant to this paragraph shall be found to be clearly erroneous if the price of the transaction to buy (sell) that is the subject of the complaint is greater than (less than) the Reference Price, described in paragraph (d) below, by an amount that equals or exceeds the applicable Percentage Parameter defined in Appendix A to the LULD Plan (''Percentage Parameters''). Similarly, transactions executed during Regular Trading Hours would remain eligible for clearly erroneous review pursuant to proposed paragraph (c)(1)(C) if a transaction is the result of an Exchange technology or systems issue that results in the transaction occurring outside of the applicable Price Bands pursuant to BZX Rule 11.17(h) or if the transaction is executed after the primary listing market for the security declares a regulatory trading halt, suspension, or pause pursuant to BZX Rule 11.17(j). In such case, the Percentage Parameters will be applicable to such transactions.[22]

Third, the Exchange proposes to narrowly allow for the review of transactions during Regular Trading Hours when the Reference Price, described in proposed paragraph (d), is determined to be erroneous by an Officer of the Exchange. Specifically, pursuant to proposed paragraph (c)(1)(D), a transaction that involved, in the case of (1) a corporate action or new issue or (2) a security that enters a Trading Pause pursuant to LULD and resumes trading without an auction,[23] a Reference Price that is determined to be erroneous by an Officer of the Exchange,

[16] The term ''Early Trading Session'' means the time between 7:00 a.m. and 8:00 a.m. Eastern Time. *See* BZX Rule 1.5(ee).

[17] The term ''Pre-Opening Session'' means the time between 8:00 a.m. and 9:30 a.m. Eastern Time. *See* BZX Rule 1.5(r).

[18] The term ''After Hours Trading Session'' means the time between 4:00 p.m. and 8:00 p.m. Eastern Time. *See* BZX Rule 1.5(c).

[19] *See* Amendment Eighteen, supra note 5.

[20] *See* Appendix A of the LULD Plan.

[21] The initial Reference Price used to calculate Price Bands is typically set by the Opening Price on the primary listing market. *See* Section V(B) of the LULD Plan.

[22] Such transactions similarly involve the execution of trades that should have been prevented but were not properly prevented due to a disruption or malfunction in the operation of the electronic communications and trading facilities of the Exchange, another market center or responsible single plan processor.

[23] The Exchange notes that the ''resumption of trading without an auction'' provision of the proposed rule text applies only to securities that enter a Trading Pause pursuant to LULD and does not apply to a corporate action or new issue.

the transaction will be reviewable as clearly erroneous. In such circumstances, the Exchange may use a different Reference Price pursuant to proposed paragraph (d)(2) of this Rule. A transaction subject to review pursuant to this paragraph shall be found to be clearly erroneous if the price of the transaction to buy (sell) that is the subject of the complaint is greater than (less than) the new Reference Price, described in paragraph (d)(2), by an amount that equals or exceeds the applicable Numerical Guidelines or Percentage Parameters. Specifically, the Percentage Parameters would apply to all transactions except those in an NMS Stock that is not subject to the LULD Plan, as described in paragraph (c)(1)(A).

In the context of a corporate action or a new issue, there may be instances where the security's Reference Price is later determined by the Exchange to be erroneous (*e.g.,* because of a bad first trade for a new issue), and subsequent LULD Price Bands are calculated from that incorrect Reference Price. In determining whether the Reference Price is erroneous in such instances, the Exchange would generally look at the theoretical price for the security as the correct Reference Price. For a corporate action, the theoretical price would be derived from a mathematical formula using the prior day's close and then applying the ratio for the corporate action. For a new issue, the theoretical price would likewise be derived from the valuation of the new issue. If the new issue is an uplift from the OTC markets, the theoretical price would be the prior day's close on the OTC market. In the foregoing instances, the theoretical price of the security would be used as the new Reference Price when applying the Percentage Parameters under the LULD Plan (or Numerical Guidelines if the transaction is in an NMS Stock that is not subject to the LULD Plan) to determine whether executions would be cancelled as clearly erroneous.

The following illustrate the proposed application of the rule in the context of a corporate action or new issue:

Example 1

1. ABCD is subject to a corporate action, 1 for 10 reverse split, and the previous day close was $5, but the new theoretical price based on the terms of the corporate action is $50
2. The security opens at $5, with LULD bands at $4.50 × $5.50
3. The bands will be calculated correctly but the security is trading at an erroneous price based on the valuation of the remaining outstanding shares
4. The theoretical price of $50 would be used as the new Reference Price when applying LULD bands to determine if executions would be cancelled as clearly erroneous

Example 2

1. ABCD is subject to a corporate action, the company is doing a spin off where a new issue will be listed, BCDE. ABCD trades at $50, and the spinoff company is worth ⅕ of ABCD
2. BCDE opens at $50 in the belief it is the same company as ABCD
3. The theoretical values of the two companies are ABCD $40 and BCDE $10
4. BCDE would be deemed to have had an incorrect Reference Price and the theoretical value of $10 would be used as the new Reference Price when applying the LULD Bands to determine if executions would be cancelled as clearly erroneous

Example 3

1. ABCD is an uplift from the OTC market, the prior days close on the OTC market was $20
2. ABCD opens trading on the new listing exchange at $0.20 due to an erroneous order entry
3. The new Reference Price to determine clearly erroneous executions would be $20, the theoretical value of the stock from where it was last traded

In the context of the rare situation in which a security that enters a LULD Trading Pause and resumes trading without an auction (*i.e.,* reopens with quotations), the LULD Plan requires that the new Reference Price in this instance be established by using the mid-point of the best bid and offer (''BBO'') on the primary listing exchange at the reopening time.[24] This can result in a Reference Price and subsequent LULD Price Band calculation that is significantly away from the security's last traded or more relevant price, especially in less liquid names. In such rare instances, the Exchange is proposing to use a different Reference Price that is based on the prior LULD Band that triggered the Trading Pause, rather than the midpoint of the BBO.

The following example illustrates the proposed application of the rule in the context of a security that reopens without an auction:

Example 4

1. ABCD stock is trading at $20, with LULD Bands at $18 × $22.
2. An incoming buy order causes the stock to enter a Limit State pursuant to the LULD Plan and then a Trading Pause at $22.
3. During the Trading Pause, the buy order causing the Trading Pause is cancelled.
4. At the end of the 5 minute halt, there is no crossed interest for an auction to occur, thus trading would resume on a quote.
5. Upon resumption, the quote available is widely set at $10 × $90.
6. The Reference Price upon resumption is $50 (mid-point of BBO).
7. The SIP will use this Reference Price and publish LULD Bands of $45 × $55 (*i.e.,* far away from BBO prior to the halt).
8. The bands will be calculated correctly, but the $50 Reference Price is subsequently determined to be incorrect as the price clearly deviated from where it previously traded prior to the Trading Pause.
9. The new Reference Price would be $22 (*i.e.,* the last effective Price Band that was in a Limit State before the Trading Pause pursuant to the LULD Plan), and the LULD Bands would be applied to determine if the executions should be cancelled as clearly erroneous.

In all of the foregoing situations, investors would be left with no remedy to request clearly erroneous review without the proposed carveouts in paragraph (c)(1)(D) because the trades occurred within the LULD Price Bands (albeit LULD Price Bands that were calculated from an erroneous Reference Price). The Exchange believes that removing the current ability for the Exchange to review in these narrow circumstances would lessen investor protections.

Numerical Guidelines

Today, paragraph (c)(1) defines the Numerical Guidelines that are used to determine if a transaction is deemed clearly erroneous during Regular Trading Hours, or during the Early Trading, Pre-Opening and After Hours Sessions. With respect to Regular Trading Hours, trades are generally deemed clearly erroneous if the execution price differs from the Reference Price (*i.e.,* last sale) by 10% if the Reference Price is greater than $0.00 up to and including $25.00; 5% if the Reference Price is greater than $25.00 up to and including $50.00; and 3% if the Reference Price is greater than $50.00. Wider parameters are also used for reviews for Multi-Stock Events, as described in paragraph (c)(2). With respect to transactions in Leveraged ETF/ETN securities executed during

[24] *See* LULD Plan, Section I(U) and V(C)(1).

Regular Trading Hours, Early Trading, Pre-Opening and After Hours Trading Session, trades are deemed clearly erroneous if the execution price exceeds the Regular Trading Hours Numerical Guidelines multiplied by the leverage multiplier.

Given the changes described in this proposed rule change, the Exchange proposes to amend the way that the Numerical Guidelines are calculated during Regular Trading Hours in the handful of instances where clearly erroneous review would continue to be available. Specifically, the Exchange would base these Numerical Guidelines, as applied to the circumstances described in paragraph (c)(1)(A), on the Percentage Parameters used to calculate Price Bands, as set forth in Appendix A to the LULD Plan. Without this change, a transaction that would otherwise stand if Price Bands were properly applied to the transaction may end up being subject to review and deemed clearly erroneous solely due to the fact that the Price Bands were not available due to a systems or other issue. The Exchange believes that it makes more sense to instead base the Price Bands on the same parameters as would otherwise determine whether the trade would have been allowed to execute within the Price Bands. The Exchange also proposes to modify the Numerical Guidelines applicable to leveraged ETF/ETN securities during Regular Trading Hours. As noted above, the Numerical Guidelines will only be applicable to transactions eligible for review pursuant paragraph (c)(1)(A) (*i.e.,* to NMS Stocks that are not subject to the LULD Plan). As leveraged ETF/ETN securities are subject to LULD and thus the Percentage Parameters will be applicable during Regular Trading Hours, the Exchange proposes to eliminate the Numerical Guidelines for leveraged ETF/ETN securities traded during Regular Trading Hours. However, as no Price Bands are available outside of Regular Trading Hours, the Exchange proposes to keep the existing Numerical Guidelines in place for transactions in leveraged ETF/ETN securities that occur during Early Trading, Pre-Opening and After Hours Trading.

The Exchange also proposes to move existing paragraphs (c)(2), (c)(3), and (d) to proposed paragraph (c)(2)(B), (c)(2)(C), and (C)(2)(D), respectively, as Multi-Stock Events, Additional Factors, and Outlier Transactions will only be subject to review if those NMS Stocks are not subject to the LULD Plan or occur during the Early Trading, Pre-Opening and After Hours Sessions. Proposed paragraph (c)(2)(B) is substantially similar to existing paragraph (c)(2) except for a change in rule reference to paragraph (c)(1) has been updated to paragraph (c)(1)(A). Further, given the proposal to move existing paragraph (c)(2) to paragraph (c)(2)(B), the Exchange also proposes to amend applicable rule references throughout paragraph (c)(2)(A). Finally, the Exchange proposes to update applicable rule references in paragraph (c)(2)(D) based on the above-described structural changes to the Rule.

Reference Price

As proposed, the Reference Price used would continue to be based on last sale and would be memorialized in proposed paragraph (d). Continuing to use the last sale as the Reference Price is necessary for operational efficiency as it may not be possible to perform a timely clearly erroneous review if doing so required computing the arithmetic mean price of eligible reported transactions over the past five minutes, as contemplated by the LULD Plan. While this means that there would still be some differences between the Price Bands and the clearly erroneous parameters, the Exchange believes that this difference is reasonable in light of the need to ensure timely review if clearly erroneous rules are invoked. The Exchange also proposes to allow for an alternate Reference Price to be used as prescribed in proposed paragraphs (d)(1), (2), and (3). Specifically, the Reference Price may be a value other than the consolidated last sale immediately prior to the execution(s) under review (1) in the case of Multi-Stock Events involving twenty or more securities, as described in paragraph (c)(2)(B) above, (2) in the case of an erroneous Reference Price, as described in paragraph (c)(1)(D) above (and in the case of (c)(1)(D)(2), the price of the prior LULD Band that triggered the Trading Pause will be used as the new Reference Price), or (3) in other circumstances, such as, for example, relevant news impacting a security or securities, periods of extreme market volatility, sustained illiquidity, or widespread system issues, where use of a different Reference Price is necessary for the maintenance of a fair and orderly market and the protection of investors and the public interest.

System Disruption or Malfunction

The Exchange proposes to change to Rule 11.17(f) to conform to the structural changes to the Rule described above and to reference the applicability of Percentage Parameters. Specifically, the Exchange proposes eliminate a reference to paragraph (c)(3) based on the structural changes described above. Further, existing rule text provides that in extraordinary circumstances an Officer of the Exchange or other senior level employee designee may use a lower Numerical Guideline if necessary to maintain a fair and order market, protect investors and the public interest. The Exchange proposes to amend this language to provide that an Officer of the Exchange or other senior level employee designee may use a lower Percentage Parameter, in the case of an NMS Stock subject to the LULD Plan, or a Numerical Guideline, in the case of an NMS Stock not subject to the LULD in such case.

Trade Nullification for UTP Securities That Are the Subject of Initial Public Offerings

Current paragraph (h) of BZX Rule 11.17 provides different procedures for conducting clearly erroneous review in initial public offering (''IPO'') securities that are traded pursuant to unlisted trading privileges (''UTP'') after the initial opening of such IPO securities on the listing market. Specifically, this paragraph provides that a clearly erroneous error may be deemed to have occurred in the opening transaction of the subject security if the execution price of the opening transaction on the Exchange is the lesser of $1.00 or 10% away from the opening price on the listing exchange or association. The Exchange no longer believes that this provision is necessary as opening transactions on the Exchange following an IPO are subject to Price Bands pursuant to the LULD Plan. The Exchange therefore proposes to eliminate this provision in connection with the broader changes to clearly erroneous review during Regular Trading Hours.

Securities Subject to Limit Up-Limit Down Plan

The Exchange proposes to renumber paragraph (i) to paragraph (h) based on the proposal to eliminate existing paragraph (h), and to rename the paragraph to provide for transactions occurring outside of LULD Price Bands. Given that proposed paragraph (c)(1) defines the LULD Plan, the Exchange also proposes to eliminate redundant language from proposed paragraph (h). Finally, the Exchange also proposes to update references to the LULD Plan and Price Bands so that they are uniform throughout the Rule and to update rule references throughout the paragraph to conform to the structural changes to the Rule described above.

Multi-Day Event and Trading Halts

The Exchange proposes to renumber paragraphs (j) and (k) to paragraphs (i)

and (j), respectively, based on the proposal to eliminate existing paragraph (h). Additionally, the Exchange proposes to modify the text of both paragraphs to reference the Percentage Parameters as well as the Numerical Guidelines. Specifically, the existing text of proposed paragraphs (i) and (j) provides that any action taken in connection with this paragraph will be taken without regard to the Numerical Guidelines set forth in this Rule. The Exchange proposes to amend the rule text to provide that any action taken in connection with this paragraph will be taken without regard to the Percentage Parameters or Numerical Guidelines set forth in this Rule, with the Percentage Parameters being applicable to an NMS Stock subject to the LULD Plan and the Numerical Guidelines being applicable to an NMS Stock not subject to the LULD Plan.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[25] in general, and Section 6(b)(5) of the Act,[26] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers.

As explained in the purpose section of this proposed rule change, the current pilot was implemented following the Flash Crash to bring greater transparency to the process for conducting clearly erroneous reviews, and to help assure that the review process is based on clear, objective, and consistent rules across the U.S. equities markets. The Exchange believes that the amended clearly erroneous rules have been successful in that regard, and have thus furthered fair and orderly markets. Specifically, the Exchange believes that the pilot has successfully ensured that such reviews are conducted based on objective and consistent standards across SROs, and has therefore afforded greater certainty to Members and investors. The Exchange therefore believes that making the current pilot a permanent program is appropriate so that equities market participants can continue to reap the benefits of a clear, objective, and transparent process for conducting clearly erroneous reviews. In addition, the Exchange understands that the other U.S. equities exchanges and FINRA will also file largely identical proposals to make their respective clearly erroneous pilots permanent. The Exchange therefore believes that the proposed rule change would promote transparency and uniformity across markets concerning review of transactions as clearly erroneous, and would also help assure consistent results in handling erroneous trades across the U.S. equities markets, thus furthering fair and orderly markets, the protection of investors, and the public interest.

Similarly, the Exchange believes that it is consistent with just and equitable principles of trade to limit the availability of clearly erroneous review during Regular Trading Hours. The Plan was approved by the Commission to operate on a permanent rather than pilot basis. As a number of market participants have noted, the LULD Plan provides protections that ensure that investors' orders are not executed at prices that may be considered clearly erroneous. Further, amendments to the LULD Plan approved in Amendment Eighteen serve to ensure that the Price Bands established by the LULD Plan are ''appropriately tailored to prevent trades that are so far from current market prices that they would be viewed as having been executed in error.'' [27] Thus, the Exchange believes that clearly erroneous review should only be necessary in very limited circumstances during Regular Trading Hours. Specifically, such review would only be necessary in instances where a transaction was not subject to the LULD Plan, or was the result of some form of systems issue, as detailed in the purpose section of this proposed rule change. Additionally, in narrow circumstances where the transaction was subject to the LULD Plan, a clearly erroneous review would be available in the case of (1) a corporate action or new issue or (2) a security that enters a Trading Pause pursuant to LULD and resumes trading without an auction, where the Reference Price is determined to be erroneous by an Officer of the Exchange. Thus, eliminating clearly erroneous review in all other instances will serve to increase certainty for Members and investors that trades executed during Regular Trading Hours would typically stand and would not be subject to review.

Given the fact that clearly erroneous review would largely be limited to transactions that were not subject to the LULD Plan, the Exchange also believes that it is necessary to change the parameters used to determine whether a trade is clearly erroneous. Specifically, due to the different parameters currently used for clearly erroneous review and for determining Price Bands, it is possible that a trade that would have been permitted to execute within the Price Bands would later be deemed clearly erroneous, if, for example, a systems issue prevented the dissemination of the Price Bands. The Exchange believes that this result is contrary to the principle that trades within the Price Bands should stand, and has the potential to cause investor confusion if trades that are properly executed within the applicable parameters described in the LULD Plan are later deemed erroneous. By using consistent parameters for clearly erroneous reviews conducted during Regular Trading Hours and the calculation of the Price Bands, the Exchange believes that this change would also serve to promote greater certainty with regards to when trades may be deemed erroneous.

The Exchange believes that it is consistent with the protection of investors and the public interest to remove the current provision of the clearly erroneous rule dealing with UTP securities that are the subject of IPOs. This provision applies specifically to opening transactions on a non-listing market following an IPO on the listing market. As such, review under this paragraph is limited to trades conducted during Regular Trading Hours. As previously addressed, trades executed during Regular Trading Hours would generally not be subject to clearly erroneous review but would instead be protected by the Price Bands. The Exchange therefore no longer believes that this paragraph is necessary, as all trades subject to this provision today would either be subject to the LULD Plan, or, in the event of some systems or other issue, would be subject to the provisions that apply to transactions that are not adequately protected by the LULD Plan.

Finally, the proposed rule changes make organizational updates to the Exchange's Clearly Erroneous Execution Rule as well as minor updates and corrections to the Rule to improve readability and clarity.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal would ensure the continued, uninterrupted operation of harmonized clearly erroneous execution rules across

[25] 15 U.S.C. 78f(b).

[26] 15 U.S.C. 78f(b)(5).

[27] *See* Amendment Eighteen, supra note 5.

the U.S. equities markets while also amending those rules to provide greater certainty to Members and investors that trades will stand if executed during Regular Trading Hours where the LULD Plan provides adequate protection against trading at erroneous prices. The Exchange understands that the other national securities exchanges and FINRA will also file similar proposals, the substance of which are identical to this proposal. Thus, the proposed rule change will help to ensure consistency across SROs without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No comments were solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be 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–CboeBZX–2022–017 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–CboeBZX–2022–017. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2022–017 and should be submitted on or before April 1, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–05150 Filed 3–10–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–774, OMB Control No. 3235–0726]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Extension:

Rules 300–304 of Regulation Crowdfunding (Intermediaries).

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information provided for Rule 17Ab2–1 (17 CFR 240.17Ab2–1) and Form CA–1: Registration of Clearing Agencies (17 CFR 249b.200) under the Securities Exchange Act of 1934 (''Exchange Act'') (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rules 300–304 of Regulation Crowdfunding enumerate the requirements with which intermediaries must comply to participate in the offer and sale of securities in reliance on Section 4(a)(6) of the Securities Act of 1933 (''Section 4(a)(6)''). Rule 300 requires an intermediary to be registered with the Commission as a broker or as a funding portal and be a member of a registered national securities association.[1]

Rule 301 requires intermediaries to have a reasonable basis for believing that an issuer seeking to offer and sell securities in reliance on Section 4(a)(6) through the intermediary's platform complies with the requirements in Section 4A(b) of the Securities Act and the related requirements in Regulation Crowdfunding. Rule 302 provides that no intermediary or associated person of an intermediary may accept an investment commitment in a transaction involving the offer or sale of securities made in reliance on Section 4(a)(6) until the investor has opened an account with the intermediary and the intermediary has obtained from the investor consent to electronic delivery of materials. Rule 303 requires an intermediary to make publicly available on its platform the information that an issuer of crowdfunding securities is required to provide to potential investors, in a manner that reasonably permits a person accessing the platform to save, download, or otherwise store the information, for a minimum of 21 days before any securities are sold in the offering, during which time the intermediary may accept investment commitments. Rule 303 also requires intermediaries to comply with the requirements related to the maintenance and transmission of funds. An intermediary that is a registered broker is required to comply with the requirements of Rule 15c2–4 of the Securities Exchange Act of 1934 (''Exchange Act'') (Transmission or Maintenance of Payments Received in Connection with Underwritings).[2] An intermediary that is a registered funding portal must direct investors to transmit

[28] 17 CFR 200.30–3(a)(12).

[1] Currently, FINRA is the only registered national securities association.

[2] 17 CFR 240.15c2–4.

the money or other consideration directly to a qualified third party that has agreed in writing to hold the funds for the benefit of, and to promptly transmit or return the funds to, the persons entitled thereto in accordance with Regulation Crowdfunding.

The rules also require intermediaries to implement and maintain systems to comply with the information disclosure, communication channels, and investor notification requirements. These requirements include providing disclosure about compensation at account opening (Rule 302), obtaining investor acknowledgements to confirm investor qualifications and review of educational materials (Rule 303), providing investor questionnaires (Rule 303), providing communication channels with third parties and among investors (Rule 303), notifying investors of investment commitments (Rule 303), confirming completed transactions (Rule 303) and confirming or reconfirming offering cancellations (Rule 304).

The Commission staff estimates that there will be 136 intermediaries engaged in crowdfunding activity and therefore subject to Rules 300–304. The Commission staff estimates the annualized industry burden will be 38,317 hours to comply with Rules 300–304. The Commission staff further estimates that the costs associated with complying with Rules 300–304 will be a total amount of $18,750,000.

Written comments are invited on: (a) 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; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing by May 10, 2022.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov*.

Dated: March 8, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–05200 Filed 3–10–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–22, OMB Control No. 3235–0006]

Proposed Collection; Comment Request, Extension: Form 13F

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Section 13(f) [1] of the Securities Exchange Act of 1934 [2] (the ''Exchange Act'') empowers the Commission to: (1) Adopt rules that create a reporting and disclosure system to collect specific information; and (2) disseminate such information to the public. Rule 13f–1 [3] under the Exchange Act requires institutional investment managers that exercise investment discretion over accounts that have in the aggregate a fair market value of at least $100,000,000 of certain U.S. exchange-traded equity securities, as set forth in rule 13f–1(c), to file quarterly reports with the Commission on Form 13F.[4]

The information collection requirements apply to institutional investment managers that meet the $100 million reporting threshold. Section 13(f)(6)(A) of the Exchange Act defines an ''institutional investment manager'' as any person, other than a natural person, investing in or buying and selling securities for its own account, and any person exercising investment discretion with respect to the account of any other person. Rule 13f–1(b) under the Exchange Act defines ''investment discretion'' for purposes of Form 13F reporting.

The reporting system required by Section 13(f) of the Exchange Act is intended, among other things, to create in the Commission a central repository of historical and current data about the investment activities of institutional investment managers, and to improve the body of factual data available to regulators and the public.

The currently approved burden estimates include a total hour burden of 472,521.6 hours, with an internal cost burden of $31,186,425.60, to comply with Form 13F.[5] Consistent with a recent rulemaking proposal that made adjustments to these estimates due primarily to the Commission's belief that the currently approved estimates do not appropriately reflect the information collection costs associated with Form 13F,[6] the table below reflects the revised estimates.

[1] 15 U.S.C. 78m(f).

[2] 15 U.S.C. 78a *et seq*.

[3] 17 CFR 240.13f–1.

[4] 17 CFR 249.325.

[5] This estimate is based on the last time the rule's information collection was submitted for PRA renewal in 2018.

[6] *See* Electronic Submission of Applications for Orders under the Advisers Act and the Investment Company Act, Confidential Treatment Requests for Filings on Form 13F, and Form ADV–NR; Amendments to Form 13F, Investment Company Release No. (Nov. 4, 2021).

TABLE—FORM 13F CURRENT AND REVISED BURDEN ESTIMATES

	Initial hours	Annual hours		Wage rate	Internal time cost	External costs [1]
Revisions to Current PRA Burden Estimates						
Revised Burdens for 13F–HR Filings						
Current estimated annual burden of Form 13F–HR per filer.	.....	80.8 hours	×	$66 [2]	$5,332.80.	
Revised current annual estimated burden per filer.	.....	10 hours [3]	×	$202.50 (blended rate for senior programmer and compliance clerk) [4].	$2,025	$789 [6]
		1 hour [3]	.....	$368 (compliance attorney rate) [5].	$368.	
Total revised estimated burden per filer.	.....	11 hours	.....	.....	$2,393	$789
Number of filers	.....	5,466 filers [7]	.....	.....	5,466 filers	5,466 filers
Revised current annual burden of Form 13F–HR filings.	.....	60,126 hours	.....	.....	$13,080,138	$4,312,674
Revised Burdens for 13F–NT Filings						
Current estimated annual burden of Form 13F–NT.	.....	80.8 hours.				
Revised current annual burden of Form 13F–NT per filer.	.....	4 hours	×	$71 (wage rate for compliance clerk).	$284	$300
Number of filers	.....	1,535 filers [8]	.....	.....	1,535 filers	1,535 filers
		6,140 hours	.....	.....	$435,940	$460,500
Revised Burdens for Form 13F Amendment Filings						
Current estimated burden per amendment filing.	.....	4 hours	.....	$66.00	$264.	
Revised current estimated burden per amendment.	.....	3.5 hours [9]	×	$202.50 (blended rate for senior programmer and compliance clerk).	$708.75	$300
		0.5 hour [9]	.....	$368 (compliance attorney rate).	$184.	
Total revised estimates burden per amendment.	.....	4 hours	.....	.....	$892.75	$300
Number of amendments.	.....	244 amendments [10]	.....	.....	244 amendments	244 amendments
Revised current annual estimated burden of all amendments.	.....	976 hours	.....	.....	$217,831	$73,200
Total Estimated Form 13F Burden						
Currently approved burden estimates.	472,521.6 hours		.....	.....	$31,186,425.60	$0

TABLE—FORM 13F CURRENT AND REVISED BURDEN ESTIMATES—Continued

	Initial hours	Annual hours		Wage rate	Internal time cost	External costs [1]
Revised current burden estimates.	67,242 hours		.....	.....	$13,733,909	$4,846,374

Notes:

[1] The external costs of complying with Form 13F can vary among filers. Some filers use third-party vendors for a range of services in connection with filing reports on Form 13F, while other filers use vendors for more limited purposes such as providing more user-friendly versions of the list of section 13(f) Securities. For purposes of the PRA, we estimate that each filer will spend an average of $300 on vendor services each year in connection with the filer's four quarterly reports on Form 13F–HR or Form 13F–NT, as applicable, in addition to the estimated vendor costs associated with any amendments. In addition, some filers engage outside legal services in connection with the preparation of requests for confidential treatment or analyses regarding possible requests, or in connection with the form's disclosure requirements. For purposes of the PRA, we estimate that each manager filing reports on Form 13F–HR will incur $489 for one hour of outside legal services each year.

[2] $66 was the estimated wage rate for a compliance clerk in 2018.

[3] The estimate reduces the total burden hours associated with complying with the reporting requirements of Form 13F–HR from 80.8 to 11 hours. We believe that this reduction adequately reflects the reduction in the time managers spend complying with Form 13F–HR as a result of advances in technology that have occurred since Form 13F was adopted. The revised estimate also assumes that an in-house compliance attorney would spend 1 hour annually on the preparation of the filing, as well as determining whether a 13(f) Confidential Treatment Request should be filed. The remaining 10 hours would be divided equally between a senior programmer and compliance clerk.

[4] The $202.50 wage rate reflects current estimates of the blended hourly rate for an in-house senior programmer ($334) and in-house compliance clerk ($71). $202.50 is based on the following calculation: ($334 + $71)/2 = $202.50. The $334 per hour figure for a senior programmer is based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's Office Salaries in the Securities Industry 2013 (''SIFMA Report''), modified by Commission staff to account for an 1800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead. The $71 per hour figure for a compliance clerk is based on salary information from the SIFMA Report, modified by Commission staff to account for an 1800-hour work-year and inflation, and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead.

[5] The $368 per hour figure for a compliance attorney is based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's Office Salaries in the Securities Industry 2013 (''SIFMA Report''), modified by Commission staff to account for an 1800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[6] $789 includes an estimated $300 paid to a third-party vendor in connection with the Form 13F–HR filing as well as an estimated $489 for one hour of outside legal services. We estimate that Form 13F–HR filers will require some level of external legal counsel in connection with these filings.

[7] This estimate is based on the number of 13F–HR filers as of December 2019.

[8] This estimate is based on the number of Form 13F–NT filers as of December 2019.

[9] The revised estimate assumes that an in-house compliance attorney would spend 0.5 hours annually on the preparation of the filing amendment, as well as determining whether a 13(f) Confidential Treatment Request should be filed. The remaining 3.5 hours would be divided equally between a senior programmer and compliance clerk.

[10] This estimate is based on the number of Form 13F amendments filed as of December 2019.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) 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; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication by May 10, 2022.

Please direct your written comments to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, C/O John Pezzullo, 100 F Street NE, Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov*.

Dated: March 8, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–05201 Filed 3–10–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94370; File No. SR–NASDAQ–2022–017]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Modify Equity 4, Section 4120 To Add Categories of Regulatory and Operational Halts, To Reorganize the Remaining Text of the Rule, and To Make Conforming Changes to Related Rules

March 7, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 22, 2022, The Nasdaq Stock Market LLC (''Nasdaq'' 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 modify Equity 4, Section 4120 to add categories of regulatory and operational halts and to reorganize the remaining text of the rule, and to make conforming changes to related rules.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In conjunction with adoption of an amended Nasdaq UTP Plan proposed by its participants (''Amended Nasdaq UTP Plan''),[3] Nasdaq is amending Rule 4120[4] to integrate several definitions and concepts from the Amended Nasdaq UTP Plan and to reorganize the rule in light of Nasdaq's experience with applying the rule over fifteen years as a national securities exchange. Nasdaq proposes to reorganize and amend Rule 4120 entitled Limit Up-Limit Down Plan and Trading Halts. The rule sets forth Nasdaq's authority to halt trading under various circumstances. The Exchange is a participant of the transaction reporting plan governing Tape C Securities (''Nasdaq UTP Plan'').[5] As part of these changes, Nasdaq will add categories of regulatory and operational halts, improve the rule's clarity, adopt defined terms from the Amended Nasdaq UTP Plan and delete parts of the rule that are no longer needed. Last, Nasdaq is updating cross references in other rules that are affected by the proposed changes.

Background

The Exchange has been working with other SROs to establish common criteria and procedures for halting and resuming trading in equity securities in the event of regulatory or operational issues. These common standards are designed to ensure that events which might impact multiple exchanges are handled in a consistent manner that is transparent. The Exchange believes that implementation of these common standards will assist the SROs in maintaining fair and orderly markets. Notwithstanding the development of these common standards, Nasdaq will retain discretion in certain instances as to whether and how to handle halts, as is discussed below.

Every U.S.-listed equity security has its primary listing on a specific stock exchange that is responsible for a number of regulatory functions.[6] These include confirming that the security continues to meet the exchange's listing standards, monitoring trading in that security and taking action to halt trading in the security when necessary to protect investors and to ensure a fair and orderly market. While these core responsibilities remain with the primary listing venue, trading in the security can occur on multiple exchanges that have unlisted trading privileges for the security[7] or in the over-the-counter market, regulated by the Financial Industry Regulatory Authority, Inc. (''FINRA''). The exchanges and FINRA are responsible for monitoring activity on the markets over which they have oversight, but also must abide by the regulatory decisions made by the Primary Listing Market. For example, a venue trading a security pursuant to unlisted trading privileges must halt trading in that security during a Regulatory Halt, which is a defined term under the proposed rules,[8] and may only trade the security once the Primary Listing Market has cleared the security to resume trading.

All SROs have rules that require them to honor a Regulatory Halt. Nasdaq, as a Primary Listing Market, also has rules outlining the circumstances in which it will halt trading in its listed securities, including situations in which such halts are for regulatory purposes[9]—and therefore are applicable to all markets trading the security—or for operational purposes, which would not halt trading on other markets. However, the trading halt rules are not consistent across SROs. Consequently, events that might constitute a Regulatory Halt for securities listed on one Primary Listing Market theoretically might not be grounds for a Regulatory Halt in securities listed on another Primary Listing Market. Such inconsistency among exchange rules could lead to confusion in circumstances such as a cross market event, which could be deemed ''Extraordinary Market Activity.''[10]

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[3] On February 11, 2021, the Nasdaq UTP Plan participants filed Amendment 50 to the Plan, to revise provisions governing regulatory and operational halts. *See* Letter from Robert Brooks, Chairman, UTP Operating Committee, Nasdaq UTP Plan, to Vanessa Countryman, Secretary, Securities and Exchange Commission, dated February 11, 2021. The Nasdaq UTP Plan subsequently filed two partial amendments to the 50th Amendment, on March 31, 2021 and on April 7, 2021. The SEC approved the amendments on May 28, 2021. *See* Securities Exchange Act Release No. 34–92071 (May 28, 2021), 86 FR 29846 (June 3, 2021) (S7–24–89). The Amended Nasdaq UTP Plan includes provisions requiring participant self-regulatory organizations (''SROs'') to honor a Regulatory Halt declared by the Primary Listing Market. The provisions in the Nasdaq UTP Plan, and the plan for consolidation of data for non-Nasdaq-listed securities, the Consolidated Tape System and Consolidated Quotations System (collectively, the ''CTA/CQS Plan''), include provisions similar to the changes proposed by the Exchange in this filing.

[4] References herein to Nasdaq Rules in the 4000 Series shall mean Rules in Nasdaq Equity 4.

[5] Each transaction reporting plan has a securities information processor (''SIP'') responsible for consolidation of information for the plan's securities, pursuant to Rule 603 of Regulation NMS. The transaction reporting plan for Nasdaq-listed securities is known as The Joint Self-Regulatory Organization Plan Governing The Collection, Consolidation and Dissemination of Quotation and Transaction Information For Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis or the ''Nasdaq UTP Plan.'' Pursuant to the Nasdaq UTP Plan, the UTP SIP, which is Nasdaq, consolidates order and trade data from all markets trading Nasdaq-listed securities. The Exchange uses the term ''UTP SIP'' herein when referring specifically to the SIP responsible for consolidation of information in Nasdaq-listed securities.

[6] Nasdaq is proposing to adopt Primary Listing Market as a new term, defined in Nasdaq UTP Plan, Section X.A.8, as follows: ''[T]he national securities exchange on which an Eligible Security is listed. If an Eligible Security is listed on more than one national securities exchange, Primary Listing Market means the exchange on which the security has been listed the longest.''

[7] In addition, securities may also be listed on the New York Stock Exchange (''dually-listed''). *See* Rules 5005(a)(11), 5220 and IM–5220.

[8] *See* proposed Rule 4120(a)(11).

[9] Nasdaq's current Rule 4120 establishes a limited number of reasons for instituting a Regulatory Halt for a Nasdaq-listed security. These reasons are: To permit the dissemination of material news concerning a listed company (Rule 4120(a)(1)); with respect to an American Depository Receipt (''ADR'') listed on Nasdaq, where another U.S. or foreign exchange that lists the security or the security underlying the ADR imposes a Regulatory Halt on the security listed on its market (Rule 4120(a)(4)); where Nasdaq requests information from the issuer relating to material news, the issuer's ability to meet Nasdaq's listing standards, or to protect investors (Rule 4120(a)(5)); in the event that extraordinary market activity in the security is occurring, ''such as the execution of a series of transactions for a significant dollar value at prices substantially unrelated to the current market for the security'' that is ''likely to have a material effect on the market for the security'' and the Exchange believes it is ''caused by the misuse or malfunction of an electronic quotation, communication, reporting or execution system operated by, or linked to,'' Nasdaq or another market (Rule 4120(a)(6)); in the event of an initial public offering (''IPO'') (Rule 4120(a)(7)); with respect to an index warrant, under certain specified conditions, or when appropriate in the interests of a fair and orderly market (Rule 4120(a)(8)); with respect to certain ''Derivative Securities Products'' (defined in Rule 4120(b)(4)(A)) when certain pricing information concerning the instrument is not available or is not being disseminated to all market participants at the same time (Rules 4120(a)(9) and (10)); for securities not covered by the Limit Up-Limit Down Plan, in the event a single stock trading pause is triggered (Rule 4120(a)(11)); and for securities covered by the Limit Up-Limit Down Plan, in the event of a trading pause (Rule 4120(a)(12)).

[10] The proposed definition of Extraordinary Market Activity encompasses a market event that

While the existing rule generally has worked as intended to afford the Exchange authority to initiate a Regulatory Halt in appropriate cases, Nasdaq's experience is that the current rule may not contemplate some situations where a Regulatory Halt would help to maintain fair and orderly markets. For example, the current definition of ''Extraordinary Market Activity'' focuses on events where trading occurs significantly away from pre-event market prices. However, there may be other situations where trading proceeds in an orderly fashion despite a computer error that causes duplicative orders, bad data or other erroneous information that could impact investors' understanding of the market or their trading activity. The Exchange believes it would facilitate fair and orderly markets to give Primary Listing Markets greater flexibility to consider the facts and circumstances of each case and decide whether a Regulatory Halt is appropriate.

The complex and interconnected market structure in the United States also relies on consolidated market data processed and disseminated by the SIPs. In certain circumstances, the loss of this information or issues with the accuracy or timeliness of the information might cause a Primary Listing Market to determine that a trading halt is appropriate. The Exchange believes that further guidance in the rules will assist market participants in better understanding how various scenarios would be handled.

The Exchange believes that the cross-market proposed changes by: (1) Adopting uniform rules regarding the trigger points for regulatory trading halts in situations most likely to have an impact across markets and multiple listing venues; (2) addressing more scenarios in the uniform rule where a Primary Listing Market may need to implement a Regulatory Halt to maintain fair and orderly markets; and (3) adding provisions that apply to SIP-related issues to increase transparency into how these situations would be handled.

As noted above, the proposed changes that would be uniformly applied across SROs are those that relate to cross-market events as set forth in the Amended Nasdaq UTP Plan. However, there will still be situations where personnel at the Primary Listing Market will need to determine the impact of the cross-market event on the securities listed on its market and use discretion in deciding whether to halt trading in some or all securities during a cross-market event that affects securities listed on different markets. In making a determination as to whether to declare a Regulatory Halt for Extraordinary Market Activity, the Primary Listing Market will consider the totality of information available concerning the severity of the issue, its likely duration, potential impact on members and other market participants, and it will make a good-faith determination that the criteria for declaring a Regulatory Halt have been satisfied and that a Regulatory Halt is appropriate.[11] Moreover, the Primary Listing Market will consult, if feasible, with the affected Trading Center(s), other Plan Participants, or the Processor, as applicable, regarding the scope of the issue and what steps are being taken to address the issue. Exchanges may also declare a Regulatory Halt when it determines that it is necessary to maintain a fair and orderly market.[12]

While the Exchange and the other SROs intend to harmonize certain aspects of their trading halt rules, other elements of the rules will continue to be unique to each market. The Exchange believes that this is appropriate to reflect different products listed or traded on each market and the unique relationship of the Primary Listing Market to its listed companies. It is anticipated that these unique rules would most likely be invoked in cases where the Primary Listing Market's decision on whether to institute a Regulatory Halt turns on specific information related to an individual security or issuer, such as the dissemination of news and the issuer's ability to meet listing standards, rather than broader market issues stemming from Extraordinary Market Activity or loss of consolidated market data from a SIP.

In addition to the changes noted above, the Exchange is deleting provisions that are no longer needed and reorganizing the rule to improve its clarity. The Exchange is also making a handful of non-substantive changes to rule text to improve its clarity. The Exchange will implement all of the changes proposed herein in conjunction with other SROs implementing the necessary rule changes. The Exchange will publish an Equity Trader alert at least 30 business days prior to implementing the proposed changes.

Definitions

The Exchange proposes adding a definitions section as Rule 4120(a) to consolidate the various definitions that will be used in the Rule, some of which are taken from the Amended Nasdaq UTP Plan. Nasdaq is adopting the following terms from the Amended Nasdaq UTP Plan: ''Extraordinary Market Activity,'' ''Material SIP Latency,'' ''Operating Committee,'' ''Operational Halt,'' ''Primary Listing Market,'' ''Processor,'' ''Regulatory Halt,'' ''Regular Trading Hours,'' [13] ''SIP Halt,'' ''SIP Halt Resume Time,'' and ''SIP Outage.'' The definitions of ''Derivatives Securities Product,'' ''IPO,'' ''Pre-Market Session'' and ''Required Value'' have been moved into the definitions section from elsewhere in the current rule without change. The definition of ''Post-Market Session'' has been moved from elsewhere in the rule with a minor change deleting the alternative closing time of 4:15 p.m. as all securities traded on Nasdaq commence their closing cross process at 4:00 p.m.[14]

First, the Exchange proposes to add the definition of ''Primary Listing Market'' [15] to Rule 4120, which will have the same meaning as in the Amended Nasdaq UTP Plan, Section X.A).8. As is currently the case under Rule 4120 and under the Nasdaq UTP Plan, all Regulatory Halt decisions are made by the market on which the security has its primary listing. This reflects the regulatory responsibility that the Primary Listing Market has for fair and orderly trading in the securities that list on its market and its direct access to its listed companies, which are required to advise it of certain events and maintain lines of communication with the Primary Listing Market. The proposed definition makes clear that if a security is listed on more than one market (a dually-listed security), the Primary Listing Market means the exchange on which the security has been listed the longest. This provision matches language used in the definition of ''Primary Listing Exchange'' in the

affects multiple markets. *See* proposed Rule 4120(a)(2) (incorporating by reference Nasdaq UTP Plan, Section X.A.1). Thus, such cross-market events could be considered Extraordinary Market Activity.

[11] The Exchange will consider these factors for all Regulatory Halts, not simply those caused by Extraordinary Market Activity.

[12] *See* proposed Rule 4120(a)(11) and Amended Nasdaq UTP Plan, Section X.A.10.

[13] The Exchange notes that pursuant to existing Rule 4120(b)(4), the Regular Market Session occurs until 4:00 p.m. or 4:15 p.m., and the Post-Market Session begins at 4:00 p.m. or 4:15 p.m.

[14] As noted above, the Exchange is adopting several new terms that have the same meaning as those terms are defined in the Amended Nasdaq UTP Plan. Each of the national market system plans governing the single plan processors has identical definitions of these terms, thus there will be uniformity in the meaning of the terms among such plans as well as among the rules of the SROs.

[15] *See* proposed Rule 4120(a)(9).

Limit-Up Limit-Down Plan and will avoid conflict in the event of dually-listed securities.

Second, the Exchange proposes to replace the definition of ''Extraordinary Market Activity'' with a broader definition of the term taken from Section X.A.1. of the Amended Nasdaq UTP Plan.[16] The current rule establishes a three-part test for Extraordinary Market Activity:

(1) Extraordinary Market Activity must be occurring in the security—the sole example of such activity included in the rule is ''the execution of a series of transactions for a significant dollar value at prices substantially unrelated to the current market for the security, as measured by the national best bid and offer,'' and

(2) The Exchange must determine that such Extraordinary Market Activity is likely to have a material effect on the market for the security, and

(3) The Exchange believes that either: (i) Such activity is caused by the misuse or malfunction of an electronic quotation, communication, reporting or execution system operated by, or linked to, the Exchange; (ii) after consultation with another national securities exchange trading the security on an unlisted trading privileges basis, that such activity is caused by the misuse or malfunction of an electronic quotation, communication, reporting or execution system operated by, or linked to, such other national securities exchange; or (iii) after consultation with FINRA regarding a FINRA facility trading the security, such activity is caused by the misuse or malfunction of such FINRA facility or an electronic quotation, communication, reporting, or execution system linked to such FINRA facility.

Although the single scenario in element (1) of the test is not exclusive, the Exchange believes that market participants would benefit from the inclusion of other scenarios that might constitute ''Extraordinary Market Activity.'' For example, experience indicates that significant market events do not always result in price dislocation. In some cases, trading may remain orderly. Moreover, price discovery—at least when measured by the absence of large price changes—may appear to be orderly, but in fact there may be confusion or information missing (*e.g.,* quote or transaction information) that is important to participants. The absence of accurate information could make it difficult for market participants to properly confirm the positions they own, the impact of the event, or the correct prices for securities.

The proposed definition of Extraordinary Market Activity is the same definition in Section X.A. 1. of the Amended Nasdaq UTP Plan.[17] The new definition updates and consolidates the terminology and broadens applicability of the term in comparison to the current definition, by making it clear that Extraordinary Market Activity may occur solely on the Exchange or multiple markets, referred to as ''Trading Centers'' in the proposed rule change. A ''Trading Center,'' which is defined in Rule 600(b)(95) of Regulation NMS, refers to a ''national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent.'' The Amended Nasdaq UTP Plan definition of Extraordinary Market Activity also explicitly refers to disruptions or malfunctions at a SIP or a member of a Trading Center, whereas the current rule, as discussed above, does not. To qualify as Extraordinary Market Activity, the event must have a ''severe and continuing negative impact'' on a market-wide basis on quoting, order, or trading activity or the availability of market information necessary to maintain a fair and orderly market.

The new definition of Extraordinary Market Activity also explains what constitutes a ''severe and continuing negative impact.'' In addition to the scenario in the current rule involving significant price movement, the proposed change adds two new scenarios to provide additional transparency to member firms:

- Duplicative or erroneous quoting, order trade reporting, or other related message traffic between one or more Trading Centers or their members; and
- The unavailability of quoting, order or transaction information, or regulatory messages, for a sustained period.

These problems may cause market participants to change their trading behavior or withdraw from the market entirely. When serious enough, this can affect the fair and orderly operation of the market. In determining whether to initiate a trading halt, Nasdaq would, as set forth in the Amended Nasdaq UTP Plan and in proposed Rule 4120(b)(2)(D), consider the totality of information available concerning the severity of the issue, its likely duration, potential impact on members and other market participants, and will make a good-faith determination that the criteria for declaring a Regulatory Halt has been satisfied and that a Regulatory Halt is appropriate. Therefore, the Exchange, acting as the Primary Listing Market, in consultation with the affected trading centers, other SIP Plan participants, or the Processor, as applicable, where feasible, will retain discretion to evaluate the magnitude of each situation to determine whether the event meets the definition of Extraordinary Market Activity.

As with the current rule, the three scenarios included by reference in the new definition would not be exhaustive. This enables the Primary Listing Market to act in the best interests of the market when confronted with unexpected events. However, the Exchange believes that the three scenarios included in the rule cover many of the most likely events that may occur. As is currently the case, the Exchange anticipates providing public notice of Extraordinary Market Activity as soon as it is practicable, with updates as necessary, to assist firms in monitoring the status of issues. These notices, coupled with the proposed rule, will assist participants by alerting them to the situations most likely to result in trading halts.

The third set of new proposed definitions would be specific to events involving the SIP. While Nasdaq recognizes that many events involving the SIP would also meet the definition of ''Extraordinary Market Activity,'' the Exchange believes that the critical role of the SIPs in market infrastructure factors in favor of additional guidance on how such events will be handled. The definitions of ''SIP Outage,'' ''Material SIP Latency,'' ''SIP Halt Resume Time,'' and ''SIP Halt'' are intended to provide additional guidance and specific processes to address this subset of potential market issues. In addition, the Exchange is proposing to define terms related to SIP governance needed in order to understand these definitions:

- ''SIP'' [18] is defined as the Processor for Tape C securities, which is Nasdaq.

[16] *See* proposed Rule 4120(a)(2).

[17] ''Extraordinary Market Activity'' means a disruption or malfunction of any electronic quotation, communication, reporting, or execution system operated by, or linked to, the Processor or a Trading Center or a member of such Trading Center that has a severe and continuing negative impact, on a market-wide basis, on quoting, order, or trading activity or on the availability of market information necessary to maintain a fair and orderly market. For purposes of this definition, a severe and continuing negative impact on quoting, order, or trading activity includes (i) a series of quotes, orders, or transactions at prices substantially unrelated to the current market for the security or securities; (ii) duplicative or erroneous quoting, order, trade reporting, or other related message traffic between one or more Trading Centers or their members; or (iii) the unavailability of quoting, order, or transaction information for a sustained period.

[18] *See* proposed Rule 4120(a)(14).

• ''SIP Plan'' [19] is defined as the Nasdaq UTP Plan.

• ''Operating Committee'' [20] is defined as having the same meaning as in the Nasdaq UTP Plan, namely the committee charged with administering the Nasdaq UTP Plan.

• ''Processor'' [21] has the same meaning as set forth in the Nasdaq UTP Plan, namely the entity selected by the Participants to perform the processing functions set forth in the Plan.

The Exchange is proposing to adopt a category of Regulatory Halt, called a ''SIP Halt,'' [22] which will have the same meaning as that term is defined in Section X.A.11. of the Nasdaq UTP Plan, namely ''a Regulatory Halt to trading in one or more securities that a Primary Listing Market declares in the event of a SIP Outage or Material SIP Latency.'' This new category of Regulatory Halt will address situations where the Primary Listing Market declares a Regulatory Halt in one or more securities as a result of a SIP Outage or Material SIP Latency (each is discussed below). While a SIP Halt may be declared in a single stock, Nasdaq anticipates that most events will impact multiple securities or even all securities with their primary listing on a particular market. Because of the complexities inherent in these types of halts, the Exchange is proposing special procedures for the halting and resuming of trading as a result of a SIP Halt. These are discussed in more detail later.

The Exchange is proposing to define a ''SIP Outage'' [23] as having the same meaning as in Section X.A.13 of the Amended Nasdaq UTP Plan. Specifically, the Exchange is proposing to define SIP Outage to mean a situation in which the Processor has ceased, or anticipates being unable, to provide updated and/or accurate quotation or last sale price information in one or more securities for a material period that exceeds the time thresholds for an orderly failover to backup facilities established by mutual agreement among the Processor, the Primary Listing Market for the affected securities, and the Operating Committee unless the Primary Listing Market, in consultation with the Processor and the Operating Committee, determines that resumption of accurate data is expected in the near future.

Recent experience with events involving a loss of consolidated data from the SIP has shown that in many cases, the least disruptive outcome in the event of a brief interruption in data is to not halt trading in the affected securities if the market is fair and orderly. For example, in August 2013, Nasdaq halted trading in Nasdaq-listed securities due to an interruption in UTP SIP data due to uncertainty about the impact the loss of data would have on market participants. Although the UTP SIP successfully restarted the system within its primary data center and was operational within 17 minutes, the market remained halted for 3 hours at the request of market participants so that they could manage their books, clear stale orders and reconnect to the system. By contrast, the New York Stock Exchange (''NYSE''), benefitting from this prior experience, did not halt trading during a loss of CTA/CQS data in October 2014 and failed over to back-up facilities within 30 minutes of the loss of SIP data. Because NYSE did not halt trading, firms did not need to reconnect and clear order books. As a result, the duration of the NYSE event—measured from loss of SIP data to end of the issue—was shorter and caused less disruption to the market even though the scope of the underlying problem that caused the loss of data from both SIPs was comparable.

At the direction of the Operating Committees, each processor has invested significant money and effort into improving the resiliency of the SIPs. This will increase the likelihood that SIPs will failover rapidly and commence disseminating valid data. Of course, there could still be situations where the failover does not work as expected, or the problem is not cured despite the redundancy available in the backup center. It is in these situations that the Exchange and the other SROs believe that the need for a SIP Halt is most likely to arise.

For this reason, the proposed definition focuses on the agreed time frames for an orderly failover. Emergency procedures applicable to the Processor provide that when a determination is made to failover to the secondary data center, the Processor shall endeavor to complete the failover within 10 minutes.[24]

Accordingly, the Primary Listing Market would be expected to consider a SIP Halt in the event of the loss of SIP data once the loss in data extends or is anticipated to extend for a material period that exceeds the same agreed-upon 10 minute failover thresholds, unless the Primary Listing Market, in consultation with the Processor and the responsible Operating Committee, determines that resumption of accurate data is expected in the near future. The Exchange, in consultation with the other SROs, considered and rejected specifying a numerical time limit after which a SIP Halt would be required. Because of the significant impact a broad trading halt can have on market confidence, the Exchange believes Primary Listing Markets should retain discretion to consider the facts of the incident in evaluating a SIP Halt to avoid having to halt trading despite knowing that the SIP is about to resume data dissemination. Instead, the Primary Listing Market, in consultation with other SROs, SIPs and market participants where feasible, would continually re-evaluate whether a SIP Halt is appropriate and take action when, in its judgment, the thresholds in the definition have been passed. The Primary Listing Market retains discretion throughout the process to institute a Regulatory Halt in good faith—even within the 10 minute failover window—if trading appears disorderly, price discovery has been impacted, or it is otherwise in the interests of a fair and orderly market to halt trading.

In addition to situations where a SIP is no longer disseminating data, circumstances may arise where quotation or last sale price information from the SIP is delayed or stale due to a significant increase in latency. Minor latency in the data will always exist given the nature of a consolidated feed, where data from multiple markets is validated, normalized, consolidated and then distributed. However, significant latency can impact trading decisions and market confidence if participants are unsure whether data accurately reflects the current state of the market.

The Exchange is proposing to define ''Material SIP Latency'' [25] as having the same meaning as in Section X.A.5 of the Amended Nasdaq UTP Plan. Specifically, the Exchange is proposing to define Material SIP Latency to mean a delay of quotation or last sale price information in one or more securities between the time data is received by the Processor and the time the Processor disseminates the data over the Processor's vendor lines, which delay the Primary Listing Market determines, in consultation with, and in accordance with, publicly disclosed guidelines established by the Operating Committee, to be (a) material and (b) unlikely to be resolved in the near future. In this regard, SIP Emergency procedures presently state that ''SIP material

[19] *See* proposed Rule 4120(a)(18).

[20] *See* proposed Rule 4120(a)(5).

[21] *See* proposed Rule 4120(a)(10).

[22] *See* proposed Rule 4120(a)(15).

[23] *See* proposed Rule 4120(a)(17).

[24] *See https://www.utpplan.com/DOC/UTP_SIP_Emergency_Procedures.pdf.*

[25] *See* proposed Rule 4120(a)(4).

latency refers to sustained latency of 100 milliseconds or greater for 10 minutes caused by a technical issue at the Processor.'' [26] The Emergency Procedures have various escalation points to advise the Primary Listing Market, the Operating Committee, and market participants. Under the proposal, the Primary Listing Market, in consultation with the Operating Committee, would be responsible for determining when this latency has become a Material SIP Latency.

Because guidelines are designed as an early warning system to mobilize decision makers, many latency events that exceed the thresholds in the guidelines would not constitute Material SIP Latency resulting in a SIP Halt. Instead, the Primary Listing Market, in consultation with the Operating Committee, would be expected to evaluate the severity of the latency and its continued duration and consider whether the issue is likely to be resolved in the near future. As in the case of a SIP Outage, the Exchange, in consultation with other SROs, considered adopting fixed latency metrics in the rule, but for several reasons, it determined that this would be counterproductive. First, it could create situations where a SIP Halt is imposed even where resolution is imminent. Second, greater flexibility will enable the Exchange and other Primary Listing Markets to learn from experience about how various levels of latency affect trading. Fixed thresholds in the rule might also become outdated over time if latency levels drop due to system enhancements. Regardless of the thresholds, the Primary Listing Market always retains the authority to institute a Regulatory Halt if it determines, in good faith, a halt to be in the interests of a fair and orderly market.

The Exchange proposes to add a definition of ''Regulatory Halt'' [27] as having the same meaning as in Section X.A.10 of the Amended Nasdaq UTP Plan. Specifically, the Exchange has proposed to define Regulatory Halt to mean a halt declared by the Primary Listing Market in trading in one or more securities on all Trading Centers for regulatory purposes, including for the dissemination of material news, news pending, suspensions, or where otherwise necessary to maintain a fair and orderly market.[28] A Regulatory Halt includes a trading pause triggered by Limit Up-Limit Down, a halt based on Extraordinary Market Activity, a trading halt triggered by a Market-Wide Circuit Breaker, and a SIP Halt. The new term Regulatory Halt consolidates the various reasons for such a halt that are enumerated in the proposed Rule 4120(b). In addition to the specific reasons, the rule would memorialize the Primary Listing Market's ability to implement a Regulatory Halt where otherwise necessary to preserve a fair and orderly market.[29] The definition also makes clear that market-wide circuit breakers, codified in Rule 4121, constitute a Regulatory Halt. These circuit breakers provide for coordinated cross-market trading halts designed to stop trading temporarily or, under extreme circumstances, close the markets before the normal close of the trading session.

Finally, the Exchange proposes to add a definition of ''Operational Halt,'' [30] which is defined as having the same meaning as in Section X.A.7 of the Amended Nasdaq UTP Plan. Specifically, the Exchange is proposing to define Operational Halt to mean a halt in trading in one or more securities only on the market declaring the halt. An Operational Halt is effective only on Nasdaq; other markets are not required to halt trading in the impacted securities. In practice, the Exchange has always had the capacity to implement operational halts in specified circumstances.[31] The proposed change would provide greater clarity on when an Operational Halt may be implemented and the process for halting and resuming trading in the event of an Operational Halt. An Operational Halt is not a Regulatory Halt.[32]

Regulatory Halt Types

The Exchange proposes to consolidate the various types of situations that form the basis for declaring a Regulatory Halt in Rule 4120(b). The proposed rule change would divide the situations that form the basis of the Exchange's authority to declare a Regulatory Halt in a security for which the Exchange is the Primary Listing Market into three categories: (1) As provided by the SIP Plans; (2) discretionary Regulatory Halts; and (3) mandatory Regulatory Halts.

The first category concerns situations enumerated in the SIP Plan, specifically related to a SIP Outage, Material SIP Latency, or Extraordinary Market Activity.

The second category provides the Exchange with discretion to declare a Regulatory Halt in situations described by the proposed rule, such as when the Exchange requests certain information from an issuer and for a security subject to an IPO. The Exchange believes that discretion in determining whether to impose a Regulatory Halt is appropriate because of the many facts and circumstances that must be considered by the Primary Listing Market in determining whether to halt trading. A rule establishing exact standards for a mandatory halt would risk forcing the Exchange to halt trading in circumstances where other facts may weigh against a halt, thereby forcing the Exchange to act in a way that is not in the best interests of the market. Alternatively, fixed standards could also prevent the Exchange from halting in circumstances where a Regulatory Halt would be appropriate. Instead, the proposed change would outline the types of scenarios where the Primary Listing Market may initiate a Regulatory Halt after consulting with the entities specified in the Amended Nasdaq UTP Plan, where feasible. However, there may be situations where such consultation may not be possible due to technical issues or time sensitivity. The proposed change would preserve the Exchange's ability to act in the best interests of the market in these circumstances, consistent with the Amended Nasdaq UTP Plan.

As under the current rule, the proposed change continues to allow the Exchange to institute a Regulatory Halt in circumstances where the Exchange requests additional information from an issuer (current Rule 4120(a)(5) and

[26] *See https://www.utpplan.com/DOC/UTP_SIP_Emergency_Procedures.pdf.*

[27] *See* proposed Rule 4120(a)(11).

[28] The Exchange's authority to declare a Regulatory Halt to maintain a fair and orderly market is explicitly included in the definition of Regulatory Halt. The Exchange will institute a Regulatory Halt if it makes a determination that it is necessary to maintain a fair and orderly market. The Exchange believes that the addition of this basis to declare a Regulatory Halt will protect investors by giving the Exchange explicit authority to act in unforeseen situations not covered by other provisions of Rule 4120.

[29] As provided for in the Nasdaq UTP Plan, the Proposed Rule would permit the Exchange to declare a Regulatory Halt for a security for which it is the Primary Listing Market, in the event of national, regional, or localized disruption that necessitates a Regulatory Halt to maintain a fair and orderly market.

[30] *See* proposed Rule 4120(a)(6).

[31] *See* By-Laws of the Nasdaq Stock Market LLC, Section 5 (''Authority to Take Action Under Emergency or Extraordinary Market Conditions''), available at *https://listingcenter.nasdaq.com/assets/rulebook/nasdaq/rules/NASDAQ_Corporate_Organization_Nasdaq_LLC.pdf.*

[32] The Exchange notes that it proposes to amend the existing definition of the term ''Post-Market Session'' to clarify that it is a trading session that begins after ''Regular Trading Hours''—a term that, in turn, is defined in the Nasdaq UTP Plan—and that such session begins at ''approximately'' 4:00 p.m. The addition of the term ''approximately'' reflects the fact that the Nasdaq Closing Cross, which precedes the Post-Market Session at 4:00 p.m., is not instantaneous. *See* proposed Rule 4120(a)(7).

proposed Rule 4120(b)(1)(B)(i)),[33] to allow for the dissemination of material news (current Rule 4120(a)(1) and new Rule 4120(b)(1)(B)(ii)); to facilitate the initiation of trading of an IPO (current Rule 4120(a)(7) and proposed Rule 4120(b)(1)(B)(iii)) and to protect a fair and orderly market in the trading of index warrants (current Rule 4120(a)(8) and proposed Rule 4120(b)(1)(B)(iv)). Proposed Rule 4120(b)(1)(B)(v), codified without material change from current Rule 4120(a)(9), gives the Exchange discretion to halt a series of Portfolio Depository Receipts, Index Fund Shares (as defined in Rule 5705), Index-Linked Exchangeable Notes, Equity Gold Shares, Trust Certificates, Commodity-Based Trust Shares, Currency Trust Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, and Managed Trust Securities (as defined in Rule 5711(a)–(h) and (j), respectively), or NextShares (as defined in Rule 5745) listed on Nasdaq if the Intraday Indicative Value (as defined in Rule 5705), for Portfolio Depository Receipts or Index Fund Shares, for derivative securities as defined in Rule 5711(a), (b), and (d)–(h), Rule 5711(j) for Managed Trust Securities, or Rule 5745 for NextShares) or the index value applicable to that series is not being disseminated as required, during the day in which the interruption to the dissemination of the Intraday Indicative Value or the index value occurs. It requires the Exchange to halt trading in these instruments no later than the beginning of trading on the day following the interruption to the dissemination of the Intraday Indicative Value or the index value if the interruption persists past the trading day on which it occurs. The Exchange would also retain discretionary authority to halt trading in a series of Portfolio Depository Receipts, Index Fund Shares, Exchange Traded Fund Shares (as defined in Rule 5704), Managed Fund Shares, Index-Linked Exchangeable Notes, Equity Gold Shares, Trust Certificates, Commodity-Based Trust Shares, Currency Trust Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, Trust Units (as defined in Rule 5711(i)), Managed Trust Securities, Currency Warrants (as defined in Rule 5711(k)), NextShares, or Proxy Portfolio Shares (as defined in Rule 5750) based on a consideration of the following factors: (A) Trading in underlying securities comprising the index or portfolio applicable to that series has been halted in the primary market(s), (B) the extent to which trading has ceased in securities underlying the index or portfolio, or (C) the presence of other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market.

Proposed Rule 4120(b)(1)(B)(vi) gives the Exchange discretion to halt trading in an American Depository Receipt (''ADR'') or other Nasdaq-listed security when the foreign securities exchange or market listing the security underlying the ADR or the Nasdaq-listed security or the regulatory authority overseeing such foreign securities exchange or market institutes a halt for regulatory reasons. The Exchange is deleting text that presently exists in the Rule covering ADR and other Nasdaq-listed security halts, at Rule 4120(a)(4), which references national securities exchanges instituting a halt for ''regulatory reasons'' because under the proposed new rules, a Regulatory Halt will be issued by the Primary Listing Exchange. If the other national securities exchange is the primary listing exchange and declares a regulatory halt, the security will be subject to a halt by the Exchange. Thus, such a halt on the Exchange will be mandatory. The proposed amended rule will consider only actions taken by a foreign exchange that halts the Nasdaq-listed security, or security underlying an ADR, on its market for regulatory reasons (foreign exchanges do not fall within the definition of a ''primary listing market'' and therefore their regulatory halts do not fall within the Amended Nasdaq UTP Plan's definition of Regulatory Halts). The Exchange will then assess the regulatory reasons underlying the halt on the foreign market and possibly initiate a Regulatory Halt.

Proposed Rule 4120(b)(1)(B)(vii) would permit the Exchange to declare a Regulatory Halt for a security for which it is the Primary Listing Market, in the event of national, regional, or localized disruption that necessitates a Regulatory Halt to maintain a fair and orderly market. This proposal incorporates an identical provision in the Nasdaq UTP Plan.

The third category of Regulatory Halts concerns situations in which it is mandatory that the Exchange must declare a Regulatory Halt. Proposed Rule 4120(b)(1)(C)(i) codifies without substantive modification the existing provisions of Rule 4120(a)(10) in situations where the Exchange becomes aware that the net asset value of a Derivative Securities Product (or the Disclosed Portfolio in the case of Managed Fund Shares, the Composition File in the case of NextShares, or in the case of Proxy Portfolio Securities, a Proxy Basket, or the Fund Portfolio) is not being disseminated to all participants at the same time. The Exchange is required to halt trading in the Derivative Securities Product when this occurs. Similarly, proposed Rule 4120(b)(1)(C)(ii) retains without substantive modification the existing rule with respect to the Limit Up-Limit Down Plan (current Rule 4120(a)(12)).[34] The Exchange proposes to make clear in Rule 4120(b)(1)(C)(iii) that a trading halt pursuant to extraordinary market volatility (market-wide circuit breakers), as is described in Rule 4121, constitutes a Regulatory Halt. Finally, the Exchange is incorporating Rule 4120(a)(13) into proposed Rule 4120(b)(1)(C)(iv). Rule 4120(a)(13) requires Nasdaq to halt trading in an Equity Investment Tracking Stock (as defined in Rule 5005) or Subscription Receipt (listed under Rule 5520) whenever Nasdaq halts or suspends trading in a security tracked by the Equity Investment Tracking Stock or the common stock into which the Subscription Receipt is exchangeable.

The Exchange is proposing to move or delete certain elements in the current list of situations that form the basis for declaring a Regulatory Halt in Rule 4120(a). First, the Exchange is deleting the current definition of Extraordinary Market Activity in Rule 4120(a)(6), which it proposes to replace with the updated and more extensive definition previously discussed. Second, the Exchange is proposing to delete current Rule 4120(a)(11), which establishes a trading pause in the event of large price moves in securities not covered by the Limit Up-Limit Down Plan.[35] As the Limit Up-Limit Down Plan is now fully implemented, this subsection is no longer necessary. In addition, the Exchange proposes moving existing Rule 4120(a)(2) and (a)(3) to proposed Rule 4120(b)(3) covering declaration of a Regulatory Halt by a Primary Listing Market other than Nasdaq. These provisions are discussed in more detail below.

Initiating a Regulatory Halt

In coordination with the other SROs, the Exchange developed proposed Rule

[33] As proposed, Rule 4120(b)(1)(B)(i) provides that the Exchange's determination regarding a trading halt would be made consistent with Section X.C of the Amended Nasdaq UTP Plan.

[34] Current Rule 4120(a)(12)(G) (''If the Exchange is unable to reopen trading due to a systems or technology issue, it shall notify the Processor immediately'') will be incorporated into proposed Rule 4120(b)(4)(A)(i)e.6. (''If the Exchange is unable to reopen trading due to a systems or technology issue, it shall notify the SUP immediately'').

[35] By its terms, Rule 4120(a)(11) does not apply to rights and warrants, which are the only Nasdaq-listed securities that are not covered by the Limit Up-Limit Down Plan.

4120(b)(2) to provide detailed and consistent rules on how a Primary Listing Market will initiate a Regulatory Halt. The process for initiating a Regulatory Halt is set forth in Section X.D of the Amended Nasdaq UTP Plan. First, the proposed rule makes clear that the start time of a Regulatory Halt is the time the Primary Listing Market declares the Halt, regardless of whether communications issues impact the dissemination of notice of the Halt. The Exchange's experience in prior events is that market participants need certainty on the official start time of the Halt. Under the proposed rule, the start time is fixed by the Primary Listing Market; it is not dependent on whether notice is disseminated immediately. This will avoid possible disagreement if the Halt time were tied to dissemination or receipt of notification, which may occur at different times. The Exchange recognizes that in situations where communication is interrupted, trades may continue to occur until news of the Halt reaches all Trading Centers. However, a fixed ''official'' Halt time will allow SROs to revisit trades after the fact and determine in a consistent manner whether specific trades should stand.

Currently, many Trading Centers and other market participants rely on automated, machine-readable trade halt messages disseminated by the SIP to automatically halt their order matching and order dissemination systems. While the Exchange disseminates these messages in other formats and posts the messages on its website, Nasdaq's experience is that these alternative means of communication have not been relied on by many market participants. Proposed Rule 4120(b)(2)(B) would provide advance notice in the manner set forth in the Amended Nasdaq UTP Plan. The Amended Nasdaq UTP Plan requires the Primary Listing Market to notify all other participants and the SIP using such protocols and other emergency procedures as may be mutually agreed to between the Operating Committee and the Exchange. The Exchange also must take reasonable steps to provide notice to market participants if the SIP Processor is unable to disseminate notice of the Halt or the Primary Listing Market is not open for trading. In such case, the notice would include:

- Proprietary data feeds containing quote and last sale information that the Primary Listing Market also sends to the applicable SIP that is unable to disseminate the halt notices;
- Posting on a publicly available Exchange website; or
- System status messages that are disseminated to market participants who choose to sign up for the service.

The Exchange believes that market participants will benefit from additional sources of halt notifications that include machine readable and easily accessible communications for human traders and Nasdaq recommends that participants be prepared in advance to monitor multiple sources. Although it may take longer for participants to react to messages received in less automated formats, the use of multiple forms of dissemination will increase the likelihood that participants receive important information. It will also assist participants who do not subscribe to the Exchange's proprietary feeds in getting regulatory notices. As noted above, in situations where communication is interrupted the Exchange and other SROs would retain the ability to break trades that occurred after the start of the Regulatory Halt in appropriate circumstances (pursuant to rules governing clearly erroneous trades, at Equity 11, Rule 11890), thereby lessening the potential impact on participants that were delayed in halting trading. Participants must monitor several sources of regulatory notices so that they are aware of the imposition of a Regulatory Halt in situations where communication is interrupted; however, the failure of a participant to do so will not prevent the Exchange from initiating a Regulatory Halt.

Proposed Rule 4120(b)(2)(C) also makes clear that, consistent with the Amended Nasdaq UTP Plan, except in exigent circumstances, the Primary Listing Market will not declare a Regulatory Halt retroactive to a time earlier than the notice of such halt. Feedback from market participants has been that it is very disruptive to trading when the Primary Listing Market sets the start of a trading halt for a time earlier than the notice of the halt.[36] Therefore, in almost all situations the trading halt will start at the time of the notice or at a point in time thereafter. However, the Exchange retains the authority to implement a retroactive halt to deal with unexpected and significant situations that represent exigent circumstances. While it is difficult in advance to provide an exhaustive list of when retroactive application of a trading halt would be in the public interest, one situation where a halt was applied retroactively was when the Primary Listing Market erroneously lifted a Regulatory Halt. In that case, the Primary Listing Market instituted a Regulatory Halt retroactively so that it coincided with the time the original halt was lifted in error.

Consistent with Section X.C.2 of the Amended Nasdaq UTP Plan, Proposed Rule 4120(b)(D) states that in making a determination to declare a Regulatory Halt in trading any security for which the Exchange is the Primary Listing Market, the Exchange will consider the totality of information available concerning the severity of the issue, its likely duration, and potential impact on Members and other market participants and will make a good-faith determination that the criteria for declaring the Regulatory Halt have been satisfied and that a Regulatory Halt is appropriate. The Exchange will consult, if feasible, with the affected Trading Center(s), other SIP Plan Participants, or the Processor, as applicable, regarding the scope of the issue and what steps are being taken to address the issue.

Finally, consistent with Section X.C.2 of the Amended Nasdaq UTP Plan, Proposed Rule 4120(b)(E) states that once a Regulatory Halt has been declared, the Exchange will continue to evaluate the circumstances to determine when trading may resume in accordance with its Rules.

Nasdaq notes that except as otherwise stated, the proposed procedures for initiating Regulatory Halts replace those set forth in current Rule 4120(c).

Regulatory Halt Initiated by Other Markets

The Exchange believes that consolidating all subsections concerning a Regulatory Halt declared by other Primary Listing Markets in Rule 4120(b)(3) would add clarity to the rule. As is the case under the current rule, the Exchange would honor a Regulatory Halt.

- Current Rule 4120(a)(2), which states that the Exchange may halt trading on Nasdaq in any security it trades on an unlisted trading privileges basis, if the Primary Listing Market declares a Regulatory Halt in the security to permit dissemination of material news, would become proposed Rule 4120(b)(3)(A)(i). Consistent with Section X.G of the Nasdaq UTP Plan, the proposed Rule will more broadly require Nasdaq to halt trading of a UTP security if the Primary Listing Market declares a Regulatory Halt in that security.

Current Rule 4120(b), which governs trading halts in certain Derivative Securities Products traded on the Exchange pursuant to unlisted trading privileges, would become proposed

[36] As noted previously, the start of a Regulatory Halt is measured as the point in time when the Primary Listing Market declares the halt, regardless of whether there is a delay in dissemination of the notice or in receipt of the notice by participants.

Rule 4120(b)(3)(A)(ii). Subsection (b)(3)(A)(ii) would replace the term ''Regular Market Session'' with the term ''Regular Trading Hours'' to stay consistent with other portions of the proposed rule. The change is non-substantive and would still refer to the period between 9:30 a.m. and 4:00 p.m. Eastern Time on days when the Exchange is open for trading. No other changes have been made to this subsection.

Resumption of Trading After a Regulatory Halt

The SROs have jointly developed processes to govern the resumption of trading in the event of a Regulatory Halt. While the actual process of re-launching trading will remain unique to each exchange (for example, trading in Nasdaq-listed securities resumes on the Exchange in most cases through a Halt Cross pursuant to Rule 4753), the proposed rule would harmonize certain common elements of the reopening process that would benefit from consistency across markets. These common elements include the primacy of the Primary Listing Market in resumption decisions, the requirement that the Primary Listing Market make its determination to resume trading in good faith,[37] and certain parts of the complex process of reopening trading after a SIP Halt. With respect to a SIP Halt, common elements of the reopening process include the interaction among SROs (including the Primary Listing Market with the SIP), the requirement that the Primary Listing Market terminate a SIP Halt with a notification that specifies a SIP Halt Resume Time, the minimum quoting times before resumption of trading, the cutoff time after which trading would not resume during Regular Trading Hours, and the time when trading may resume if the Primary Listing Market does not open a security within the amount of time specified in its rules after the SIP Halt Resume Time.

Proposed Rule 4120(b)(4) provides the process to be followed when resuming trading upon the conclusion of a Regulatory Halt. The new rule, which incorporates Section X.E, and.(F of the Amended Nasdaq UTP Plan, is divided into the following three subsections concerning resumption of trading: (A) After a Regulatory Halt other than an IPO or SIP Halt; [38] (B) after a SIP Halt; and (C) after an IPO Halt.[39] The Exchange's proposed rule would make clear that Nasdaq, as the Primary Listing Market, is responsible for declaring a resumption of trading when it makes a good faith determination that trading may resume in a fair and orderly manner and in accordance with its rules. The Exchange expects that other SROs will propose the same concept. Similarly, the Exchange may resume trading in a non-Nasdaq-listed security [40] subject to a Regulatory Halt after the Exchange receives notification from the Primary Listing Market that the Regulatory Halt has been terminated. The Exchange does not run Halt Crosses in securities listed on another exchange and, therefore, the resumption of trading in these securities will occur once notice from the Primary Listing Market is received. Proposed Rule 4120(b)(4)(A)(ii) sets forth the mechanics of how the resumption would occur for these non-Nasdaq-listed securities and is consistent with current practice.

The existing resumption process incorporating the Halt Cross is being moved without modification to proposed Rule 4120(b)(4)(A)(i)a.–c. This process will apply to any type of a Regulatory Halt except for halts related to the launch of IPOs and a SIP Halt (which does not exist under the current rule) or an LULD Halt. The existing process for launching IPOs has also been incorporated in the proposed rule without substantive modification as proposed Rule 4120(b)(4)(C).

Proposed Rule 4120(b)(4)(A)(i)d. states that during any trading halt or pause for which a halt cross under Rule 4753 will not occur (as in the case of a Regulatory Halt for securities where Nasdaq is not the Primary Listing Market), orders entered during the Regulatory Halt or pause will not be accepted, unless subject to instructions that the order will be directed to another exchange as described in Rule 4758.

The Exchange proposes to add Rule 4120(b)(4)(A)(i)e. that will address the re-opening process following a Limit Up-Limit Down pause. The Exchange is proposing to move the Limit Up-Limit Down trading pause termination process to Rule 4120(b)(4)(A)(i)e. unchanged from current Rule 4120(c)(10).

For a SIP Halt, proposed Rule 4120(b)(4)(B) establishes the process by which Nasdaq, as the Primary Listing Market, determines to resume trading. The SROs' experience with such events is that communication among SROs, SIPs and market participants is the best way to ensure that the Primary Listing Market has access to available information and to coordinate the reopening of trading in an orderly manner. In addition, the SROs anticipate that market participants and other impacted entities will have access to information about the issue causing the SIP Halt, the duration of the halt and the resumption process through updated communications from the SIP, Operating Committee and Primary Listing Market. The Operating Committees have policies and procedures that, among other things, establish industry notice protocols for various SIP-related events.[41]

Under the proposal, for the resumption of trading after a SIP Halt initiated by the Exchange, the Exchange, as the Primary Listing Market, will make a good-faith determination of the SIP Halt Resume Time, after considering the totality of information as to whether resuming trading would promote a fair and orderly market. Nasdaq would solicit input from the Processor, the Operating Committee, or the operator of the system in question (as well as any Trading Center(s) to which such system is linked), regarding operational readiness to resume trading. The Primary Listing Market retains discretion to delay the SIP Halt Resume Time if it has reason to believe that trading will not resume in a fair or orderly manner.

When resuming trading after a SIP Halt as the Primary Listing Market, Nasdaq will use the same Halt Cross as other Regulatory Halt types, except for a Regulatory Halt related to the launch of an IPO or an LULD Halt. Whereas the Halt Cross for other Regulatory Halt types (except for a Regulatory Halt related to the launch of an IPO or an

[37] *See* Partial Amendment No. 1 of Trading Halt Amendments to the UTP Plan, dated March 31, 2021.

[38] When resuming trading in a halted security other than for an IPO or SIP Halt, the proposal states that trading shall resume at the time specified by Nasdaq in a notice posted on a publicly available Nasdaq website. This is unchanged from current Rule 4120(c)(5), except that the Proposed Rule no longer expressly provides that the Exchange will post notice of the resumption on a publicly available Nasdaq website or disseminate it through major wire services. Instead, consistent with the Amended Nasdaq UTP Plan, the Proposed Rule provides that the Exchange will notify all participants and the SIP that a Regulatory Halt has been lifted using such protocols and other emergency procedures as may be mutually agreed to between the Operating Committee and the Exchange.

[39] The Exchange proposes to change an obsolete reference in the provision of the Rules pertaining to resumptions after IPO Halts. The Exchange proposes to replace the phrase ''member organizations'' with the word ''Member'' to reflect the fact that the Rules refer to Exchange participants as Members.

[40] Companies that are dually-listed on Nasdaq and NYSE have one Primary Listing Market. *See* proposed amended IM–5220. Thus, if Nasdaq is not the Primary Listing Market for a dually-listed security, it will resume trading after receiving notice from NYSE that the Regulatory Halt has been terminated.

[41] *See https://www.utpplan.com/DOC/UTP_SIP_Emergency_Procedures.pdf.*

LULD Halt, in which Nasdaq will extend the Display Only Period if an order imbalance exists at its conclusion) have a fixed five-minute Display Only Period during which the Exchange is open for quoting but not trading, the complexities in resuming trading after a SIP Halt require additional flexibility to assist market participants in events that may involve hundreds or even thousands of securities. As a result, proposed Rule 4120(b)(4)(B)(i)b. and c. sets a *minimum* five-minute Display Only Period that can be extended at the discretion of Nasdaq to ensure a fair and orderly reopening of trading. It is anticipated that Nasdaq will consider input from other SROs, the SIP and market participants in reaching this conclusion. The SROs considered setting a fixed-length Display Only Period, including a longer such period of ten or fifteen minutes, but it determined that a flexible time period would better serve the markets in that it could be five minutes, or longer if deemed appropriate to facilitate a fair and orderly reopening. Nasdaq would, of course, be expected to communicate the duration of the Display Only Period to market participants (*i.e.,* in the resumption notice) sufficiently in advance of resumption to allow them to prepare their systems for trading.

Proposed Rule 4120(b)(4)(B)(i)a. gives Nasdaq, as the Primary Listing Market, discretion to delay the SIP Halt Resume Time if it believes that trading will not resume in a fair and orderly manner. Moreover, proposed Rule 4120(b)(4)(B)(i)b allows Nasdaq to stagger the SIP Halt Resume Times for multiple securities in order to reopen in a fair and orderly manner. For example, this discretion could be used to open trading in a small number of symbols to ensure that systems are operating normally before resuming trading in the remaining symbols.

In addition, the proposed rule would establish the last SIP Halt Resume Time as 20 minutes before the end of Regular Trading Hours (*e.g.,* 3:40 p.m. ET)—which is the latest time by which Nasdaq believes that it could conduct an orderly Halt Cross process before the end of Regular Trading Hours and without impacting the Closing Cross. If trading has not resumed by that time, Nasdaq would establish its closing price in halted securities using its contingency closing process. The Exchange's contingent closing process is memorialized in Rule 4754(b)(7).

Proposed Rule 4120(b)(4)(B)(i)c. provides that, for a SIP Halt initiated by Nasdaq, the reopening process shall be the same as for a non-IPO Regulatory Halt pursuant to proposed Rule 4120(b)(4)(A)(i)a.–c., except that the Display Only Period will be a minimum of five minutes, but may be extended at the discretion of Nasdaq pursuant to proposed Rule 4120(b)(4)(B)(i)a.&b. Proposed Rule 4120(b)(4)(B)(ii) provides that, for a SIP Halt initiated by another exchange that is the Primary Listing Market, during Regular Trading Hours, Nasdaq may resume trading after trading has resumed on the Primary Listing Market or notice has been received from the Primary Listing Market that trading may resume. Proposed Rule 4120(b)(4)(B)(ii) provides that, for a SIP Halt initiated by a market other than Nasdaq, during Regular Trading Hours, if the Primary Listing Market does not open a security within the amount of time listed by the rules of the Primary Listing Market, Nasdaq may resume trading in that security. Under Proposed Rule 4120(b)(4)(B)(ii), Outside of Regular Trading Hours, Nasdaq may resume trading immediately after the SIP Halt Resume Time.[42]

Nasdaq notes that except as otherwise stated, the proposed procedures for terminating Regulatory Halts replace those set forth in current Rule 4120(c).

Operational Halt

The Exchange proposes in Rule 4120(c) to address Operational Halts, which are non-regulatory in nature and apply only to the exchange that calls the halt. The ability to call an Operational Halt has existed for a long time, although in the Exchange's experience, such halts have rarely been initiated. As part of Nasdaq's assessment with the other SROs of the halting and resumption of trading, the Exchange believes that the markets would benefit from greater clarity regarding when an Operational Halt may be appropriate. In part, the proposed change is designed to cover situations similar to those that might constitute a Regulatory Halt, but where the impact is limited to a single market. For example, just as a market disruption might trigger a Regulatory Halt for Extraordinary Market Activity if it affects multiple markets, so a disruption at the Exchange, such as a technical issue affecting trading in one or more securities, could impact trading on the Exchange so significantly that an Operational Halt is appropriate in one or more securities. In such an instance, it would be in the public interest to institute an Operational Halt to minimize the impact of a disruption that, if trading were allowed to continue, might negatively affect a greater number of market participants. An Operational Halt does not implicate other trading centers.

As is currently the case in existing Rule 4120(a)(3)(B), proposed Rule 4120(c)(1)(C) gives discretion to the Exchange to impose an Operational Halt in a security listed on Nasdaq when a Primary Listing Market imposes an Operational Halt in a security that is a derivative or component of the Nasdaq-listed security. As discussed in relation to Derivative Securities Products, Nasdaq does not automatically halt trading—through either a Regulatory Halt or an Operational Halt—when component or derivative securities are halted. However, proposed Rule 4120(c)(1)(C), like the current rule, gives the Exchange authority to halt a security listed on Nasdaq if the impact of the component or derivative security on price discovery or the fair and orderly market in the Nasdaq-listed security is significant enough to warrant a trading halt. Factors would include whether trading in the security listed on Nasdaq is fair and orderly, the nature of the issue that triggered the Operational Halt(s) on the Primary Listing Market(s) in the component or derivative securities and whether the security that is subject to the Operational Halt continues to trade on other Trading Centers.

Proposed Rule 4120(c) also would authorize the Exchange to implement an Operational Halt for any security trading on Nasdaq, including a security listed elsewhere:

- If it is experiencing Extraordinary Market Activity on Nasdaq; or
- when otherwise necessary to maintain a fair and orderly market or in the public interest.

The Exchange is proposing to delete Rule 4120(a)(3)(A) that authorizes the Exchange to institute an ''operational trading halt'' in a security listed on another exchange when that exchange imposes a trading halt because of an order imbalance or influx. The Exchange believes this language could restrict its ability to follow an Operational Halt imposed by another market to a limited set of fact patterns. The Exchange believes that the broader language provided by the definition of Extraordinary Market Activity and the ability to initiate an Operational Halt when necessary to maintain a fair and orderly market will better serve the interests of investors by allowing the Exchange to act where appropriate.

Proposed Rule 4120(c)(2) provides the process for initiating an Operational Halt. Under the proposed rule, the Exchange must notify the SIP if it has concerns about its ability to collect and transmit Quotation Information or

[42] *See* Partial Amendment No. 2 of Trading Halt Amendments to the UTP Plan, dated April 7, 2021.

Transaction Reports, or if it has declared an Operation Halt or suspension of trading in one or more Eligible Security, pursuant to the procedures adopted by the Operating Committee.

Proposed Rule 4120(c)(3) will clarify how the Exchange resumes trading after an Operational Halt. Proposed Rule 4120(c)(3) provides that the Exchange would resume trading when it determines that trading may resume in a fair and orderly manner consistent with the Exchange's rules. Proposed Rule 4120(c)(3) includes one change from the current rule. Under the current rule, the Halt Cross process is used to resume trading after all halts in Nasdaq-listed securities, whether the halt is a Regulatory Halt or an Operational Halt. The Exchange is proposing to modify the process for an Operational Halt to give the Exchange discretion to open trading without a Halt Cross if it determines such action to be in the best interests of the market. During the July 8, 2015 suspension of trading by NYSE in all securities due to an operational issue, many market participants requested that NYSE resume trading without an auction to avoid any impact on Regulation NMS compliance and mispricing because trading continued on other markets. NYSE determined that its rules (NYSE Rule 7.35A) allow it to reopen without an auction process, and this decision was well received. Indeed, Nasdaq agrees that a Halt Cross in such a circumstance might prove to be disruptive or result in trade-throughs. Nasdaq's current rules would not permit it to reopen after an Operational Halt without a Halt Cross auction process. The Exchange proposes modifying its rules to provide it the same flexibility.

For Nasdaq-listed securities where a Halt Cross is conducted, the Exchange will use the same Halt Cross process for resumption outlined in Rule 4120(b)(4)(A)(i)a.–c. as it does for most Regulatory Halt types. The proposed rule notes that Nasdaq may determine to open trading without a Halt Cross if it determines such action to be in the best interests of the market. Where the Exchange decides not to hold a Halt Cross for a security subject to a halt or pause, the Exchange proposes to amend Rule 4753 to clarify that market hours trading will resume when Nasdaq releases the security. Moreover, where trading halt or pause for which a halt cross will not occur (as in the case of an Operational Halt for securities where Nasdaq is not the Primary Listing Market), orders entered during the Operational Halt will not be accepted, unless subject to instructions that the order will be directed to another exchange as described in Rule 4758.[43] When the Nasdaq is not the Primary Listing Market, when halting trading based on an Operational Halt, initiated by the Primary Listing Market, Nasdaq shall resume trading once it has determined the trading may be resumed in a fair and orderly manner.

Conforming Changes to Other Rules

The Exchange is proposing to modify a number of other rules that cross reference Rule 4120 in light of the reorganization of these rules. Updated cross references are proposed for the following rules:

- Rule 4702(a) (Order Types) will be modified to update cross references to the Rule that governs Limit-Up-Limit-Down procedures. Rule 4702(b)(16)(A) will be modified to update the cross-reference to the provision within Rule 4120 that is used to set the price of a Company Direct Listing Order.
- Rule 4753(a)(3) (Nasdaq Halt Cross) will be updated to make conforming changes to cross-references to IPO Halt procedures, a Trading Pause initiated pursuant to the Limit Up-Limit Down procedure, and the definition of the terms ''Auction Reference Prices'' and ''Auction Collars.''
- Rule 4753(b) (Nasdaq Halt Cross) will be modified to update the references to subsections of Rule 4120 to reflect the reorganization of Rule 4120. The Exchange also updates a cross-reference to Rule 4120 discussed when describing the role of a ''financial advisor.'' [44]
- Rule 4753(c) (Nasdaq Halt Cross) will be modified to update a cross reference to Rule 4120.
- Rule 4754(b)(6) (Nasdaq Closing Cross related to the Limit Up-Limit Down Plan) will be modified to reflect the new subsections of Rule 4120 that govern LULD Halts.
- IM–5315–2, IM–5405–1, and IM–5505–1 will be modified to reflect updated cross-references to provisions of Rule 4120 that the Exchange is proposing to relocate.

In addition, the Exchange is proposing to amend several rules that rely on the definition of ''Regular Market Session'' in current Rule 4120(b)(4)(D). Regular Market Session is defined as ''the trading session from 9:30 a.m. until 4:00 p.m. or 4:15 p.m.'' The Exchange is proposing to replace the references to Regular Market Session in Rule 5710 (Securities Linked to the Performance of Indexes and Commodities (Including Currencies)) and 5711 with references to Regular Trading Hours as proposed in Rule 4120(a)(12). The term ''Regular Trading Hours'' would be consistent with the existing application of the definition of ''Regular Market Session'' and obviate the need for multiple definitions for the regular trading day. As previously discussed, no securities traded on Nasdaq currently close at 4:15 p.m. and, therefore, the alternative closing time in the current Regular Market Session definition is not needed.

The Exchange also is proposing to modify IM–5220, which covers dually-listed securities, to reflect the changes proposed to Rule 4120. The proposed rule makes clear that the Primary Listing Market is the market on which the security has been listed longest. This clear statement has eliminated the need for the more specific citations to various subsections of Rule 4120 currently contained in IM–5220 because proposed Rule 4120 distinguishes between those securities for which Nasdaq is the Primary Listing Market and those securities for which Nasdaq is not. The Exchange is also eliminating language from the rule that references the Intermarket Trading System, which no longer exists. These changes are not substantive.

Finally, the Exchange proposes to amend certain references in Rule 5711, which governs the trading of certain derivative securities. The references to Regular Market Session would be changed to Regular Trading Hours throughout Rule 5711. This is consistent with changes made in other rules referring to Regular Market Session. The reference in subsection (i)(v)(B)(2) to the trading pauses contained in Rule 4120(a)(11) has been replaced with a citation to the Limit Up-Limit Down Plan, which now applies to these instruments (rather than Rule 4120(a)(11), which as discussed above, is obsolete). The reference in Rule 5711(j)(vi)(B)(5) to halting a series of Managed Trust Securities traded on the Exchange pursuant to unlisted trading privileges will be updated to reference

[43] The Exchange notes that it does not plan to carry over a portion of the existing Rule text that permits Nasdaq, in the event that it halts trading pursuant to an operational trading halt imposed by another exchange, to commence quotations and trading at any time following initiation of operational trading halts, without regard to regular procedures for resuming trading. This language will be replaced.

[44] As discussed earlier, the Exchange also proposes to amend Rule 4753(b) to state that for Nasdaq-listed securities that are the subject of a trading halt or pause initiated pursuant to Rule 4120, the Nasdaq Halt Cross shall occur at the time specified under Rule 4120, unless Nasdaq determines not to hold a Halt Cross, pursuant to proposed Rule 4120(c)(3)(A). The proposed amendments also clarify that market hours trading will commence when the Nasdaq Halt Cross concludes, or in the case of a security for which Nasdaq determines not to hold a Halt Cross, when Nasdaq releases the security.

the applicable section of the proposal, Rule 4120(b)(3)(A)(ii). The Exchange also proposes to update or insert cross-citations to the LULD Halt procedures for other derivative securities in this Rule that refer to halt procedures (Currency Trust Shares (Rule 5711(e), Commentary .07, and Currency Warrants (Rule 5711(k)(vi)).

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[45] Specifically, the proposal is consistent with Section 6(b)(5) of the Act [46] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest.

As described above, the Exchange and other SROs are seeking to adopt harmonized rules related to halting and resuming trading in U.S.-listed equity securities. The Exchange believes that the proposed rules will provide greater transparency and clarity with respect to the situations in which trading will be halted and the process through which that halt will be implemented and terminated. Particularly, the proposed changes seek to achieve consistent results for participants across U.S. equities exchanges while maintaining a fair and orderly market, protecting investors and protecting the public interest. Based on the foregoing, the Exchange believes that the proposed rules are consistent with Section 6(b)(5) of the Act [47] because they will foster cooperation and coordination with persons engaged in regulating and facilitating transactions in securities.

As discussed previously, the Exchange believes that the various provisions of the proposed rules that will apply to all SROs are focused on the type of cross-market event where a consistent approach will assist market participants and reduce confusion during a crisis. Because market participants often trade the same security across multiple venues and trade securities listed on different exchanges as part of a common strategy, the Exchange believes that the proposed rules will lessen the risk that market participants holding a basket of securities will have to deal with divergent outcomes depending on where the securities are listed or traded. Conversely, the proposed rules would still allow individual SROs to react differently to events that impact various securities or markets in different ways. This avoids the ''brittle market'' risk where an isolated event at a single market forces all markets trading equities securities to halt or halts trading in all securities where the issue impacted only a subset of securities. By addressing both concerns, the Exchange believes that the proposed rules further the Act's goal of maintaining fair and orderly markets.

The Exchange believes that the proposed rules' focus of responsibility on the Primary Listing Market for decisions related to a Regulatory Halt and the resumption of trading is consistent with the Act, which itself imposes obligations on exchanges with respect to issuers that are listed. As is currently the case, the Primary Listing Market would be responsible for the many regulatory functions related to its listings, including the determination of when to declare a Regulatory Halt. While these core responsibilities remain with the Primary Listing Market, trading in the security can occur on multiple exchanges that have unlisted trading privileges for the security or in the over-the-counter market, regulated by FINRA. These other venues are responsible for monitoring activity on their own markets, but also have agreed to honor a Regulatory Halt.

The proposed changes relating to Regulatory Halts would ensure that all SROs handle the situations covered therein in a consistent manner that would prevent conflicting outcomes in cross-market events and ensure that all Trading Centers recognize a Regulatory Halt declared by the Primary Listing Market. The changes are consistent with and implement the Amended Nasdaq UTP Plan. While the proposed rules recognize one Primary Listing Market for each security, the rules do not prevent an issuer from switching its listing to another national securities exchange that would thereafter assume the responsibilities of Primary Listing Market for that security. Similarly, the proposed rules set forth a fair and objective standard to determine which exchange will be the Primary Listing Market in the case of dually-listed securities: The exchange on which the security has been listed the longest.

The Exchange believes that the other definitions in the proposed rules are also consistent with the Act. For example, existing rules of the Exchange allow it to take action to halt the market in the event of Extraordinary Market Activity. The proposed rules would expand the scope of what constitutes Extraordinary Market Activity, consistent with the amended definition of that term in the Amended Nasdaq UTP Plan, thereby furthering the Act's goal of promoting fair and orderly markets. The Exchange is also proposing to adopt definitions for ''SIP Outage,'' ''Material SIP Latency'' and ''SIP Halt,'' to explicitly address situations that may disrupt the markets, and these definitions are identical to the definitions in the Amended Nasdaq UTP Plan. The proposed rules provide guidance on when the Exchange should seek information from the Operating Committee, other SROs and market participants as well as means for dissemination of important information to the market, consistent with the Amended Nasdaq UTP Plan. The Exchange believes these provisions strike the right balance in outlining a process to address unforeseen events without preventing SROs from taking action needed to protect the market.

The Exchange believes that the proposed rules, which make halts more consistent across exchange rules, is consistent with the Act in that it will foster cooperation and coordination with persons engaged in regulating the equities markets. In particular, the Exchange believes it is important for SROs to coordinate when there is a widespread and significant event, as multiple Trading Centers are impacted in such an event. Further, while the Exchange recognizes that the proposed rule will not guarantee a consistent result on every market in all situations, the Exchange does believe that it will assist in that outcome. While the proposed rules relating to Regulatory Halts focuses primarily on the kinds of cross-market events that would likely impact multiple markets, individual SROs will still retain flexibility to deal with unique products or smaller situations confined to a particular market. To that end, the Exchange has retained existing elements of Rule 4120 that focus on its unique products and the processes it has developed over time to interact with its issuers.

Also consistent with the Act, and with the Amended Nasdaq UTP Plan, is the Exchange's proposal in Rule 4120(c) to address Operational Halts, which are non-regulatory in nature and apply only to the exchange that calls the halt. As noted earlier, the Exchange presently has the ability to call an Operational Halt, but does so rarely. The Exchange believes that the markets would benefit from greater clarity regarding when an Operational Halt may be appropriate. In

[45] 15 U.S.C. 78f(b).

[46] 15 U.S.C. 78f(b)(5).

[47] 15 U.S.C. 78f(b)(5).

part, the proposed change is designed to cover situations similar to those that might constitute a Regulatory Halt, but where the impact is limited to a single market. For example, just as a market disruption might trigger a Regulatory Halt for Extraordinary Market Activity if it affects multiple markets, so could a disruption at the Exchange, such as a technical issue affecting trading in one or more securities, impact trading on the Exchange so significantly that an Operational Halt is appropriate in one or more securities. In such an instance, it would be in the public interest to institute an Operational Halt to minimize the impact of a disruption that, if trading were allowed to continue, might negatively affect a greater number of market participants. An Operational Halt does not implicate other trading centers.

As is currently the case in existing Rule 4120(a)(3)(B), proposed Rule 4120(c)(1)(C) gives discretion to the Exchange to impose an Operational Halt in a security listed on Nasdaq when a Primary Listing Market imposes an Operational Halt in a security that is a derivative or component of the Nasdaq-listed security. As discussed in relation to Derivative Securities Products, Nasdaq does not automatically halt trading—through either a Regulatory Halt or an Operational Halt—when component or derivative securities are halted. However, proposed Rule 4120(c)(1)(C), like the current rule, gives the Exchange authority to halt a security listed on Nasdaq if the impact of the component or derivative security on price discovery or the fair and orderly market in the Nasdaq-listed security is significant enough to warrant a trading halt. Factors would include whether trading in the security listed on Nasdaq is fair and orderly, the nature of the issue that triggered the Operational Halt(s) on the Primary Listing Market(s) in the component or derivative securities and whether the security that is subject to the Operational Halt continues to trade on other Trading Centers.

Proposed Rule 4120(c) also would authorize the Exchange to implement an Operational Halt for any security trading on Nasdaq, including a security listed elsewhere: (i) If it determines that there is a significant order imbalance; (ii) if it is experiencing Extraordinary Market Activity; or (iii) when otherwise necessary to maintain a fair and orderly market or in the public interest.

The Exchange believes that it is consistent with the Act to delete Rule 4120(a)(3)(A), which authorizes the Exchange to institute an ''operational trading halt'' in a security listed on another exchange when that exchange imposes a trading halt because of an order imbalance or influx. The Exchange believes this language could restrict its ability to follow an Operational Halt imposed by another market to a limited set of fact patterns. The Exchange believes that the broader language provided by the definition of Extraordinary Market Activity and the ability to initiate an Operational Halt in the event of a significant order imbalance in proposed Rule 4120(c) will better serve the interests of investors by allowing the Exchange to act where appropriate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposal is consistent with Section 6(b)(8) of the Act[48] in that it does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act as explained below.

Importantly, the Exchange believes the proposal will not impose a burden on intermarket competition but will rather alleviate any burden on competition because it is the result of a collaborative effort by all SROs to harmonize and improve the process related to the halting and resumption of trading in U.S.-listed equity securities, consistent with the Amended Nasdaq UTP Plan. In this area, the Exchange believes that all SROs should have consistent rules to the extent possible in order to provide additional transparency and certainty to market participants and to avoid inconsistent outcomes that could cause confusion and erode market confidence. The proposed changes would ensure that all SROs handle the situations covered therein in a consistent manner and ensure that all Trading Centers handle a Regulatory Halt consistently. The Exchange understands that all other Primary Listing Markets intend to file proposals that are substantially similar to this proposal.

The Exchange does not believe that its proposals concerning Operational Halts impose an undue burden on competition. Under the existing Rules, the Exchange already possesses discretionary authority to impose Operational Halts for various reasons, including because of an order imbalance or influx that causes another national securities exchange to impose a trading halt in a security, or because another national securities exchange imposes an operational halt in a security that is a derivative or component of a security listed on Nasdaq. As described earlier, the proposed Rule change clarifies and broadens the circumstances in which the Exchange may impose such Halts, and specifies procedures for both imposing and lifting them. The Exchange does not intend for these proposals to have any competitive impact whatsoever. Indeed, the Exchange expects that other exchanges will adopt similar rules and procedures to govern operational halts, to the extent that they have not done so already.

The Exchange does not believe that the proposed rule change imposes a burden on intramarket competition because the provisions apply to all market participants equally. In addition, information regarding the halting and resumption of trading will be disseminated using several freely accessible sources to ensure broad availability of information in addition to the SIP data and proprietary data feeds offered by the Exchange and other SROs that are available to subscribers.

In addition, the proposals include several provisions related to the declaration and timing of trading halts and the resumption of trading designed to avoid any advantage to those who can react more quickly than other participants. The proposed rule gives the Exchanges the ability to declare the timing of a Regulatory Halt immediately. The SROs retain the discretion to cancel trades that occur after the time of the Regulatory Halt. The proposals also allow for the staggered resumption of trading to assist firms in reentering the market after a SIP Halt affecting multiple securities, in order to reopen in a fair and orderly manner. In addition, the proposals encourage early and frequent communication among the SROs, SIPs and market participants to enable the dissemination of timely and accurate information concerning the market to market participants.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which

[48] 15 U.S.C. 78f(b)(8).

the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be 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–NASDAQ–2022–017 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–NASDAQ–2022–017. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2022–017 and should be submitted on or before April 1, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[49]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–05147 Filed 3–10–22; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 17365 and # 17366; ALABAMA Disaster Number AL–00126]

Administrative Declaration of a Disaster for the State of Alabama

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Alabama dated 03/07/2022.

Incident: Tornado.

Incident Period: 02/03/2022.

DATES: Issued on 03/07/2022.

Physical Loan Application Deadline Date: 05/06/2022.

Economic Injury (EIDL) Loan Application Deadline Date: 12/7/2022.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Hale.

Contiguous Counties:

Alabama: Bibb, Greene, Marengo, Perry, Tuscaloosa.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	2.875
Homeowners without Credit Available Elsewhere	1.438
Businesses with Credit Available Elsewhere	5.880
Businesses without Credit Available Elsewhere	2.940
Non-Profit Organizations with Credit Available Elsewhere	1.875
Non-Profit Organizations without Credit Available Elsewhere	1.875
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	2.940
Non-Profit Organizations without Credit Available Elsewhere	1.875

The number assigned to this disaster for physical damage is 17365 C and for economic injury is 17366 0.

The State which received an EIDL Declaration # is Alabama.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2022–05157 Filed 3–10–22; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Docket No.: SBA–2022–001]

Class Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Notice of intent to waive the nonmanufacturer rule for dental equipment and supplies.

SUMMARY: The U.S. Small Business Administration (SBA) is considering granting a request for a class waiver of the Nonmanufacturer Rule (NMR) for dental equipment and supplies.

DATES: Comments and source information must be submitted by April 11, 2022.

ADDRESSES: You may submit comments and source information via the Federal Rulemaking Portal at *https://www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *https://www.regulations.gov,* please submit the information to Carol Hulme, Attorney Advisor, Office of Government Contracting, U.S. Small Business Administration, 409 Third Street SW, 8th Floor, Washington, DC 20416. Highlight the information that you consider to be CBI and explain why you believe this information should be held confidential. SBA will review the information and make a final determination as to whether the information will be published.

[49] 17 CFR 200.30–3(a)(12).

FOR FURTHER INFORMATION CONTACT: Carol Hulme, Attorney Advisor, by telephone at 202–205–6347; or by email at *Carol-Ann.Hulme@sba.gov.*

SUPPLEMENTARY INFORMATION: Sections 8(a)(17) and 46 of the Small Business Act (Act), 15 U.S.C. 637(a)(17) and 657s, and SBA's implementing regulations, found at 13 CFR 121.406(b), require that recipients of Federal supply contracts provide the product of a small business manufacturer or processor if the recipient of the set-aside contract is not the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule (NMR). 13 CFR 121.406(b). The NMR applies to a contract issued as a small business set-aside (except as stated below); a service-disabled veteran-owned small business (SDVOSB) set-aside or sole-source contract; a Historically Underutilized Business Zone (HUBZone) set-aside or sole source contract; a women-owned small business (WOSB) or economically disadvantaged women-owned small business (EDWOSB) set-aside or sole source contract; or 8(a) set-aside or sole source contract; a partial set-aside; or a set-aside of an order against a multiple award contract. The NMR does not apply to small business set-aside acquisitions with an estimated value between the micro-purchase threshold and the simplified acquisition threshold.

Sections 8(a)(17)(B)(iv)(II) and 46(a)(4)(B) of the Act authorize SBA to waive the NMR for a ''class of products'' for which there are no small business manufacturers or processors available to participate in the Federal market. The SBA identifies a ''class of products'' based on a combination of the six-digit NAICS code and a description of the class of products. A waiver would not have any effect on the requirements in 13 CFR 121.406(b) or on requirements external to the Act that involve domestic sources of supply, such as the Buy American Act, 41 U.S.C. 8301–8305, or the Trade Agreements Act, 19 U.S.C. 2501 *et. seq.*

As implemented in SBA's regulations at 13 CFR 121.1202(c), in order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or been awarded a contract to supply the class of products within the last 24 months.

SBA has received a request for a class waiver for dental supplies and equipment. Specifically, the waiver would apply to dental chairs, dental delivery systems, dental lights, dental cabinets, dental stools, dental handpieces, dental infection control apparatus, dental air management systems, and mechanical room equipment under North American Industry Classification (NAICS) code 339114. If granted, the class waiver would allow otherwise qualified regular dealers to supply the waived item on certain small business contracts, regardless of the business size of the manufacturer. The applicable NAICS Code is 339114 because there are no small businesses that manufacturer this product. A search of the Federal marketplace revealed there are no small business manufacturers that can manufacture and supply this product to the Federal government.

SBA invites the public to comment on this pending request to waive the NMR for dental equipment and supplies. The public may comment or provide source information on any small business manufacturers of this class of products that are available to participate in the Federal market. The public comment period will run for 30 days after the date of publication in the **Federal Register**.

More information on the NMR and class waivers can be found at Nonmanufacturer rule (*sba.gov*).

Wallace D. Sermons, II,

Acting Director, Office of Government Contracting.

[FR Doc. 2022–05240 Filed 3–10–22; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF STATE

[Public Notice: 11614]

Overseas Schools Advisory Council Notice of Meeting

The Department of State's Overseas Schools Advisory Council will hold its Winter Committee Meeting on Thursday, April 7, 2022, from 9:00 a.m. until approximately 12:00 p.m. If permitted, the members will meet in-person. To limit exposure, the meeting is open for the public to participate virtually only. If an in-person meeting is not permitted for the Advisory Council members due to local conditions, the meeting will be held exclusively online.

The Overseas Schools Advisory Council works closely with the U.S. business community on improving American-sponsored schools overseas that are assisted by the Department of State and attended by U.S. government employee dependents, and the children of employees of U.S. corporations and foundations abroad.

This meeting will address issues related to the support provided by the Overseas Schools Advisory Council to American-sponsored overseas schools. There will be a presentation on the status of the Council-sponsored Child Protection Project and Social Emotional Learning Project. Also, the Regional Education Officers in the Office of Overseas Schools will present on the initiatives in the American-sponsored overseas schools.

Public members may attend the meeting virtually, subject to the instructions of the Chair. Those interested in participating virtually should RSVP prior to April 7, 2022 to: Mr. Mark Ulfers, Office of Overseas Schools, Department of State, Tel: 202–261–8200, Email: *OverseasSchools@state.gov.*

The Department will send instructions for virtual participation to those that RSVP. Requests for reasonable accommodation should be sent prior to April 7. Requests sent after that date will be considered but may not be possible to fulfill.

Mark Ulfers,

Executive Secretary, Overseas Schools Advisory Council.

[FR Doc. 2022–05100 Filed 3–10–22; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

[Public Notice: 11676]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''In America: An Anthology of Fashion'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition ''In America: An Anthology of Fashion'' at The Metropolitan Museum of Art, New York, New York, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Stacy E. White,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2022–05159 Filed 3–10–22; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[FAA Docket Number: FAA–2022–0334]

NextGen Advisory Committee; Notice of Public Meeting

AGENCY: Federal Aviation Administration (FAA), Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting of the NextGen Advisory Committee (NAC).

DATES: The meeting will be held virtually, on March 28, 2022, from 1:00 p.m.–4:00 p.m. ET. Requests to attend the meeting virtually and request for accommodations for a disability must be received by March 17, 2022. If you wish to make a public statement during the meeting, you must submit a written copy of your remarks by March 17, 2022. Written materials requested to be reviewed by NAC Members before the meeting must be received no later than March 17, 2022.

ADDRESSES: This will be a virtual meeting. Virtual meeting information will be provided upon registration. Information on the NAC, including copies of previous meeting minutes, is available on the NAC internet website at *https://www.faa.gov/about/office_org/headquarters_offices/ang/nac/*. Members of the public interested in attending must send the required information listed in the **SUPPLEMENTARY INFORMATION** section to *9-AWA-ANG-NACRegistration@faa.gov*.

FOR FURTHER INFORMATION CONTACT: Kimberly Noonan, NAC Coordinator, U.S. Department of Transportation, at *Kimberly.Noonan@faa.gov* or 202–267–3760. Any requests or questions not regarding attendance registration should be sent to the person listed in this section.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of Transportation established the NAC under agency authority in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, Public Law 92–463, 5 U.S.C. app. 2, to provide independent advice and recommendations to the FAA, and to respond to specific taskings received directly from the FAA. The NAC recommends consensus-driven advice for FAA consideration relating to Air Traffic Management System modernization.

II. Agenda

At the meeting, the agenda will cover the following topics:

- NAC Chairman's Report
- FAA Report
- NAC Subcommittee Chairman's Report
  - Risk and Mitigations update for the following focus areas: Multiple Runway Operations, Data Communications, Performance Based Navigation, Surface and Data Sharing, and Northeast Corridor
- NAC Chairman Closing Comments

The detailed agenda will be posted on the NAC internet website at least one week in advance of the meeting.

III. Public Participation

This virtual meeting will be open to the public. Members of the public who wish to attend are asked to register via email by submitting their full legal name, country of citizenship, contact information (telephone number and email address), and name of your industry association, or applicable affiliation. Please email this information to the email address listed in the **ADDRESSES** section. When registration is confirmed, registrants will be provided the virtual meeting information/teleconference call-in number and passcode. Callers are responsible for paying associated long-distance charges (if any).

Note: Only NAC Members, members of the public who have registered to make a public statement, and NAC working groups and FAA staff who are providing briefings will have the ability to actively participate. All other attendees will be able to listen only.

The U.S. Department of Transportation is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Five minutes will be allotted for oral comments from members of the public joining the meeting. This time may be extended if there is a significant number of members of the public wishing to provide an oral comment. To accommodate as many speakers as possible, the time for each commenter may be limited. Individuals wishing to reserve speaking time during the meeting must submit a request at the time of registration, as well as the name, address, and organizational affiliation of the proposed speaker. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, FAA may conduct a lottery to determine the speakers. Speakers are required to submit a copy of their prepared remarks for inclusion in the meeting records and for circulation to NAC members to the person listed under the heading **FOR FURTHER INFORMATION CONTACT**. All prepared remarks submitted on time will be accepted and considered as part of the meeting's record.

Members of the public may submit written statements for inclusion in the meeting records and circulation to the NAC members. Written statements need to be submitted to the person listed under the heading **FOR FURTHER INFORMATION CONTACT**. Comments received after the due date listed in the **DATES** section will be distributed to the members but may not be reviewed prior to the meeting. Any member of the public may present a written statement to the committee at any time.

Signed in Washington, DC, this 8th day of March 2022.

Kimberly Noonan,

Manager, Stakeholder and Collaboration Division (A), NextGen Office of Collaboration and Messaging, ANG–M, Office of the Assistant Administrator for NextGen, Federal Aviation Administration.

[FR Doc. 2022–05164 Filed 3–10–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0053]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: MISSIONCARE COLLECTIVE (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before April 11, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0053 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0053 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2022–0053, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel MISSIONCARE COLLECTIVE is:

—*Intended Commercial Use of Vessel:* ''Time charters.''

—*Geographic Region Including Base of Operations:* ''Florida'' (Base of Operations: St. Petersburg, FL)

—*Vessel Length and Type:* 57.8′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2022–0053 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0053 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

FR Doc. 2022–05126 Filed 3–10–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0055]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: PERSEVERANCE (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the

Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before April 11, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0055 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0055 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2022–0055, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel PERSEVERANCE is:

—*Intended Commercial Use of Vessel:* ''OUPV or 'six pack'.''

—*Geographic Region Including Base of Operations:* ''Puerto Rico'' (Base of Operations: Fajardo, PR)

—*Vessel Length and Type:* 38′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2022–0055 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0055 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–05127 Filed 3–10–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0051]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: BLUE GOOSE (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from

interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before April 11, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0051 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0051 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2022–0051, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel BLUE GOOSE is:

—*Intended Commercial Use of Vessel:* ''The intended use will be for up to 6 paying passengers to be able to take a non-charter (captain operated) boat ride. The vessel will be offered for 2, 4, 6, and 8-hour trips. The trips will be sightseeing, evening cruises, trips to local restaurants, stadium trips, entertainment, etc.''

—*Geographic Region Including Base of Operations:* ''Tennessee, Mississippi, Alabama, and Florida'' (Base of Operations: Knoxville, TN)

—*Vessel Length and Type:* 42′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2022–0051 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0051 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–05124 Filed 3–10–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0054]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: ANGEL DEL MAR (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire.

A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before April 11, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0054 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Search MARAD–2022–0054 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2022–0054, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov*, including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov*.

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel ANGEL DEL MAR is:

—*Intended Commercial Use of Vessel:* ''Small local single and multi-day charters in Florida and Bahamas. No cargo.''

—*Geographic Region Including Base of Operations:* ''Florida'' (Base of Operations: Stuart, FL)

—*Vessel Length and Type:* 70′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2022–0054 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov*, keyword search MARAD–2022–0054 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov*. Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov*, as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy*. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–05123 Filed 3–10–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0056]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: PILAR (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this

action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before April 11, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0056 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0056 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2022–0056, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel PILAR is:

—*Intended Commercial Use of Vessel:* ''Carrying passengers for hire.''
—*Geographic Region Including Base of Operations:* ''Florida Georgia, North Carolina, South Carolina, Alabama, Mississippi, Louisiana, and Texas'' (Base of Operations: Tampa, FL)
—*Vessel Length and Type:* 67.2′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2022–0056 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0056 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–05128 Filed 3–10–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0052]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: MARGARET ANNA (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before April 11, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0052 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0052 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2022–0052, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel MARGARET ANNA is:

—*Intended Commercial Use of Vessel:* ''The vessel will be used for sail training operations and expeditions on coastwise and transoceanic routes.''

—*Geographic Region Including Base of Operations:* ''Maine, Massachusetts, Rhode Island, New York, Maryland, Virginia, South Carolina, Florida, Michigan, and Illinois'' (Base of Operations: Annapolis, MD)

—*Vessel Length and Type:* 65.5′ Sail

The complete application is available for review identified in the DOT docket as MARAD 2022–0052 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0052 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–05125 Filed 3–10–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

[Docket No. PHMSA–2021–0054]

Pipeline Safety: Information Collection Activities

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, PHMSA invites comments on proposed revisions to Form PHMSA F 7000–1, ''Accident Report—Hazardous Liquid and Carbon Dioxide Pipeline Systems,'' under Office of Management and Budget (OMB) Control No. 2137–0047; Form PHMSA F 7100.2–1, ''Annual Report for Natural and Other Gas Transmission and Gathering Pipeline Systems,'' under OMB Control No. 2137–0522; Form PHMSA F 7000–1.1, ''Annual Report for Hazardous Liquid and Carbon Dioxide Pipeline Systems,'' under OMB Control No. 2137–0614; Form PHMSA F 7100.1–1, ''Annual Report for Gas Distribution

Systems,'' under OMB Control No. 2137–0629; and Forms PHMSA F 7100.1, ''Incident Report—Gas Distribution Systems,'' PHMSA F 7100.2, ''Incident Report—Gas Transmission and Gathering Systems,'' and PHMSA F 7100.3, ''Incident Report—Liquefied Natural Gas (LNG) Facilities,'' each under OMB Control No. 2137–0635.

DATES: Interested persons are invited to submit comments on or before May 10, 2022.

ADDRESSES: Comments may be submitted in the following ways:

E-Gov Website: http://www.regulations.gov. This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

Fax: 1–202–493–2251.

Mail: Docket Management Facility; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590–0001.

Hand Delivery: Room W12–140 on the ground level of DOT, West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9:00 a.m. and 5:00 p.m., ET, Monday through Friday, except federal holidays.

Instructions: Identify the docket number, PHMSA–2021–0054 at the beginning of your comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket or to read background documents or comments, go to *http://www.regulations.gov* at any time or to Room W12–140 on the ground level of DOT, West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9:00 a.m. and 5:00 p.m., ET, Monday through Friday, except federal holidays. If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: ''Comments on: PHMSA–2021–0054.'' The Docket Clerk will date stamp the postcard prior to returning it to you via the U.S. mail. Please note that due to delays in the delivery of U.S. mail to federal offices in Washington, DC, we recommend that persons consider an alternative method (internet, fax, or professional delivery service) of submitting comments to the docket and ensuring their timely receipt at DOT.

Privacy Act Statement: DOT may solicit comments from the public regarding certain general notices. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA, 5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this notice, it is important that you clearly designate the submitted comments as CBI. Pursuant to 49 CFR 190.343, you may ask PHMSA to give confidential treatment to information you give to the Agency by taking the following steps: (1) Mark each page of the original document submission containing CBI as ''Confidential''; (2) send PHMSA, along with the original document, a second copy of the original document with the CBI deleted; and (3) explain why the information you are submitting is CBI. Submissions containing CBI should be sent to Angela Hill, DOT, PHMSA, 1200 New Jersey Avenue SE, PHP–30, Washington, DC 20590–0001. Any commentary PHMSA receives that is not specifically designated as CBI will be placed in the public docket for this matter.

FOR FURTHER INFORMATION CONTACT: Angela Hill by telephone at 202–366–1246, by email at *Angela.Hill@dot.gov,* or by mail at DOT, PHMSA, 1200 New Jersey Avenue SE, PHP–30, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1320.8(d), Title 5, Code of Federal Regulations (CFR), requires PHMSA to provide interested members of the public and affected entities an opportunity to comment on information collection and recordkeeping requests. This notice identifies the proposed changes to information collections under OMB Control Numbers 2137–0047, 2137–0522, 2137–0614, 2137–0629, and 2137–0635 that PHMSA will submit to OMB for approval.

Excavation damage is one of the leading causes of serious pipeline incidents. Additionally, the consequences of these damages have the potential to significantly impact the environment and negatively affect communities across our Nation. In 2000, PHMSA was instrumental in creating the Common Ground Alliance (CGA) a non-profit organization established to help reduce damage to the underground facility infrastructure—ensuring public safety, environmental protection, and the reliability of utility services. In the years since, PHMSA has continued supporting CGA efforts. In 2003, the CGA launched the Damage Information Reporting Tool (DIRT) to collect excavation damage data, including root cause data to identify the underlying causes of excavation damages to underground facilities. Understanding the root causes of excavation damage is essential to identifying measures to prevent future damage.

Since 2010, gas distribution pipeline operators have submitted the number of excavation damage events on their pipelines and one-call notices of excavation (tickets) involving their facilities to PHMSA annually on Form PHMSA F 7100.1–1, ''Annual Report for Gas Distribution Systems.'' PHMSA incident and accident reports were also modified in 2010 to collect excavation damage data in the format contemplated in the CGA's DIRT. In 2015, PHMSA began collecting gas distribution annual report excavation damage data in each of the CGA DIRT root cause categories. In 2018, to better understand the impact of excavation damages to people, property, and the environment, the CGA added new questions to DIRT and expanded the number of root cause categories.

PHMSA plans to amend its forms to continue alignment of PHMSA submissions regarding excavation damage to pipelines with the CGA's DIRT scheme to improve consistency and to reduce burdens on operators. Many pipeline operators submit data to CGA DIRT, so consistency between the DIRT and PHMSA submissions will avoid duplication of efforts by pipeline operators. The 2018 DIRT data structure also produces more detail about excavation damage root cause than existing PHMSA forms. By collecting more detailed data, PHMSA and stakeholders can better understand the gaps in current pipeline operator damage prevention programs.

As gas gathering, gas transmission, and hazardous liquid pipeline systems are susceptible to excavation damage, PHMSA is proposing to collect excavation damage data on the annual reports for these pipeline systems. Differences among the predominant root causes by pipeline system might indicate different preventive measures for each system type, so these data points will be useful for PHMSA to collect.

PHMSA also proposes miscellaneous changes to the forms and certain instructions unrelated to excavation damage root cause. These changes are fully described in the following paragraphs.

A. Form PHMSA F 7000–1 Accident Report—Hazardous Liquid and Carbon Dioxide Pipeline Systems

In Part A4 of this form, operators are instructed to enter the earliest local time and date an accident reporting criterion was met. In some cases, consequences occur when the pipeline system fails, but the extent of the consequences are not known until hours, days, or weeks later. PHMSA proposes clarifying the instructions to ensure the form collects the time consequences occurred rather than the time operators fully documented the extent of the consequences.

In Part C3 of this form, operators report the type of item that failed. When a breakout tank weld fails, operators select ''onshore breakout tank or storage vessel'' in Part A14 and ''weld'' in Part C3, but are currently unable to enter additional data about the breakout tank in Part C3, sections u and v.

PHMSA proposes to require the collection of breakout tank data in Part C3, sections u and v, for reports where A14, describing the part of the system involved in the accident, is ''Onshore Breakout Tank or Storage Vessel.'' This change would provide stakeholders with data about the breakout tank regardless of the item that failed on the breakout tank.

In Part G3 of this report, operators enter data when the cause of the accident is excavation damage. Currently, PHMSA instructs operators to submit data about exemptions to one-call laws only when the sub-cause of an accident is third-party excavation damage. PHMSA proposes collecting state law exemption data when any sub-cause within excavation damage is selected. This change would improve PHMSA's ability to identify instances where state law exemptions contributed to the excavation damage accident no matter which party (first, second, or third) was excavating.

PHMSA believes that the current time estimated for excavation damage information collection provides sufficient time for affected operators to include the newly required information. PHMSA does not expect operators to incur additional burden due to these revisions.

B. Form PHMSA F 7100.2–1 Annual Report for Natural and Other Gas Transmission and Gathering Pipeline Systems

PHMSA proposes adding a new part to this form to collect the number of one-call tickets and the number of excavation damage events in each CGA DIRT root cause category. Data for gas transmission and gas gathering pipelines would be reported separately.

C. Form PHMSA F 7000–1.1 Annual Report for Hazardous Liquid and Carbon Dioxide Pipeline Systems

PHMSA proposes adding a new part to this form to collect the number of one-call tickets and the number of excavation damage events in each CGA DIRT root cause category.

PHMSA proposes modifying Part J, ''Miles of Pipe by Specified Minimum Yield Strength,'' to include columns for pipe segments that are required to meet some, but not all, of the 49 CFR part 195 requirements. Specifically, PHMSA proposes adding a column for miles regulated under § 195.11 and a column for miles regulated under § 195.12. These changes promote consistency within the report since miles regulated under §§ 195.11 and 195.12 are reported in Parts H and I of this form.

D. Form PHMSA F 7100.1–1 Annual Report for Gas Distribution Systems

PHMSA proposes replacing the CGA DIRT root cause categories currently in this form with the 2018 CGA DIRT root cause categories.

PHMSA proposes removing Part E pertaining to the number of excess flow valves (EFVs) and manual service line shut-off valves. In 2010, after the conclusion of an EFV rulemaking, PHMSA added the number of EFVs installed during the year and the total number of EFVs in the system. Also, PHMSA added the number of shut-off valves installed during the year and the total number of shut-off valves in the system as part of the 2016 final rule, ''Expanding the Use of Excess Flow Valves in Gas Distribution Systems to Applications Other Than Single-Family Residences'' (Docket PHMSA–2011–0009). PHMSA's primary motivation for collecting the number of EFVs and shut-off valves on the annual report was to support PHMSA and state partner inspector efforts to assess compliance with the EFV rules. Based on feedback from inspectors, PHMSA has determined that operators' annual reporting of the number of EFVs and shut-off valves is not helpful for determining compliance. Inspectors have been determining compliance by observing construction practices and reviewing specific installation records. When gas distribution incidents occur, PHMSA collects data about EFVs and shut-off valves specific to the incident location. The collection of data in the incident report provides additional opportunities for inspectors to assess operator compliance with the EFV rulemakings. PHMSA has determined that it no longer needs to collect EFV and shut-off valve data in Part E of the annual report.

E. Form PHMSA F 7100.1 Incident Report—Gas Distribution Systems

In Part A4 of this form, operators are instructed to enter the earliest local time and date an incident reporting criterion was met. In some cases, consequences occur when the pipeline system fails, but the extent of the consequences are not known until hours, days, or weeks later. PHMSA proposes clarifying the instructions to ensure the form collects the time consequences occurred rather than the time operators fully documented the extent of the consequences.

The term ''confirmed discovery'' is defined in § 191.3. PHMSA proposes adding the local time and date of ''confirmed discovery'' in Part A of this form. This data would enhance the ability of PHMSA and stakeholders to assess operator compliance with PHMSA incident reporting regulations.

In Part G3 of this form, operators enter data when the cause of the incident is excavation damage. Currently, PHMSA instructs operators to submit data about exemptions to one-call laws only when the sub-cause is third party excavation damage. PHMSA proposes collecting state law exemption data when any sub-cause within excavation damage is selected. This change would improve PHMSA's ability to identify instances where state law exemptions contributed to the excavation damage incident no matter which party (first, second, or third) was excavating.

PHMSA proposes adding questions from the 2018 edition of the CGA DIRT and replacing the root cause categories currently in the form to match the most recent CGA DIRT root cause categories.

PHMSA believes that the current time estimated for this information collection provides sufficient time for affected operators to include the newly required information. PHMSA does not expect operators to incur additional burden due to these revisions.

F. Form PHMSA F 7100.2 Incident Report—Gas Transmission and Gathering Systems

PHMSA plans to change the name of this form to include pipeline system types that currently use the form to submit incident data to PHMSA. PHMSA proposes to change the name to ''Incident Report—Gas Transmission, Gas Gathering, and Underground Natural Gas Storage Facilities.''

In Part A4 of this form, operators are instructed to enter the earliest local time and date that an incident reporting criterion was met. In some cases, consequences occur when the pipeline system fails, but the extent of the consequences are not known until hours, days, or weeks later. PHMSA proposes clarifying the instructions to ensure the form collects the time consequences occurred rather than the time operators fully documented the extent of the consequences.

The term ''confirmed discovery'' is defined in § 191.3. PHMSA proposes adding the local time and date of ''confirmed discovery'' in Part A of this form. This data would enhance the ability of PHMSA and stakeholders to assess operator compliance with PHMSA incident reporting regulations.

In Part G3 of this form, operators enter data when the cause of the incident is excavation damage. Currently, PHMSA instructs operators to submit data about exemptions to one-call laws only when the sub-cause is third-party excavation damage. PHMSA proposes collecting state law exemption data when any sub-cause within excavation damage is selected. This change would improve PHMSA's ability to identify instances where state law exemptions contributed to the excavation damage incident no matter which party (first, second, or third) was excavating.

PHMSA proposes adding questions from the 2018 edition of the CGA DIRT and replacing the root cause categories currently in the report with the 2018 CGA DIRT root cause categories.

PHMSA believes that the current time estimated for this information collection provides sufficient time for affected operators to include the newly required information. PHMSA does not expect operators to incur additional burden due to these revisions.

G. Form PHMSA F 7100.3 Incident Report—Liquefied Natural Gas (LNG) Facilities

In Part A4, operators are instructed to enter the earliest local time and date an incident reporting criterion was met. In some cases, consequences occur when the pipeline system fails, but the extent of the consequences are not known until hours, days, or weeks later. PHMSA proposes clarifying the instructions to ensure the form collects the time consequences occurred rather than the time operators fully documented the extent of the consequences.

The term ''confirmed discovery'' is defined in § 191.3. PHMSA proposes adding the local time and date of ''confirmed discovery'' in Part A of this form. This data would enhance the ability of PHMSA and stakeholders to assess operator compliance with PHMSA incident reporting regulations.

PHMSA believes that the current time estimated for this information collection provides sufficient time for affected operators to include the newly required information. PHMSA does not expect operators to incur additional burden due to these revisions.

II. Summary of Impacted Collection

Section 1320.8(d), Title 5, Code of Federal Regulations, requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies information collection requests that PHMSA will submit to OMB for revision.

The following information is provided for these information collections: (1) Title of the information collection; (2) OMB control number; (3) Current expiration date; (4) Type of request; (5) Abstract of the information collection activity; (6) Description of affected public; (7) Estimate of total annual reporting and recordkeeping burden; and (8) Frequency of collection.

PHMSA will request a 3-year term of approval for these information collections. PHMSA requests comments on the following information:

1. *Title:* Transportation of Hazardous Liquids by Pipeline: Record Keeping and Accident Reporting.

OMB Control Number: 2137–0047.

Current Expiration Date: 3/31/2024.

Type of Request: Revision.

Abstract: This mandatory information collection covers the recordkeeping requirements and the collection of accident data from operators of hazardous liquid and carbon dioxide pipelines. Part 195 requires hazardous liquid operators to file an accident report as soon as practicable, but not later than 30 days after discovery of the accident, on DOT Form 7000–1 whenever there is a reportable accident. With respect to accidents caused by excavation damage to a pipeline, PHMSA is revising this information collection to require state law exemption data when any sub-cause is selected within the excavation damage causes. PHMSA believes that the current time estimated for this information collection provides sufficient time for affected operators to include the newly required information. PHMSA does not expect operators to incur additional burden due to this revision.

Affected Public: Operators of Hazardous Liquid and Carbon Dioxide Pipeline Facilities.

Annual Reporting and Recordkeeping Burden:

Estimated number of responses: 1,644.

Estimated annual burden hours: 53,504.

Frequency of Collection: On occasion.

2. *Title:* Annual and Incident Reports for Gas Pipeline Operators.

OMB Control Number: 2137–0522.

Current Expiration Date: 5/31/2024.

Type of Request: Revision.

Abstract: This mandatory information collection covers the requirements for operators of natural gas pipelines, underground natural gas storage facilities, and liquefied natural gas facilities to submit annual and incident reports to DOT/PHMSA. Currently, PHMSA receives an estimated 2,247 reports from operators in compliance with these requirements resulting in an overall time burden of 71,801 hours annually.

Section 191.17 requires operators of underground natural gas storage facilities, gas transmission systems, and gas gathering systems to submit an annual report by March 15, for the preceding calendar year. This revision includes changes to the ''Annual Report for Natural and Other Gas Transmission and Gathering Pipeline Systems'' to collect data on excavation damages. Each year, gas transmission operators submit an estimated 1,440 annual reports to PHMSA. The current estimated burden for each annual report is 47 hours for an overall reporting burden of 67,680 hours [47 hours × 1,440 reports]. Because gas transmission operators are new to collecting and submitting data on excavation damages, PHMSA estimates that it will take the estimated 1,440 respondents a one-time effort of 18 hours, per operator, to update their systems to accommodate the new data request. This will result in operators incurring a one-time burden of 25,920 hours [18 hours × 1,440 reports]. PHMSA expects that it will take gas transmission operators an additional hour, annually, to include the newly requested excavation damage data in their annual report submission. Therefore, over the course of the three-year approval for the information collection, the average time increase to

the gas transmission annual report burden will be 7 hours [(18 hours + 3 hours)/3] each year—resulting in the annual time burden to increase from 47 hours to 54 hours per report. This will result in an overall burden increase of 10,080 hours [7 hours × 1,440 reports] due to this revision. The total annual burden for submitting the gas transmission annual report will be 77,760 hours [54 hours × 1,440 reports]. Based on the annual burden increase of 10,080 hours for the gas transmission annual reports, the estimated annual burden for this entire information collection, including the annual report burden for liquefied natural gas and underground natural gas storage operators, and the immediate notice of incidents, will increase from 71,801 hours to 81,881 hours [71,801 hours + 10,080].

Affected Public: Operators of Natural Gas Pipelines, Underground Natural Gas Storage Facilities, and Liquefied Natural Gas Facilities.

Annual Reporting and Recordkeeping Burden:

Estimated number of responses: 2,247.

Estimated annual burden hours: 81,881.

Frequency of collection: Annually and on occasion.

3. *Title:* Hazardous Liquid Pipeline Operator Annual Report.

OMB Control Number: 2137–0614.

Current Expiration Date: 1/31/2023.

Type of Request: Revision.

Abstract: This mandatory information collection covers the collection of annual report data from operators of hazardous liquid and carbon dioxide pipelines. Part 195 requires these pipeline operators to submit reports each year. This revision includes collecting excavation damage data and changes to the report form to improve consistency. Each year, hazardous liquid operators submit an estimated 475 annual reports to PHMSA. The current estimated burden for operators to submit each report is 19 hours for an overall annual reporting burden of 9,025 hours [19 hours × 475 reports]. Because hazardous liquid operators are new to collecting and submitting data on excavation damages, PHMSA estimates that it will take each of these 475 respondents a one-time effort of 18 hours, per operator, to update their systems to accommodate the new data request. This will result in a one-time burden of 8,550 hours [475 responses × 18 hours]. PHMSA expects that it will take hazardous liquid operators an additional hour, annually, to include the newly requested excavation damage data in their annual report submission. Therefore, over the course of the three-year approval for the information collection, the average increase to the annual report burden will be 7 hours [(18 hours + 3 hours)/3]. As a result, the annual reporting burden will increase from 19 hours to 26 hours per report. This will result in an estimated annual reporting burden of 12,350 hours [475 reports × 26 hours].

Affected Public: Operators of Hazardous Liquid and Carbon Dioxide Pipeline Facilities.

Annual Reporting and Recordkeeping Burden:

Estimated number of responses: 475.

Estimated annual burden hours: 12,350.

Frequency of Collection: Annually.

4. *Title:* Annual Report for Gas Distribution Operators.

OMB Control Number: 2137–0629.

Current Expiration Date: 5/31/2024.

Type of Request: Revision.

Abstract: This mandatory information collection covers the collection of data from operators of gas distribution pipeline systems for annual reports. Section 191.17 requires operators of gas distribution systems to submit an annual report by March 15, for the preceding calendar year. This revision includes updating the CGA DIRT root causes and removing data about manual service line shut-off valves and excess flow valves. Each year, gas distribution operators submit approximately 1,446 annual reports to PHMSA. The current estimated burden for operators to submit each report is 17.5 hours for an overall annual reporting burden of 25,305 hours [17.5 hours × 1,446 reports]. Because gas distribution operators are currently collecting and submitting data on excavation damages, PHMSA estimates that these respondents will incur a one-time effort of 9 hours, per operator, to update their systems to accommodate the expanded data request. This will result in a one-time burden of 13,014 hours [1,446 reports × 9 hours]. PHMSA expects that it will take gas distribution operators an additional hour, annually, to add the newly expanded excavation damage data to their annual report submission. Therefore, over the course of the three-year approval for the information collection, the average increase to the annual report burden will be 4 hours [(9 hours + 3 hours)/3] each year. As a result, the annual reporting burden will increase from 17.5 hours to 21.5 hours per report. This will result in an estimated annual reporting burden of 31,089 hours [1,446 reports × 21.5 hours].

PHMSA is also revising the burden estimate to account for the elimination of the requirement to report EFV data. PHMSA currently estimates that it takes gas distribution operators 1.5 hours, per report, to submit the total number of EFVs and shut-off valves installed and maintained in each calendar year. Therefore, the burden hour for this requirement is 2,169 hours [1.5 hours × 1,446 reports). PHMSA is proposing to eliminate this requirement which will result in a 2,169-hour burden reduction. Based on the revisions discussed above, the burden hour estimate for the gas distribution annual report will be 20 hours [17.5 hours (current) + 4 hours (DIRT revisions)—1.5 hours (eliminated EFV/shut-off valve data)] for a total annual burden of 28,920 hours [20 hours × 1,446 reports].

Affected Public: Operators of Gas Distribution Pipeline Systems.

Annual Reporting and Recordkeeping Burden:

Estimated number of responses: 1,446.

Estimated annual burden hours: 28,920.

Frequency of Collection: Annually.

5. *Title:* Incident Reports for Natural Gas Pipeline Operators.

OMB Control Number: 2137–0635.

Current Expiration Date: 5/31/2024.

Type of Request: Revision.

Abstract: This mandatory information collection covers the collection of incident data from operators of gas distribution, gas gathering, gas transmission, underground natural gas storage facilities, and liquefied natural gas facilities. Part 191 requires these operators to submit incident reports when certain criteria are met. This revision includes changes to form PHMSA F 7100.1, ''Incident Report—Gas Distribution Systems,'' to collect more state one-call law exemption data and update the CGA DIRT questions. In the ''Incident Report—Gas Transmission and Gathering Systems'' form, this revision includes changing the name of the form, collecting more state one-call law exemption data, and updating the CGA DIRT questions. In all three incident reports, this revision includes collecting the local time and date of ''confirmed discovery.'' PHMSA does not expect operators to incur additional time due to these revisions. PHMSA expects the current time estimated for this information collection to be sufficient for affected operators to include the newly required information.

Affected Public: Gas Pipeline Operators and Operators of Underground Natural Gas and Liquefied Natural Gas Facilities.

Annual Reporting and Recordkeeping Burden:

Estimated Number of Responses: 259.

Estimated Annual Burden Hours: 3,108.

Frequency of Collection: On occasion.

Comments are invited on:

(a) The need for the revision of these information collections for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(b) The accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

(e) Additional information that would be appropriate to collect to inform the reduction in risk to people, property, and the environment due to excavation damages.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued in Washington, DC, on March 7, 2022, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2022–05192 Filed 3–10–22; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

[Docket No. PHMSA–2021–0085]

Pipeline Safety: Information Collection Activities

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, PHMSA invites public comments on its intent to request Office of Management and Budget (OMB) approval to revise and renew an information collection currently under OMB Control Number 2137–0596 titled: ''National Pipeline Mapping System Program.'' The information collection currently requires operators to submit geospatial data, attributes, metadata, public contact information, and a transmittal letter appropriate for use in the National Pipeline Mapping System (NPMS). Acceptable formats and additional information are specified in the NPMS Attribute Standards document available at *www.npms.phmsa.dot.gov.* The proposed revisions would modify one attribute approved in January 2020 that pipeline operators must submit to PHMSA, extend the expiration date of the information collection established by OMB, and require gas transmission operators to submit additional attributes to the NPMS.

DATES: Interested persons are invited to submit comments on or before May 10, 2022.

ADDRESSES: Comments may be submitted in the following ways:

E-Gov Website: http://www.regulations.gov. This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

Fax: 1–202–493–2251.

Mail: Docket Management Facility; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590–0001.

Hand Delivery: Room W12–140 on the ground level of DOT, West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9:00 a.m. and 5:00 p.m., ET, Monday through Friday, except federal holidays.

Instructions: Identify the docket number, PHMSA–2021–0085 at the beginning of your comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. You should know that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). Therefore, you may want to review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000, (65 FR 19477) or visit *http://www.regulations.gov* before submitting any such comments.

Docket: For access to the docket or to read background documents or comments, go to *http://www.regulations.gov* at any time or to Room W12–140 on the ground level of DOT, West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9:00 a.m. and 5:00 p.m., ET, Monday through Friday, except federal holidays. If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: ''Comments on: PHMSA–2021–0085.'' The Docket Clerk will date stamp the postcard prior to returning it to you via the U.S. mail. Please note that due to delays in the delivery of U.S. mail to federal offices in Washington, DC, we recommend that persons consider an alternative method (internet, fax, or professional delivery service) of submitting comments to the docket and ensuring their timely receipt at DOT.

Privacy Act Statement: DOT may solicit comments from the public regarding certain general notices. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this notice, it is important that you clearly designate the submitted comments as CBI. Pursuant to 49 CFR 190.343, you may ask PHMSA to give confidential treatment to information you give to the Agency by taking the following steps: (1) Mark each page of the original document submission containing CBI as ''Confidential''; (2) send PHMSA, along with the original document, a second copy of the original document with the CBI deleted; and (3) explain why the information you are submitting is CBI. Any commentary PHMSA receives that is not specifically designated as CBI will be placed in the public docket for this matter.

FOR FURTHER INFORMATION CONTACT: Angela Hill by email at *Angela.Hill@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 1320.8(d), Title 5, Code of Federal Regulations, requires PHMSA to provide interested members of the public and affected entities an opportunity to comment on information collection and recordkeeping requests. This notice identifies the proposed changes to the information collection under OMB Control Number 2137–0596 that PHMSA will submit to OMB for approval.

The NPMS includes a geospatial information system (GIS) dataset that contains information about PHMSA-regulated gas transmission and hazardous liquid pipelines. The NPMS also contains data layers for liquefied natural gas plants and hazardous liquid breakout tanks. PHMSA has a contract for services to perform all NPMS data submission processing and support for pipeline operators submitting NPMS data. This contract also includes all information technology (IT) systems and applications designed to collect, process, and disseminate NPMS data to stakeholders and the public.

On January 22, 2020, OMB approved significant changes to the NPMS information collection and established January 31, 2023, as the expiration date of the information collection. Since OMB approval, PHMSA has determined that implementing the significant changes approved by OMB are not feasible within the terms and scope of the current data submission and IT contract.

The acquisition planning for a re-competition of the NPMS contract has started. However, the complexities introduced by the combined requirements of supporting the NPMS system in its current state while at the same time implementing the significant changes to the system has impacted the contract procurement timeline. The changes to the NPMS system would require architecture, data, and application design modifications. PHMSA has initiated the process of establishing a new NPMS contract to complete this work, but will not be able to complete that process and set up the new system in order to start collecting the new information approved by OMB before the January 31, 2023, expiration date.

PHMSA also proposes that two additional data elements be added to the information collection for gas transmission pipelines. On October 1, 2019, (84 FR 52180) PHMSA published in the **Federal Register** a final rule titled: ''Pipeline Safety: Safety of Gas Transmission Pipelines: MAOP Reconfirmation, Expansion of Assessment Requirements, and Other Related Amendments'' (Docket no, PHMSA–2011–0023). In the final rule, the term ''moderate consequence area'' was added to 49 CFR part 192. Also, the final rule added § 192.710, which requires assessments of certain gas transmission pipelines outside of high consequence areas (HCAs). Data elements regarding the location of moderate consequence areas (MCAs) and assessments outside of HCAs would provide local, state, and federal government stakeholders with important information regarding gas pipeline segments with elevated risk.

II. Implementation Timeline

PHMSA intends to maintain a phased implementation plan, as outlined below, for the information collection changes approved in January 2020. The dates shown below are the earliest possible dates PHMSA could start collecting data for each phase. PHMSA will inform operators if we need to revise any of the dates. Details about the contents of each phase are included in the next sections.

Phase 0 2024 collection of CY 2023 data
Phase 1 2027 collection of CY 2026 data
Phase 2 2028 collection of CY 2027 data
Phase 3 2027 collection of CY 2026 data

These proposed implementation dates would allow PHMSA and pipeline operators to design and build the necessary systems to support the data submittal process. Additional time is also necessary for developing new submission methods and tools, explanatory and procedural materials, and training opportunities, which will provide certainty for both PHMSA and pipeline operators through the implementation of the changes outlined in the NPMS information collection.

A. Phase 0 Data Elements

In the April 11, 2019, (84 FR 14717) **Federal Register** notice requesting revision to the previously approved information collection regarding the National Pipeline Mapping System Program which led to the January 2020 OMB approval, the data elements below became mandatory, rather than optional, in Phase 1. PHMSA proposes making the data elements below mandatory in a new Phase 0 since PHMSA and many operators already have experience using these attributes. When operators submit calendar year 2023 data in 2024, PHMSA may reject submissions missing the following four data elements:

(1) Pipe diameter; (2) Commodity detail; (3) Breakout tanks; and (4) Abandoned pipeline segments.

B. Phase 1 Data Elements

In the April 11, 2019, **Federal Register** notice that led to the January 2020 OMB approval, the data elements below were included in Phase 1. PHMSA proposes keeping these data elements in Phase 1:

- Pipe material.
- Pipe join method.
- Onshore/offshore.
- In-line inspection (yes/no).
- Class location.
- Gas HCA segment (yes/no).
- Coated (yes/no).
- Liquified Natural Gas plants (type of plant, year constructed, and capacity, in addition to separate layers and attributes for impoundments and exclusion zones).

PHMSA proposes two new data elements to be submitted by gas transmission pipeline operators in Phase 1. After PHMSA requested OMB approval of the information collection on April 11, 2019, PHMSA regulations were revised to include two new types of gas pipeline segments reflecting elevated risk. PHMSA proposes adding data elements to identify gas pipeline segments within MCAs, as defined in § 192.3, and for the applicability of § 192.710 to gas pipeline segments. Access to these two data elements would be restricted to government officials. Similar to collecting and sharing ''gas high consequence area (HCA) segment (yes/no),'' collecting and sharing the MCA and § 192.710 data would provide government stakeholders with location information for pipeline segments with elevated risk.

- Gas MCA (yes/no)—if the gas transmission segment is in an MCA as defined in part 192.3, report ''Y.'' Otherwise, report ''N.'' For a segment where Gas HCA is ''Y,'' MCA must be ''N.''
- Gas 192.710 (yes/no)—if the gas transmission segment is required to be assessed under 49 CFR 192.710, report ''Y.'' Otherwise, report ''N.'' For a segment where Gas HCA is ''Y,'' 192.710 must be ''N.''

C. Phase 2 Data Elements

In the April 11, 2019, **Federal Register** notice that led to the January 2020 OMB approval, Phase 2 consisted of changing the Facility Response Plan (FRP) sequence number from optional to mandatory and adding the following new data elements:

- Facility Response Plan (FRP) sequence number becomes mandatory.
- Seam type.
- Pipe grade.
- Wall thickness.
- Decade of installation.
- Hazardous liquid segment could affect an HCA—High Populated, Other Populated, Commercially Navigable Waterway, and Ecological USA.
- Assessment method and year.

PHMSA proposes no changes to the number of elements being collected in Phase 2 but does propose minor improvements for how one of the data elements will be collected. The OMB-approved collection includes collecting ''pipe grade'' in Phase 2. Stakeholders would have used this text to infer the numeric value for specified minimum yield strength (SMYS) of steel pipe.

PHMSA proposes replacing the collection of ''pipe grade'' with the collection of the SMYS in pounds per square inch gauge (psig) when the ''pipe material'' is steel. Collecting ''SMYS'' allows stakeholders to see the actual numeric value instead of inferring the value from the ''pipe grade'' text field. When ''SMYS'' is unknown, PHMSA proposes operators report 9.999 psig which is well below any actual value for pipeline steel.

D. Phase 3

In the April 11, 2019, **Federal Register** notice that led to the January 2020 OMB approval, Phase 3 consisted of implementing new positional accuracy standards of +/- 50 or 100 feet seven years after OMB approval. PHMSA will require NPMS data submittals to meet these standards in 2027.

E. NPMS Attribute Standards Adjustments

Under the current approval of this information collection, wall thickness is collected as a number when known and text is entered when unknown. This paradigm creates unnecessary work for both PHMSA and pipeline operator GIS staff since sometimes the attribute would be text and sometimes numeric. PHMSA proposes that when the wall thickness is unknown, operators report the wall thickness as 9.999.

The current approval of this information collection states that the FRP sequence number is required for applicable liquid segments per 49 CFR part 194. In the NPMS Attribute Standards document, PHMSA did not list the commodity values for which the FRP sequence number is required. PHMSA proposes modifying the NPMS Attribute Standards document by listing onshore crude oil and onshore refined products as the pipeline segments requiring the FRP sequence number. In some cases, the operator may be required to report a hazardous liquid pipeline to the NPMS before obtaining an FRP sequence number from PHMSA. PHMSA also proposes that operators enter 9.999 for onshore crude oil and onshore refined products segments without an FRP sequence number. An updated NPMS Attribute Standards document reflecting the changes proposed by PHMSA is included in Docket No. PHMSA–2021–0085.

III. Summary of Impacted Collection

Section 1320.8(d), Title 5, Code of Federal Regulations, requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies an information collection request that PHMSA will submit to OMB for revision.

The following information is provided for this information collection: (1) Title of the information collection; (2) OMB control number; (3) Current expiration date; (4) Type of request; (5) Abstract of the information collection activity; (6) Description of affected public; (7) Estimate of total annual reporting and recordkeeping burden; and (8) Frequency of collection.

PHMSA will request a three-year term of approval for this information collection. PHMSA requests comments on the following information:

1. *Title:* National Pipeline Mapping System Program.

OMB Control Number: 2137–0596.

Expiration Date: 1/31/2023.

Type of Request: Revision of a previously approved information collection.

Abstract: The Pipeline Safety Improvement Act of 2002 (Pub. L. 107–355), 49 U.S.C. 60132, ''National Pipeline Mapping System,'' requires the operator of a pipeline facility (except distribution lines and gathering lines) to provide information to PHMSA. Each operator is required to submit geospatial data appropriate for use in the National Pipeline Mapping System or data in a format that can be readily converted to geospatial data; the name and address of the person with primary operational control (to be known as its operator); and a means for a member of the public to contact the operator for additional information about the pipeline facilities it operates. Operators would submit the requested data elements once and make annual updates to the data if necessary. These data elements strengthen the effectiveness of PHMSA's risk rankings and evaluations, which are used as a factor in determining pipeline inspection priority and frequency; allow for more effective assistance to emergency responders by providing them with a more reliable, complete data set of pipelines and facilities; and provide better support to PHMSA's inspectors by providing more accurate pipeline locations and additional pipeline-related geospatial data that can be linked to tabular data in PHMSA's inspection database.

This proposed revision would require operators to submit geospatial data for MCAs, as defined in 49 CFR part 192, and data based on the applicability of § 192.710 assessments outside of HCAs. This revision would also require operators to submit the data element ''SMYS'' in psig in place of submitting data on pipe grade. PHMSA does not expect operators to incur additional burden due to the inclusion of these new and revised elements. PHMSA believes that the annual burden allotted for this information collection is sufficient for operators to include the newly requested data elements. A detailed breakdown of the estimated burden for this information collection can be found at *www.regulations.gov.*

Respondents: Operators of gas transmission, hazardous liquid, or liquefied natural gas pipeline facilities.

Annual Reporting and Recordkeeping Burden:

Estimated Number of Responses: 1,346 responses.

Estimated Total Annual Burden: 162,208 hours.

Frequency of Collection: Annually.

Comments are invited on:

(a) The need for the renewal and revision of this collection of information 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,

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are required to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued in Washington, DC, on March 7, 2022, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2022–05193 Filed 3–10–22; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

United States Mint

Establish Price for United States Mint Numismatic Product

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice.

SUMMARY: The United States Mint is announcing pricing for the following new United States Mint numismatic product in accordance with the table below:

SKU	Product	Price
22RC	2022 Limited Edition Silver Proof Set™.	$201.00

FOR FURTHER INFORMATION CONTACT: Anne Janeski, Marketing Specialist, Sales and Marketing 202–306–9666; United States Mint; 801 9th Street NW; Washington, DC 20220.

(Authority: 31 U.S.C. 5111, 5112, 5132, & 9701)

Eric Anderson,

Executive Secretary, United States Mint.

[FR Doc. 2022–05181 Filed 3–10–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0797]

Agency Information Collection Activity Under OMB Review: GI Bill® School Feedback Tool

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration (VBA), 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. 2900–0797.

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. 2900–0797'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 13607.

Title: Principles of Excellence Complaint Feedback Tool.

OMB Control Number: 2900–0797.

Type of Review: Revision of a currently approved collection.

Abstract: The respondent submits a complaint about an educational institution online through either the GI Bill website or the eBenefit portal. The information gathered can only be obtained from the individual respondents. Valid complaints will be accepted from third parties. The Feedback Tool process for VA's complaint system data elements include:

- *Institution/Employer:* There are over 36,000 educational institutions that are approved for VA education benefits.
- *Anonymous Complaints:* The Feedback Tool Complaint System allows for a user to file anonymous complaints. Based on working group discussions with CFPB and FTC, VA believes that allowing anonymous complaints will garner more ground truth on what is happening with Veterans using their education benefits at different schools.
- *Required fields:* As a result of allowing anonymous complaints, many of the fields will not be required by VA.

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 241 on December 20, 2021, pages 72027–72028.

Affected Public: Individuals or Households.

Estimated Annual Burden: 300 hours.

Estimated Average Burden per Respondent: 30 and 60 minutes respectively based on level of complexity.

Frequency of Response: Occasionally.

Estimated Number of Respondents: 1,202.

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. 2022–05221 Filed 3–10–22; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0406]

Agency Information Collection Activity: Verification of VA Benefits

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 collection of information, including each proposed extension of a currently approved 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 10, 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. 2900–0406'' 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. 2900–0406'' 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: 44 U.S.C. 3501–21.

Title: Verification of VA Benefits, 26–8937.

OMB Control Number: 2900–0406.

Type of Review: Revision of currently approved collection.

Abstract: VA Form 26–8937 is designed to assist lenders and VA in the completion of debt checks in a uniform manner. The form restricts information requested to only that needed for the debt check and also eliminates unlimited versions of lender-designed forms. This form is also occasionally used to inform the lender prior to loan closing if a Veteran is eligible for an exemption from the funding fee.

Lenders ensure the completion of the upper portion of VA Form 26–8937, including the veteran's authorization for release of the information, and forward it to the appropriate VA Office. VA personnel perform the debt check, complete the balance of the form, and return it to the lender, who considers any repayment terms in evaluating the veteran's creditworthiness. Following the closing of any loan, the lender submits the form with the loan report and related documents for post closing review. The form is reviewed by a loan examiner to ensure that debt check requirements have been observed in each case.

Affected Public: Individuals and households.

Estimated Annual Burden: 440 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 5,500.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

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Part II

Department of Energy

Federal Energy Regulatory Commission

Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviewsotice of Decision; Notice

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL21–3–000]

Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviews

AGENCY: Federal Energy Regulatory Commission.

ACTION: Interim policy statement.

SUMMARY: This interim policy statement describes Commission procedures for evaluating climate impacts under NEPA and describes how the Commission will integrate climate considerations into its public interest determinations under the NGA.

DATES: Public comments are due on or before April 4, 2022. Comments on the information collection are due May 10, 2022.

ADDRESSES: Comments, identified by docket number, may be filed electronically at *http://www.ferc.gov* in acceptable native applications and print-to-PDF, but not in Scanned or picture format. For those unable to file electronically, comments may be filed by mail or hand-delivery to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426. The Comment Procedures section of this document contains more detailed filing procedures.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

1. The Commission is issuing this interim policy statement to explain how the Commission will assess the impacts of natural gas infrastructure projects on climate change in its reviews under the National Environmental Policy Act (NEPA) and the Natural Gas Act (NGA). We seek comment on all aspects of the interim policy statement, including, in particular, on the approach to assessing the significance of the proposed project's contribution to climate change. Although the guidance contained herein is subject to revision based on the record developed in this proceeding, we will begin applying the framework established in this policy statement in the interim. Doing so will allow the Commission to evaluate and act on pending applications under sections 3 and 7 of the NGA without undue delay and with an eye toward greater certainty and predictability for all stakeholders.

I. Introduction

2. Climate change poses a severe threat to the nation's security, economy, environment, and to the health of individual citizens. Human-made greenhouse gas (GHG) emissions, including carbon dioxide and methane, are the primary cause of climate change.[1] GHG emissions are released in large quantities through the production, transportation, and consumption of natural gas. Accordingly, to fulfill its statutory responsibilities, it is critical that the Commission consider and document how its authorization of infrastructure projects under the NGA, particularly natural gas transportation facilities, will affect emissions of GHGs.[2]

3. This policy statement describes Commission procedures for evaluating climate impacts under NEPA, both those caused by a project's contribution to climate change and the impacts of climate change on the project, and describes how the Commission will integrate climate considerations into its public interest determinations under the NGA. For purposes of assessing the appropriate level of NEPA review, Commission staff will apply the 100% utilization or ''full burn'' rate for the proposed project's emissions to determine whether to prepare an Environmental Impact Statement (EIS) or an environmental assessment (EA). Commission staff will proceed with the preparation of an EIS, if the proposed project may result in 100,000 metric tons per year of CO_2e or more.[3] As further described below, the Commission believes this estimate is appropriate because it captures Commission projects that may result in incremental GHG emissions that may have a significant effect upon the human environment.[4] This approach is consistent with the overall goal of NEPA to require a ''hard look'' at adverse environmental impacts and assess whether those can be minimized or avoided.[5] To appropriately assess possible mitigation, as further explained below, the Commission will determine a project's reasonably foreseeable GHG emissions based on a projection of the amount of capacity that will be actually used (projected utilization rate), as opposed to assuming 100% utilization, and any other factors impacting the quantification of project emissions. The Commission's NEPA analysis will examine any proposed measures to reduce reasonably foreseeable emissions.

4. When considering under the NGA whether a project is in the public interest, the Commission considers a project's impacts on climate change, and, accordingly, will consider proposals by the project sponsor to mitigate all or a portion of the project's climate change impacts, and the Commission may condition its authorization on the project sponsor further mitigating those impacts.

5. This policy statement does not establish binding rules and is intended to explain how the Commission will consider these issues when they arise.[6]

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[1] Intergovernmental Panel on Climate Change, United Nations, *Summary for Policymakers* of Climate Change 2021: The Physical Science Basis SPM–5 (Valerie Masson-Delmotte et al. eds.) (2021), *https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_SPM.pdf* (IPCC Report).

[2] *See Sierra Club* v. *FERC,* 867 F.3d 1357, 1374 (D.C. Cir. 2017) (*Sabal Trail*) (requiring the Commission to consider the reasonably foreseeable GHG emissions resulting from natural gas projects).

[3] Carbon dioxide equivalent is the combination of the emissions that contribute to climate change adjusted using each pollutant's global warming potential. This allows the Commission to aggregate all GHG emissions into a single value that accounts for each chemical's specific potential to trap heat in the atmosphere.

[4] *See, e.g., Grand Canyon Trust* v. *FAA,* 290 F.3d 339, 340 (D.C. Cir. 2002) (''If *any* 'significant' environmental impacts might result from the proposed agency action[,] then an EIS must be prepared *before* agency action is taken.'' (quoting *Sierra Club* v. *Peterson,* 717 F.2d 1409, 1415 (D.C. Cir. 1983))); *Found. for N. Am. Wild Sheep* v. *U.S. Dep't of Agr.,* 681 F.2d 1172, 1178 (9th Cir. 1982) (''If substantial questions are raised whether a project may have a significant effect upon the human environment, an EIS must be prepared.'').

[5] *See* 42 U.S.C. 4331(a); 4332(c).

[6] Commissioner Danly's dissent claims that today's interim policy statement is ''a substantive, binding rule that is subject to judicial review.'' Danly Dissent at P 46. This interim document is intended to provide all interested entities with guidance as to how the Commission will approach application under NGA sections 3 and 7. It does not ''impose[] an obligation, den[y] a right, or fix[] some legal relationship.'' *Reliable Automatic Sprinkler Co.* v. *Consumer Prod. Safety Comm'n,* 324 F.3d 726, 731 (D.C. Cir. 2003). Parties that disagree with the approach outlined in the statement retain their full rights to litigate their concerns in any individual proceeding. *Cf. id.* (''Final agency action 'marks the consummation of the agency's decisionmaking process' and is 'one by which rights or obligations have been determined, or from which legal consequences will flow.') (quoting *Bennett* v. *Spear,* 520 U.S. 154, 178 (1997)). In addition, Commissioner Danly speculates that ''no project sponsor will believe that mitigation is optional or that submitting an application exceeding the Interim Policy Statement's 100,000 tpy threshold without a mitigation proposal would be anything other than a waste of time and money.'' Danly Dissent PP 46–47. In response, we note only that the Commission will consider mitigation on a case-by-case basis and that we have not suggested that GHG emissions must be mitigated to insignificant levels in order for us to conclude that a proposed

II. Background

A. GHG Emissions and Climate Change

6. Climate change is the variation in the Earth's climate (including temperature, precipitation, humidity, wind, and other meteorological variables) over time. Climate change is driven by accumulation of GHGs in the atmosphere due to the increased consumption of fossil fuels (*e.g.,* coal, petroleum, and natural gas) since the early beginnings of the industrial age and accelerating in the mid- to late-20th century.[7] The GHGs produced by fossil-fuel combustion are carbon dioxide, methane, and nitrous oxide.

7. In 2017 and 2018, the U.S. Global Change Research Program [8] issued its Climate Science Special Report: Fourth National Climate Assessment, Volumes I and II.[9] This report and the recently released report by the Intergovernmental Panel on Climate Change, Climate Change 2021: The Physical Science Basis, state that climate change has resulted in a wide range of impacts across every region of the country and the globe. Those impacts extend beyond atmospheric climate change and include changes to water resources, agriculture, ecosystems, human health, and ocean systems.[10] According to the Fourth Assessment Report, the United States and the world are warming, global sea level is rising and oceans are acidifying, and certain weather events are becoming more frequent and more severe.[11] These impacts have accelerated throughout the end of the 20th century and into the 21st century.[12]

B. Council on Environmental Quality Guidance on Climate Change

8. In 2010, the Council on Environmental Quality (CEQ) issued its first draft guidance on how federal agencies can consider the effects of GHG emissions and climate change under NEPA.[13] CEQ revised the draft guidance in 2014,[14] and issued final guidance in 2016.[15] Throughout the guidance's evolution, CEQ advised agencies to quantify GHG emissions and to consider both the extent to which a proposed project's GHG emissions would contribute to climate change and how a changing climate may impact the proposed project. The 2016 guidance, however, explicitly declined to establish a quantity or threshold of GHGs for determining whether a proposed project will have a significant impact on climate.[16]

9. CEQ rescinded the 2016 guidance in April 2017, as directed by Executive Order 13783 *Promoting Energy Independence and Economic Growth,*[17] and issued revised draft guidance in June 2019.[18] In January 2021, Executive Order 13990 *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis* revoked Executive Order 13783 and directed CEQ to rescind the 2019 draft guidance and to review, revise, and update the 2016 guidance.[19] CEQ has not yet issued an update to the 2016 guidance, but, in the interim, has directed agencies to consider all available tools and resources, including the 2016 guidance, in assessing GHG emissions and the climate change effects of proposed actions.[20]

C. Previous Commission Policy on Consideration of Climate Change Under NEPA

10. Commission staff has addressed climate change in some fashion in its NEPA documents for at least a decade.[21] Commission staff's NEPA documents have included direct GHG emission estimates from project construction (*e.g.,* tailpipe emissions from construction equipment) and/or operation (*e.g.,* fuel combustion at compressor stations and gas venting and leaks).[22] Starting in late 2016, the Commission began to conservatively estimate indirect downstream GHG emissions by assuming full combustion of the maximum annual volume of gas that could be transported by the project.[23] For indirect upstream, production-related GHG emissions, Commission orders during that time period relied on Department of Energy studies to calculate broad estimates.[24] For upstream impacts, the Commission generally indicated that these analyses were not required by NEPA because the Commission lacked detailed information about the precise source of the gas to be transported, but provided estimates for informational purposes.[25]

11. In 2017, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *Sierra Club* v. *FERC* (*Sabal Trail*) [26] found that downstream GHG emissions were an indirect effect of the Sabal Trail pipeline project and required the Commission to give a quantitative estimate of the downstream GHG emissions resulting from the burning of the natural gas to be

project is required by the public convenience and necessity or consistent with the public interest.

[7] IPCC Report at SPM–5. Other forces contribute to climate change, such as agriculture, forest clearing, and other anthropogenically driven sources.

[8] The U.S. Global Change Research Program is the leading U.S. scientific body on climate change. It comprises representatives from 13 federal departments and agencies and issues reports every 4 years that describe the state of the science relating to climate change and the effects of climate change on different regions of the United States and on various societal and environmental sectors, such as water resources, agriculture, energy use, and human health.

[9] U.S. Global Change Research Program, Climate Science Special Report, Fourth National Climate Assessment | Volume I (Donald J. Wuebbles et al. eds) (2017), *https://science2017.globalchange.gov/downloads/CSSR2017_FullReport.pdf*; U.S. Global Change Research Program, Fourth National Climate Assessment, Volume II Impacts, Risks, and Adaptation in the United States (David Reidmiller et al. eds.) (2018), *https://nca2018.globalchange.gov/downloads/NCA4_2018_FullReport.pdf* (USGCRP Report Volume II).

[10] IPCC Report at SPM–5 to SPM–10.

[11] USGCRP Report Volume II at 73–75.

[12] *See, e.g.,* USGCRP Report Volume II at 99 (describing accelerating flooding rates in Atlantic and Gulf Coast cities).

[13] CEQ, *Draft NEPA Guidance on Consideration of the Effects of Climate Change and Greenhouse Gas Emissions* (Feb. 18, 2010), *https://ceq.doe.gov/docs/ceq-regulations-and-guidance/20100218-nepa-consideration-effects-ghg-draft-guidance.pdf.*

[14] Revised Draft Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in NEPA Reviews, 79 FR 77802 (Dec. 24, 2014).

[15] CEQ, *Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews* (Aug. 1, 2016), *https://ceq.doe.gov/docs/ceq-regulations-and-guidance/nepa_final_ghg_guidance.pdf* (2016 CEQ Guidance).

[16] 2016 CEQ Guidance at 9–10 (''This guidance does not establish any particular quantity of GHG emissions as 'significantly' affecting the quality of the human environment or give greater consideration to the effects of GHG emissions and climate change over other effects on the human environment.'').

[17] Exec. Order No. 13783, 82 FR 16576 (Apr. 5, 2017).

[18] Draft National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions, 84 FR 30097 (June 26, 2019).

[19] Exec. Order No. 13990, 86 FR 7037 (Jan. 20, 2021).

[20] Notice of Rescission of Draft Guidance, 86 FR 10252 (Feb. 19, 2021).

[21] For details on GHG analysis in the Commission's NEPA documents through April 2018, see *Certification of New Interstate Natural Gas Facilities,* 83 FR 18020, 163 FERC ¶ 61,042, at PP 44–50 (2018) (2018 NOI).

[22] *See, e.g.,* Environmental Assessment for the Philadelphia Lateral Expansion Project, Docket No. CP11–508–000, at 24 (Jan. 18, 2012) (construction emissions); Environmental Assessment for the Minisink Compressor Project, Docket No. CP11–515–000, at 29 (Feb. 29, 2012) (operation emissions).

[23] *See, e.g., Columbia Gas Transmission, LLC,* 158 FERC ¶ 61,046, at P 120 (2017); *Tex. E. Transmission, LP,* 157 FERC ¶ 61,223, at P 41 (2016), *reh'g granted,* 161 FERC ¶ 61,226 (2017).

[24] *See, e.g., Columbia Gas Transmission, LLC,* 158 FERC ¶ 61,046 at PP 116–119.

[25] With respect to upstream emissions, the D.C. Circuit subsequently noted that the Commission does not violate NEPA in not considering upstream GHG emissions where there is no evidence to predict the number and location of additional wells that would be drilled as a result of a project. *Birckhead* v. *FERC,* 925 F.3d 510, 518 (D.C. Cir. 2019) (*Birckhead*).

[26] 867 F.3d 1357.

transported by the pipeline or explain why the Commission could not do so, and to discuss the significance of these emissions.[27] On remand, the Commission compared the estimated downstream GHG emissions from the project to state and national GHG emission inventories.[28] However, the Commission concluded that it could not determine whether those downstream GHG emissions were significant and rejected the use of the Social Cost of Carbon (SCC) tool to inform the Commission's analysis.[29]

12. In 2018, the Commission stated in *Dominion Transmission, Inc.*[30] that end use consumption of gas and upstream production of gas were generally not reasonably foreseeable or causally related to the project (no party had identified the specific end use of the gas) and thus the Commission was not required to consider upstream or downstream emissions as indirect impacts under NEPA.[31] The Commission stated it would continue to ''analyze upstream and downstream environmental effects when those effects are sufficiently causally connected to and are reasonably foreseeable effects of the proposed action.'' [32] The Commission reiterated that without an accepted methodology it could not find whether a particular quantity of GHG emissions was significant.[33]

13. However, in *Birckhead,* the D.C. Circuit rejected the Commission's position that *Sabal Trail* is limited to the narrow facts of that case. While the court in *Birckhead* acknowledged that downstream emissions may not always be a foreseeable effect of natural gas projects, it rejected the notion that downstream GHG emissions are a reasonably foreseeable indirect effect of a natural gas project only if a specific end destination is identified.[34] The court further noted that the Commission should attempt to obtain information on downstream uses to determine whether downstream GHG emissions are a reasonably foreseeable effect of the project.[35]

14. In 2021, in *Northern Natural Gas Co.,* the Commission explained that it had reconsidered its position that it was unable to assess the significance of a project's GHG emissions or those emissions' contribution to climate change.[36] The Commission found that that project's reasonably foreseeable GHG emissions—construction and operation emissions only, as the project proposed no new capacity—would not significantly contribute to climate change.[37] Later in 2021, the D.C. Circuit further criticized the Commission's stance prior to *Northern Natural Gas Co.* that it was unable to assess the significance of a project's GHG emissions or those emissions' contribution to climate change, holding that the Commission failed to appropriately analyze the significance of three natural gas projects' contribution to climate change using ''theoretical approaches or research methods generally accepted in the scientific community,'' such as the SCC tool.[38]

D. Certificate Policy Statement Notices of Inquiry

15. On April 19, 2018, the Commission issued a Notice of Inquiry (2018 NOI) [39] seeking information and stakeholder perspectives to help the Commission explore whether, and if so how, it should revise its approach for determining whether proposed projects are consistent with the public convenience and necessity under the currently effective policy statement on the certification of new interstate natural gas transportation facilities (Certificate Policy Statement).[40] The 2018 NOI included a background section discussing how the legal standards and historical context informed the creation of the Certificate Policy Statement in 1999, how the Commission's evaluations under the Certificate Policy Statement and under NEPA have evolved, and how changed circumstances since 1999 have required the present review.[41] Notably, the Commission sought input on whether, and if so how, the Commission should adjust its evaluation of the environmental impacts of a proposed project.

16. In response to the 2018 NOI, the Commission received more than 3,000 comments from stakeholders including landowners; tribal, federal, state, and local government officials; non-governmental organizations; consultants, academic institutions, and think tanks; natural gas producers, Commission-regulated companies, local distribution companies, and industry trade organizations; electricity generators and utilities; and others. Many comments addressed GHG emissions.

17. On February 18, 2021, the Commission issued a new, refreshed Notice of Inquiry (2021 NOI),[42] seeking comments to build upon the existing record established by the 2018 NOI. The Commission posed several updated questions relating to GHG emissions, including asking: How the Commission could consider upstream impacts from natural gas production and downstream end-use impacts; how the Commission should determine the significance of a project's GHG emissions' contribution to climate change; whether the NGA, NEPA, or another federal statute authorize or mandate the use of the SCC analysis by the Commission; how the Commission could determine whether a proposed project's GHG emissions could be offset by reduced GHG emissions resulting from the project's operations; and how the Commission could impose GHG emission limits or mitigation to reduce the significance of impacts from a proposed project on climate change.[43]

18. With respect to determining significance, the 2021 NOI sought comment on (1) what type of metrics and models the Commission should consider in determining significance, (2) whether any level of emissions should be considered *de minimis,* and (3) how the SCC tool or other tools could factor into determining significance.[44]

19. The public comment period for the 2021 NOI closed on May 26, 2021.[45] The Commission received over 35,000 comments and approximately 150

[27] *Id.* at 1374.

[28] *Fla. Se. Connection, LLC,* 164 FERC ¶ 61,099, at P 5 (2018).

[29] *Id.* No party petitioned for judicial review of the Commission's determination on remand.

[30] 163 FERC ¶ 61,128 (2018), *pet. dismissed, Otsego 2000* v. *FERC,* 767 F.App'x 19 (D.C. Cir. 2019) (unpublished opinion).

[31] *Id.* PP 41–44, 61–62.

[32] *Id.* P 44; *see also Tenn. Gas Pipeline Co., LLC,* 163 FERC ¶ 61,190, at PP 61–62 (2018).

[33] *Dominion Transmission, Inc.,* 163 FERC ¶ 61,128 at PP 67–70.

[34] *Birckhead,* 925 F.3d at 518–19.

[35] *Id.* at 520.

[36] 174 FERC ¶ 61,189, at P 29 (2021).

[37] *Id.* PP 29–36.

[38] *Vecinos para el Bienestar de la Comunidad Costera* v. *FERC,* 6 F.4th 1321, 1328 (D.C. Cir. 2021) (*Vecinos)* (citing 40 CFR 1502.21(c), which requires an EIS to include an evaluation of impacts based upon theoretical approaches or research methods generally accepted in the scientific community where the information relevant to the reasonably foreseeable significant adverse impacts cannot be obtained because the means to obtain it are not known). The case is pending on remand with the Commission.

[39] 2018 NOI, 163 FERC ¶ 61,042.

[40] *Certification of New Interstate Natural Gas Pipeline Facilities,* 88 FERC ¶ 61,227 (1999), *clarified,* 90 FERC ¶ 61,128, *further clarified,* 92 FERC ¶ 61,094 (2000). The Commission must determine whether a proposed natural gas project is or will be required by the present or future public convenience and necessity, as that standard is established in NGA section 7. 15 U.S.C. 717f.

[41] 2018 NOI, 163 FERC ¶ 61,042 at PP 5–50.

[42] *Certification of New Interstate Natural Gas Facilities,* 174 FERC ¶ 61,125 (2021).

[43] *Id.* P 17.

[44] *Id.* (citations omitted).

[45] *See* Notice Extending Time for Comments, Docket No. PL18–1–000 (Mar. 31, 2021) (extending the original comment deadline from April 26, 2021, to May 26, 2021).

unique comment letters from a wide range of stakeholders, as noted above.

20. Comments relevant to this policy statement are addressed in Section III below.

III. Statutory Authority/Obligations

A. NGA

21. Section 7 of the NGA authorizes the Commission to issue certificates of public convenience and necessity for the construction and operation of facilities transporting natural gas in interstate commerce.[46] The Commission does not have authority to regulate intrastate transportation facilities or other facilities that affect interstate transportation, such as those used for the production, gathering, or local distribution of natural gas. Congress did not displace state authority over such subjects.[47]

22. Section 3(a) of the NGA provides for federal jurisdiction over the siting, construction, and operation of facilities used to import or export gas.[48] To date, the Commission has exercised section 3 authority to authorize: (1) LNG terminals located at the site of import or export and (2) the site and facilities at the place of import/export where a pipeline crosses an international border.[49] Additionally, NGA section 3(e) states that ''[t]he Commission shall have the exclusive authority to approve or deny an application for the siting, construction, expansion, or operation of an LNG terminal.'' [50]

23. Both NGA sections 7 and 3 authorize the Commission to attach terms and conditions to its authorization.[51] Courts have interpreted these provisions broadly and given the Commission latitude in deciding what types of mitigation to require.[52] In issuing authorizations, the Commission has required project sponsors to comply with conditions to prevent or mitigate project impacts on environmental resources.[53]

B. NEPA

24. NEPA and its implementing regulations require agencies, before taking or authorizing a major federal action that may significantly affect the quality of the human environment, to take a ''hard look'' at the environmental consequences of the proposed action and disclose their analyses to the public by preparing an EIS.[54] Alternatively, agencies can first prepare an Environmental Assessment (EA) for a proposed action that is not likely to have significant effects or when the significance is unknown, to determine whether an EIS is necessary for a particular action.[55] Depending on the outcome of the EA, agencies can either prepare an EIS or issue a finding of no significant impact.[56]

25. Previous CEQ regulations and court cases have examined a proposed project's ''context'' and ''intensity'' or the severity of the impact as factors for determining what constitutes a significant effect.[57] In assessing significance, Commission staff considers, for each resource, the duration of the impact as well as the geographic, biological, or social context in which the effects would occur, and the intensity (*e.g.* severity) of the impact.[58] This analysis may draw on both qualitative and quantitative information.[59] Using both types of data, the Commission routinely makes significance determinations for impacts to various resources from natural gas projects.[60]

26. In evaluating whether an impact is significant, the Commission determines whether ''it would result in a substantial adverse change in the physical environment.'' [61] In making that determination, the Commission considers available evidence, giving that evidence such weight as it deems appropriate using its experience, judgment, and expertise.[62] Notably,

[46] 15 U.S.C. 717f.

[47] NGA section 1(b) states that Commission authority applies to interstate transportation of natural gas and sales for resale, ''but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.'' *Id.* 717(b).

[48] The 1977 Department of Energy Organization Act (42 U.S.C. 7151(b)) placed all section 3 jurisdiction under the Department of Energy. The Secretary of Energy subsequently delegated authority to the Commission to ''[a]pprove or disapprove the construction and operation of particular facilities, the site at which such facilities shall be located, and with respect to natural gas that involves the construction of new domestic facilities, the place of entry for imports or exit for exports.'' Department of Energy Delegation Order No. 00–004.00A, section 1.21A (May 16, 2006).

[49] In addition to pipelines that cross the international border with Canada and Mexico, the Commission has also asserted authority over the portions of subsea pipelines planned to cross the ''border'' of the Exclusive Economic Zone between the U.S. and the Bahamas. *See, e.g., Tractebel Calypso Pipeline, LLC,* 106 FERC ¶ 61,273 (2004), *vacated, Calypso U.S. Pipeline, LLC,* 137 FERC ¶ 61,098 (2011).

[50] 15 U.S.C. 717b(e)(1).

[51] *Id.* 717f(e) (''The Commission shall have the power to attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require.''); *see also id.* 717b(a) (stating that the Commission may ''grant such application, in whole or in part, with such modification and upon such terms and conditions as the Commission may find necessary or appropriate''); *id.* 717b(e)(3)(A) (providing the authority to approve an application for an LNG Terminal, ''in whole or part, with such modifications and upon such terms and conditions as the Commission find[s] necessary or appropriate'').

[52] *See Twp. of Bordentown* v. *FERC,* 903 F.3d 234, 261 n.15 (3d Cir. 2018) (concluding that the Commission's authority to enforce any required remediation is amply supported by provisions of the NGA); *Sabal Trail,* 867 F.3d at 1374 (holding that the Commission has legal authority to mitigate reasonably foreseeable indirect effects).

[53] *See, e.g., Atl. Coast Pipeline, LLC,* 161 FERC ¶ 61,042, at app. A (2017), *on reh'g,* 164 FERC ¶ 61,100 (2018).

[54] 42 U.S.C. 4332(2)(C); 40 CFR 1502.3; *see Balt. Gas & Elec. Co.* v. *Nat. Res. Def. Council, Inc.,* 462 U.S. 87, 97 (1983) (discussing the twin aims of NEPA).

[55] 40 CFR 1501.5, 1508.1(h).

[56] 40 CFR 1508.1(*l*) (defining a finding of no significant impact as a document that briefly presents the reasons why an action that is not otherwise categorically excluded under § 1501.4 will not have a significant effect on the human environment and for which an EIS will therefore not be prepared).

[57] *Vieux Carre Prop. Owners, Residents & Assocs., Inc.* v. *Pierce,* 719 F.2d 1272, 1279 (5th Cir. 1983) (stating there is ''no hard and fast definition of 'significant' '' but considering the proposed project's context in assessing whether a finding of no significance impact was reasonable). The regulations implementing NEPA previously addressed the term ''significantly,'' but that provision was removed by amendments effective September 14, 2020 and replaced with 40 CFR 1501.3(b). ''Whether a project has significant environmental impacts, thus triggering the need to produce an EIS, depends on its 'context' (region, locality) and 'intensity' ('severity of impact').'' *Nat'l Parks Conservation Ass'n* v. *Semonite,* 916 F.3d 1075, 1082 (D.C. Cir.) (quoting 40 CFR 1508.27 (2018)), *amended in part by* 925 F.3d 500 (D.C. Cir. 2019). The new 40 CFR 1501.3(b) calls for agencies to consider the ''potentially affected environment and degree of the effects of the action'' and to consider the short-term, long-term, beneficial, and adverse effects, and effects on public safety and those that would violate laws.

[58] *See, e.g.* Final EIS for the Alaska LNG Project, Docket No. CP17–178–000, at 4–1.

[59] *See Sabal Trail,* 867 F.3d at 1371 (''The EIS also gave the public and agency decisionmakers the qualitative and quantitative tools they needed to make an informed choice for themselves. NEPA requires nothing more.'').

[60] *See, e.g., Transcon. Gas Pipe Line Co., LLC,* 158 FERC ¶ 61,125, at P 79 (describing how the final EIS for the Atlantic Sunrise Project concluded that the project would result in adverse impacts that would be mitigated to less than significant levels), *order on reh'g,* 161 FERC ¶ 61,250 (2017), *petition denied sub nom., Allegheny Def. Project* v. *FERC,* 964 F.3d 1 (D.C. Cir. 2020); *see also infra* note 61; *see also Magnum Gas Storage, LLC,* 134 FERC ¶ 61,197, at P 115 (2011) (explaining that '''significantly,' as used in NEPA, requires considerations of both context and intensity, which varies with the setting of each proposed action.'').

[61] *N. Nat. Gas Co.,* 174 FERC ¶ 61,189, at P 32 (citing *Magnum Gas Storage, LLC,* 134 FERC ¶ 61,197 at P 114 (''[A]n impact was considered to be significant if it would result in a substantial adverse change in the physical environment or natural condition and could not be mitigated to less-than-significant level.'')).

[62] *See, e.g., Tex. LNG Brownsville LLC,* 169 FERC ¶ 61,130, at P 56 (2019) (''Due to the relatively undeveloped nature of the project area, the visual sensitivity of nearby recreation areas, and the lack of feasible visual screening measures, the Final EIS concluded that the project would result in a

Continued

NEPA does not require that the studies, metrics, and models on which an agency relies be universally accepted or otherwise uncontested.[63] Instead, NEPA permits agencies to rely on the best available evidence, quantitative and qualitative, even where that evidence has certain limitations when assessing the significance of their actions,[64] and an agency's determination is entitled to deference.[65]

27. In addition to determining whether its actions may significantly affect the quality of the human environment, NEPA requires the Commission to consider whether there are steps that could be taken to mitigate any adverse environmental consequences.[66] While NEPA is a procedural statute and does not require a federal agency to reject a proposed project with significant adverse effects or take action to mitigate adverse effects,[67] an agency may require mitigation of impacts as a condition of its permitting or approval,[68] and the Commission routinely does so.[69]

IV. Discussion

A. Quantifying GHG Emissions and Determining Significance

28. Consistent with CEQ regulations,[70] the Commission will quantify a project's GHG emissions that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action, including those effects that occur at the same time and place as the proposed action and effects that are later in time or farther removed in distance from the proposed action. This will include GHG emissions resulting from construction and operation of the project[71] as well as, in most cases, GHG emissions resulting from the downstream combustion of transported gas.[72]

29. The Commission will consider all evidence in the record relating to a project's estimated GHG emissions,[73] utilization rate, or offsets: Estimates presented by project sponsors, as well as opposing evidence from other parties. Going forward, in determining the level of GHG emissions attributed to a project, the Commission will estimate a project's GHG emissions based on a projection of what amount of project capacity will be actually used (projected utilization rate), as opposed to assuming 100% utilization.[74] The Commission will also consider evidence of factors expected to reduce or offset the estimated direct or reasonably foreseeable downstream emissions of the project.

1. Categories of Emissions

30. CEQ regulations implementing NEPA require agencies to consider effects or impacts that ''are reasonably foreseeable and have a reasonably close causal relationship to the proposed action . . . including those effects that occur at the same time and place as the proposed action . . . and may include effects that are later in time or farther removed in distance for the proposed action . . . .'' [75] A ''but for'' causal relationship is insufficient to make an agency responsible for a particular effect,[76] and effects should not be considered if they are the ''product of a lengthy causal chain.'' [77] Further, effects to be considered do not include those that the agency has no ability to prevent due to its limited statutory authority or would occur regardless of the proposed action.[78] Regarding reasonable foreseeability, courts have found that an impact is reasonably foreseeable if it is ''sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision.'' [79] Although courts have held that NEPA requires ''reasonable forecasting,'' [80] an agency ''is not required to engage in speculative analysis'' [81] or ''to do the impractical, if

significant impact on visual resources when viewed from the adjacent Laguna Atascosa National Wildlife Refuge.''), *order on reh'g,* 170 FERC ¶ 61,139, at P 32 (2020), *remanded on other grounds, Vecinos,* 6 F.4th 1321; Final EIS for the Alaska LNG Project, Docket No. CP17–178–000, at ES–4 (Mar. 2020) (explaining the significant, long-term to permanent project impacts from the loss of thousands of acres of permafrost from construction that would permanently alter hydrology and vegetation within and past the project footprint).

[63] *Sierra Club* v. *U.S. Dep't of Transp.,* 753 F.2d 120, 128 (D.C. Cir. 1985) (''It is clearly within the expertise and discretion of the agency to determine proper testing methods.''); *see also Hughes River Watershed Conservancy* v. *Johnson,* 165 F.3d 283, 289 (4th Cir. 1999) (''Agencies are entitled to select their own methodology as long as that methodology is reasonable. The reviewing court must give deference to an agency's decision.'').

[64] *See Spiller* v. *White,* 352 F.3d 235, 244 n.5 (5th Cir. 2003) (rejecting petitioner's contention that the significance determination must be objective, factual, and quantitative and should not involve any qualitative judgment calls).

[65] *See La. Crawfish Producers Ass'n-W.* v. *Rowan,* 463 F.3d 352, 355 (5th Cir. 2006) (NEPA-related decisions are accorded a considerable degree of deference); *Spiller* v. *White,* 352 F.3d at 244 n.5 (''We should note that our deference to the [l]ead [a]gencies[']' fact-finding and conclusions includes deference to their judgment as to whether any particular environmental impact of the proposed pipeline rises to the level of significance''); *Powder River Basin Res. Council* v. *U.S. Bureau of Land Mgmt.,* 37 F.Supp. 3d 59, 74 (D.D.C. 2014) (agencies are afforded discretion to use their expertise to determine the best method to evaluate the significance of an impact to a particular resource, so long as that method is reasonable).

[66] *Robertson* v. *Methow Valley Citizens Council,* 490 U.S. 332, 351 (1989) (''To be sure, one important ingredient of an EIS is the discussion of steps that can be taken to mitigate adverse environmental consequences.'').

[67] *Id.* at 352 (''There is a fundamental distinction, however, between a requirement that mitigation be discussed in sufficient detail to ensure that environmental consequences have been fairly evaluated, on the one hand, and a substantive requirement that a complete mitigation plan be actually formulated and adopted, on the other.'').

[68] *Final Guidance for Federal Departments and Agencies on the Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate use of Mitigated Findings of No Significant Impact,* 76 FR 3843, 3848 (Jan. 21, 2011).

[69] *See, e.g., Columbia Gas Transmission, LLC,* 170 FERC ¶ 61,045, at P 66, app. (2020) (conditioning certificate authority on site-specific mitigation measures when crossing abandoned mine lands, including the management and disposal of contaminated groundwater, and mitigation measures for acid mine drainage); *PennEast Pipeline Co., LLC,* 170 FERC ¶ 61,198, at PP 29–30, app. A (2020) (conditioning certificate authority on mitigation of construction impacts on karst features); *Atl. Coast Pipeline, LLC,* 161 FERC ¶ 61,042 at app. A (conditioning certificate authority on the mitigation of construction impacts on karst features and on a nearby inn and mitigation of impacts from the discovery of invasive aquatic species during construction); *Port Arthur LNG, LP,* 115 FERC ¶ 61,344, at PP 68–71, app. A (conditioning sections 3 and 7 authority on the mitigation of construction impacts on aquatic resources and wetlands), *order on reh'g,* 117 FERC ¶ 61,213 (2006), *vacated,* 136 FERC ¶ 61,196 (2011).

[70] 40 CFR 1508.1(g) (defining the effects or impacts that must be considered when conducting a review under NEPA).

[71] Emissions quantification also includes loss of carbon storage/sinks through land use conversions, forest clearing, wetland conversions, etc.

[72] As discussed below, the vast majority of all natural gas consumed in the United States is combusted. *See infra* note 101.

[73] Additionally, the Commission will consider evidence regarding whether certain emissions associated with a proposed project, such as upstream and downstream emissions, are reasonably foreseeable.

[74] *See Certification of New Interstate Natural Gas Pipeline Facilities,* 178 FERC ¶ 61,107, at P 55 (2022) (explaining that project sponsors are encouraged to provide the Commission with information on estimated utilization rates and the intended end use of gas to demonstrate project need).

[75] 40 CFR 1508.1(g).

[76] *Id.* § 1508.1(g)(2); *see also U.S. Dep't of Transp.* v. *Pub. Citizen,* 541 U.S. 752, 767 (2004) (*Pub. Citizen*) (finding that ''NEPA requires 'a reasonably close causal relationship' between the environmental effect and the alleged cause'' in order ''to make an agency responsible for a particular effect under NEPA'' (quoting *Metro. Edison Co.* v. *People Against Nuclear Energy,* 460 U.S. 766, 774 (1983) (*Metro. Edison Co.*))).

[77] 40 CFR 1508.1(g)(2); *see also Metro. Edison Co.,* 460 U.S. at 774 (finding that ''[s]ome effects that are 'caused by' a change in the physical environment in the sense of 'but for' causation,'' will not fall within NEPA if ''the causal chain is too attenuated'').

[78] 40 CFR 1508.1(g)(2); *see also Pub. Citizen,* 541 U.S. at 770 (''[W]here an agency has no ability to prevent a certain effect due to its limited statutory authority over the relevant actions, the agency cannot be considered a legally relevant 'cause' of the effect.'').

[79] *EarthReports, Inc.* v. *FERC,* 828 F.3d 949, 955 (DC Cir. 2016) (citations omitted); *see also Sierra Club* v. *Marsh,* 976 F.2d 763, 767 (1st Cir. 1992).

[80] *N. Plains Res. Council, Inc.* v. *Surface Transp. Bd.,* 668 F.3d 1067, 1079 (9th Cir. 2011) (quoting *Selkirk Conservation All.* v. *Forsgren,* 336 F.3d 944, 962 (9th Cir. 2003)).

[81] *Id.* at 1078.

not enough information is available to permit meaningful consideration.'' [82]

31. As discussed below, the Commission proposes to:

- Consider direct emissions of a project a reasonably foreseeable effect;
- Find that an NGA section 3 export facility project is not the legally relevant cause of upstream and downstream emissions; [83]
- Consider on a case-by-case basis whether downstream emissions are a reasonably foreseeable effect of an NGA section 7 interstate project; and
- Consider on a case-by-case basis whether upstream emissions are a reasonably foreseeable effect of an NGA 7 project.

a. Direct Emissions

32. Several commenters assert that the Commission must consider fugitive emissions from the transportation of gas.[84] New Jersey Conservation Foundation, Sabin Center for Climate Change Law (Sabin Center), The Watershed Institute, Clean Air Council, PennFuture, and New Jersey League of Conservation Voters (collectively, New Jersey Conservation Foundation) argue that natural gas leakage from both pipeline operation and natural gas production is worse than combustion because methane has a higher global warming potential than carbon dioxide.[85]

33. As the Commission has long held, direct GHG emissions from the project's short-term construction [86] and long-term operational activities [87] are an effect of the proposed project. Under current Commission regulations, the project sponsor provides an estimate of construction emissions and an estimate of the project's potential operational emissions, including fugitive emissions from both pipeline and aboveground facilities, in its application for Commission authorization.[88]

b. Downstream Emissions

34. Some commenters argue that the Commission must consider the downstream emissions of natural gas projects,[89] including fugitive emissions.[90] In contrast, other commenters generally assert that the Commission should not consider downstream emissions, or at most, should only do a qualitative assessment of downstream emissions, because they are not reasonably foreseeable impacts or do not have a close causal relationship under NEPA to gas transportation.[91]

35. As discussed above, in August 2017, the D.C. Circuit issued *Sabal Trail,* which involved a greenfield pipeline project that would deliver all gas transported by the project to specific gas-fired generating plants. The D.C. Circuit found that downstream emissions from the use of the transported natural gas were an indirect, reasonably foreseeable effect of the proposed pipeline and that in the circumstances of that case—where the vast majority of throughput on the proposed project was destined for a limited number of specifically identified electric generation facilities—the downstream GHG emissions could be reasonably quantified by the Commission.[92]

36. The D.C. Circuit reiterated this determination in two subsequent cases. First, in *Birckhead,* the court rejected the claim that downstream emissions are only a foreseeable effect in factual circumstances akin to *Sabal Trail, i.e.,* where all transported gas will be burned at specifically identified destinations, but also rejected the argument that downstream emissions are always a foreseeable effect of a natural gas certificate project.[93] Then, in *Allegheny Defense Project* v. *FERC,*[94] the court stated that the downstream emissions of a project designed to deliver gas into large interstate pipeline systems, which in turn deliver gas to 16 states, are an indirect effect of the project.[95]

37. INGAA and others read the Supreme Court's *Public Citizen* decision as requiring an agency to consider an environmental effect only when the agency has the authority to control the outcome and note that the Commission has no authority to regulate the end use (or production) of natural gas.[96] INGAA states that attempting to regulate downstream (or upstream) activities would invade the jurisdiction of other regulators, that most projects will not result in reasonably foreseeable downstream GHG emissions like those in *Sabal Trail,* and thus, downstream emissions should only be considered on a case-by-case basis.[97] INGAA suggests the Commission look for guidance to *Center for Biological Diversity* v. *U.S. Army Corps of Engineers,*[98] which criticizes *Sabal Trail* as ''breezing past . . . statutory limits and precedents . . . clarifying what effects are cognizable under NEPA.'' [99]

38. Given that data show that the vast majority of consumed gas is ultimately combusted,[100] there appears to be a

[82] *Id.* (quoting *Envtl. Prot. Info. Ctr.* v. *U.S. Forest Serv.,* 451 F.3d 1005, 1014 (9th Cir. 2006)).

[83] *EarthReports, Inc.* v. *FERC,* 828 F.3d at 955 (citing *Sierra Club* v. *FERC,* 827 F.3d 36, 47, 59, 68 (D.C. Cir. 2016) (*Freeport*).

[84] *See, e.g.,* Egan Millard 2021 Comments at 3; New Jersey Conservation Foundation 2021 Comments at 21; Shayna Gleason 2021 Comments at 2.

[85] New Jersey Conservation Foundation 2021 Comments at 21.

[86] Construction emissions include emissions from gasoline- and diesel-powered construction equipment.

[87] Operational emissions include emissions from combustion units at compressor stations and fugitive leaks from compressor stations, meter/valve stations, and the pipeline.

[88] The project sponsor provides emissions information in Resource Report No. 9. 18 CFR 380.12(k). Operational emissions are also estimated in the project's air permit application, which is typically submitted to the state agency with delegated Clean Air Act authority. Further, the Commission's guidance manual for NGA certificate applications instructs project sponsors to provide the GHGs in tons per year for the construction and operation of the proposed project. *See* Guidance Manual for Environmental Report Preparation for Applications Filed under the NGA, Volume I, at 4–123, 4–125 to 4–127 (Guidance Manual).

[89] *See, e.g.,* Food and Water Watch 2021 Comments at 1; New Jersey Conservation Foundation 2021 Comments at 19; Attorneys General of Massachusetts, Illinois, Maryland, New Jersey, Rhode Island, Washington, and the District of Columbia (Attorneys General of Massachusetts et al.) 2018 Comments at 12–17.

[90] For example, the Massachusetts PipeLine Awareness Network states that the Commission should consider fugitive emissions from the distribution and burning of transported gas. Massachusetts PipeLine Awareness Network 2021 Comments at 2; *see also, e.g.,* Egan Millard 2021 Comments at 3; Shayna Gleason 2021 Comments at 2.

[91] *See, e.g.,* American Petroleum Institute (API) Technical Conference Comments at 3–5 (stating the Commission and developers cannot accurately forecast downstream emissions due to lack of knowledge of the end use of the gas, variability in utilization rates and regulatory requirements, and unpredictable changes in supply and demand, among other factors); Boardwalk Pipeline Partners LP (Boardwalk) Technical Conference Comments at 21; Enbridge Gas Pipelines (Enbridge) Technical Conference Comments at 11, 25–26; Interstate Natural Gas Association of America (INGAA) 2021 Comments at 58–60; The Williams Companies, Inc. (Williams) 2021 Comments at 37–38; Natural Gas Supply Association (NGSA) 2018 Comments at 15–16.

[92] The court concluded ''that the EIS for the Southeast Market Project should have either given a quantitative estimate of the downstream greenhouse emissions that will result from burning the natural gas that the pipelines will transport or explained more specifically why it could not have done so.'' *Sabal Trail,* 867 F.3d at 1374.

[93] *Birckhead,* 925 F.3d at 518–20 (criticizing the Commission for not attempting to obtain data on downstream uses).

[94] 932 F.3d 940 (DC Cir. 2019).

[95] *Id.* at 945–46.

[96] *See, e.g.,* INGAA 2021 Comments at 50–51.

[97] INGAA 2021 Comments at 49–51, 57; *see also* INGAA Technical Conference Comments at 14 (adding that NEPA's requirements would exclude downstream emissions occurring after a ''long and attenuated chain of intermediate causal factors, as when natural gas is transported to an interconnect for further shipment on the interstate grid, eventually reaching end-use consumers only through a long intermediate path'').

[98] 941 F.3d 1288 (11th Cir. 2019) (*Center for Biological Diversity*).

[99] *Id.* at 1300 (citing *Pub. Citizen,* 541 U.S. 752 and *Metro. Edison Co.,* 460 U.S. 766).

[100] U.S. Energy Info. Admin., *December 2021 Monthly Energy Review* 24, 101 (2021) (reporting

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substantial likelihood of GHG emissions from the end-use combustion of transported gas as a result of a natural gas project proposed under NGA section 7.[101] However, as contemplated by the court in *Birckhead,* there may be circumstances where downstream emissions are not a foreseeable effect of an authorized project, and the court stated that each project must be analyzed on a case-by-case basis.[102] Accordingly, project sponsors may submit any evidence they believe indicates that downstream emissions are not a reasonably foreseeable effect of a proposed project.

39. We disagree with commenters' assertions that *Public Citizen* prohibits the Commission from considering downstream GHG emissions. The question is not whether the Commission has regulatory authority over downstream emissions. Rather, as the *Sabal Trail* court reasoned in applying *Public Citizen,* the Commission ''has no obligation to gather or consider environmental information [only] if it has no statutory authority *to act on that information.*'' [103] Because the Commission can reject a section 7 certificate based on the project's environmental impacts, including GHG emissions, the court held that the Commission was required to consider downstream emissions resulting from the Sabal Trail project's construction.[104] For section 7 projects—unlike section 3 projects, described below—there is no independent decision, such as the DOE authorization critical in *Freeport,* to ''break the NEPA causal'' chain.[105] Accordingly, the Commission's authorization for section 7 projects is a ''legally relevant cause'' of the emissions, meeting *Public Citizen's* direction that ''NEPA requires 'a reasonably close causal relationship' between the environmental effect and the alleged cause,'' analogous to the ''familiar doctrine of proximate cause from tort law.'' [106]

40. The Commission finds this and subsequent direction from the D.C. Circuit more instructive than *Center for Biological Diversity,* which determined that a specific effect was too tenuous to be considered in analysis of a U.S. Army Corps of Engineers discharge permit for mining activities under the Clean Water Act.[107]

41. However, for proposed export projects under NGA section 3, the Commission will not consider downstream GHG emissions an effect requiring analysis under NEPA regulations. The Department of Energy, not the Commission, has sole authority to license and consider the environmental impacts of the export of any natural gas.[108] As courts have explained, the Commission need not consider the effects of downstream transportation, consumption, or combustion of exported gas because the Department of Energy's ''independent decision to allow exports . . . breaks the NEPA causal chain and absolves the Commission of responsibility to include [these considerations] in its NEPA analysis.'' [109]

c. Upstream Emissions

42. Some commenters state that the Commission must consider the upstream GHG emissions of natural gas projects, including fugitive emissions from production,[110] to assess the project's total impact on climate change.[111] Other commenters argue that upstream emissions are not a reasonably foreseeable effect of a natural gas transportation project, and therefore should not be considered by the Commission.[112] Some commenters focus on how to obtain sufficient information to account for upstream GHG emissions. For example, EPA recommends that the Commission require project sponsors to provide available information on reasonably foreseeable induced production demand. EPA states that environmental documents under NEPA should disclose this information as well as items such as the proposal's regionally known hydrocarbon accumulations and a decline curve analysis to allow for appropriate regional and local impact analysis.[113]

43. In various NGA section 7 proceedings, the Commission has considered upstream emissions on a case-by-case basis—sometimes acknowledging it is difficult to quantify upstream emissions due to several unknown factors, including the location of the supply source and whether transported gas will come from new or existing production.[114] The Commission will continue to consider on a case-by-case basis whether the environmental effects resulting from natural gas production are either likely caused by a proposed NGA section 7 project or reasonably foreseeable consequences of our approval of such projects. To the extent known, project sponsors are encouraged to submit information on the reasonably foreseeable upstream impacts caused by the project or an explanation as to why there are none for Commission consideration.

2. Calculating GHG Emissions

44. To calculate operational emissions, project sponsors should continue to follow the existing guidance outlined in section 4.9.1.3 of the Commission's Guidance Manual for Environmental Report Preparation for

that, in 2020, 1,036 Bcf of natural gas had a non-combustion use compared to 30,476 Bcf of total consumption), *https://www.eia.gov/totalenergy/data/monthly/pdf/mer.pdf*; *see also* Jayni Hein et al., Institute for Policy Integrity, *Pipeline Approvals and Greenhouse Gas Emissions* 25 (2019) (explaining that, in 2017, 97% of all natural gas consumed was combusted).

[101] *See Birckhead,* 925 F.3d at 518; *Sabal Trail,* 867 F.3d at 1371–72.

[102] *Birckhead,* 925 F.3d at 518–19 (rejecting, in *dicta,* that downstream emissions are always a foreseeable effect of a proposed certificate project).

[103] *Sabal Trail,* 867 F.3d at 1372–73 (emphasis in original) (explaining *Pub. Citizen,* 541 U.S. 752).

[104] *See id.* at 1373 (''Because FERC could deny a pipeline certificate on the ground that the pipeline would be too harmful to the environment, the agency is a 'legally relevant cause' of the direct and indirect environmental effects of pipelines it approves.'' (quoting *Freeport,* 827 F.3d at 47).

[105] *Freeport,* 827 F.3d at 47.

[106] *Pub. Citizen,* 541 U.S. at 767 (quoting *Metro. Edison Co.,* 460 U.S. at 774).

[107] *See Center for Biological Diversity,* 941 F.3d at 1292 (describing whether the U.S. Army Corps of Engineers legally declined to address, in issuing discharge permits for phosphate mining, the effects of a radioactive byproduct of fertilizer production (phosphogypsum), where the phosphogypsum is neither a byproduct of dredging and filling or phosphate mining or beneficiation). The court criticized the reasoning in *Sabal Trail* but also observed that the ''causal relationship between the agency action and the putative downstream effect was much closer [in *Sabal Trail*] than it is here'' and that the Commission's scope of statutory authority is ''much broader'' than that of the U.S. Army Corps of Engineers. *Id.* at 1299–1300.

[108] *Freeport,* 827 F.3d at 47 (holding that the Commission does not have to address the indirect effects of the anticipated export of natural gas because the Department of Energy, not the Commission, has sole authority to license and consider the environmental impacts of the export of any natural gas going through LNG facilities); *Freeport,* 827 F.3d at 62–63 (same); *EarthReports, Inc.* v. *FERC,* 828 F.3d at 956 (same); *Sabal Trail,* 867 F.3d at 1372 (explaining *Freeport*).

[109] *Freeport,* 827 F.3d at 48.

[110] *See, e.g.,* Egan Millard 2021 Comments at 3; Shayna Gleason 2021 Comments at 2.

[111] *See, e.g.,* Institute for Policy Integrity at New York University School of Law (Policy Integrity) Technical Conference Comments at 17; Food and Water Watch 2021 Comments at 1; New Jersey Conservation Foundation 2021 Comments at 19.

[112] *See, e.g.,* Boardwalk Technical Conference Comments at 21; Enbridge Technical Conference Comments at 11, 25–26; TC Energy Corporation (TC Energy) Technical Conference Comments at 5; Williams Technical Conference Comments at 4; INGAA 2021 Comments at 56–57; Williams 2021 Comments at 37–38.

[113] EPA 2021 Comments at 5.

[114] *See Birckhead,* 925 F.3d at 516–18. *See, e.g., Double E Pipeline, LLC,* 173 FERC ¶ 61,074, at P 97 (2020); *Cent. N.Y. Oil & Gas Co., LLC,* 137 FERC ¶ 61,121, at PP 81–101 (2011), *order on reh'g,* 138 FERC ¶ 61,104, at PP 33–49 (2012), *petition for review dismissed sub nom., Coal. for Responsible Growth* v. *FERC,* 485 F.App'x 472, 474–75 (2d Cir. 2012) (unpublished opinion); *see also Adelphia Gateway, LLC,* 169 FERC ¶ 61,220, at P 243 (2019), *order on reh'g,* 171 FERC ¶ 61,049, at P 89 (2020).

Applications Filed under the NGA.[115] However, under this policy statement, for purposes of assessing the impact of a project's GHG emissions on climate change, the Commission will consider operational GHG emissions calculated based on a projected utilization rate for the project, as described below.[116]

45. Additionally, the Commission recognizes that there may be other factors that might serve to reduce a proposed project's climate impacts. For example, the installation of emission-reduction technology or purchase of offsets by downstream users would reduce the impacts. Thus, to enable the Commission's use of the best estimate of a project's GHG emissions, project sponsors are encouraged to calculate project GHG emissions using a projected utilization rate and submit evidence of any other factors that might impact a project's net emissions such as the factors identified by commenters below.

46. Commenters recommend that the Commission consider factors that might impact a project's net emissions, such as (1) whether the transported gas will phase out use of a more carbon-intensive energy source, like coal or fuel oil, and will prevent the use of more carbon-intensive energy sources in the future; (2) whether the pipeline will transport gas that would otherwise be transported by vehicles, thereby reducing the emissions from transporting the gas; (3) whether the proposed project will transport gas volumes that would have otherwise been delivered to the same consumers through a different pipeline or may ultimately end up transporting fuel blends including renewable natural gas or hydrogen; (4) whether the project sponsor will purchase offsets to counter project emissions; or (5) whether the project may be backed by a local distribution company serving customer demand in states with established emissions caps.[117] INGAA states that in the absence of reliable and verifiable predictive models to the contrary, the requirement of reasonable foreseeability arguably dictates that the Commission cannot adopt any default assumption that a natural gas infrastructure project will increase (rather than decrease, or leave unchanged) net global GHG emissions, and that at minimum, the Commission would have to provide a rational justification for any such assumption.[118] By contrast, New Jersey Conservation Foundation and others contend that the Commission should consider whether the project may be displacing renewable energy sources, thereby increasing GHG emissions.[119]

47. INGAA and other commenters strongly urge the Commission to calculate a project's downstream emissions, if at all, based on the likely utilization rate of the proposed project, instead of relying on a full-burn estimate.[120]

48. Conversely, New Jersey Conservation Foundation and others argue the Commission must calculate direct, downstream, and upstream GHG emissions by assuming the maximum authorized operating conditions, unless, some add, the project sponsor can demonstrate otherwise.[121] Further, other commenters propose their own methods of how to calculate the downstream emissions of a proposed project.[122] New Jersey Conservation Foundation urges the Commission to recommend or require the use of specified emissions factors to calculate project emissions.[123] Some commenters argue that the Commission must, beyond asking project sponsors, require certain information to be provided, conduct independent research, or otherwise compile missing information.[124] Dr. Susan F. Tierney states that the Commission should articulate a default methodology, set of assumptions, and sources of data (suggesting multiple sources including data from the U.S. Department of Energy's National Energy Technology Laboratory's 2019 life-cycle estimates of GHG emissions for the natural gas supply chain) to establish a default maximum emissions rate, which could then be supplemented by an applicant's own estimate or an intervenor's alternative estimate.[125]

a. Projected Utilization Rate

49. In previous environmental documents and certificate orders, the Commission has disclosed a project's operational emissions [126] and estimates

[115] We note that thresholds for Clean Air Act and state air permits are typically based on the regulated source's potential to emit, or the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design, rather than its actual emissions, and that air permits themselves are expressed in potential to emit. *See* 40 CFR 70.2. This policy statement does not apply to any other air pollutants than GHGs. For all other air pollutants, we will continue to evaluate a project's air quality impacts based on its potential to emit.

[116] *See infra* section III.A.2.a.

[117] *See, e.g.,* American Gas Association (AGA) Technical Conference Comments at 28, 40; API Technical Conference Comments at 3; Boardwalk Technical Conference Comments at 23 (stating that the Commission should rely on local distribution companies' air permits to determine GHG emissions); Enbridge Technical Conference Comments at 31–34; Hon. Joseph T. Kelliher Technical Conference Comments at 5–6 (Commissioner Kelliher, Principal at Three Acorns, was a panelist at the GHG Technical Conference on Panel 1.); INGAA Technical Conference Comments at 17–18 (suggesting the net emissions analysis must be undertaken on a global level); Kinder Morgan Entities (Kinder Morgan) Technical Conference Comments at 12–15; National Grid Gas Companies Technical Conference Comments at 3–7 (describing the Distributed Infrastructure Solution that it has developed in coordination with the State of New York); Williams Technical Conference Comments at 7–8; Charles River Associates 2021 Comments at 4–5; Ohio Environmental Council 2021 Comments at 3. *See* Environmental Assessment for the Iroquois Gas Transmission System, L.P. (Iroquois) Enhancement by Compression Project, Docket No. CP20–48–000, at B–110 (Sept. 30, 2020) (citing Iroquois' end-use GHG analysis that projected greater GHG emissions if the project was not built under scenarios where the energy needs of all new buildings are met by fuel oil as opposed to gas supplied by the project). One industrial end user expresses concern about the potential of integrating renewable natural gas due to concerns about pipeline integrity or increased costs. American Forest and Paper Association and Process Gas Consumers Group (collectively, American Forest) Technical Conference Comments at 13–14.

[118] INGAA Technical Conference Comments at 19.

[119] *See, e.g.,* New Jersey Conservation Foundation 2021 Comments at 23.

[120] *See, e.g.,* Enbridge Technical Conference Comments at 12, 29–30; Hon. Joseph T. Kelliher Technical Conference Comments at 5–6; INGAA Technical Conference Comments at 15–16 (describing an analysis it commissioned concluding that in 2020, the maximum utilization on an average annual basis for any of the pipeline ''corridors'' between different regions is not higher than 65% and it is over 50% only for 7 of the 30 regional corridors); TC Energy Technical Conference Comments at 18; Charles River Associates 2021 Comments at 6; INGAA 2021 Comments at 58; *see also* Boardwalk Technical Conference Comments at 3, 23; Williams Technical Conference Comments at 7. API, on the other hand, asserts that use of utilization estimates or emissions data forces the Commission to pick winners among competing pipeline projects and asserts that such decisions are best made by market forces after the Commission authorizes a project. API Technical Conference Comments at 3–4.

[121] *See, e.g.,* New Jersey Conservation Foundation 2021 Comments at 21–22; Public Interest Organizations 2018 Comments at 91; Washington State Department of Commerce and Washington State Department of Ecology 2018 Comments at 6. Public Interest Organizations' 2018 comments represent 63 entities including Natural Resources Defense Council.

[122] *See, e.g.,* Charles River Associates 2021 Comments at 6–8 (proposing a regional analysis to estimate downstream emissions of a gas project).

[123] New Jersey Conservation Foundation 2021 Comments at 22.

[124] *See, e.g.,* Berkshire Environmental Action Team 2021 Comments at 3; North Carolina Department of Environmental Quality 2018 Comments at 5–8.

[125] Dr. Susan F. Tierney, Senior Advisor with the Analysis Group, Inc., was a panelist at the GHG Technical Conference on Panel 1. Dr. Susan F. Tierney Technical Conference Statement at 4–10. The applicant could supplement its estimate with an alternative estimate, and intervenors could also submit estimates.

[126] *See* Environmental Assessment for the Lake City 1st Branch Line Abandonment and Capacity Replacement Project, Docket No. CP20–504–000, at 51–53 (Feb. 2021); *see also* Environmental Assessment for the Philadelphia Lateral Expansion Project, Docket No. CP11–508–000, at 24 (Jan. 18, 2012) (construction emissions); Environmental Assessment for the Minisink Compressor Project,

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of downstream emissions [127] by assuming a 100% utilization rate estimate of the project (*e.g.,* the maximum capacity is transported 365 days per year, 24 hours a day and fully combusted downstream). This represents the maximum potential downstream GHG emissions. However, most projects do not operate at 100% utilization at all times. In fact, many projects are designed to address peak demand. For example, traditionally, in the Northeast, demand for gas is highest in the winter months, resulting in high utilization rates during those months due to heating needs, but lower in the summer, resulting in low annual utilization rates.[128]

50. Because in most instances a 100% utilization rate estimate does not accurately capture the project's climate impacts, estimated emissions that reflect a projected utilization rate will provide more useful information. The project's projected utilization rate may be calculated using, for example:

- Expected utilization data from project shippers;
- Historical usage data; [129]
- Demand projections;
- An estimate of how much capacity will be used on an interruptible basis.

51. The project sponsor is encouraged to file its projected utilization rate, as well as its justification for the rate and any supporting evidence, in its application for authorization under NGA section 3 or 7. The Commission will also consider evidence submitted by commenters and protesters in support of or opposition to the projected utilization rate.

b. Other Evidence Considered

52. Further, the Commission will consider any other evidence in the record that impacts the quantification of the project's reasonably foreseeable emissions. For example, the Commission will consider: Evidence of a net-reduction in GHG emissions where the use of transported gas displaces the use of a higher emitting alternative fuel; [130] evidence of anticipated changes in downstream usage rates over time; evidence of any real, verifiable, and measurable reduction efforts taken by the pipeline or downstream users to reduce their GHG emissions or offset their impacts; [131] and evidence that a project would displace zero-emissions electric generation. Further, other agencies, notably the EPA, have proposed regulations that may impact the emission of methane from Commission-regulated facilities.[132] If such regulations are adopted, the Commission will consider them when examining project GHG emissions. Similarly, the Commission will consider evidence from commenters and protestors supporting or challenging such estimates and assumptions.

B. Level of Review and Significance

53. Under NEPA, an agency must prepare an EIS for every ''major [f]ederal action[ ] significantly affecting the quality of the human environment.'' [133] To determine whether an EIS is necessary for a particular action, the agency may prepare an EA,[134] described as a ''concise public document'' providing ''sufficient evidence and analysis,'' to determine whether to prepare an EIS or issue a finding of no significant impact.[135]

54. To assess significance, the Commission determines whether the impact ''would result in a substantial adverse change in the physical environment,'' [136] which, as discussed, is based on considerations of the severity of adverse environmental impacts. In making that determination, the Commission uses its experience, judgment, and expertise to give record evidence appropriate weight.[137] The Commission found that ''there is nothing about GHG emissions or their resulting contribution to climate change that prevents us from making that same type of significance determination.'' [138]

55. Specifically, in *Northern Natural Gas Co.,* the Commission explained that:

> The U.S. Court of Appeals for the District of Columbia Circuit has explained that a proposed interstate natural gas pipeline's reasonably foreseeable GHG emissions are relevant to whether the pipeline is required by the public convenience and necessity. A rigorous review of a project's reasonably foreseeable GHG emissions is also an essential part of the Commission's responsibility under NEPA to take a ''hard look'' at a project's environmental impacts. Determining the significance of the impacts from a proposed project's GHG emissions informs the Commission's review in a number of important respects, including its decision whether to prepare an environmental impact statement.[139]

56. To date, no federal agency, including the Commission, has established a threshold for determining what level of project-induced GHG emissions is significant. The Commission received a number of comments, discussed below, offering perspectives on whether and at what level it should assess the significance of a proposed project's GHG emissions.

1. Comments

57. The Commission received relevant comments in response to both the 2018 and 2021 NOIs on whether the Commission should: Determine

Docket No. CP11–515–000, at 29 (Feb. 29, 2012) (operation emissions).

[127] *See Atl. Coast Pipeline, LLC,* 161 FERC ¶ 61,042 at P 305.

[128] Some commenters point out that daily pipeline load factors vary significantly based on seasonal trends. *See, e.g.,* Charles River Associates 2021 Comments at 3; Williams 2021 Comments at 46.

[129] We note that for a greenfield pipeline project, historic data will not be available. In those cases, the project sponsor could use data from other similar projects or regional data.

[130] For instance, in a downstream end-use analysis, Iroquois projected that its Enhancement by Compression project could result in net GHG reductions when considering the alternative fuel that may be used (*e.g.,* fuel oil for heating) by the end use customer in the event that gas is not available. Iroquois Gas Transmission, LP, Downstream GHG Report, Docket No. CP20–48–000 (filed May 19, 2020).

[131] For example, the Commission may consider evidence that a downstream user purchases credits to offset its GHG emissions from the consumption of transported gas. The Commission will consider downstream user's mitigation measures according to the criteria outlined in *infra* section III.C.3 for applicant-proposed mitigation measures. With regards to construction and operational emissions, project sponsors should continue to provide evidence of measures that minimize emissions, such as using low-sulfur diesel fuel and limiting equipment idling during construction, as outlined in the Guidance Manual. Guidance Manual at 4–124. However, as described *supra* section III.A.2.a, operational emissions should now be calculated based on the project's projected utilization rate.

[132] *See, e.g.,* Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review, 86 FR 63,110 (Nov. 15, 2020).

[133] 42 U.S.C. 4332(C); 40 CFR 1502.3.

[134] 40 CFR 1501.5, 1508.1(h).

[135] *See* 40 CFR 1501.3, 1501.5, 1501.6, 1508.1(h), (l).

[136] *See Magnum Gas Storage, LLC,* 134 FERC ¶ 61,197 at P 114 (''[A]n impact was considered to be significant if it would result in a substantial adverse change in the physical environment or natural condition and could not be mitigated to less-than-significant level.'').

[137] For example, for an impact where there are no established federal standards, the Commission makes qualitative assessments to determine whether a proposed project would have a significant impact on a particular resource. *See, e.g., Tex. LNG Brownsville LLC,* 169 FERC ¶ 61,130 at P 56 (''Due to the relatively undeveloped nature of the project area, the visual sensitivity of nearby recreation areas, and the lack of feasible visual screening measures, the Final EIS concluded that the project would result in a significant impact on visual resources when viewed from the adjacent Laguna Atascosa National Wildlife Refuge.''); *Alaska Gasline Dev. Corp.,* 171 FERC ¶ 61,134, at PP 25, 89 (describing how the final EIS for the Alaska LNG Project found that construction and operation of the project would have significant impacts on resources such as permafrost, wetlands, forests, and caribou, but less than significant impacts on resources such as scrub and herbaceous plant communities), *order on reh'g,* 172 FERC ¶ 61,214 (2020); *Transcon. Gas Pipe Line Co., LLC,* 158 FERC ¶ 61,125 at P 79 (describing how the final EIS for the Atlantic Sunrise Project concluded that the project would result in adverse impacts that would be mitigated to less than significant levels).

[138] *N. Nat. Gas Co.,* 174 FERC ¶ 61,189 at P 32.

[139] 174 FERC ¶ 61,189 at P 30 (citations omitted).

significance at all; set a specific significance threshold and at what level; and/or use various inventories, goals, and tools to set the threshold.

a. Whether the Commission Should Determine Significance

58. Numerous commenters (Delaware Riverkeeper, Food and Water Watch, North Carolina Department of Environmental Quality, Sabin Center, and others) argue that the Commission should make a significant impact determination based on a project's GHG emissions, which they argue would include the project's associated upstream and downstream emissions. Some commenters, for example the Sabin Center in 2018, direct the Commission to the NEPA regulation at 40 CFR 1508.27 (that was removed by amendments effective September 14, 2020), which provides that ''significantly'' as used in NEPA requires considerations of both the context of the action and the intensity of the impacts associated with any proposal.[140]

59. In contrast, some regulated entities and other commenters express concern about the Commission determining the significance of a project's impacts on the basis of GHG emissions, especially upstream and downstream emissions. For example, INGAA and others (Energy Infrastructure Council, Williams, etc.) argue that the Commission should, at most, engage in a qualitative discussion of downstream GHG emissions because net GHG emissions are not reasonably foreseeable, and that the Commission should not assess the significance of upstream or downstream emissions.[141] Commenters such as Boardwalk state that the Commission cannot reject a project because of downstream GHG emissions or consider upstream GHG emissions, may only include a general disclosure of downstream emissions in limited circumstances (such as where all end use is known), and should generally decline to assess significance and only engage in a qualitative discussion.[142]

60. Commenters argue that the Commission lacks the ability to make a significance determination and has no objective basis upon which to evaluate the impacts of GHG emissions associated with any specific proposed project.[143] Other commenters state that setting any significance threshold would be arbitrary [144] and potentially outside of the Commission's authority or jurisdiction.[145]

61. Finally, commenters state that the Commission should defer to other agencies, such as CEQ or EPA, in setting a significance threshold, citing: The lack of a national energy policy or federal GHG limits; the EPA's existing authority to regulate GHG emissions under the Clean Air Act; the direction of Executive Orders 13990 and 14008, which commenters say direct EPA to examine its own GHG emissions standards; and the ongoing Interagency Work Group efforts on the SCC.[146] A few industry commenters also caution against creating uncertainty or a moving target for industry while waiting for a significance threshold to be established.[147]

b. What the Threshold Should Be

62. Some commenters argue that the Commission should consider any net increase in GHG emissions as significant.[148] Attorneys General of Massachusetts, Connecticut, Maryland, Minnesota, New Jersey, New York, Oregon, Rhode Island, and the District of Columbia (Attorneys General of Massachusetts et al.) argues that any investment in pipeline infrastructure is inconsistent with new national emissions reductions targets and thus, project emissions can be significant on that basis alone, even if they represent a small share of national emissions, or that emissions are significant if they impede the ability of a state to meet its clean energy goals.[149]

63. A few commenters suggest specific numerical thresholds. The Sabin Center recommends that the Commission assess the magnitude of GHG emissions impacts using EPA's quantification threshold of 25,000 tons per year of CO_2e to identify major emitters under the Clean Air Act, social cost of GHG tools to assign a dollar value to the potential impacts of the emissions, and EPA's GHG Equivalencies Calculator as a comparison tool.[150] One commenter cites to EIS examples where the Commission stated that monetized benefits of $8 million and $28 million would be ''significant'' for local economies and suggests that gross climate damages between roughly $8 and $20 million should be considered significant.[151]

64. Conversely, a few commenters state that emissions from all individual projects could be considered *de minimis* and individually too small to impact climate change.[152] Others urge the Commission away from taking a bright line approach to determining significance,[153] while Driftwood Pipeline LLC urges that significance, if appropriate, requires the Commission to disclose a clear threshold.[154]

65. CEQ points the Commission to its 2016 guidance as an existing resource to help agencies assess GHG emissions and the effects of climate change in NEPA reviews.[155]

c. Use of Inventories, Climate Goals, Programmatic Analyses, Etc. in Determining Significance

66. Some commenters recommend that the Commission use state, regional, and global GHG reduction goals to provide context and/or define

[140] *See, e.g.,* Sabin Center 2018 Comments at 8–9.

[141] *See, e.g.,* INGAA 2021 Comments at 58–64. INGAA's 2021 comments update its 2018 position that the Commission should not presume that all GHG emissions are significant and should instead make a reasoned judgment whether: (1) A meaningful assessment can be made with reasonable effort based upon available information and (2) if so, whether a meaningful judgment can be formed regarding if the contribution of GHGs is likely to have a significant impact on the resource as a whole. INGAA 2018 Comments at 81–84.

[142] Boardwalk 2021 Comments at 77–78, 86–90, 92–93. These comments are generally echoed by the Energy Infrastructure Council. Energy Infrastructure Council 2021 Comments at 15–16, 22–27.

[143] *See, e.g.,* Enbridge 2021 Comments at 103.

[144] *See, e.g.,* U.S. Chamber of Commerce 2021 Comments at 9.

[145] *See, e.g.,* API 2021 Comments at 29–32; NGSA 2021 Comments at 21–22; TC Energy 2021 Comments at 52–56; U.S. Chamber of Commerce 2021 Comments at 9.

[146] *See, e.g.,* Cheniere Energy Inc. 2021 Comments at 14–16; Enbridge 2021 Comments at 104; Williams 2021 Comments at 35–38. Energy Transfer LP and the NGSA also cite CEQ's recent NEPA regulatory update and direction to agencies to propose revisions to their NEPA procedures by September 14, 2023. Energy Transfer LP 2021 Comments at 14; NGSA 2021 Comments at 19–20. The Commission's current regulations provide that the Commission will comply with CEQ's regulations except where those regulations are inconsistent with the statutory requirements of the Commission. 18 CFR 380.1. Therefore, any action taken by the Commission in a future rulemaking pursuant to CEQ's regulatory update does not prevent the Commission from issuing this policy statement.

[147] *See, e.g.,* BHE Pipeline Group 2021 Comments at 8–10; Cheniere Energy Inc. 2021 Comments at 17–18.

[148] Ohio Environmental Council 2021 Comments at 3.

[149] Attorneys General of Massachusetts et al. 2021 Comments at 6–11. The 2021 commenters are made up of a slightly different group of state attorneys general than those filing comments in 2018.

[150] Sabin Center 2018 Comments at 8–9.

[151] Environmental Defense Fund, Food & Water Watch, Policy Integrity, Montana Environmental Information Center, Natural Resources Defense Council, Sierra Club, Union of Concerned Scientists, and Western Environmental Law Center (EDF) 2021 Comments at 14–15.

[152] *See, e.g.,* Competitive Enterprise Institute 2021 Comments at 4, 6.

[153] *See, e.g.,* Enbridge 2021 Comments at 108; Russo on Energy 2021 Comments at 17–18.

[154] Driftwood Pipeline LLC 2021 Comments at 3.

[155] CEQ 2021 Comments at 1.

significance of GHG emissions.[156] For example, Attorneys General of Massachusetts et al. comments that the Commission already analyzes whether a proposed pipeline project is consistent with various energy and climate policies and goals and that this can be used as a metric for evaluating significance.[157] Others argue that the Commission's analysis of a proposed project's public benefits should weigh the effect of project GHG emissions on states' and the nation's abilities to comply with climate and clean energy laws and policies, such as specific energy and climate change action plans and policies.[158] The Ohio Environmental Council recommends that the Commission consider the total proposed upstream and downstream GHG emissions of all gas projects pending in any given year, giving weight to the total possible GHG emissions that could be locked in by those projects and comparing this total with international goals.[159]

67. Other commenters suggest alternative means or tools for assessing significance. For example, commenters suggest that the Commission should use a ''Climate Test.'' [160] Patricia Weber comments that the Commission should use such a test to determine if a project is viable in a scenario where the climate goals of the Paris agreement are met using climate and global energy market models. One commenter urges the Commission to examine acres of wetlands that will be lost due to climate impacts of proposed projects as a proxy for significance.[161] Some commenters suggest the Commission consider a programmatic or regional analysis of pipelines.[162]

68. EDF comments that a comparison of a project's emissions to international, state, or regional carbon budgets, or assessing geophysical impacts such as increases in carbon dioxide levels, global temperatures, or sea levels can be misleading and trivialize the project's impacts.[163]

69. Some industry commenters state that any comparison of direct or indirect emissions should be made to global GHG inventories, not national or state inventories.[164] However, Williams states that, while the Commission should consider only direct construction and operation emissions, the Commission should compare those emissions against national GHG inventories and not against international agreements or regional targets.[165] Others oppose use of a regional analysis of GHG emissions from pipeline projects.[166]

d. Use of the Social Cost of Greenhouse Gases

70. Several commenters generally argue for a monetization of climate damages using the Social Cost of Greenhouse Gas (SC–GHG) tools [167] to determine significance.[168] EDF recommends that the approach should be consistent with the Commission's practices for determining the significance of other monetized effects, such as economic impacts.[169] Public Interest Organizations comment that an established numerical significance threshold is not necessary, but if one is established, it should be used in tandem with the SCC tool and should not be based solely on one metric, especially not on a comparison to global emissions. Rather, they urge a holistic review of how a proposed project's impacts weigh against any benefits.[170] EDF states that if the climate damages exceeded monetized project benefits, the Commission could reject the project.[171]

71. Conversely, other commenters oppose use of the SCC tool in determining significance [172] or of using the SCC tool at all.[173] The Attorneys General of Missouri, Alabama, Alaska, Arizona, Arkansas, Georgia, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Montana, Nebraska, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, and West Virginia (Attorneys General of Missouri et al.) contends that the NGA does not allow use of the SCC tool to calculate speculative damages and that its use is contrary to the Commission's public interest responsibilities. Further, they argue that NEPA does not permit the use of the SCC because NEPA does not allow agencies to rely on conclusions that are speculative or reflect substandard or outdated science.[174]

72. Public Interest Organizations state that, while neither the NGA nor NEPA explicitly reference the SCC tool, there is nothing in these or other federal statutes that would prohibit its use.[175] New Jersey Conservation Foundation notes that President Biden's Executive Order 13990 supports the use of the SC–GHG tools by agencies to capture the full costs of GHG emissions as accurately as possible.[176] New Jersey Conservation Foundation states that following issuance of Executive Order 13990, the Interagency Working Group on the Social Cost of Greenhouse Gases (GHG IWG) published interim SC–GHG values, which the Commission should use.[177]

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[156] *See, e.g.,* Delaware Riverkeeper Network & Berks Gas Truth 2021 Comments at 62; Ron Schaaf and Deb Evans 2021 Comments at 8; California Public Utilities Commission 2018 Comments at 11–12.

[157] Attorneys General of Massachusetts et al. 2018 Comments at 17–20.

[158] *See, e.g.,* Attorneys General of Massachusetts et al. 2018 Comments at 17–20; Franklin Governments 2018 Comments at 2.

[159] Ohio Environment Council 2018 Comments at 12–13.

[160] Natural Resources Defense Council (NRDC) also suggests the Commission use its forthcoming ''Climate Test,'' which is a tool being developed by NRDC to quantify the consistency of individual infrastructure projects with climate goals. NRDC 2021 Comments at 6. However, NRDC has not filed additional information on its ''Climate Test.''

[161] Healthy Gulf 2021 Comments at 14.

[162] *E.g.,* Attorneys General of Massachusetts et al. 2021 Comments at 8–11; EPA 2021 Comments at 1; Attorneys General of Massachusetts et al. 2018 Comments at 12–17.

[163] EDF 2021 Comments at 9–12, 16.

[164] *See, e.g.,* Boardwalk 2021 Comments at 82–83; NGSA 2021 Comments at 15. Enbridge states that comparison to these inventories would be arbitrary, but that such an approach could help contextualize the GHG emissions for the Commission and the public. Enbridge 2021 Comments at 105, 108–109.

[165] Williams 2021 Comments at 38.

[166] *See, e.g.,* Competitive Enterprise Institute 2021 Comments at 3–4.

[167] The SC–GHG collectively includes the values for the SCC, the social cost of methane (SCM), and social cost of nitrous oxide (SCN).

[168] *See, e.g.,* Policy Integrity Technical Conference Comments at 22–26; EPA 2021 Comments at 6; Ohio Environmental Council 2021 Comments at 2; Public Interest Organizations 2021 Comments at 43–45; Attorneys General of Massachusetts et al. 2018 Comments at 17–22; EDF 2018 Comments at 8–11. The 2018 EDF comments were filed by a slightly different set of entities than in 2021. Public Interest Organizations' 2021 comments represent 53 entities including Natural Resources Defense Council.

[169] EDF 2021 Comments at 14–16.

[170] Public Interest Organizations 2021 Comments at 43–45, 50–53, 60.

[171] EDF 2021 Comments at 9.

[172] *See, e.g.,* Kinder Morgan 2021 Comments at 32–40 (stating the Commission should use the SCC tool only as a qualitative comparison tool).

[173] *See, e.g.,* American Forest Technical Conference Comments at 9; Competitive Enterprise Institute Technical Conference Comments at 1–2, 7–35; Enbridge 2021 Comments at 111; Energy Infrastructure Council 2021 Comments at 24–25; Williams 2021 Comments 41–43.

[174] Attorneys General of Missouri et al. 2021 Comments at 2–7. A similar group, consisting of the Attorneys General of Missouri, Alabama, Alaska, Arizona, Arkansas, Georgia, Indiana, Kansas, Kentucky, Mississippi, Montana, Nebraska, Ohio, Oklahoma, South Carolina, Texas, Utah, West Virginia, and Wyoming (Attorneys General of Missouri et al.), also submitted comments in response to the Commission's technical conference, *see infra* section III.C.1, extensively critiquing potential use of the SCC. Attorneys General of Missouri et al. Technical Conference Comments at 3–15. Mr. Kirk Frost also provided comments on use of the SCC, urging the Commission to use the tool to assess GHG emissions impacts. Kirk Frost December 23, 2021 Technical Conference Comments at 4.

[175] Public Interest Organizations 2021 Comments at 58.

[176] New Jersey Conservation Foundation 2021 Comments at 23–24 (citing Exec. Order No. 13990, 86 FR 7037, 7040 (Jan. 25, 2021)).

[177] New Jersey Conservation Foundation 2021 Comments at 24.

73. CEQ notes that it was working with representatives on the GHG IWG to develop additional guidance regarding the application of the SC–GHG tools in decision-making processes, including NEPA analysis.[178] NGSA and API urge the Commission to wait for this review to be completed.[179] NGSA further states that it would be inappropriate for the Commission to develop a likely conflicting approach for utilizing the SCC tool.[180] API states that it would violate principles of consistency for the Commission to apply the interim SC–GHG values to current proposals (*i.e.,* for the remainder of this year), knowing that these values may change and lead to different treatment for future proposals.[181] EPA states that in cases where the Commission determines that a monetary comparison between benefits and costs is appropriate, the Commission should take into account established practices for benefit-cost analyses (*e.g.,* the Office of Management and Budget's Circular A–4 and references therein). If the Commission chooses to use the SC–GHG tools, EPA states that it should disclose all assumptions and levels of uncertainty associated with the analysis.[182]

74. The Public Interest Organizations state that monetizing impacts using the SCC tool provides the public and decisionmakers with accessible figures useful in determining whether a project is in the public interest and allows the Commission to easily compare project harms and economic benefits, whereas other metrics can misleadingly minimize climate impacts due to inadequate contextualization.[183]

75. Kinder Morgan asserts that the SCC tool relies on inputs or assumptions that introduce too much uncertainty.[184] Similarly, Attorneys General of Missouri et al. contends that the SCC tool is too speculative and arbitrary to hold up to the hard-look requirement under NEPA.[185] Rebutting this, EDF emphasizes that the GHG IWG's methodology is rigorous and based on the best available data and economic practices, such as utilizing a 300-year time horizon.[186] INGAA states that the significant variation in output among GHG IWG's interim values shows that discount rates reflect a high level of uncertainty in the models and that an agency's chosen discount rate wields an outsized influence on the end result.[187] INGAA states that the Commission should: (1) Only use the SCC tool within the NEPA evaluation, not the NGA evaluation; (2) use the SCC tool as a relative, but not absolute, measure; (3) use the SCC tool only as a threshold indicator; and (4) place any SCC estimates in the proper context.[188]

76. New Jersey Conservation Foundation recommends that the Commission use all of the GHG IWG's interim values provided for the SC–GHG tools (GHG IWG recommends using a discount rate of 3%, but also provides values associated with discount rates of 2.5% and 5%).[189]

77. Boardwalk and Kinder Morgan argue that the Commission should only use the SCC tool as a qualitative tool.[190] Boardwalk further asserts that there should not be any triggering levels that would result in adverse action by the Commission or a significance determination. Boardwalk contends that the use of trigger levels would create substantial regulatory uncertainty. Kinder Morgan and Williams also express concern that the SCC tool yields inherently one-sided GHG data if it is applied to a project in a manner that monetizes only the project's GHG costs and not the corresponding project benefits.[191] Energy Infrastructure Council asserts that the SCC tool is meaningless without a standard or threshold for significance and its use requires a monetized cost-benefit analysis of an entire project.[192]

78. Kinder Morgan states that the SCC tool was not designed for project-specific analysis but could be used as a screening tool in a qualitative analysis. If the Commission uses the SCC tool, Kinder Morgan recommends that it should explain why and how it was used.[193] This explanation should include information about the SCC's function, its mechanism, its embedded limitations and assumptions, and the specific reason for its application in a given circumstance. Kinder Morgan states that this type of explanation is vital to avoid misleading the public about the purpose of the SCC calculation and the meaning of its results.[194] Spectra Energy Partners, LP and Seneca Resources Corporation contend that the Commission has no basis to designate a particular SCC dollar amount as significant, and any such designation would be arbitrary and could not meaningfully inform the Commission's decision making or the public.[195] Additionally, Kinder Morgan states that the Commission should not use the SCC tool to determine mitigation measures or conditions because no statute requires that the Commission implement mitigation based on calculations from such a tool.[196]

2. Appropriate Level of NEPA Review and Significance Determination

79. To determine the appropriate level of NEPA review, the Commission is establishing a significance threshold of 100,000 metric tons or more per year of CO_2e. In calculating this emissions estimate, Commission staff will apply the 100% utilization or ''full burn'' rate for natural gas supplies delivered by the proposed project and will prepare an EIS if the estimated emissions from the proposed project may exceed the 100,000 metric tons per year threshold.

80. An emissions threshold of 100,000 metric tons per year of CO_2e captures the majority of annual emissions generated by Commission authorized projects, including those that may result in incremental GHG emissions over a long duration that may have a significant effect upon the human environment. Establishing a threshold for NEPA purposes also provides Commission staff, industry, and other stakeholders clarity regarding whether a particular project will result in the preparation of either an EA or an EIS. We believe that such clarity ultimately benefits both the regulated community and public by ensuring certainty regarding the Commission's process for reviewing applications for natural gas infrastructure.

81. In its NEPA document, staff will estimate the proposed project's GHG emissions based on all relevant evidence submitted in the record—including the project's utilization rate, offsets, and mitigation. A project with estimated emissions of 100,000 metric tons per year of CO_2e or greater will be presumed to have a significant effect, unless record evidence refutes that

[178] CEQ 2021 Comments at 2. *C.f. Louisiana* v. *Biden,* No. 21–cv–1074–JDC–KK (W.D. La.) Order Granting Preliminary Injunction (Feb. 11, 2022).

[179] API 2021 Comment at 24–25; NGSA 2021 Comments at 20–21.

[180] NGSA 2021 Comments at 20–21.

[181] API 2021 Comment at 25, 27–28.

[182] EPA 2021 Comments at 2–3.

[183] Public Interest Organizations 2021 Comments at 58.

[184] Kinder Morgan 2021 Comments at 34–35.

[185] Attorneys General of Missouri et al. 2021 Comments at 9.

[186] EDF 2021 Comments at 21.

[187] INGAA 2021 Comments at 67.

[188] INGAA 2021 Comments at 70–73.

[189] New Jersey Conservation Foundation 2021 Comments at 24; *see also* EDF 2021 Comments at 6–7.

[190] Boardwalk 2021 Comments at 103; Kinder Morgan 2021 Comments at 32–33.

[191] Kinder Morgan 2021 Comments at 32–33; Williams 2021 Comments at 44–45.

[192] Energy Infrastructure Council 2021 Comments at 26–27.

[193] Kinder Morgan 2021 Comments at 42.

[194] *Id.*

[195] Seneca Resources Corp. 2018 Comments at 9; Spectra Energy Partners, LP 2018 Comments at 87.

[196] Kinder Morgan 2021 Comments at 42.

presumption.[197] While the 100,000 metric ton presumption will serve as a guidepost, facilitating transparent, predictable analysis of a proposed project's contribution to climate change, our analysis will continue to consider all evidence in the record on a case-by-case basis. As part of that analysis, the Commission will continue to consider any emerging tools as well as any forthcoming frameworks or analysis issued by CEQ or other agencies on this issue. Finally, as noted at the outset, we encourage commenters to address this approach to assessing significance—including the 100,000 metric ton CO_2e threshold.

a. Commission Authority To Establish a Threshold

82. Section 3 of the NGA requires the Commission to approve an application for the exportation or importation of natural gas unless the proposal ''will not be consistent with the public interest.'' [198] Similarly, under section 7, the Commission must find a proposed project is or will be required by the present or future public convenience and necessity.[199] The Commission has long regarded section 3's ''public interest'' standard and section 7's ''public convenience and necessity'' standard as substantially equivalent.[200] In considering applications under section 3 or section 7, the Commission must ''evaluate all factors bearing on the public interest.'' [201] The Commission has recognized from its earliest decisions that it may consider the end use of gas as a factor in assessing the public interest [202] and has long considered the impact of natural gas combustion on air pollution.[203]

83. As discussed above, the courts have interpreted the Commission's obligations under NEPA to require analysis of downstream GHG emissions for NGA section 7 certificate projects, but do not require an analysis of either downstream or upstream GHG emissions for section 3 export projects.[204] As also discussed above, the Commission has previously acknowledged that upstream emissions for NGA section 7 certificate projects may be difficult to quantify. However, as noted, the Commission will continue to consider on a case-by-case basis whether GHG emissions from upstream production activities are a reasonably foreseeable and causally connected result of a proposed project.[205]

84. Contrary to the suggestion of some commenters, the Commission would not intrude into another agency's domain by establishing a significance threshold. The Commission does not propose to set an emissions standard that projects will be expected to meet; rather, the threshold would be an indication of potential significance for purposes of the Commission's review of a project's environmental impacts under NEPA and trigger the preparation of an EIS.[206]

85. As discussed above, NEPA requires the Commission to take a ''hard look'' at the environmental consequences of a proposed action and to prepare an EIS disclosing its analysis to the public where its action may significantly affect the quality of the human environment, or to prepare an EA for a proposed action that is not likely to have significant effects or when the significance is unknown to determine if an EIS is necessary. We note that neither EPA nor CEQ raise objections to the Commission determining the significance of GHG emissions; in fact, EPA points to Executive Order 14008, which directs the federal government to prioritize assessment, disclosure, and mitigation of climate pollution and climate-related risks, in response to the Commission's query on how it could determine the significance of a project's GHG emissions.[207]

86. As discussed above, NEPA requires the Commission to determine whether a project would have any significant effects on the environment, including the effects of GHG emissions on the climate.[208] Moreover, courts have rejected the claim that under the NEPA framework, the determination of whether an impact is significant must not involve any subjective judgment calls.[209]

87. We are establishing a uniform GHG emissions threshold because GHG emissions affect climate to the same degree, regardless of the location or specifics of a particular project. Establishing such a threshold will provide the Commission a workable and consistent path forward to analyze proposed projects. Further, a numerical threshold is a clear, consistent standard that can be easily understood and applied by the regulated community and interested stakeholders.

b. Rationale for an Emissions Threshold of 100,000 Metric Tons per Year

88. Human impact on the warming of the global climate system is unequivocal.[210] Even if deep reductions in GHG emissions are achieved, the planet is projected to warm by at least 1.5 degrees Celsius (°C) by 2050.[211] This level of warming will present major global consequences. For example, extreme temperature events that may have occurred once in 10 years on average in a climate without human influence will occur 4.1 times as frequently and be 1.9 °C hotter.[212] Agricultural and ecological drought events that may have occurred once in 10 years on average across drying regions in a climate without human influence will occur twice as frequently.[213] Warming beyond 1.5 °C presents even more severe consequences. The Intergovernmental Panel on Climate Change states that ''[w]ith every additional increment of global warming, changes in extremes continue to become larger.'' [214] For example, every subsequent 0.5 °C of warming ''causes clearly discernible increases in the intensity and frequency of hot extremes, including heatwaves (*very likely*), and heavy precipitation

[197] When examining a project's GHG emissions, the Commission will consider record evidence of the construction, operational, and, where determined to be reasonably foreseeable, downstream and upstream GHG emissions that reoccur annually over the life of the project.

[198] 15 U.S.C. 717b(a).

[199] *Id.* 717f(c), (e).

[200] *Distrigas Corp.* v. *FPC,* 495 F.2d 1057, 1065 (D.C. Cir.).

[201] *Atl. Ref. Co.* v. *Pub. Serv. Comm'n of State of N.Y.,* 360 U.S. 378, 391 (1959).

[202] *See, e.g., Hope Nat. Gas Co.,* 4 FPC 59, 59, 66–67 (1944) (stating that ''considerations of conservation are material to the issuance of certificates of public convenience and necessity under section 7'' and authorizing a project in large part because of the particular end use of the gas); *see N. Nat. Gas Co.,* 15 FPC 1634, 1641 (1956) (Connole, Comm'r, dissenting) (contending that the Commission has ''long held that considerations of conservation, inferior and superior uses, and related matters are relevant to determining whether the public convenience and necessity require the issuance of a certificate'').

[203] *Transwestern Pipeline Co.,* 36 FPC 176, 185–186, 189–191 (1966) (citing *FPC* v. *Transcon. Gas Pipe Line Corp.,* 365 U.S. 1 (1961) (*Transco*), for the proposition that the ''end use of gas was properly of concern to [the Commission], and made it clear that air pollution was a relevant consideration''). *Cf. Am. La. Pipe Line Co.,* 16 FPC 897, 899–900 (1956) (''[T]here is a public need for and will be a public benefit from [the proposed] natural-gas service . . . . This need and benefit arise from the facts, among others, . . . that natural gas is a clean, convenient and efficient fuel.'').

[204] *See supra* PP 34–37.

[205] *See supra* P 42.

[206] The Commission notes that CEQ and EPA are undertaking initiatives that may culminate in the establishment of a significance threshold for GHG emissions or that may further impact the Commission's determination of GHG significance in its NEPA analysis. If CEQ or EPA issues any future guidance regarding the evaluation of GHG emissions, the Commission may adjust its methods for determining the significance of GHG emissions consistent with that guidance.

[207] EPA 2021 Comments at 6.

[208] *See supra* PP 23–25.

[209] *Spiller* v. *White,* 352 F.3d at 244 n.5.

[210] IPCC Report at SPM–5.

[211] *See* IPCC Report at SPM–17.

[212] IPCC Report at SPM–23.

[213] IPCC Report at SPM–23.

[214] IPCC Report at SPM–19.

(*high confidence*), as well as agricultural and ecological droughts in some regions (*high confidence*).'' [215] Because of the dire effects at stake, even relatively minor GHG emissions pose a significant threat, 100,000 metric tons per year of project GHG emissions will capture all natural gas projects that have what we believe to be the potential for causing significant impacts on climate, given the typical lifespans of authorized projects. For a single natural gas project with a lifespan of 30 years, this threshold represents a total of three million metric tons of GHG emissions.

89. Based on an internal review of natural gas projects from 2008 to 2021, a 100,000 metric tons per year threshold will cover the vast majority of potential GHG emissions from natural gas projects authorized by the Commission. For context, projects that likely have 100,000 metric tons per year or more of GHG emissions include projects transporting an average of 5,200 dekatherms per day and projects involving the operation of one or more compressor stations or LNG facilities.

90. Outside the NEPA context, other federal and state agencies that have established thresholds to evaluate or regulate GHG emissions from an analysis of the emissions from regulated sources. Most notably, in 2012, EPA issued the Tailoring Rule to regulate GHG emissions from stationary sources of air pollution under the Prevention of Significant Deterioration (PSD) [216] and Title V [217] permitting programs [218] and proposed to phase in the regulation of GHG emissions in two steps. Under Step 1, sources already subject to the PSD permitting program for at least one non-GHG pollutant (''anyway'' sources) were required to utilize best available control technology (BACT) for GHG emissions [219] if they increased net GHG emissions by at least 75,000 tons per year of CO_2e.

91. Under Step 2, EPA expanded the Tailoring Rule by requiring a new source or a major modification to an existing source to obtain PSD and/or Title V permits based on GHG emissions alone. Sources that had the potential to emit at least 100,000 tons per year of CO_2e would become newly subject to the PSD and/or Title V requirements, even if they did not exceed the statutory threshold for any other pollutant. Additionally, modifications to an existing source already subject to PSD and/or Title V that increased net GHG emissions by at least 75,000 tons per year of CO_2e would be subject to PSD requirements regardless of whether there was an increase in the emissions of any other pollutant.[220]

92. In setting the 75,000 tons and 100,000 tons per year of GHGs thresholds, EPA considered the administrative burden of permitting the estimated number of additional facilities under each threshold and the percentage of total national stationary source GHG emissions that would be covered under the threshold.[221] For example, under Step 1, EPA estimated a 5% increase in the total annual cost to run the permitting programs and that approximately 65% of GHG emissions would be covered. Under Step 2, EPA estimated that approximately 550 new sources would become subject to the PSD and Title V programs, increasing total annual costs to run the programs by 42% and covering 67% of GHG emissions. EPA further found that lowering the threshold to 50,000 or 25,000 tons per year of CO_2e would drastically increase both the number of new facilities requiring permits and the cost of administering the programs but would only marginally increase the percentage of GHG emissions covered to 70% and 75%, respectively.

93. In 2014, the Supreme Court invalidated portions of the Tailoring Rule, holding that EPA may not use GHG emissions as the sole basis for determining whether a source is subject to a PSD or Title V permitting requirements.[222] While the Supreme Court's ruling struck down Step 2 of the Tailoring Rule, it upheld Step 1 and allowed EPA to continue to regulate GHG emissions from ''anyway'' sources. Notably, the decision did not discuss EPA's methodology for establishing the thresholds; it only ruled that deviating from the 100 and 250 tons per year statutory thresholds in the Clean Air Act when requiring sources to newly obtain PSD or Title V permits based solely on GHG emissions under Step 2 was impermissible.

94. Further, at least two agencies in California that are directed to determine the significance of GHG emissions and climate impacts of proposed projects under the California Environmental Quality Act have also proposed or established thresholds of significance based on an analysis of regulated sources. First, in 2008, the California Air Resources Board (California ARB) proposed finding a less than significant impact for a proposed industrial project that, with mitigation, emits no more than 7,000 metric tons per year of CO_2e from non-transportation sources, including combustion and fugitive emissions.[223] Second, the South Coast Air Quality Management District (South Coast AQMD) adopted an interim GHG significance threshold of 10,000 metric tons of CO_2e per year for stationary

[215] IPCC Report at SPM–19 (emphasis in original).

[216] The PSD permitting program is part of the New Source Review program, which requires new stationary sources and major modifications to existing major sources to obtain preconstruction permits. PSD is designed to prevent air quality deterioration in regions that are attaining the National Ambient Air Quality Standards by requiring major sources or major modifications to install the Best Available Control Technology (BACT). Major sources under the PSD program are defined as facilities that emit or have the potential to emit 250 tons per year of any criteria air pollutant or 100 tons per year of any criteria air pollutant for specific types of facilities listed in the statute. 42 U.S.C. 7479(1). The six criteria pollutants are carbon monoxide, ground-level ozone, lead, nitrogen dioxide, particulate matter, and sulfur dioxide. 40 CFR pt. 50.

[217] The Title V program requires major stationary sources to obtain a single operating permit that consolidates all of the permitting requirements in the Clean Air Act into a single permit, including PSD, New Source Performance Standards, and National Emission Standards for Hazardous Air Pollutants. Major sources under the Title V program are defined as any stationary facility that emits or has the potential to emit 100 tons per year of any hazardous air pollutant, except GHGs. 42 U.S.C. 7602(j). The Clean Air Act Amendments of 1990 originally designated over 180 chemicals as hazardous air pollutants, and EPA has the authority to modify the list through rulemaking. 42 U.S.C. 7412(b)–(c).

[218] Prevention of Significant Deterioration and the Title V Greenhouse Gas Tailoring Rule, 75 FR 31514 (June 3, 2010) (Tailoring Rule).

[219] BACT is used to minimize emissions based on the maximum degree of control that the facility can achieve as determined by the permitting authority on a case-by-case basis. BACT may be a design, equipment, work practice, or operational standard, such as add-on control equipment, fuel cleaning or treatment, or innovative fuel combustion techniques. Note that BACT for minimizing GHG emissions at natural gas facilities is limited.

[220] EPA also planned a Step 3 to further reduce the threshold, although not below 50,000 tons per year of CO_2e. The Supreme Court struck down relevant portions of the Tailoring Rule before EPA finalized Step 3.

[221] Tailoring Rule, 75 FR at 31533–80.

[222] *Util. Air Regul. Grp.* v. *EPA,* 573 U.S. 302, 320 (2014).

[223] California ARB, Preliminary Draft Staff Proposal, Recommended Approaches for Setting Interim Thresholds for Greenhouse Gases under the California Environmental Quality Act (Oct. 24, 2008) (CEQA Proposed Interim Thresholds). In addition, California ARB proposed to require these projects to meet performance standards for construction-related emissions and transportation to support a finding of less than significant impacts. CEQA Proposed Interim Thresholds at attach. A.

sources of air pollution in 2008.[224] Both California ARB and South Coast AQMD found that their thresholds would capture approximately 90% of emissions from their respective regulated sources.[225]

95. Like EPA and the California agencies, we are basing our threshold on an analysis of regulated sources. Although we are adopting a conceptually similar methodology in establishing our threshold, we note that our approach will cover a larger number of emissions than the threshold established by EPA in the Tailoring Rule. EPA's thresholds of 75,000 and 100,000 tons per year accounted for only 65% and 67% of emissions from EPA-regulated sources, respectively, whereas our proposed threshold of 100,000 metric tons per year would deem nearly three-quarters of Commission-regulated natural gas project, which collectively account for roughly 99% of GHG emissions from Commission-regulated natural gas projects, to have a significant impact on climate change.

3. Other Metrics

96. As noted above, commenters argue for and against the use of various existing GHG inventories or goals as a comparison tool to determine significance. Comparison to an existing GHG inventory or goal presents substantially different percentages based on the chosen goal (international, state, regional, or local). Because different projects may have different potential purposes and the purpose of a project may be characterized to support or oppose a particular viewpoint, we do not believe that tying the Commission's significance determination for a proposed project's GHG emissions to a particular inventory or goal is appropriate. However, we recognize that this type of comparison can be helpful to inform the Commission's analysis and the public, especially when presented using a consistent metric across proposed projects under consideration by the Commission. We note that many commenters reference the SC–GHG as one tool. To the extent permitted by law,[226] the Commission could consider the SC–GHG in the future.

C. Mitigation

97. Federal agencies can use mitigation to minimize the potential adverse environmental effects of their actions,[227] and mitigation is used by the Commission in reviewing NGA sections 3 and 7 proposals.[228]

98. The NGA grants the Commission broad authority to attach reasonable terms and conditions to NGA section 7 certificates of public convenience and necessity and NGA section 3 authorizations.[229] The Commission has consistently exercised this authority to attach environmental conditions that mitigate the adverse environmental impacts of a proposed project, and the Commission is not precluded from utilizing this authority to require a project sponsor to mitigate all, or a portion of, the impacts related to a proposed project's GHG emissions. Therefore, consistent with the discussion provided herein, going forward project proponents are encouraged to propose mitigation that will minimize climate impacts. The Commission will consider any mitigation measures proposed by the project sponsor on a case-by-case basis when balancing the need for a project against its adverse environmental impacts and may require additional mitigation as a condition of an NGA section 3 authorization or section 7 certificate.

1. Technical Conference on GHG Mitigation

99. On November 19, 2021, the Commission held a Commission staff-led technical conference to discuss methods project sponsors may use to mitigate the effects of direct and indirect greenhouse gas emissions resulting from Natural Gas Act sections 3 and 7 authorizations.[230] Representatives from industry, academia, non-governmental organizations, and state regulatory commissions participated as panelists, with discussion topics including: How the Commission could determine the quantity of reasonably foreseeable GHG emissions resulting from a project proposed under section 3 or 7 of the NGA and the appropriate level of mitigation for such emissions; types of mitigation measures a project sponsor could employ to reduce the amount of GHG emissions associated with a proposed project; and methods for the continued verification and accounting of GHG mitigation during project operation, as well as cost impacts to the industry from implementing GHG mitigation measures and how project sponsors might recover those costs.

100. In addition to the panelists' written statements, the Commission received over 20 comments in response to the technical conference. The Commission considered these statements and comments in developing the mitigation policy described below.

2. Authority To Require Mitigation

101. Some commenters state that the Commission has broad authority under the NGA to place conditions in certificate authorizations requiring pipeline companies to mitigate GHG impacts,[231] while others argue that the Commission does not have authority under the NGA or NEPA to impose mitigation measures,[232] especially

[224] South Coast AQMD, Interim CEQA GHG Significance Threshold for Stationary Sources, Rules and Plans (Dec. 5, 2008), *http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-(ghg)-ceqa-significance-thresholds/ghgboardsynopsis.pdf?sfvrsn=2.*

[225] *Id.* at 4; CEQA Proposed Interim Thresholds at attach. A.

[226] Currently, two pending court cases challenge use of the IWG's interim values by federal agencies. *Mo.* v. *Biden,* —— F. Supp. 3d ——, 2021 WL 3885590 (E.D. Mo. Aug. 31, 2021), appeal filed, No. 21–3013 (8th Cir.); *La.* v. *Biden,* No. 21–cv–1074–JDC–KK (W.D. La).

[227] Mitigation is measures that avoid, minimize, or counterbalance effects caused by a proposed action by: (1) Avoiding the impact altogether by not taking a certain action or parts of an action; (2) minimizing impacts by limiting the degree or magnitude of the action and its implementation; (3) rectifying the impact by repairing, rehabilitating, or restoring the affected environment; (4) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; and/or (5) compensating for the impact by replacing or providing substitute resources or environments. 40 CFR 1508.1.

[228] As discussed *supra* P 26, NEPA contains no substantive requirement that environmental impacts be mitigated or avoided, however, the environmental document must include a mitigation discussion that provides ''sufficient detail'' to indicate that environmental impacts have been fairly evaluated. *S. Fork Band Couns. of W. Shoshone of Nev.* v. *U.S. Dep't of Interior,* 588 F.3d 718, 727 (9th Cir. 2009); *see also Nat'l Parks & Conservation Ass'n* v. *U.S. Dep't of Transp.,* 222 F.3d 677, 681 n.5 (9th Cir. 2000) (stating that mitigation measures proposed in an EIS ''need not be legally enforceable, funded, or even in final form to comply with NEPA's procedural requirements'').

[229] *See supra* P 22; *see also* 15 U.S.C. 717b(e)(3)(A) (providing the authority to approve an application for an LNG Terminal, ''in whole or part, with such modifications and upon such terms and conditions as the Commission find[s] necessary or appropriate'').

[230] *See* Transcript of Greenhouse Gas Mitigation: Natural Gas Act Sections 3 and 7 Authorizations, Docket No. PL21–3–000 (issued Dec. 22, 2021) (Technical Conference Transcript).

[231] *See, e.g.,* Policy Integrity Technical Conference Comments at 2; Policy Integrity 2021 Comments at 14–15, 21; Public Interest Organizations 2021 Comments at 71–72; *see also* American Forest Technical Conference Comments at 4–5, 7–10 (stating that to the extent the courts have clarified the Commission's duty to consider GHG emissions and require mitigation for such impacts, that it supports the Commission considering mitigation on a case-by-case basis to avoid the uncertainty posed by the threat of litigation and the possibility of a court vacating the project's certificate).

[232] *See, e.g.,* Boardwalk Technical Conference Comments at 7; Dr. Jason Scott Johnston Technical Conference Comments at 1; TC Energy Technical Conference Comments at 4; API 2021 Comments at

measures to mitigate upstream or downstream GHG emissions.[233] Specifically, commenters argue that the Commission's authority under NGA section 7(e) to place conditions on a certificate is limited by the statutory purpose to regulate interstate transportation to ensure reliable access to plentiful natural gas at reasonable prices.[234] Commenters further assert that the Commission has no authority to establish environmental policy and that the Commission cannot use its conditioning authority to indirectly mitigate an effect that it has no authority to directly mitigate.[235]

102. Commenters also claim that any attempt to mitigate indirect GHG emissions would infringe on the regulatory authority of other federal and state agencies and result in back-door regulation of energy policy.[236] Specifically, commenters state that any attempt by the Commission to mitigate upstream or downstream GHG emissions would interfere with state resource decisions and usurp issues of national energy and environmental policy that Congress vested in other federal authorities.[237] For example, commenters argue that Congress has delegated authority to the EPA and state agencies to regulate GHGs under the CAA.[238] Even if the Commission had the authority to impose mitigation measures for upstream or downstream GHG emissions, commenters argue that the Commission must first establish that those GHG emissions are reasonably foreseeable and have a sufficiently close causal connection (akin to proximate causation under tort law) [239] to the authorization of a project under NEPA, and if not, should not be considered for mitigation purposes.[240] Lastly, commenters question reliance on *Sabal Trail* to support the Commission's authority to impose mitigation.[241]

103. We disagree with contentions that the Commission does not have the authority under the NGA or NEPA to require mitigation of GHG emissions by a project sponsor. The D.C. Circuit stated in *Sabal Trail,* that ''the [Commission] has legal authority to mitigate'' greenhouse-gas emissions that are an indirect effect of authorizing a pipeline project.[242] And, as early as 1961, the Supreme Court recognized that the Commission's predecessor, the Federal Power Commission, had the authority to consider downstream uses, and specifically, the impact of end-users combusting transported gas on air quality, as part of its public convenience and necessity determination under the NGA.[243] Both NGA sections 3 and 7 authorize the Commission to attach ''such reasonable terms and conditions as the public convenience and necessity may require.'' [244] Pursuant to this authority, the Commission has conditioned NGA section 7 certificates and section 3 authorizations on mitigation of impacts of the proposed project.[245] Moreover, courts have interpreted this provision broadly and given the Commission latitude in deciding what types of mitigation to require.[246]

104. Regarding claims that the Commission cannot mandate mitigation of downstream emissions because those emissions are outside the Commission's jurisdiction, we recognize, as many commenters assert, that the Commission does not have the statutory authority to impose conditions on downstream users or other entities outside the Commission's jurisdiction, such as production, gathering, and local distribution entities.[247] Rather, the Commission encourages each *project sponsor* to propose measures to mitigate the impacts of reasonably foreseeable

29–30; *see also* Williams Technical Conference Comments at 17 (claiming that there is no reasonable basis for the Commission to require project sponsors to submit mitigation proposals with their applications because the technical conference demonstrated a lack of evidentiary support for any specific mitigation methods, offered no specific proposals regarding the levels of fees, offsets, or caps, and proposed no concrete and cost-effective means to mitigate emissions).

[233] API Technical Conference Comments at 5; Boardwalk Technical Conference Comments at 10; Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. (collectively, Con Edison) Technical Conference Comments at 5; Hon. Joseph T. Kelliher Technical Conference Comments at 1; INGAA Technical Conference Comments at 6–7; TC Energy Technical Conference Comments at 8; API 2021 Comments at 31; INGAA 2021 Comments at 74–83; TC Energy 2021 Comments at 56–58.

[234] *See, e.g.,* Hon. Joseph T. Kelliher Technical Conference Comments at 1 (citing *NAACP* v. *FPC,* 425 U.S. 662, 669–70 (1976)); *id.* at 8–9 (asserting that the proper place to consider GHG emissions (direct only) is under the Commission's balancing test, where a project sponsor may choose to voluntarily offset emissions); TC Energy Technical Conference Comments at 8; INGAA 2021 Comments at 74–76.

[235] *See, e.g.,* Boardwalk Technical Conference Comments at 11–13 (arguing that *Transco* does not authorize the Commission to indirectly regulate upstream and downstream emissions); Enbridge Technical Conference Comments at 5, 16, 21; Hon. Joseph T. Kelliher Technical Conference Comments at 4; INGAA 2021 Comments at 76–77.

[236] *See, e.g.,* API Technical Conference Comments at 2, 4; Edison Electric Institute (EEI) Technical Conference Comments at 9–10; Enbridge Technical Conference Comments at 18–19, 23–24; Hon. Joseph T. Kelliher Technical Conference Comments at 5; Attorneys General of Missouri et al. Technical Conference Comments at 3 (citing *S. Coast Air Quality Mgmt. Dist.* v. *FERC,* 621 F.3d 1085, 1092 (9th Cir, 2010)); TC Energy Technical Conference Comments at 6–7; Boardwalk 2021 Comments at 10. Commenters further argue that the NGA was not enacted to comprehensively regulate the natural gas industry, but instead to fill a regulatory gap over interstate gas transportation and sales; therefore, Congress left the regulation of upstream production and downstream consumption to the states. Enbridge Technical Conference Comments at 16–17; Hon. Joseph T. Kelliher Technical Conference Comments at 2 (citing *NAACP* v. *FPC,* 425 U.S. at 669–70; *State of Cal.* v. *Southland Royalty Co.,* 436 U.S. 519, 523 (1989); *ONEOK, Inc.* v. *Learjet, Inc.,* 575 U.S. 373, 378, 384–85 (2015); *ANR Pipeline Co.* v. *FERC,* 876 F.2d 124, 132–33 (D.C. Cir. 1989)).

[237] INGAA Technical Conference Comments at 8; Boardwalk 2021 Comments at 107; Con Edison Technical Conference Comments at 6–7 (stating that the state regulators are the best positioned to determine and impose mitigation measures for upstream and downstream GHG emissions); INGAA 2021 Comments at 77–79.

[238] American Public Gas Association (APGA) Technical Conference Comments at 5–6; EEI Technical Conference Comments at 9–10; Enbridge Technical Conference Comments at 23–24; TC Energy Technical Conference Comments at 9–10.

[239] Specifically, commenters argue that the Commission should rely on *Center for Biological Diversity,* which states that ''the legal analysis in *Sabal Trail* is questionable at best'' and that ''[i]t fails to take seriously the rule of reason announced in *Public Citizen* or to account for the untenable consequences of its decision.'' *Center for Biological Diversity,* 941 F.3d at 1300; *see also* AGA Technical Conference Comments at 13–14; Boardwalk Technical Conference Comments at 16–17; Hon. Joseph T. Kelliher Technical Conference Comments at 3; INGAA Technical Conference Comments at 12–13; TC Energy Technical Conference Comments at 13–14.

[240] API Technical Conference Comments at 4; EEI Technical Conference Comments at 6; INGAA Technical Conference Comments at 14; Williams Technical Conference Comments at 5.

[241] *See* AGA Technical Conference Comments at 12–13 (arguing that the Commission should not rely on this statement of dicta because the issue of mandatory mitigation was not at issue in this case; rather, the court only addressed whether the Commission is, in some circumstances, required by NEPA to include a discussion of downstream GHG emissions when conducting its environmental review); Boardwalk Technical Conference Comments at 16 (same); Enbridge Technical Conference Comments at 20 (same); Hon. Joseph T. Kelliher Technical Conference Comments at 3–4 (same); TC Energy Technical Conference Comments at 12 (same).

[242] *Sabal Trail,* 867 F.3d at 1374.

[243] *Transco,* 365 U.S. at 17; *see also NAACP* v. *FPC,* 425 U.S. at n.6 (stating that the Commission has the authority to consider conservation and environmental issues under the NGA's public interest determination). *See Certification of New Interstate Natural Gas Pipeline Facilities,* 178 FERC ¶ 61,107 at PP 71–72.

[244] 15 U.S.C. 717f(e); *see also id.* 717b(e)(3)(A) (providing the authority to approve an application for an LNG Terminal, ''in whole or part, with such modifications and upon such terms and conditions as the Commission find[s] necessary or appropriate.'').

[245] For examples where the Commission has conditioned approval of natural gas projects on mitigation of adverse impacts, *see supra* note 69.

[246] *See Twp. of Bordentown* v. *FERC,* 903 F.3d at 261 n.15 (concluding that the Commission's authority to enforce any required remediation is amply supported by provisions of the NGA); *Sabal Trail,* 867 F.3d at 1374 (holding that the Commission has legal authority to mitigate reasonably foreseeable indirect effects).

[247] *See generally Tex. Pipeline Ass'n* v. *FERC,* 661 F.3d 258, 260 (5th Cir. 2011) (holding that the Commission lacked authority to require ''major non-interstate pipelines'' to post certain flow information).

GHG emissions associated with its proposed project, and will consider such mitigation proposals in assessing the extent of a project's adverse impacts.[248]

105. We note that the Supreme Court's ruling in *Public Citizen* does not preclude the Commission from requiring project sponsors to mitigate reasonably foreseeable upstream or downstream emissions. As discussed previously,[249] the Commission may consider downstream GHG emissions under *Public Citizen,* which states that ''NEPA requires 'a reasonably close causal relationship' between [an] environmental effect and the alleged cause,'' analogous to the ''familiar doctrine of proximate cause from tort law'' and does not require an agency to gather or consider information regarding environmental harms if it lacks authority to act on that information.[250] As directed by *Public Citizen,* decisionmakers should ''look to the underlying policies or legislative intent in order to draw a manageable line between those causal changes that may make an actor responsible for an effect and those that do not.'' [251] Here, the NGA ''broadly instruct[s]'' the Commission to consider ''the public convenience and necessity'' when evaluating proposed interstate pipeline applications, balancing public benefits against adverse effects, including adverse environmental effects,[252] and we have noted that the Commission has consistently exercised its broad conditioning authority under the NGA to attach environmental conditions that mitigate the adverse environmental impacts of a proposed project.[253] NEPA requires an agency to consider the environmental impacts of its actions, including steps that could be taken to mitigate adverse environmental consequences,[254] although it does not require a federal agency to take action to mitigate those adverse effects.[255] As CEQ recognizes, an agency may, however, require mitigation of impacts under its authority as a condition of its permitting or approval.[256] Thus, as the D.C. Circuit held in *Sabal Trail,* the Commission can deny a pipeline certificate on the ground that the pipeline would be too harmful to the environment, because the agency is the ''legally relevant cause'' of the direct and reasonably foreseeable environmental effects of the pipelines it approves.[257] Accordingly, the Commission may consider the end use of gas and the impact of natural gas combustion on air pollution as a factor in assessing the public interest.[258] However, as detailed below, the Commission's priority is for project sponsors to mitigate, to the greatest extent possible, a project's direct GHG emissions. The Commission also encourages project sponsors to propose mitigation of reasonably foreseeable indirect emissions, and will take such proposals into account in assessing the extent of a project's adverse impacts.

3. Mitigation Measures

106. The Commission encourages the project sponsor to propose measures to mitigate the direct GHG emissions of its proposed project to the extent these emissions have a significant adverse environmental impact.[259] INGAA describes three possible levels of mitigation—to zero, to a level of below significance, and to an amount to be determined by use of the SCC—but dismisses each as unworkable, improperly adopting broad policy judgements, and reliant on a one-sided and imprecise methodology, respectively.[260] The Commission plans to evaluate proposed mitigation plans on a case-by-case basis and is not mandating a standard level of mitigation. We also encourage project sponsors to proposed measures to mitigate the reasonably foreseeable upstream or downstream emissions associated with their projects.

107. The Commission will consider the project's impact on climate change, including the project sponsor's mitigation proposal, as part of its public interest determination under NGA section 3 or 7.[261] When making the public interest determination, the Commission will assess the adequacy of the project sponsor's proposed mitigation on a case-by-case basis and will consider the project's impact on climate change as one of many factors.[262] Further, the Commission may require additional mitigation of a project's direct GHG emissions as a condition of the authorization, should the Commission deem a project sponsor's proposed mitigation inadequate to support the public interest determination.

108. Also we note that NEPA does not preclude the Commission from approving a project with significant adverse impacts.[263] If a project's emissions equal or exceed the 100,000

[248] As described *supra* in section III.A.2.b, the Commission will consider GHG emission mitigation and reduction efforts taken by non-jurisdictional entities, including downstream users, when quantifying the reasonably foreseeable project GHG emissions. However, the project sponsor's GHG mitigation plan should only include its own proposed mitigation efforts.

[249] *See supra* section III.A.1.b.

[250] *Pub. Citizen,* 541 U.S. at 767, 770 (quoting *Metro. Edison Co.,* 460 U.S. at 774); *see Sabal Trail,* 867 F.3d at 1372.

[251] *Pub. Citizen,* 541 U.S. at 767 (quoting *Metro. Edison Co.,* 460 U.S. at 774 n.7).

[252] *Sabal Trail,* 867 F.3d at 1373 (citing *Minisink Residents for Envtl. Pres. & Safety* v. *FERC,* 762 F.3d 97, 101–02 (D.C. Cir. 2014); *Myersville Citizens for a Rural Cmty.* v. *FERC,* 783 F.3d 1301, 1309 (D.C. Cir. 2015)).

[253] *See supra* P 97.

[254] *Robertson* v. *Methow Valley Citizens Council,* 490 U.S. at 351 (''To be sure, one important ingredient of an EIS is the discussion of steps that can be taken to mitigate adverse environmental consequences.'').

[255] *Id.* at 352 (''There is a fundamental distinction, however, between a requirement that mitigation be discussed in sufficient detail to ensure that environmental consequences have been fairly evaluated, on the one hand, and a substantive requirement that a complete mitigation plan be actually formulated and adopted, on the other.''); *S. Fork Band Couns. of W. Shoshone of Nev.* v. *U.S. Dep't of Interior,* 588 F.3d at 727 (NEPA does not require that agencies mitigate significant environmental harms).

[256] *Final Guidance for Federal Departments and Agencies on the Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate use of Mitigated Findings of No Significant Impact,* 76 FR 3843, 3848.

[257] *Sabal Trail,* 867 F.3d at 1373 (distinguishing *Public Citizen*).

[258] *See supra* P 80.

[259] The Attorneys General of Massachusetts, Delaware, Maryland, Michigan, Minnesota, New Jersey, Rhode Island, and the District of Columbia (Attorneys General of Massachusetts et al.) recommends that the Commission include reasonable, binding mitigation measures that incorporate any applicable state or federal regulations or permit conditions. Attorneys General of Massachusetts et al. Technical Conference Comments at 6. The technical conference commenters are made up of a slightly different group of state attorneys general than those filing comments in 2018 or 2021. As explained below, the Commission is only considering mitigation measures that reduce emissions beyond those associated with regulatory requirements in this policy statement.

[260] INGAA Technical Conference Comments at 21–27; *see also* Enbridge Technical Conference Comments at 12–13, 35–38 (recommending the Commission await direction from Congress in choosing a mitigation level, especially if requiring project sponsors to mitigate to less than significant levels and noting that mitigation to zero is not practicable if downstream or upstream emissions are included).

[261] Attorneys General of Massachusetts et al. urges the Commission to consider the impacts of any mitigation measures on environmental justice communities. Attorneys General of Massachusetts et al. Technical Conference Comments at 5–6.

[262] Jennifer Danis, Senior Fellow with the Sabin Center for Climate Change Law and a panelist at the GHG Technical Conference on Panel 1, recommends that the Commission should not consider the effect of any mitigation measures in its public interest determination but should only consider mitigation measures once the Commission has determined that public convenience and necessity absolutely requires the project. Jennifer Danis Technical Conference Statement at 8–11. As explained in the Certificate Policy Statement, the Commission considers all factors, including the extent to which adverse impacts are mitigated, to determine whether a project is in the public convenience and necessity. *Certification of New Interstate Natural Gas Pipeline Facilities,* 178 FERC ¶ 61,107 at PP 70, 93–95.

[263] *See supra* section II.B.

metric tons per year significance threshold and the project sponsor's proposed mitigation will reduce the project's GHG emissions below that threshold, the Commission will consider that mitigation in determining whether it can make a finding of no significant impact.

109. While the Commission has broad authority to require mitigation of GHG emissions by a project sponsor, we are not mandating here any particular form of mitigation.[264] A project sponsor is free to propose any mechanism to mitigate the project's GHG emissions.[265] However, in order to ensure that any GHG emissions reduction mechanisms achieve real, verifiable, and measurable reductions, any proposed mechanisms should:

a. Be both real and additional—the emissions reductions would not have otherwise happened unless the proposed reduction mechanism was implemented, and the associated reductions occur beyond regulatory requirements; [266]

b. be quantifiable—any emissions reductions must be calculated using a transparent and replicable methodology;

c. be unencumbered—seller has clear ownership of or exclusive rights to the benefits of the GHG reduction; and

d. be trackable—the project sponsor must also propose means for the Commission to monitor and track compliance with the proposed mitigation measures for the life of the project.

110. Commenters express concerns with how the Commission will determine whether mitigation measures are verifiable or how the Commission will monitor or track compliance with mitigation measures in a way that avoids double counting emissions reductions.[267] Commenters point out that other federal agencies and states are already monitoring GHG emissions from certificated projects, such as EPA's GHG Reporting Rule, so a Commission-designed monitoring scheme would be duplicative and unnecessary.[268] EEI recommends that the Commission explore interagency agreements or memorandums of understanding (MOU) with agencies like EPA and PHMSA to avoid redundancies and clarify mitigation responsibilities,[269] while INGAA states that such agreements or MOUs would be insufficient.[270]

111. We believe it best not to mandate mitigation based on a specific volume or proportion of emissions. Encouraging project sponsors to submit proposed mitigation measures as opposed to mandating a certain level of mitigation for all projects allows the Commission to consider a project sponsor's proposed mitigation plan in comparison to the project's benefits, such as fuel switching or providing reliable gas service, when making a public interest determination and allows project sponsors the flexibility to choose what mitigation measures work best for their individual project. Moreover, we recognize that determining an appropriate amount of mitigation, particularly for downstream uses, depends on a variety of complex factors, some of which may not be known at the time of an application, such as state and local climate change policies, the interconnected nature of the natural gas pipeline system, long-term changes in natural gas supply sources, changes in demand for natural gas over time, individual companies' long-term goals to reduce GHG emissions, the availability of renewable energy credits or other carbon offsets, and the potential for future action by other federal agencies.[271]

112. Similarly, we believe it best to allow project sponsors to demonstrate that their proposed mitigation measures are verifiable and propose means for the Commission to monitor or track the proposed measures through the life of the project. This approach allows project sponsors to take advantage of existing monitoring programs and tailor verification and tracking to their chosen mitigation proposals and prevents the Commission from needing to establish a new monitoring program.

4. Opportunities for Mitigation

113. While project sponsors are free to propose any type of mitigation mechanism, the following are examples of mitigation mechanisms project sponsors may consider.

a. Market-Based Mitigation

114. Project sponsors may mitigate the GHG emissions of a proposed project through participation in one (or more) of the various types of carbon offset markets. Sponsors could, for example, purchase renewable energy credits, participate in a mandatory compliance market (if located in a state that requires participation in such a market), or participate in a voluntary carbon market.

i. Renewable Energy Credits

115. Renewable energy credits (REC) are tradeable, market-based

[264] Commenters emphasize the need for flexibility in assessing mitigation measures. *See, e.g.,* Enbridge Pre-Conference Comments at 9; Enbridge Technical Conference Comments at 46–47 (suggesting that, depending on a variety of factors, the applicant may or may not be able to propose appropriate mitigation at the time of the project application); Hon. Joseph T. Kelliher Technical Conference Comments at 11 (recommending alternatives to imposing mitigation requirements such as revising the Commission's 2015 Modernization Policy Statement, issuing a new GHG policy statement that either allows limited section 4 rate filings to recover costs or clarifies the level of shipper support required to support establishment of a tracker surcharge and recommending that such a policy address lost and unaccounted-for fuel, or implementing a fast track certificate process for project sponsors that voluntarily commit to mitigate direct GHG emissions); INGAA Technical Conference Comments at 30; Magnolia LNG LLC Technical Conference Comments at 2; TC Energy Technical Conference Comments at 5, 21 (arguing against the Commission requiring marked-based mitigation measures). A few commenters either oppose use of the SCC in determining a required level of mitigation for project emissions, Enbridge Technical Conference Comments at 6, 38–39, or urge the Commission to use the SCC to monetize the impacts of any GHGs that are not able to be mitigated, Attorneys General of Massachusetts et al. Technical Conference Comments at 7. As described above, the Commission does not propose to mandate any particular level or type of mitigation.

[265] For example, Mountain Valley Pipeline, LLC, proposed to offset the operational emissions of the Mountain Valley Pipeline Project by purchasing carbon offset credits equivalent to 90% of GHG emissions associated with the project's operations in its first 10 years of service from a new methane abatement project located at a mine in southwest Virginia. Mountain Valley Pipeline, LLC, Carbon Offset Commitment for Mountain Valley Pipeline Project Operations, Docket No. CP21–57–000 (filed July 12, 2021).

[266] Regulatory requirements include those imposed by the Commission and other federal and state regulatory agencies. However, project sponsors may include participation in voluntary regulatory programs that reduce GHG emissions.

[267] *See, e.g.,* INGAA Technical Conference Comments at 38–39. Dr. Carl Pechman, Director of the National Regulatory Research Institute and a panelist at the GHG Technical Conference on Panel 3, provides extensive comments on how the Commission could establish accounting protocols and offset tracking. Dr. Carl Pechman Technical Conference Statement at 1–15.

[268] APGA Technical Conference Comments at 8–9; Enbridge Technical Conference Comments at 48–49; INGAA Technical Conference Comments at 40–41; TC Energy Technical Conference Comments at 5–6, 22–23. Similarly, commenters state that the Commission should defer to other agencies, such as the EPA and state environmental agencies, that are already taking regulatory action regarding emissions, express concern over the potential for inconsistent mitigation requirements between agencies, and/or point to EPA's methane regulation proposal to reduce GHG emissions from new, reconstructed, modified, and existing facilities in the oil and gas source category under section 111 of the Clean Air Act. APGA Technical Conference Comments at 5; EEI Technical Conference Comments at 10–11; INGAA Technical Conference Comments at 30–32; NGSA Technical Conference Comments at 6–7. Conversely, one commenter encourages the Commission to use resources from the EPA's pending rulemaking. Attorneys General of Massachusetts et al. Technical Conference Comments at 6–7 (referencing Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review, 86 FR 63110 (Nov. 15, 2021)).

[269] EEI Technical Conference Comments at 12–14.

[270] INGAA Technical Conference Comments at 40–41.

[271] *See, e.g.,* Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review, 86 FR 63110 (Nov. 15, 2020).

commodities that provide proof that one megawatt hour of electricity was generated from a renewable source and delivered to the grid. RECs legally convey the attributes of renewable electricity generation to their owner. While state or regional RECs may be traded on financial exchanges that typically meet state or regional guidelines, they are not limited by geographic boundaries—RECs can be purchased independently from electricity and can be matched with energy consumption.[272]

116. Commenters argue that the Commission may not require RECs because unlike offsets, RECs pertain only to the use of electric power and are therefore not appropriate for upstream or downstream mitigation, do not mitigate or compensate for GHG emissions, and are not denominated in carbon dioxide (CO_2) or CO_2e, thus, they cannot represent any specific amount of avoided or reduced emissions.[273] Enbridge also states that in most instances, project sponsors will not qualify to purchase RECs under existing state programs.[274] While RECs may not represent a 100% offset per unit of GHG emitted, RECs do represent a decrease in GHG emissions from overall energy use and production, and we will consider them.

ii. Mandatory Compliance Market Participation

117. The compliance market is a mandatory offset program regulated by national, regional, or provincial law and mandates CO_2 and GHG emission reduction requirements. Under this framework an allowance, which is an authorization for an entity to emit GHG emissions, is created. Allowances are generated and traded for regulatory compliance and are priced as a commodity based on supply and demand, regardless of project type.

118. A prime example of an existing, domestic compliance market is the Regional Greenhouse Gas Initiative (RGGI). RGGI is a cooperative effort by eleven Northeast and Mid-Atlantic states[275] to limit CO_2 emissions at certain electric power generators. Each region involved in RGGI has an established emissions budget (cap) and each electric power generator holds allowances covering their GHG emissions. If a generator is below its established cap, it may trade an allowance to other entities[276] that exceed their cap. RGGI has an established emissions-based auction and trading system where allowances are bought, sold, and traded.[277] In addition to allowances, offsets may be used for compliance purposes, which requires a third-party certification of that offset for use. RGGI strictly regulates the quantity and types of offsets. There are five pre-determined types of RGGI offsets:

a. Landfill gas (methane) capture/burning;
b. sulfur hexafluoride capture/recycling;
c. afforestation (the establishment of a forest in an area where there was no previous tree cover);
d. energy efficiency (end use); and
e. agricultural manure management operations (avoided emissions).

119. In addition to RGGI, California participates in the Western Climate Initiative with Quebec and Nova Scotia,[278] covering industrial production, electricity generation, residential, commercial, and small industrial combustion, and transportation fuel combustion.

120. If an applicant proposes any method of market-based mitigation of GHG emissions, such as those described in this section, we encourage the applicant to inform the Commission of any state or regional compliance goals or initiatives that may be relevant to our consideration of such mitigation proposal.

iii. Voluntary Carbon Market Participation

121. If a project sponsor is not located in a state that participates in a mandatory compliance market, the voluntary carbon market offers an opportunity to mitigate project emissions. The voluntary carbon market transacts with offsets, which are the instrument representing the reduction, avoidance, or sequestration of one metric ton of GHG.[279] The voluntary market funds additional, external projects that avoid or reduce GHG emissions.[280] The voluntary carbon market is open to project sponsors regardless of location and is more flexible than compliance markets, although each market has its own standards, registries, and project types. Offset allowances are issued to project sponsors of qualifying CO_2 emissions offset projects.

122. Typically, an independent third party qualifies offset projects and establishes standards to verify offsets; however, not all offsets available in the voluntary market are certified by a third party. In order to ensure the additionality and permanence of offsets, the use of unverified offsets is discouraged. If a project sponsor proposes to mitigate project emissions through participation in a voluntary carbon market, the sponsor is encouraged to seek Commission approval of the third party that would verify the offsets prior to participation. Examples of existing, acceptable third-party certifiers include:

a. Climate Action Reserve;[281]
b. Verified Carbon Standard;[282] and
c. American Carbon Registry.[283]

123. Some commenters support allowing project sponsors to purchase emissions offsets while others oppose it as a mitigation method. For example, Policy Integrity recommends that the

[272] For more information, see EPA Green Power Partnership, *Offsets and RECs: What's the Difference* (Feb. 2018), *https://www.epa.gov/sites/default/files/2018-03/documents/gpp_guide_recs_offsets.pdf.*

[273] Enbridge Pre-Conference Comments at 6–7; Enbridge Technical Conference Comments at 42–46; Enbridge 2021 Comments at 145–148; INGAA Technical Conference Comments at 33.

[274] Enbridge 2021 Comments at 23, 148 n. 406 (stating that the lack of a federal REC program coupled with the patchwork of state and regional, as well as voluntary and mandatory, REC programs brings into question whether project sponsors could participate in these existing programs).

[275] RGGI includes: Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Vermont, and Virginia.

[276] Any entity is eligible to participate in CO_2 allowance auctions including, but not limited, to corporations, individuals, non-profit corporations, environmental organizations, brokers, and other interested parties. The Regional Greenhouse Gas Initiative, *CO_2 Allowance Auctions, Frequently Asked Questions* 1 (Apr. 6, 2021), *https://www.rggi.org/sites/default/files/Uploads/Auction-Materials/54/FAQS_Apr_6_2021.pdf.*

[277] 23.5 million CO_2 allowances (short tons) sold at RGGI auction in March 2021 at clearing price of $7.60/allowance.

[278] 54.7 million CO_2 allowances (metric tons) sold at settlement price of $17.8/allowance during a February 2021 auction.

[279] EPA Green Power Partnership, *supra* note 272.

[280] In 2019, 104 million metric tons of CO_2e offsets were sold and the price per metric ton CO_2e was $1.40 to $4.30, depending on type of project (renewable energy and forestry/land use, respectively). S&P Global Platts, *Voluntary Carbon Market Grows 6% on Year in 2019: Ecosystem Marketplace* (Sep. 22, 2020), *https://www.spglobal.com/platts/en/market-insights/latest-news/coal/092220-voluntary-carbon-market-grows-6-on-year-in-2019-ecosystem-marketplace.*

[281] Typical offset projects include ozone depleting substances destruction, landfill gas capture/combustion, livestock gas capture/combustion, improved forest management, avoided grassland conversion, and improved forest management, among others. For more information, see generally *https://www.climateactionreserve.org/.*

[282] Typical offset projects include renewable energy, forest and wetland conservation and restoration, transport efficiency improvement, nitrous oxide abatement, clean cookstoves, methane capture and use/combustion, and waste heat recovery. For more information, see generally *https://verra.org/.*

[283] Typical offset projects include ozone depleting substances destruction, industrial process emissions, fuel switching, livestock waste management, transport fleet efficiency, landfill gas capture and combustion, wetland restoration, forest management, and coal mine methane capture. For more information, see generally *https://americancarbonregistry.org/.*

Commission require certificate holders to purchase emission offsets from a third party.[284] Policy Integrity states that carbon offsets are: (1) Consistent with compensatory mitigation requirements employed by other federal agencies, such as the Bureau of Land Management, U.S. Fish and Wildlife Service, and EPA; and (2) included and supported in CEQ's NEPA regulations and guidance.[285] Policy Integrity also recommends that the Commission develop a carbon offset program as opposed to relying on third-party programs; [286] however, the Commission lacks statutory authority to create such a program and believes that the existing programs and certifiers mentioned above are sufficient.

124. Conversely, some commenters oppose the Commission requiring project sponsors to purchase offsets from third parties because it is difficult to ensure that carbon offsets have the necessary traits of additionality (the reduction would not have happened but for the purchased offset), permanence (the reduction persists for the entire certification period of the offset), absence of leakage (the offset does not trigger some other activity elsewhere that adds GHG emissions), and rigorous third-party verification.[287] INGAA further comments that it would be difficult or impossible for the Commission to choose an appropriate level of offsetting because of the variability in emissions over the life of a project and the risk of over-counting for a given quantity of gas that might move over multiple jurisdictional transportation projects, and that not enough high-qualify offsets are available.[288] Commissioner Kelliher cautions that the Commission would have to verify offsets given concerns about fraud and environmental and accounting integrity.[289] As previously stated, the Commission is not requiring project sponsors to purchase offsets or mandating a certain level of offsetting, and while the Commission acknowledges the challenges with third-party offsets, we believe the certifiers mentioned above will sufficiently account for them.

b. Physical Mitigation

125. In addition to purchasing RECs or emissions offsets, project sponsors could also propose to mitigate and/or offset GHG emissions through the use of physical, on- or off-site mitigation measures. Physical mitigation measures could include smaller-scale efforts including reducing a project's fugitive methane emissions or incorporating renewable energy or other energy efficient technologies to reduce a project's GHG emissions from compressor stations, or larger-scale undertakings such as carbon capture and storage, or direct air CO_2 capture. Project sponsors could also propose environmentally based measures, such as planting trees along the right-of-way or in other locations to offset carbon emissions or restoring wetlands to provide additional carbon storage; however, the scale needed for such measures to meaningfully mitigate GHG emissions may render them impractical. In addition, project sponsors could propose to reduce GHG emissions from their existing facilities, including those with no direct connection to the proposed project, as mitigation for project-related emissions.

126. Commenters detail a host of mitigation measures they are currently undertaking or propose to implement to reduce direct project emissions, such as: Installing vent gas recovery systems and optimizing operations to reduce venting and blowdowns, replacing cast iron/unprotected steel pipes with polyethylene or protected steel pipes to minimize leaks, employing a variety of technologies and methods to identify and reduce leaks, and replacing natural gas-fired horsepower at compressor stations.[290] Other commenters echo some of those suggestions [291] and recommend operational limits on construction equipment, such as limited idle time when engines are not in use.[292] Other commenters criticize any mitigation measures, especially carbon capture and sequestration and offsets, and recommend that the Commission achieve ''real zero'' emissions that accounts for air and water pollution and focuses on environmental justice communities and workers impacted by the negative externalities associated with project operation and jobs that are being phased out.[293] Some commenters assert that direct emissions are already substantially mitigated pursuant to the regulatory authority exercised by other agencies.[294] With regard to methane leaks, Dr. Anna Scott explains that its independent certification and measurement program verifies that a company's operations meet regulatory standards and incentivize companies to go beyond the standards by using an engineering-based review process that assesses development through to operations, as well as continuous monitoring of emissions along the supply chain.[295] On a policy level, Gary

[284] Policy Integrity 2021 Comments at 14–15, 19.

[285] Policy Integrity 2021 Comments at 23–26 (citing 40 CFR 1508.1(s)(5)).

[286] Policy Integrity 2021 Comments at 20.

[287] Enbridge Pre-Conference Comments at 7–8; INGAA 2021 Comments at 79–82.

[288] INGAA Technical Conference Comments at 34–36; INGAA 2021 Comments at 79–82; *see also* Enbridge Pre-Conference Comments at 8–9; Enbridge Technical Conference Comments at 46–47.

[289] Hon. Joseph T. Kelliher Technical Conference Comments at 7; *see also id.* (asserting that this process would be complicated because credits could originate outside the U.S. and the Commission has no verification expertise).

[290] *E.g.,* AGA Technical Conference Comments at 28–30; API Technical Conference Comments at 6–8; Boardwalk Technical Conference Comments at 5–6; Con Edison Technical Conference Comments at 7–10 (detailing other efforts reduce emissions using renewable natural gas, certified natural gas, and hydrogen); Enbridge Pre-Conference Comments at 5; Enbridge Technical Conference Comments at 13–14, 39–41; INGAA Technical Conference Comments at 28–30 (citing its 2021 Climate Report); Magnolia LNG LLC Technical Conference Comments at 2 (describing its proprietary technology to reduce emissions during the liquefaction process); Scott A. Hallam Technical Conference Statement at 2 (Scott A. Hallam, Senior Vice President of Transmission and Gulf of Mexico at Williams, was a panelist at the GHG Technical Conference on Panel 1.); Stephen Mayfield Technical Conference Statement at 1–2 (Stephen Mayfield, AGM of Gas Operations at City of Tallahassee, was a panelist at the GHG Technical Conference on Panel 3.); Texas LNG Brownsville LLC Technical Conference Comments at 6; William F. Donahue Technical Conference Statement at 3 (William F. Donahue, Manager of Natural Gas Resources at Puget Sound Energy, was a panelist at the GHG Technical Conference on Panel 2.); INGAA 2021 Comments at 79–82. Some commenters note, however, that use of electric compressors may increase indirect emissions depending on the generation mix and existing infrastructure or cite concerns about the impact to the reliability of gas service during power outages. *E.g.,* American Forest Technical Conference Comments at 13; Enbridge Pre-Conference Comments at 5–6; Enbridge Technical Conference Comments at 41; Kinder Morgan Technical Conference Comments at 22–23.

[291] Delaware Riverkeeper 2021 Comments at 66; Kirk Frost 2021 Comments at 11.

[292] Delaware Riverkeeper 2021 Comments at 66.

[293] Rachel Dawn Davis, the Public Policy and Justice Organizer at Waterspirit, was a panelist at the GHG Technical Conference on Panel 3. Rachel Dawn Davis Technical Conference Statement at 1; Waterspirit Technical Conference Comments at 1–2; *see also* Technical Conference Transcript at 106–107 (transcribing remarks made by Dr. Nicky Sheats, Director of the Center for Urban Environment at the John S. Watson Institute for Public Policy and panelist on Panel 2).

[294] *E.g.,* TC Energy Technical Conference Comments at 20.

[295] Dr. Anna Scott, Co-Founder and Chief Science Officer of Project Canary, was a panelist at the GHG Technical Conference on Panel 2. Dr. Anna Scott Technical Conference Statement at 1–2, 5 (mentioning key engineering components such as operational venting or flaring, electrification of facilities and equipment, low bleed and/or zero bleed process controls, leak detection and repair programs, produced water treatment and reuse, and infrastructure and facility efficiency investments and describing how the company uses on-site sensors and algorithm technology to provide continuous monitoring). Along with pursuing carbon capture and storage solutions, Ivan Van der Walt, Chief Operating Officer at NextDecade Corporation and a panelist at the GHG Technical Conference on Panel 2, describes the joint pilot

Continued

Choquette of Pipeline Research Council International (PRCI) argues for a centralized funding mechanism for pipeline research to establish gas quality requirements with the aim of maximizing supply and reducing emissions and notes that PRCI has developed a tool that provides a method for prioritizing alternatives to reduce emissions based on effectiveness and associated capital and operating costs.[296]

127. Commenters also recommend that the Commission consider a project sponsor's participation in programs that help shippers voluntarily reduce emissions and other voluntary emissions reductions programs when evaluating mitigation measures, such as the ONE Future Coalition, Oil and Gas Climate Initiative, Climate and Clean Air Coalition Oil and Gas Methane Partnership, EPA Natural Gas STAR Program and Natural Gas STAR Methane Challenge Program, Methane Guiding Principles, the Natural Gas Sustainability Initiative, and The Environmental Partnership.[297] The Commission encourages project sponsors to detail their participation in such programs and any other voluntary measures as part of their mitigation plan for the Commission to consider as part of its public interest determination.

c. Cost Recovery

128. Commenters request that the Commission allow full cost recovery for any GHG mitigation measures through either the section 7 process or a general section 4 rate case for capitalized mitigation costs but caution the Commission to ensure that mitigation efforts are verified and the consumer's interest in low prices are balanced with a project sponsor's right to recover costs and earn a fair rate of return under the NGA.[298] Alternatively, for periodic purchases of market-based mitigation measures specifically, commenters state that pipelines could propose a tracker through a limited section 4 filing.[299] Conversely, other commenters oppose passing mitigation costs along to shippers, especially if it would increase rates for end-users, particularly low-income communities, who may not directly reap any local environmental benefits.[300] In the event mitigation costs are passed to shippers, American Forest supports establishing a baseline from which to judge emissions reductions and supports having an independent entity monitor and measure those reductions.[301] The Commission has previously considered and approved a proposal by a pipeline proponent to recover the costs of purchasing carbon offsets. In 2010, Ruby Pipeline, L.L.C., proposed to voluntarily purchase GHG offsets for the direct emissions associated with its compressor units (approximately 523,000 metric tons of GHG per year).[302] Going forward, project sponsors wishing to purchase offsets or proposing other measures to mitigate their project's GHG emissions may propose to recover the costs of these measures through their proposed rates. Applicants are encouraged to submit detailed cost estimates of GHG mitigation in their application and to clearly state how they propose to recover those costs. Pipelines may seek to recover GHG emissions mitigation costs through their rates, similarly to how they seek to recover other costs associated with constructing and operating a project, such as the cost of other construction mitigation requirements or the cost of fuel. Additionally, the Commission's process for section 7 and section 4 rate cases is designed to protect shippers from unjust or unreasonable rates and will continue to do so with respect to the recovery of costs for mitigation measures.

D. Application of Policy Statement

129. We will apply this interim policy statement to both pending and new NGA section 3 and 7 applications.[303] As noted above, doing so will allow the Commission to evaluate and act on such applications without undue delay. Applicants with pending applications will be given the opportunity to supplement the record and explain how their proposals are consistent with this policy statement, and stakeholders will have an opportunity to respond to any such filings. A project sponsor for any new natural gas infrastructure project is encouraged to include the following in its NGA section 3 or 7 application:

- The project's projected utilization rate and supporting information;
- an estimate of reasonably foreseeable project GHG emissions;
- if upstream and downstream emissions are not quantified, evidence to support why those emissions are not reasonably foreseeable project emissions;
- evidence, if any, that impacts the quantification of the project's reasonably foreseeable GHG emissions;
- a description of its proposed GHG mitigation measures, including the percent of the project's direct and indirect GHG emissions that will be mitigated and, if applicable, a tracking mechanism for tracking mitigation of GHG emissions; and
- a detailed cost estimate of its proposed GHG mitigation and a proposal for recovering those costs.

130. As explained above, the Commission will then consider the project's impact on climate change, including the project sponsor's mitigation proposal to reduce direct GHG emissions and, to the extent practicable, to reduce any reasonably foreseeable project emissions, as part of its determination under NEPA and its public interest determination under NGA section 3 or 7.[304]

project NextDecade has formed with Project Canary for measuring and certifying the GHG intensity of LNG sold from the Rio Grande LNG Project export facility. Ivan Van der Walt Technical Conference Statement at 2–3.

[296] Gary Choquette, Executive Director of Research and IT at PRCI, was a panelist at the GHG Technical Conference on Panel 2. Gary Choquette Technical Conference Statement at 3–4.

[297] *See, e.g.,* AGA Technical Conference Comments at 17–20; API Technical Conference Comments at 7–8; Boardwalk Technical Conference Comments at 5–6; NGSA Technical Conference Comments at 5; Scott A. Hallam Technical Conference Statement at 2–3; Stephen Mayfield Technical Conference Statement at 1; William F. Donahue Technical Conference Statement at 3–4; BHE Pipeline Group 2021 Comments at 12–14; Cheniere Energy Inc. 2021 Comments at 17.

[298] Boardwalk Technical Conference Comments at 3; Enbridge Technical Conference Comments at 15, 49; INGAA Technical Conference Comments at 42–45; TC Energy Technical Conference Comments at 6.

[299] Enbridge Technical Conference Comments at 15, 49; INGAA Technical Conference Comments at 45 (noting that the Commission should be clear that ''recovery of costs related to an ongoing obligation to purchase market-based mitigation is akin to a fuel tracker and would not be subject to the modernization cost recovery tracker policy or the Commission's policy against cost recovery trackers for regulatory compliance costs,'' and incremental operating costs to reduce GHG emissions should also be recoverable through a tracker); *see also* Hon. Joseph T. Kelliher Technical Conference Comments at 7 (suggesting that, while burdensome to stakeholders, the Commission could adopt a true-up mechanism requiring project sponsors to deposit offsets, which would later be compared to actual emissions).

[300] American Forest Technical Conference Comments at 15–16; APGA Technical Conference Comments at 6–8 (urging the Commission to consider the effects of cost-recovery on end-users, particularly low-income communities, who may not directly reap any local environmental benefits); American Forest and Paper Association et al. 2021 Comments at 26.

[301] American Forest Technical Conference Comments at 14 (asserting that there is little transparency for customers with respect to Lost and Unaccounted for Fuel Charges, which are recoverable by shippers).

[302] *Ruby Pipeline, LLC,* 131 FERC ¶ 61,007, at P 34 (2010).

[303] Unless required by law or regulation, the Commission will not apply a presumptive significance threshold below 100,000 metric tons of CO2e to applications filed prior to issuance of a final policy statement. If the Commission adopts a new lower threshold in a final policy statement, that threshold will only apply to applications filed after issuance of that statement.

[304] *Certification of New Interstate Natural Gas Pipeline Facilities,* 178 FERC ¶ 61,107 at PP 70–72, 93–95.

V. Information Collection Statement

131. The collection of information discussed in the Policy Statement is being submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995 [305] and OMB's implementing regulations.[306] OMB must approve information collection requirements imposed by agency rules.[307] Respondents will not be subject to any penalty for failing to comply with a collection of information if the collection does not display a valid OMB control number.

132. The Commission solicits comments from the public on the Commission's need for this information, whether the information will have practical utility, the accuracy of the burden estimates, recommendations to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. PUBLIC COMMENTS ARE DUE May 10, 2022. The burden estimates are focused on implementing the voluntary information collection pursuant to this Policy Statement. The Commission asks that any revised burden estimates submitted by commenters include the details and assumptions used to generate the estimates.

133. The following estimate of reporting burden is related only to this Policy Statement.

134. *Public Reporting Burden:* The collection of information related to this Policy Statement falls under FERC–577 and impacts the burden estimates associated with the ''Gas Pipeline Certificates'' component of FERC–577. The Policy Statement will not impact the burden estimates related to any other component of FERC–577. The estimated annual burden [308] and cost [309] follow.

FERC–577 (Natural Gas Facilities: Environmental Review and Compliance) as a Result of PL21–3–000

	Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden & cost ($) per response	Total annual burden hours & total annual cost ($)	Cost per respondent ($)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
Gas Pipeline Certificates	40	1	40	1,520 hrs; $132,240 Increase.	60,800 hrs; $5,289,600 Increase.	$132,240 Increase.

135. *Title:* FERC–577, Natural Gas Facilities: Environmental Review and Compliance

136. *Action:* Proposed revisions to an existing information collection.

137. *OMB Control No.:* 1902–0128

138. *Respondents:* Entities proposing natural gas projects.

139. *Frequency of Information Collection:* On occasion.

140. *Necessity of Voluntary Information Collection:* The Commission's existing FERC–577 information collection pertains to regulations implementing NEPA and reporting requirements for landowner notifications. The information collected pursuant to this Policy Statement should help the Commission in assessing natural gas infrastructure projects.

141. *Internal Review:* The opportunity to file the information conforms to the Commission's plan for efficient information collection, communication, and management within the natural gas pipeline industry. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the opportunity to file the information.

142. Interested persons may provide comments on this information-collection by one of the following methods:

- *Electronic Filing (preferred):* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- *USPS:* Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE, Washington, DC 20426
- Hard copy other than USPS: Federal Energy Regulatory Commission, Office of the Secretary, 12225 Wilkins Avenue, Rockville, Maryland 20852.

VI. Comment Procedures

143. The Commission invites comments on the interim policy statement by April 4, 2022. Comments must refer to Docket No. PL21–3–000 and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

144. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's website at *http://www.ferc.gov*. The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

145. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

146. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VII. Document Availability

147. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*). At this time, the Commission has suspended access to the Commission's Public Reference Room due to the President's March 13, 2020 proclamation declaring a National

[305] 44 U.S.C. 3507(d).

[306] 5 CFR 1320.

[307] This policy statement does not require the collection of any information, but rather discusses information that entities may elect to provide. The Commission is following Paperwork Reduction Act procedures to ensure compliance with that act.

[308] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. *See* 5 CFR 1320 for additional information on the definition of information collection burden.

[309] Commission staff estimates that the industry's average hourly cost for this information collection is approximated by the Commission's average hourly cost (for wages and benefits) for 2021, or $87.00/hour.

Emergency concerning the Novel Coronavirus Disease (COVID–19).

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

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By the Commission.

Commissioner Danly is dissenting with a separate statement attached.

Commissioner Christie is dissenting with a separate statement attached.

Issued: February 18, 2022.

Kimberly D. Bose,

Secretary.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviews

Docket No. PL21–3–000

DANLY, Commissioner, *dissenting:*

1. I dissent in full from today's Interim Greenhouse Gas (GHG) Policy Statement which purports to set forth the Commission's procedures to evaluate the climate change impacts of proposed natural gas projects under the National Environmental Policy Act (NEPA) and to incorporate climate change considerations into the Commission's determinations under sections 3 and 7 of the Natural Gas Act (NGA).[1]

2. This policy statement is irredeemably flawed. It is practically unworkable because it establishes a standardless standard. Its universal application to all projects, both new and pending (some for over two years), is an affront to basic fairness and is unjustifiable, especially in light of the many unnecessary delays already suffered by applicants. It is unlawful because it is illogical, it arrogates to the Commission power it does not have, and it violates the NGA, NEPA and the Commission's and the Council on Environmental Quality's (CEQ) regulations. It is also deliberately drafted so as to evade judicial review. Lastly, it will sow confusion throughout an industry that already suffers profound uncertainty. This issuance does not know what it is and neither will affected entities: It is immediately applicable, but also seeks comments, and it is allegedly not a draft policy statement, but an ''interim'' one. How can stakeholders have any confidence in its contents at all?[2]

3. When reading this policy statement, it is nearly impossible to credit the majority with actually believing that ''minimiz[ing] our litigation risk,'' making Commission decisions ''legally durable,'' and ''increas[ing], not reduc[ing], customer and investor confidence,'' are truly the goals of this proceeding.[3] Rather, the purpose of this Interim Policy Statement, like several of the Commission's other recent Natural Gas Act issuances, appears to be to actively discourage the submission of section 3 or section 7 applications by intentionally making the process more expensive, more time-consuming, and riskier.[4]

I. Overview of the Interim Policy Statement's Contents

4. The Interim Policy Statement begins by explaining it will apply upon issuance while at the same time being subject to comment and revision.[5] The majority explains this is necessary to ''act on pending applications under sections 3 and 7 of the NGA without undue delay and with an eye toward greater certainty and predictability for all stakeholders.''[6]

5. Next, it provides a historical background on past court, Commission, and CEQ issuances. For the sake of brevity, I will not describe this background discussion other than to note it is frequently misleading.[7]

6. Then the Interim Policy Statement announces that ''the Commission will quantify a project's GHG emissions that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action.''[8] This, it seems, will be fairly broad: the majority goes on to say that ''[t]his *will* include GHG emissions resulting from construction and operation of the project as well as, in most cases, GHG emissions resulting from the downstream combustion of transported natural gas.''[9]

7. The majority also states that it will continue to consider whether upstream emissions are a reasonably foreseeable effect for NGA section 7 projects on a case-by-case basis.[10] Notably missing, though, is any discussion of how upstream emissions could have a reasonably close causal relationship to an NGA section 7 project.[11]

[1] *Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviews,* 178 FERC ¶ 61,108 (2022) (Interim Policy Statement).

[2] *But see* Chairman Glick September 24, 2021 Response to Senator Barrasso September 15, 2021 Letter, Docket Nos. CP17–40–000, et al., at 1 (''When courts find flaws in the Commission's analysis, it can lead to lengthy delays and cost developers substantially more than they originally forecasted.'') (Accession No. 20210927–4003); *id.* at 9 (''Ultimately, I believe that performing thorough permitting reviews and providing developers with legally durable certificates on which they can rely will do more than just about anything else to satisfy the purposes of the Natural Gas Act.''); Chairman Glick May 21, 2021 Response to Senator Hoeven April 29, 2021 Letter, Docket No. PL18–1–000, at 1 (''I believe we can make changes to the Certificate Process that enhance our efficiency in processing applications and better address various directives we have received from the appellate courts.'') (Accession No. 20210524–4014).

[3] Chairman Glick February 2, 2022 Response to Senator Barrasso December 15, 2021 Letter at 4 (Accession No. 20220202–4003); *see also* Commissioner Clements February 2, 2022 Response to Senator Barrasso December 15, 2021 Letter at 2 (Accession No. 20220202–4000) (''I will do my part to assure that the updated policy will be a legally durable framework for fairly and efficiently considering certificate applications—one that serves the public interest and increases regulatory certainty for all stakeholders.'').

[4] *See, e.g., Algonquin Gas Transmission, LLC,* 174 FERC ¶ 61,126 (2021) (Danly and Christie, Comm'rs, dissenting) (Briefing Order), *terminated,* 178 FERC ¶ 61,029 (2022) (Danly and Christie, Comm'rs, concurring in part and dissenting in part); *see also* Commission Staff May 27, 2021 Notice in Tenn. Gas Pipeline Co., L.L.C., Docket No. CP20–493–000 (Accession No. 20210527–3054) (announcing schedule for Environmental Impact Statement (EIS) for project with previously prepared Environmental Assessment (EA)); Commission Staff May 27, 2021 Notice in North Baja Pipeline, LLC, Docket No. CP20–27–000 (Accession No. 20210527–3052) (same); Commission Staff May 27, 2021 Notice in Columbia Gulf Transmission, LLC, Docket No. CP20–527–000 (Accession No. 20210527–3049) (same); Commission Staff May 27, 2021 Notice in Iroquois Gas Transmission System, L.P., Docket No. CP20–48–000 (Accession No. 20210527–3047) (same).

[5] Interim Policy Statement, 178 FERC ¶ 61,108 at P 1.

[6] *Id.*

[7] For example, the D.C. Circuit in *Vecinos para Bienestar de la Comunidad Costera* v. *FERC* (*Vecinos*) found that the Commission failed to ''respond to significant opposing viewpoints'' regarding its analysis of GHG emissions. *Vecinos,* 6 F.4th 1321, 1329 (D.C. Cir. 2021). It did not find ''that the Commission failed to appropriately analyze the significance of three natural gas projects' contribution to climate change . . . .'' Interim Policy Statement, 178 FERC ¶ 61,108 at P 14.

[8] Interim Policy Statement, 178 FERC ¶ 61,108 at P 28.

[9] *Id.* (emphasis added) (footnotes omitted). I interpret ''in most cases'' as meaning the Commission will quantify and consider downstream emissions for NGA section 7 projects unless it is shown that the gas will not be burned. *See id.* P 28 n.72.

[10] *See id.* P 43.

[11] It should be noted that the majority cites *Sierra Club* v. *FERC* (*Sabal Trail*) to argue downstream emissions have a reasonably close causal relationship to NGA section 7 projects. *Id.* P 39 &

8. The Interim Policy Statement then describes how the quantity of project's emissions will be determined: By using a projected utilization rate for the project and considering ''other factors that might impact a project's net emissions.'' [12] This raises more questions than it answers. Do these other factors include consideration of whether the natural gas being transported will actually reduce overall emissions or simply replace existing emissions; for example by powering natural gas generation that permits the retirement of higher-emitting generation or by serving an end use need that will turn to a different—and perhaps higher emitting—energy source if the pipeline is not constructed? [13] What does this mean for projects where the end use is unknown? Does the Commission have the expertise to evaluate a project sponsor's evidence and resolve any factual disputes? Will the majority send these issues to an Administrative Law Judge as it recently did to resolve a dispute over what constituted appropriate post-construction right-of-way restoration (a subject matter with which the Commission presumably has *some* expertise)? [14]

9. I would suspect most attentive readers would have been interested to then learn how, having determined the means by which to arrive at these numbers, the Commission plans to weigh emissions among all of the other factors to be considered in its NGA determination. But the majority does not say.

10. Next, the Interim Policy Statement explains ''the Commission is establishing a significance threshold of 100,000 metric tons or more per year [(tpy)] of CO_2e'' [15] and *will presume* that the impact of a proposed project exceeding that threshold is significant unless refuted by record evidence.[16] According to Commission staff, of the 214 projects with direct [17] and downstream emissions authorized from January 2017 through June 2021, this policy would have applied to 72% of them. This means that, as of the issuance of this Interim Policy Statement, the EIS is now our default environmental document.[18]

11. The Interim Policy Statement says the Commission has authority to impose GHG mitigation for both direct emissions and downstream emissions.[19] This is a sweeping claim of jurisdiction and one that drastically departs from the Commission's historic employment of its conditioning authority. But right on the heels of that jurisdictional declaration, instead of ordering mitigation, the majority ''encourages'' project sponsors to ''propose measures to mitigate the direct GHG emissions of its proposed project to the extent these emissions have a significant adverse environmental impact'' and ''to mitigate the reasonably foreseeable upstream or downstream emissions associated with their projects.'' [20] The majority states the Commission will consider these mitigation measures in its public interest determinations.[21] This whole maneuver is odd—how often does one declare hitherto unasserted jurisdiction and then not employ it? Be warned: this is not restraint, it is foreshadowing.[22]

12. The majority tells project sponsors they are ''free to propose any mechanism to mitigate the project's GHG emissions'' [23] and offers some suggestions. Plant trees.[24] Incorporate renewable energy or other energy efficiency technologies.[25] And, with the faint echo of Johann Tetzel, the majority also suggests purchasing [26] renewable energy offsets.[27]

13. The majority's guidance ends there, leaving the project sponsor to figure out how *much* they should mitigate by these measures,[28] some of which, it ought be pointed out, do not appear to have a discernable connection to the reduction of carbon emissions.[29] Nor does the majority explain how the Commission can verify and track any such mitigation throughout the life of the project.[30] The majority offers no general framework but says only that it wants project sponsors to mitigate ''to the greatest extent possible.'' [31] One wonders why no mechanism is set forth. Could it be that we learned nothing of value from soliciting comments on GHG mitigation,[32] holding a technical conference on the subject,[33] and soliciting a second round of comments following that technical conference? [34] And think of where this leaves project sponsors. Often, they seek guidance from Commission staff. But for the 30 applications that are currently pending, such communication is potentially barred by the Commission's *ex parte* rules.[35] And even for those who are not so disadvantaged, absent direction from the Commission, staff can offer no more than this: You must roll the dice and cross your fingers that the Commission will act on, and maybe even grant, the requested authorization.[36]

n.103 (citing 867 F.3d 1357, 1372–73 (D.C. Cir. 2017) (Brown, J., concurring in part and dissenting in part)). Below I explain how *Sabal Trail* must not be given too much weight.

[12] *Id.* P 45.

[13] *See id.* P 52.

[14] *See Midship Pipeline Co., LLC* (*Midship*), 177 FERC ¶ 61,186 (2021) (Danly, Comm'r, dissenting at P 5) (''I, for one, am willing to consider the parties' arguments and make a decision.'').

[15] Interim Policy Statement, 178 FERC ¶ 61,108 at P 79.

[16] *See id.* P 81.

[17] Despite the fact that CEQ's regulations no longer distinguish between ''direct'' and ''indirect'' effects, in order to reduce confusion I use the term ''direct'' to be consistent with the Interim Policy Statement. *See* Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 85 FR 43304, 43343 (Jul. 16, 2020).

[18] *But see* 18 CFR. §§ 380.5–380.6 (setting forth when the Commission will prepare an EIS).

[19] *See* Interim Policy Statement, 178 FERC ¶ 61,108 at PP 104–06.

[20] *Id.* P 107; *see also id.* (''The Commission plans to evaluate proposed mitigation plans on a case-by-case basis . . . .'').

[21] *See id.* P 108.

[22] *See id.* P 106 (''However, as detailed below, the Commission's priority is for project sponsors to mitigate, to the greatest extent possible, a project's direct GHG emissions.'').

[23] *Id.* P 110.

[24] *See id.* P 126.

[25] *See id.*

[26] *See id.* PP 115–26; *see also id.* P 129 (''project sponsors *wishing* to purchase offsets'') (emphasis added).

[27] ''As soon as the coin in the coffer rings, the soul from purgatory springs.'' *See* Robert King, *Only in America: Tax Patents and the New Sale of Indulgences,* 60 Tax Law 761, 761 (2007) (citing Ronald H. Bainton, Here I Stand: A Life of Martin Luther 60 (1950)).

[28] *See* Interim Policy Statement, 178 FERC ¶ 61,108 at P 107 (''The Commission plans to evaluate proposed mitigation plans on a case-by-case basis and is not mandating a standard level of mitigation.'').

[29] For example, the Commission does not explain how the construction of a renewable energy or energy efficiency project reduces carbon emissions unless it could be shown that such construction will cause the retirement of, or prevent the construction of, a specific carbon emitting generation facility. Nor does the Commission describe how, in the absence of the identification of a specific facility to be displaced, it would be possible to determine the amount of mitigation provided by renewable energy or energy efficiency projects.

[30] *See* Interim Policy Statement, 178 FERC ¶ 61,108 at P 113 (''[W]e believe it best to allow project sponsors to demonstrate that their proposed mitigation measures are verifiable and propose means for the Commission to monitor or track the proposed measures through the life of the project.'').

[31] *Id.* P 106.

[32] *See Certification of New Interstate Nat. Gas Facilities,* 174 FERC ¶ 61,125, at P 17 (2021) (''C10. How could the Commission impose GHG emission limits or mitigation to reduce the significance of impacts from a proposed project on climate change? . . . If the Commission decides to impose GHG emission limits, how would the Commission determine what limit, if any, is appropriate?'').

[33] *See* Greenhouse Gas Mitigation, Technical Conference Transcript, Docket No. PL21–3–000 (Nov. 19, 2021).

[34] *See* Commission Staff November 16, 2021 Notice Inviting Technical Conference Comments, Docket No. PL21–3–000.

[35] 18 CFR. § 385.2201.

[36] I have anticipated a couple possible questions and will hazard answers that may be of interest: *Will an EIS assess the adequacy of GHG mitigation or recommend GHG mitigation measures?* My understanding is no. The Commission will

Continued

14. But the mitigation requirements may not end there. The majority states it ''may require additional mitigation as a condition of an NGA section 3 authorization or section 7 certificate.'' [37] Using what standard? Not stated. Perhaps, it will become a good-behavior approach akin to how the Commission has considered landowner impacts, stating: ''We are satisfied that [project sponsor] has taken appropriate steps to minimize [GHG emissions].'' [38] And this encumbrance is perpetual: Mitigation, the majority says, will span ''the life of the project.'' [39] That is long time. Ample opportunity for invasive oversight, enforcement actions, and novel, as yet unpredictable, employments of the Commission's authority.[40]

15. Next, we reach the majority's guidance on cost recovery. The majority states ''[p]ipelines *may* seek to recover mitigation costs through their rates,'' and are ''encouraged to submit detailed cost estimates of GHG mitigation in their application and to clearly state how they propose to recover those costs.'' [41] Pipelines *may* recover costs? On what possible basis could the Commission *deny* recovery? The majority declines to say. Then, presumably in response to comments about increasing rates for low-income communities and requests to balance the cost of mitigation with its environmental benefit, the majority states that ''the Commission's process for section 7 and section 4 rate cases is designed to protect shippers from unjust or unreasonable rates and will continue to do so with respect to the recovery of costs for mitigation measures.'' [42] How can that be true when the Commission will issue a certificate only when it determines that proposed mitigation measures are required for a pipeline project to be deemed in the public convenience and necessity? Is the Commission really suggesting that it will deny the recovery of costs that it determines are necessary to satisfy the public interest?

16. The Interim Policy Statement concludes by informing project sponsors with pending applications that they ''will be given the opportunity to supplement the record and explain how their proposals are consistent with this policy statement'' and that those filings will be subject to a reply comment period.[43] Future applicants are also ''encouraged'' to include a list of information in their filings.[44] What happens if a project sponsor supplements its record and the Commission revises the Interim Policy Statement once again before acting on that project sponsor's application? I can imagine that occurring as the comment deadline is six weeks away. And how can future applicants reasonably rely on interim guidance that may or may not change? What ''certainty and predictability'' [45] does this policy provide?

17. In sum, the Commission will weigh direct GHG emissions and, in most cases, downstream emissions in its NGA determinations. It will not tell you how these emissions will be assessed other than to say that project sponsors are encouraged to mitigate them. It will not tell you how project shippers will be protected from imprudently incurred costs. This is the tyranny of vagueness. It is also a threat. Imagine the fear that will animate the mitigation ''voluntarily'' proposed by those project sponsors with pending applications who are facing millions of dollars in sunk costs and with shippers that have relied on projects being placed into service and now only have higher cost and less reliable options available. This policy statement cannot rightly be described as ''encouraging'' anything.[46]

II. Interim Policy Statement Proposes, and Takes, Unlawful Actions

A. The Interim Policy Statement, in Its Entirety, Is Based on the Wrong Premise

18. It is worth pausing to consider the underlying premise of the majority's policy for considering GHG emissions, establishing a GHG emission threshold for preparing EISs, and requiring GHG emission mitigation. All are based on the presumption that GHG emissions are an ''effect'' of the proposed action.

19. In order to constitute an ''effect,'' three elements must be met: (1) There is a ''change[ ] in the human environment,'' that change (2) is ''reasonably foreseeable,'' and (3) it ''has a reasonably close causal relationship to the proposed action or alternatives.'' [47] The majority, however, does not allege that the change in the human environment at issue is the release of GHG emissions themselves. That makes sense, given that it would be like the Commission saying, in the hydropower context, that the flow of water from the powerhouse is a change in the human environment. While this would be *an* effect, it is not the kind of effect that is at issue in an environmental review. Instead, the effect we would care about would be the change to the quality or quantity of the body of water through which the water flows and any resultant further changes caused to species, vegetation, etc.

20. No, the majority is concerned about the changes in the human environment caused, not by the existence of GHG emissions themselves, but by climate change. The Interim Policy Statement is absolutely clear that this is its animating purpose: ''The Commission is issuing this interim policy statement to explain how the Commission will assess the impacts of natural gas infrastructure projects on climate change''; [48] ''Climate change is the variation in the Earth's climate (including temperature, humidity, wind, and other meteorological variables) over time''; [49] ''[C]limate change has resulted in a wide range of impacts across every region of the country and the globe. Those impacts extend beyond atmospheric climate change and include changes to water resources, agriculture, ecosystems, human health, and ocean systems.'' [50]

21. The question therefore is not whether GHG emissions are reasonably foreseeable but whether *climate change and its resulting effects* are reasonably foreseeable and have a reasonably close causal relationship to the proposed action. And if so, whether those effects are significant and can be mitigated by the Commission.

22. While determining the environmental impacts of a project is done on a case-by-case basis, the

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determine the adequacy of mitigation on a case-by-case basis in its orders. *Will mitigation that was not considered in an environmental document require the Commission to supplement its environmental review?* A clear answer was not provided. It is worth noting that section 1502.9(d)(1)(i) of CEQ's regulations state ''Agencies . . . [s]hall prepare supplements to either draft or final environmental impact statements if a major Federal action remains to occur, and . . . [t]he agency makes substantial changes to the proposed action that are relevant to environmental concerns . . . .'' 40 CFR. § 1502.9(d)(1)(i).

[37] Interim Policy Statement, 178 FERC ¶ 61,108 at P 99.

[38] *Double E Pipeline, LLC,* 173 FERC ¶ 61,074, at P 32 (2020).

[39] Interim Policy Statement, 178 FERC ¶ 61,108 at P 110.

[40] *See, e.g., Algonquin Gas Transmission, LLC,* 174 FERC ¶ 61,126 (2021) (Danly and Christie, Comm'rs, dissenting) (order establishing briefing to reopen final, non-appealable certificate order); *Algonquin Gas Transmission, LLC,* 178 FERC ¶ 61,029 (2022) (Danly and Christie, Comm'rs, concurring in part and dissenting in part) (order terminating briefing order but suggesting can reopen certificates to impose new terms).

[41] *Id.* P 129.

[42] *Id.*

[43] *Id.* P 130.

[44] *Id.*

[45] *Id.* P 1.

[46] *But see* Voltaire, Candide 125 (J.H. Brumfitt ed., Oxford Univ. Press 1968) (1759) (''. . . pour encourager les autres.'').

[47] 40 CFR. § 1508.1(g).

[48] Interim Policy Statement, 178 FERC ¶ 61,108 at P 1.

[49] *Id.* P 6.

[50] *Id.* P 7 (citation omitted).

construction of a natural gas pipeline and transportation of natural gas in that pipeline are unlikely, on a project-by-project basis, to have a reasonably foreseeable (which is to say traceable and calculable) effect on climate change ''in most cases.'' [51] Were climate change a reasonably foreseeable effect (as this term is used in environmental reviews) of a particular project, we would be able to examine the cause (here, the construction and the transportation of gas) and then determine some articulable and quantifiable effect (here, the amount of additional climate change) for which the project itself is causally responsible. We have never been able to do that. And while it is not acknowledged at all in the Interim Policy Statement's procedural history, the Commission has repeatedly stated that ''it cannot determine a project's incremental physical impacts on the environment caused by GHG emissions,'' [52] and CEQ has made similar statements.[53] Nothing in the Interim Policy Statement suggests this has changed nor has any new reasoning been offered to explain how we can better determine a quantifiable connection between the two.

23. The chain of causation is too attenuated for the cause and effect in this case to be considered to have a ''reasonably close causal relationship.'' The reasoning goes as follows: ''Changes to water resources, agriculture, ecosystems, human health, and ocean systems'' occurring throughout the world result from global atmospheric changes that themselves result from the warming that itself results from increases in the world-wide concentration of GHGs that enter the atmosphere as the emissions released by using natural gas, that in the case of end uses (that is, not pipeline operational uses), results from the transportation of natural gas. The logical sequence is clear, but the causation is quite attenuated. And this attenuation cannot be shortened through the ploy of employing GHG emissions as a proxy for climate change.

B. Consideration of Effects on Climate Change From Non-Jurisdictional Entities Violates the NGA and CEQ Regulations

24. The consideration of effects resulting from the upstream production or downstream use of natural gas violates the NGA and CEQ's regulations.

25. The NGA authorizes the Commission to consider only those factors bearing on the ''public convenience and necessity.'' [54] The phrase ''public convenience and necessity'' is not ''a broad license to promote the general public welfare.'' [55] It does not permit the majority to conjure up its own meanings. As a '''creature of statute,' '' [56] the Commission must ''look to the purposes for which the [Natural Gas Act] was adopted'' to give it content and meaning.[57]

26. As the Court explained in *NAACP* v. *FPC,* ''public convenience and necessity'' means ''a charge to *promote the orderly production of plentiful supplies* of electric energy and natural gas at just and reasonable rates.'' [58] Simply put, the production and use of natural gas were not only presumed but were presumed to be in the public interest. Congress put its thumb on the scale in favor of gas and charged the Commission with ensuring that there would be adequate infrastructure in place to provide an abundant supply of natural gas available at reasonable prices for all Americans to use. The purpose of the NGA is narrow and clear. And it is a mousehole through which the elephant of addressing the climate change impacts of the entire natural-gas industry cannot pass.[59]

27. And while there were ''subsidiary purposes'' for the passage of the Natural Gas Act,[60] addressing the effects of climate change caused by using natural gas could not have been one of them. And even if it were, it is obvious that something that is ''subsidiary'' cannot, definitionally, override that which is primary. The majority cannot flip the NGA's presumptions and consider the use of natural gas as intrinsically harmful, thus requiring mitigation. And it certainly cannot abandon our charge under the NGA to ''*promote* the orderly production of plentiful supplies of . . . natural gas at just and reasonable rates'' [61] by then weighing their determination that natural gas is harmful against the public interest when adjudicating section 3 and section 7 applications. This is directly contrary to the purpose Congress established the Commission to serve and supplants the judgment of Congress with that of the Commission. If that were not reason enough, it also invades jurisdictional territory that the courts have repeatedly held that Congress has reserved to the States.[62]

28. The majority cannot turn to the Supreme Court's holding in *Transco* as authority.[63] In that case, the Court held that the Federal Power Commission lawfully denied a certificate based on two factors: First, that using natural gas to alleviate air pollution from burning coal was an inferior use, and second, the

[51] *Id.* P 28. It is worth recalling that the Court has likened NEPA's ''reasonably close causal relationship'' requirement to the ''familiar doctrine of proximate cause from tort law,'' *Dep't of Transp.* v. *Pub. Citizen,* 541 U.S. 752, 767 (2004) (*Public Citizen*), and that a federal district court has found effects of climate change too attenuated for tort liability under state law. *See Comer* v. *Murphy Oil USA, Inc.,* 839 F. Supp. 2d 849, 868 (S.D. Miss. 2012) (''The assertion that the defendants' emissions combined over a period of decades or centuries with other natural and man-made gases to cause or strengthen a hurricane and damage personal property is precisely the type of remote, improbable, and extraordinary occurrence that is excluded from liability.'').

[52] *See, e.g., Trans-Foreland Pipeline Co. LLC,* 173 FERC ¶ 61,253, at P 31 (2020).

[53] *See* CEQ, *Draft NEPA Guidance on Consideration of the Effects of Climate Change and Greenhouse Gas Emissions,* at P 3 (2010), *https://obamawhitehouse.archives.gov/sites/default/files/microsites/ceq/20100218-nepa-consideration-effects-ghg-draft-guidance.pdf.*

[54] 15 U.S.C. 717f(e).

[55] *NAACP* v. *FPC,* 425 U.S. 662, 669 (1976).

[56] *Atl. City Elec. Co.* v. *FERC,* 295 F.3d 1, 8 (D.C. Cir. 2002) (quoting *Michigan* v. *EPA,* 268 F.3d 1075, 1081 (D.C. Cir. 2001)).

[57] *NAACP* v. *FPC,* 425 U.S. at 669; *see also FPC* v. *Transcon. Gas Pipe Line Corp.,* 365 U.S. 1, 17 (1961) (*Transco*) (''[I]t must be realized that the Commission's powers under § 7 are, by definition, limited.'') (citing H.T. Koplin, *Conservation and Regulation: The Natural Gas Allocation Policy of the Federal Power Commission,* 64 Yale L.J. 840, 862 (1955)).

[58] *NAACP* v. *FPC,* 425 U.S. at 670 (emphasis added) (footnote omitted). As noted by Former Commissioner Bernard L. McNamee, this purpose was affirmed by later acts of Congress. *See Adelphia Gateway, LLC,* 169 FERC ¶ 61,220 (2019) (McNamee, Comm'r, concurring at PP 32–40).

[59] *See Whitman* v. *Am. Trucking Ass'ns, Inc.,* 531 U.S. 457, 468 (2001).

[60] *NAACP* v. *FPC,* 425 U.S. at 670 (''While there are undoubtedly other subsidiary purposes contained in these Acts . . . .'') (footnote omitted); *see also id.* at 670 n.6.

[61] *NAACP* v. *FPC,* 425 U.S. at 670 (emphasis added).

[62] *See Transco,* 365 U.S. at 8 (''However, respondents correctly point out that Congress, in enacting the Natural Gas Act, did not give the Commission comprehensive powers over every incident of gas production, transportation, and sale. Rather, Congress was 'meticulous' only to invest the Commission with authority over certain aspects of this field leaving the residue for state regulation. Therefore, it is necessary to consider with care whether, despite the accepted meaning of the term 'public convenience and necessity,' the Commission has trod on forbidden ground in making its decision.'') (citation omitted); *FPC* v. *Panhandle E. Pipe Line Co.,* 337 U.S. 498, 503 (1949) (''Congress . . . not only prescribed the intended reach of the Commission's power, but also specified the areas into which this power was *not* to extend.''), *accord ExxonMobil Gas Mktg. Co.* v. *FERC,* 297 F.3d 1071, 1076 (D.C. Cir. 2002); *S. Coast Air Quality Mgmt. Dist.* v. *FERC,* 621 F.3d 1085, 1092 (9th Cir. 2010) (''In sum, the history and judicial construction of the Natural Gas Act suggest that all aspects related to the direct consumption of gas—such as passing tariffs that set the quality of gas to be burned by direct end-users—remain within the exclusive purview of the states.''); *Pub. Utils. Comm'n. of Cal.* v. *FERC,* 900 F.2d 269, 277 (D.C. Cir. 1990) (''[T]he state . . . has authority over the gas once it moves beyond the high-pressure mains into the hands of an end user.'').

[63] *See* Interim Policy Statement, 178 FERC ¶ 61,108 at P 104 n.243 (discussing *Transco,* 365 U.S. at 17).

proposal would increase future prices.[64] It does not stand for the proposition that the Commission can consider adverse effects of air pollution, and thus climate change impacts, of using natural gas as the majority implies.[65]

29. Nor is the D.C. Circuit's outlier opinion, *Sabal Trail,* as instructive as the majority seems to believe. It is very much in tension with prevailing Supreme Court precedent in *Public Citizen,* which held that agencies are only obligated to consider environmental effects to which their actions are the proximate cause.[66] *Public Citizen* explained that courts must look to the ''underlying policies or legislative intent'' of an agency's organic statute to determine whether an agency is obligated to consider environmental effects.[67] The D.C. Circuit has also characterized *Public Citizen* as ''explicit'' that an agency is ''not obligated to consider those effects . . . that could only occur after intervening action'' by some other actor ''and that only [that] actor[ ] . . . had the authority to prevent.'' [68] In other words, when any potential effects are the result of the actions of third parties such as retail consumers, upstream production companies, and power generators, who may be several degrees of separation removed from the jurisdictional pipeline, those effects are outside the scope of what the agency must consider.

30. Thus, we should not rest too much weight upon *Sabal Trail.* Not only is the holding narrower than the majority seems to believe and was roundly criticized by the accompanying dissent,[69] its reasoning has since been called into question by another appellate court and I expect it will soon be challenged in the Supreme Court.[70]

31. In sum, environmental effects resulting from the upstream production and downstream use of gas are not factors bearing on the public convenience and necessity under the Natural Gas Act. Further, the CEQ's regulations affirmatively prohibit those effects from being considered in an agency's compliance with NEPA.[71]

C. The Significance Threshold Is Illogical and Violates Regulations

32. In addition, the majority's presumption that project emissions exceeding 100,000 tpy of CO_2e will have a significant effect on the human environment is illogical and inconsistent with CEQ and Commission regulations.

33. The majority offers three irrelevant rationales for this presumption: [72] *first,* the threshold is administratively workable; [73] *second,* other agencies have established thresholds under different statutory schemes that are not based on a project's effect on the climate; [74] and *third,* the threshold will ''capture'' [75] ''99% of GHG emissions from Commission-regulated natural gas projects.'' [76] It is worth noting that according to Commission staff, a 1 million tpy threshold would have covered 98.909% of emissions from natural gas projects authorized from 2017 through 2021, making the unsupported selection of the lower threshold both arbitrary and capricious.

34. The majority also states ''even relatively minor GHG emissions pose a significant threat'' ''[b]ecause of the dire effects at stake.'' [77] This rationale, however, is not supported by the evidence offered. The Commission does not explain how minor GHG emissions could lead to ''dire effects.'' We cannot just assume—this is administrative law—we must show evidence. More importantly, the rationale does not link a proposed project to effects on climate change. And for good reason. As CEQ declared: ''it is not currently useful for the NEPA analysis to attempt to link specific climatological changes, or the environmental impacts thereof, to the particular project or emissions, as such direct linkage is difficult to isolate and to understand.'' [78] The Commission has repeatedly agreed.[79]

35. On top of being illogical, the Interim Policy Statement effectively amends the Commission's NEPA regulations without undergoing notice-and-comment procedures as required by the Administrative Procedure Act.[80] The Interim Policy Statement provides that an EIS will be prepared when the threshold is exceeded at full burn.[81] The Commission's NEPA regulations, however, set forth specific categories of projects where an EA and EIS ''will normally be prepared,'' [82] with no mention of GHG emissions. And in a case where an EA is normally prepared, the Commission ''may in *specific* circumstances''—meaning a case-by-case determination—decide whether to prepare an EIS ''depending on the location or scope of the proposed action, or resources affected.'' [83]

36. Given these fatal flaws, it is no wonder the majority seeks comment ''in particular, on the approach to assessing the significance of the proposed project's contribution to climate change.'' [84]

D. GHG Mitigation

1. Claims of Authority To Mitigate

37. Next, the majority states that the Commission's conditioning power gives it authority to require a pipeline to mitigate GHGs emitted by its operations

[64] *Transco,* 365 U.S. at 4–7. In discussing whether consideration of end use was proper in the context of conservation, the Court also noted, ''[t]he Commission said that it had not been given 'comprehensive' authority to deal with 'the end uses for which natural gas is consumed' and that it would not deny certification on that ground alone.'' *Id.* at 15–16 (discussing F.P.C., The First Five Years Under the Natural Gas Act).

[65] Interim Policy Statement, 178 FERC ¶ 61,108 at P 104. Nor does the Federal Power Commission precedent, which the majority cites, support this proposition. *See Adelphia Gateway, LLC,* 169 FERC ¶ 61,220 (McNamee, Comm'r, concurring at P 29 n.64).

[66] 541 U.S. 752, 767–69.

[67] *Id.* at 767.

[68] *Sierra Club* v. *FERC,* 827 F.3d 36, 49 (D.C. Cir. 2016).

[69] *See* 867 F.3d at 1380 (Brown, J., concurring in part and dissenting in part) (''More significantly, today's opinion completely omits any discussion of the role Florida's state agencies play in the construction and expansion of power plans within the state—a question that should be dispositive.'').

[70] *See Ctr. for Biological Diversity* v. *U.S. Army Corps of Eng's,* 941 F.3d 1288, 1299–1300 (11th Cir. 2019).

[71] 40 CFR. § 1508.1(g)(3) (''An agency's analysis of effects shall be consistent with this paragraph (g).''); *id.* § 1508.1(g)(2) (''A 'but for' causal relationship is insufficient to make an agency responsible for a particular effect under NEPA. Effects should generally not be considered if they are remote in time, geographically remote, or the product of a lengthy causal chain. Effects do not include those effects that the agency has no ability to prevent due to its limited statutory authority or would occur regardless of the proposed action.'').

[72] The relevant question on whether the Commission should prepare an EIS is whether the proposed action ''[i]s *likely* to have significant effects.'' 40 CFR. § 1501.3(a)(3).

[73] Interim Policy Statement, 178 FERC ¶ 61,108 at P 87 (''Establishing such a threshold will provide the Commission a workable and consistent path forward to analyze proposed projects. Further, a numerical threshold is a clear, consistent standard that can be easily understood and applied by the regulated community and interested stakeholders.'').

[74] *Id.* PP 90–95.

[75] *Id.* P 80.

[76] *Id.* P 95.

[77] *Id.* P 88.

[78] CEQ, *Draft NEPA Guidance on Consideration of the Effects of Climate Change and Greenhouse Gas Emissions,* at P 3 (2010), *https://obamawhitehouse.archives.gov/sites/default/files/microsites/ceq/20100218-nepa-consideration-effects-ghg-draft-guidance.pdf.*

[79] *See supra* P 22 n.52.

[80] 5 U.S.C. 553; *see also Shell Offshore Inc.* v. *Babbitt,* 238 F.3d 622, 629 (5th Cir. 2001) (''[T]he APA requires an agency to provide an opportunity for notice and comment before substantially altering a well established regulatory interpretation.'').

[81] Interim Policy Statement, 178 FERC ¶ 61,108 at P 3.

[82] 18 CFR 380.5–380.6; *see also* Commissioner Danly November 29, 2021 Response to Senator Barrasso September 15, 2021 Letter, Docket Nos. CP20–27–000, et al., at 12, Fig. 2 (Accession No. 20211214–4001).

[83] 18 CFR. § 380.5(a) (emphasis added).

[84] Interim Policy Statement, 178 FERC ¶ 61,108 at P 1; *see also id.* P 81.

and reasonably foreseeable indirect effects.[85] The majority is incorrect.

38. As commenters explain,[86] without any response from the majority, the Supreme Court has held that ''Congress *delegated to EPA the decision whether and how* to regulate carbon-dioxide emissions'' from stationary sources.[87] By claiming the authority to mitigate these same emissions as part of the Natural Gas Act certification process, the majority are attempting to usurp the statutory authority the Court found Congress has delegated to EPA and which cannot be reassigned absent Congressional action.[88] If the EPA were to regulate GHG emissions from pipeline facilities, which it is contemplating doing,[89] the Commission could possibly require project sponsors to comply with those requirements. But one would not say that the Commission could on its own require project sponsors to mitigate, for example, sulfur dioxide because the EPA had chosen not to do so, or the Commission believed its regulations to be inadequate.

39. The Commission's conditioning authority also does not allow the Commission to mitigate GHG emissions from upstream or downstream users. The commenters make the point,[90] also sidestepped by the majority,[91] that the Commission's conditioning authority cannot be used to indirectly do what the Commission cannot do directly. That is, the Commission may not indirectly rely on the Natural Gas Act to impose conditions on non-jurisdictional entities.[92]

40. Further, the Commission's conditioning authority cannot be used in ways that would be directly contrary to the purpose of the NGA—to promote the production of plentiful supplies of natural gas at reasonable rates. The majority may not rewrite the purpose of the NGA to instead charge the Commission with the mission of discouraging the production and use of natural gas.

2. Encouraging Project Sponsors To Mitigate GHG Emissions

41. The Interim Policy Statement's encouragement that project sponsors mitigate GHG emissions is in practical effect a requirement,[93] and is not in accordance with the NGA. The NGA only empowers the Commission to impose terms and conditions in two contexts: (1) Pursuant to NGA section 3 when it finds such terms ''necessary or appropriate'' [94] to ensure a proposed export or import facility is not inconsistent with the public interest, and (2) pursuant to NGA section 7, when it finds such terms are ''reasonable'' and ''require[d]'' by the ''public convenience and necessity.'' [95] Only after making these findings, can the Commission require mitigation.

42. The majority does not attempt to make either of these required findings. It simply leaps from stating that the Commission has the discretion to mitigate GHG emissions to ''expecting'' applicants to mitigate their emissions. This amounts to no more than ''because I said so.'' More is required.[96]

III. Intent of the Interim Policy Statement

43. One cannot help but notice the lengths to which the majority goes in order to make this policy statement ''non-binding,'' using words like ''propose,'' ''wish,'' ''opportunity,'' and even insisting, in response to this dissent, that it does not ''impose[] an obligation, deny[y] a right, or fix[ ] some legal relationship,'' [97] for what appears to have no purpose other than to avoid notice-and-comment procedures (that is, public participation) and judicial review. For without judicial review as a check, there is no need to engage in reasoned decision-making or be limited by the purposes of the statute.

44. In this way, the majority appears to believe it can do whatever it wants. Arrogate to the Commission authority it does not have. Disregard regulations that are currently in force. Flout prevailing Supreme Court precedent. Make threats to manipulate project sponsors into ''voluntarily'' subjecting themselves to unnecessary processes and proposing mitigation of the ''harm'' resulting from the proposed use or transportation of natural gas to provide a service that Congress declared to be in the public interest.

45. If an entity requests rehearing of today's policy statement, the majority can simply reject it—either by notice or order (without any discussion of the merits)—stating that rehearing does not lie for policy statements. And if a petition for review follows, the Commission can argue that the Interim Policy Statement is not subject to review because it is not a substantive rule. And if some project sponsor suggests it is proposing mitigation under duress and it reserves the right to challenge the mitigation requirement in court, the Commission can argue the project sponsor cannot be aggrieved because it voluntarily proposed the mitigation and accepted the certificate and its terms.[98]

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[85] *Id.* P 106.

[86] *Id.* P 103 (''For example, commenters argue that Congress has delegated authority to the EPA and state agencies to regulate GHGs under the [Clean Air Act].'') (citation omitted); *see also id.* P 103 n.238 (citing American Public Gas Association Technical Conference Comments at 5–6; EEI Technical Conference Comments at 9–10; Enbridge Technical Conference Comments at 23–24; TC Energy Technical Conference Comments at 9–10).

[87] *Am. Elec. Power Co., Inc.* v. *Connecticut,* 564 U.S. 410, 426 (2011) (emphasis added) (discussing in the context of power plants but would apply equally here); *see also Adelphia Gateway, LLC,* 169 FERC ¶ 61,220 (2019) (McNamee, Comm'r, concurring at PP 52–61).

[88] Whether EPA or CEQ have raised ''objections'' is not relevant. *See* Interim Policy Statement, 178 FERC ¶ 61,108 at P 85.

[89] Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review, 86 FR 63110 (Nov. 15, 2021). Commenters make the point, to which the majority does not respond, that the Commission should defer to EPA's rulemaking. *See, e.g.,* EEI Technical Conference Comments at 11 n.29.

[90] *See id.* P 102.

[91] *See id.* P 105 (''we recognize, as many commenters assert, that the Commission does not have the statutory authority to impose conditions on downstream users or other entities outside the Commission's jurisdiction . . . rather, the Commission encourages each *project sponsor* to propose measures . . . .'') (emphasis in original).

[92] *See Altamont Gas Transmission, Co.* v. *FERC,* 92 F.3d 1239, 1248 (D.C. Cir. 1996) (''Although the Commission ordinarily has the authority to consider a matter beyond its jurisdiction if the matter affects jurisdictional sales—at least if there would otherwise be a regulatory gap—here there is no such gap but, on the contrary, an express congressional reservation of jurisdiction to another body.''); *Am. Gas Ass'n* v. *FERC,* 912 F.2d 1496, 1510 (''[T]he Commission may not use its § 7 conditioning power to do indirectly . . . things that it cannot do at all.''); *see also Calpine Corp.,* 171 FERC ¶ 61,035 (2020) (Glick, Comm'r, dissenting at P 7) (''In recent years, the Supreme Court has repeatedly admonished both the Commission and the states that the FPA prohibits actions that 'aim at' or 'target' the other sovereign's exclusive jurisdiction.'').

[93] *See* Interim Policy Statement, 178 FERC ¶ 61,108 at P 107 (''[T]he Commission plans to *evaluate* proposed mitigation plans on a case-by-case basis . . . .'') (emphasis added); *id.* P 131 (''the Commission will then consider the project's impact on climate change, including the project sponsor's mitigation proposal to reduce direct GHG emissions and, to the extent practicable, to reduce any reasonably foreseeable project emissions . . . .'').

[94] 15 U.S.C. 717b(a).

[95] *Id.* § 717f(e).

[96] *See also Michigan* v. *EPA,* 576 U.S. 743, 752 (2015) (explaining that the phrase ''appropriate and necessary'' in the Clean Air Act ''requires at least some attention to cost''); *id.* (''One would not say that it is even rational, never mind 'appropriate,' to impose billions of dollars in economic costs in return for a few dollars in health or environmental benefits.''); *id.* 752–53 (''Agencies have long treated cost as a centrally relevant factor when deciding to regulate.'').

[97] *See* Interim Policy Statement, 178 FERC ¶ 61,108 at P 5, n.6.

[98] I recognize that project sponsors have previously reserved their right to appeal when accepting a certificate, which the Commission has not opposed. However, in the context of hydropower cases, the Commission has taken a different approach. *See Rivers Elec. Co., Inc.,* 178 FERC ¶ 61,027, P 9 n.25 (2022) (Danly, Comm'r, concurring in part and dissenting in part) (''If the transferee accepts this order, it is thereby agreeing to the new condition. It may decline to do so if it does not wish to accept the condition.'').

46. This is not good governance. Nor do I think it likely the majority will be successful. In my view, the Interim Policy Statement is a substantive, binding rule that is subject to judicial review. Despite the Interim Policy Statement's hortatory verbiage, ''there are sinews of command beneath the velvet words.'' [99] Perhaps the best illustration of this is the list of six items project sponsors are ''encouraged'' to include in their applications in light of the new policy statement.[100] This list includes estimates of the proposal's cumulative direct and indirect emissions and what mitigation measures the project sponsors propose, as well as a ''detailed cost estimate'' of the proposed mitigation and a ''proposal for recovering those costs.'' [101]

47. This is not encouragement. This is command. The project sponsors will know that if they want to win approval for their projects this is what they must do [102] even if they must guess at what will ultimately satisfy the Commission's new policies. Certainly, no project sponsor will believe that mitigation is optional or that submitting an application exceeding the Interim Policy Statement's 100,000 tpy threshold without a mitigation proposal would be anything other than a waste of time and money. And what other reason could the majority have for delaying action on those projects that have effectively twice completed the NEPA process? [103]

48. There is, however, no ambiguity in this: The Commission has changed the requirements for obtaining project approvals and applicants need to come before the Commission acknowledging that it is so.[104] The effect of this change is immediate. Even applicants whose projects have been pending with the Commission for upwards of two years will be subjected to the Commission's new rules.

49. The interim policy statement also determines that emissions over 100,000 tpy of CO_2e are significant (and emissions which fall below, not significant), a determination from which legal consequences flow under NEPA.[105] And it binds Commission staff.[106] While I acknowledge the courts have given the Commission's characterization of issuances deference in the past,[107] whether a court will do so in in this instance is far from certain.

For these reasons, I respectfully dissent.

James P. Danly, *Commissioner*

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviews

Docket No. PL21–3–000

CHRISTIE, Commissioner, *dissenting*:

1. Last year I voted to re-issue this Notice of Inquiry (NOI) for another round of comment [1] because I believed—and still do—that there are reasonable updates to the 1999 policy statement that would be worthwhile.[2] For example, I agree that precedent agreements between corporate affiliates, because of the obvious potential for self-dealing, should not, in and of themselves and without additional evidence, prove need.[3] I also believe that the Commission's procedures for guaranteeing due process to affected property owners, which, as Justice Frankfurter taught, consists of the two core elements of notice and opportunity to be heard,[4] could be strengthened.

2. Unfortunately, the new certificate policy the majority approves today [5] does not represent a reasonable update to the 1999 statement. On the contrary, what the majority does today is arrogate to itself the power to rewrite both the Natural Gas Act (NGA) [6] and the National Environmental Policy Act (NEPA),[7] a power that *only* the elected legislators in Congress can exercise. Today's action represents a truly radical departure from decades of Commission practice and precedent implementing the NGA.

3. The fundamental changes the majority imposes today to the Commission's procedures governing certificate applications are wrong as both law *and* policy. They clearly exceed the Commission's legal authority under the NGA and NEPA and, in so doing, violate the United States Supreme Court's major questions doctrine.[8]

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[99] *Am. Trucking Ass'n, Inc.* v. *I. C. C.,* 659 F.2d 452, 463 (5th Cir. 1981), *opinion clarified on other grounds,* 666 F.2d 167 (5th Cir. 1982) (*Am. Trucking*).

[100] Interim Policy Statement, 178 FERC ¶ 61,108 at P 130.

[101] *Id.*

[102] *Cf. Am. Trucking,* 659 F.2d at 463–464 (''The manner of dealing with applicants who do not follow what is declared to be the 'normal' course demonstrates graphically that the carrier who does not conform will incur both delay and potentially vast litigation expense'').

[103] For example, on August 24, 2020, Commission staff issued an EA for Tennessee Gas Pipeline Company, LLC et al.'s Evangeline Pass Expansion Project which concluded, ''[w]e recommend that the Commission Order contain a finding of no significant impact.'' Commission Staff, Environmental Assessment for Tenn. Gas Pipeline Co., LLC et al.'s Evangeline Pass Expansion Project, Docket Nos. CP20–50–000 et al., at 168 (Aug. 24, 2020). Despite this recommendation, which would have normally been adopted by the Commission, Commission staff, at the direction of the Chairman, issued supplemental Draft and Final Environmental Impact Statements. *See* Commission Staff, Final Environmental Impact Statement for Tenn. Gas Pipeline Co., LLC et al.'s Evangeline Pass Expansion Project, Docket Nos. CP20–50–000 et al. (Oct. 8, 2021); Commission Staff, Draft Environmental Impact Statement for Tenn. Gas Pipeline Co., LLC et al.'s Evangeline Pass Expansion Project, Docket Nos. CP20–50–000 et al. (July 16, 2021).

[104] *See Brown Exp., Inc.* v. *United States,* 607 F.2d 695, 701 (5th Cir. 1979) (''An announcement stating a change in the method by which an agency will grant substantive rights is not a 'general statement of policy.' '').

[105] *See Nat. Res. Def. Council, Inc.* v. *NRC,* 539 F.2d 824 (2d Cir. 1976) (''Further, it is clear that NEPA legal consequences flow from that decision since the order below sets forth rules concerning how the agency will comply with the environmental laws.''), *cert. granted,* 430 U.S. 944 (1977), *judgment vacated and case remanded for consideration of mootness,* 434 U.S. 1030 (1978).

[106] Interim Policy Statement, 178 FERC ¶ 61,108 at P 3 (''For purposes of assessing the appropriate level of NEPA review, Commission staff *will apply* the 100% utilization or 'full burn' rate for the proposed project's emissions to determine whether to prepare an Environmental Impact Statement (EIS) or an environmental assessment (EA). Commission staff *will proceed* with the preparation of an EIS, if the proposed project may result in 100,000 metric tons per year of CO_2e or more.'') (emphasis added); *see also Tex.* v. *Equal Emp't Opportunity Comm'n,* 933 F.3d 433, 441–44 (5th Cir. 2019); *id.* at 442 (''That the agency's action binds its staff . . . demonstrates that legal consequences flow from it . . . .'').

[107] *See, e.g., Interstate Nat. Gas Ass'n of Am.* v. *FERC,* 285 F.3d 18, 59 (D.C. Cir. 2002).

[1] *Certification of New Interstate Natural Gas Facilities,* 174 FERC ¶ 61,125 (2021).

[2] I also voted for the 2021 changes to the procedures for imposing a stay on the certificate and use of eminent domain during periods when petitions for reconsideration and appeals were pending. *Limiting Authorizations to Proceed with Construction Activities Pending Rehearing,* Order No. 871–B, 175 FERC ¶ 61,098 (2021). These changes were largely opposed by the pipeline industry, but in my opinion represented a reasonable approach to bring more certainty and fairness to our procedures for handling petitions for reconsideration and the use of eminent domain during the pending period.

[3] *See Certification of New Interstate Natural Gas Facilities,* 178 FERC ¶ 61,107 (2022) (Certificate Policy Statement) at PP 53–57. The need for enhanced scrutiny of contracts among corporate affiliates is recognized in state utility regulation. *See, e.g.,* Va. Code § 56–76 *et seq.,* known as the ''Virginia Affiliates Act.''

[4] *See Joint Anti-Fascist Refugee Comm.* v. *McGrath,* 341 U.S. 123 (1951) (Frankfurter, J., concurring).

[5] *Certificate Policy Statement; Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviews,* 178 FERC ¶ 61,108 (2022) (GHG Policy Statement). Although styled as an ''interim'' policy statement, it goes into effect immediately and will inflict major new costs and uncertainties on certificate applications that have been pending with the Commission for months or years. *Id.* at PP 1, 130. I consider both policy statements to be indivisible parts of a new policy governing certificates. Thus, my statement applies to both, and I am entering this dissent in both dockets.

[6] 15 U.S.C. 717 *et seq. See, e.g.,* Certificate Policy Statement at P 62.

[7] 42 U.S.C. 4321 *et seq.*

[8] *Nat'l Fed'n of Indep. Bus.* v. *Dep't of Labor, OSHA,* 142 S. Ct. 661 (2022) (*NFIB*); *Alabama Ass'n. of Realtors* v. *Dep't of Health and Human Services,* 141 S. Ct. 2485 (2021) (*Ala. Ass'n.*); *Util.*

4. The new policy also threatens to do fundamental damage to the nation's energy security by making it even more costly and difficult to build the infrastructure that will be critically needed to maintain reliable power service to consumers as the generation mix changes to incorporate lower carbon-emitting resources such as wind and solar. And as recent events in Europe and Ukraine graphically illustrate, America's energy security is an inextricable part of our national security.[9] The majority's proposal on GHG impacts is obviously motivated by a desire to address climate change, but will actually make it *more* difficult to expand the deployment of low or no-carbon resources, because it will make it more difficult to build or maintain the gas infrastructure essential to keep the lights on as more intermittent resources are deployed.[10] In addition to the essential need for natural gas to keep our power supply reliable, a dependable and adequate natural gas supply is critically needed for our manufacturing industries and the millions of jobs for American workers in those industries.[11]

5. And while I agree that reducing carbon emissions that impact the climate is a compelling policy goal,[12] this Commission—an administrative agency that only has the powers Congress has explicitly delegated to it—has no open-ended license under the U.S. Constitution or the NGA to address climate change or any other problem the majority may wish to address.

I. Legal Questions

6. The long-running controversy over the role and use of GHG analyses in natural-gas facility certificate cases raises two central questions of law and a third that flows from the first two:

7. *First,* whether the Commission can use a GHG analysis to *reject* a certificate—or attach conditions (including the use of coercive deficiency letters) amounting to a *de facto* rejection by rendering the project unfeasible—based on the NGA's ''public convenience and necessity'' [13] provision, even when the evidence otherwise supports a finding under the NGA that the facility is both ''convenient and necessary'' to provide the public with essential gas supply? Today's orders assume that the answer is yes.[14]

8. *Second,* whether the Commission can, or is required to, *reject* a certificate—or attach conditions (including the use of coercive deficiency letters) amounting to a *de facto* rejection by rendering the project unfeasible—based on a GHG analysis conducted as part of an environmental review under NEPA,[15] when the certificate application would otherwise be approved as both ''convenient and necessary'' under the NGA? Again, today's orders assume the answer is yes.[16]

9. *Third,* which, if any, conditions related to a GHG analysis may be attached to a certificate under NGA § 7(e),[17] or demanded through the use of deficiency letters? Today's orders seem to assume that there is essentially no limit to the conditions the Commission can impose.[18]

10. As discussed below, today's orders get each of these questions wrong.

A. The ''Public Interest'' in the Natural Gas Act

11. The starting point for answering all of these questions must be what ''public interest'' analysis the NGA empowers the Commission to make. Can the Commission's statutory responsibility to determine the ''public convenience and necessity'' be used to *reject* a project otherwise needed by the public based *solely* on adverse impacts to ''environmental interests'' [19] (a term today's orders leave undefined but which could be reduced to an unspecified level of GHG emissions) as the Commission today asserts? [20] Or can the Commission reject a project *solely* due to ''the interests of landowners and environmental justice communities'' as the majority also asserts? [21] The short

Air Regulatory Grp. v. *EPA,* 573 U.S. 302 (2014) (*UARG*); *FDA* v. *Brown & Williamson Tobacco Corp.,* 529 U.S. 120 (2000) (*Brown & Williamson*). I discuss this doctrine in Section I.B., *infra.*

[9] *See, e.g.,* Natasha Bertrand, *US putting together 'global' strategy to increase gas production if Russia invades Ukraine, officials say,* CNN (Jan. 24, 2022), available at *https://www.cnn.com/2022/01/23/politics/us-gas-production-strategy-russia-ukraine-invasion/index.html https://www.cnn.com/2022/01/23/politics/us-gas-production-strategy-russia-ukraine-invasion/index.html*; *and,* Stephen Stapczynski and Sergio Chapa, *U.S. Became World's Top LNG Exporter, Spurred by Europe Crisis,* Bloomberg (Jan 4, 2022), available at *https://www.bloomberg.com/news/articles/2022-01-04/u-s-lng-exports-top-rivals-for-first-time-on-shale-revolution.*

[10] *See NERC December 2021 Long-Term Reliability Assessment,* at 5 (Dec. 2021) (''Natural gas is the reliability 'fuel that keeps the lights on,' and *natural gas policy must reflect this reality.*'') (emphasis added) (available at *https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_LTRA_2021.pdf*); *id.* at 6 (''Sufficient flexible [dispatchable] resources are needed to support increasing levels of variable [intermittent] generation *uncertainty.* Until storage technology is fully developed and deployed at scale, (which cannot be presumed to occur within the time horizon of this LTRA), natural gas-fired generation will remain a necessary balancing resource to provide increasing flexibility needs.'') (emphasis added); *NERC 2020 Long-Term Reliability Assessment, December 2020,* at 7 (Dec. 2020) (''As *more solar and wind* generation is added, *additional* flexible resources are needed to offset their resources' variability. This is placing *more* operating pressure on those (*typically natural gas*) resources and makes them *the key to* securing [Bulk Power System] reliability.'' (emphases added) (available at *https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_LTRA_2020.pdf*).

[11] Letter from Industrial Energy Consumers of America to Sen. Joe Manchin III, Sen. John Barrasso, Sen. Frank Pallone, Jr., Sen. Cathy McMorris Rodgers, *Lack of Interstate Natural Gas Pipeline Capacity Threatens Manufacturing Operations, Investments, Jobs, and Supply Chain* (Feb. 9, 2022).

[12] Since we are regulators with an advisory role, not Article III judges, my personal view is that the most politically realistic and sustainable way to reduce carbon emissions significantly without threatening the reliability of our grid and punishing tens of millions of American workers and consumers with lost jobs and skyrocketing energy prices (*see, e.g.,* Europe) is by massive *public* investment in the research, development and deployment of the technologies that can achieve that goal economically and effectively. *See, e.g.,* Press Release, Bipartisan Policy Center, *New AEIC Report Recommends DOE Combine Loan and Demonstration Offices, Jumpstart American Clean Energy Deployment* (Jan. 21, 2022), available at *https://bipartisanpolicy.org/press-release/new-aeic-report-recommends-doe-combine-loan-and-demonstration-offices-jumpstart-american-clean-energy-deployment/* (citing to American Energy Innovation Council, Scaling Innovation: A Proposed Framework for Scaling Energy Demonstrations and Early Deployment (Jan. 2022)). Once developed to commercial scale, marketable technologies will roll out globally on their own, without the market-distorting mandates and subsidies that only enrich rent-seekers and impoverish consumers. More specifically with regard to natural gas facilities, there is also the potential with available technology to reduce direct methane emissions from the existing oil and gas system within existing legal authority. And such initiatives do not obviate the need for near-term mitigation measures, such as preparing the electric grid to maintain power during extreme weather events.

[13] 15 U.S.C. 717f.

[14] Certificate Policy Statement at P 62; GHG Policy Statement at PP 4, 99.

[15] *See* Certificate Policy Statement at P 6, GHG Policy Statement at P 27.

[16] Certificate Policy Statement at P 62; GHG Policy Statement at PP 27, 99.

[17] 15 U.S.C. 717f(e).

[18] *See* Certificate Policy Statement at P 74; GHG Policy Statement at P 99.

[19] Certificate Policy Statement at P 62.

[20] *Id.*

[21] *Id.* The notion that a certificate could be rejected based solely on the interests of ''landowners'' or ''environmental justice communities'' (a term the majority leaves largely undefined) illustrates the radical divergence from both law and long Commission practice of what the Commission purports to do today. While a regulatory commission should always be mindful of and sensitive to the impacts on affected property owners and communities in every case involving the potential use of eminent domain—particularly on the question of the project's route or siting—and should generally seek wherever possible to reduce or minimize such impacts, specific measures to reduce or minimize such impacts are governed by the statutes applicable to each proceeding. Under both the Constitution and the NGA, if a project is needed for a public purpose, then landowners are made whole through just compensation. U.S. Const. amend. V. Questions of compensation are

Continued

answer is no. There is nothing in the text or history of the NGA to support such a claim about, or application of, the Commission's public interest responsibilities under the NGA.

12. As discussed herein, any claim that a ''public interest'' analysis under the NGA gives FERC the authority to reject a project based solely on GHG emissions is specious and ahistorical. The history of the NGA indicates that Congress intended the statute to *promote* the development of pipelines and other natural-gas facilities. As one federal judge has observed, ''nothing in the text of [the NGA] . . . empowers the Commission to entirely deny the construction of an export terminal or the issuance of a certificate based solely on an adverse indirect environmental effect regulated by another agency.'' [22]

13. I recognize that the Commission and the courts have construed ''public convenience and necessity'' to require the Commission to consider ''all factors bearing on the public interest,'' [23] but the Supreme Court has been very clear that any public interest analysis undertaken in the course of determining ''public necessity and convenience'' is constrained by the purposes and limitations of the statute.[24] It is not an open-ended license to use this Commission's certificating authority to promote whatever a majority of Commissioners from time to time may happen to view as the ''public interest.''

14. With regard to GHG emissions that may be associated with upstream production activities or downstream distribution to, or consumption by, retail consumers, the Commission simply has *no* authority over such activities. That authority was left to the states.[25] Congress intended for the NGA to fill ''a regulatory gap'' over the ''*interstate* shipment and sale of gas.'' [26]

15. Even if the Commission were to undertake some estimate of the indirect GHG impacts of third-party activities that it has no authority to regulate, it does not follow that the Commission can then reject a certificate based on those impacts.[27] To do so would be to ignore the undeniable purpose of the NGA, which was enacted to facilitate the development and bringing to market of natural gas resources. The Commission's role under the NGA is to *promote* the development of the nation's natural gas resources and to safeguard the interests of ratepayers.[28] Any consideration of environmental impacts, while important, is necessarily subsidiary to that role.[29]

16. It is a truism that FERC is an economic regulator, *not* an environmental regulator. This Commission was not given certification authority in order to advance environmental goals; [30] it was given certification authority to *ensure the development* of natural gas resources and their availability—this includes pipeline infrastructure—at just and reasonable rates. To construe the Commission's analysis of the public convenience and necessity as a license to *prohibit* the development of *needed* natural gas resources using the public interest language in the NGA would be to negate the very legislative purpose of the statute.[31] Put another way, the premise of the NGA is that the production and transportation of natural gas for ultimate consumption by end users is socially valuable and should be promoted, not that the use of natural gas (which inevitably results in some discharge of GHGs) is inherently destructive and must be curbed, mitigated, or discouraged.

17. To those who say ''well, times have changed and Congress was not

adjudicated in state or federal court—not by this Commission. NGA § 7(h), 15 U.S.C. 717f(h). Bringing such extra-jurisdictional considerations into the Commission's public convenience and necessity analyses under NGA § 7 is just another expansion of Commission power far beyond anything justified in law.

[22] *Sabal Trail,* 867 F.3d 1357, 1382 (DC Cir. 2017) (*Sabal Trail*) (Brown, J., dissenting in part and concurring in part).

[23] *Atl. Refining Co.* v. *Pub. Serv. Comm'n of State of N.Y.,* 360 U.S. 378, 391 (1959) (''This is not to say that rates are the only factor bearing on the public convenience and necessity, for § 7(e) requires the Commission to evaluate all factors bearing on the public interest.''); *N.C. Gas Corp.,* 10 FPC 469, 476 (1950) (''Public convenience and necessity comprehends a question of the public interest. Or, stated another way: Is the proposal conducive to the public welfare? Is it reasonably required to promote the accommodation of the public? The public interest we referred to has many facets. *To the limit of our authority under the law* our responsibility encompasses them all'') (emphasis added) (quoting *Commonwealth Nat. Gas Corp.,* 9 FPC 70 (1950)).

[24] *NAACP* v. *FPC,* 425 U.S. 662, 669 (1976) (''This Court's cases have consistently held that the use of the words 'public interest' in a regulatory statute is not a broad license to promote the general public welfare. Rather, the words take meaning from the purposes of the regulatory legislation.''). Where the Supreme Court has permitted the Commission to consider end use, those considerations have related directly to its core statutory responsibilities under the NGA, namely, ensuring adequate supply at reasonable rates. *See FPC* v. *Transcontinental Pipe Line Co.,* 365 U.S. 1 (1961) (permitting the Commission to consider whether the end use was ''wasteful'' of limited gas resources).

[25] NGA § 1(b), 15 U.S.C. 717(b).

[26] *ONEOK, Inc.* v. *Learjet, Inc.,* 575 U.S. 373, 378 (2015) (emphasis added); *see also, FPC* v. *Panhandle E. Pipe Line Co.,* 337 U.S. 498, 502–503 (1949) (''suffice it to say that the Natural Gas Act did not envisage federal regulation of the entire natural-gas field to the limit of constitutional power. Rather it contemplated the exercise of federal power as specified in the Act, particularly in that interstate segment which states were powerless to regulate because of the Commerce Clause of the Federal Constitution. The jurisdiction of the Federal Power Commission was to *complement* that of the state regulatory bodies.'') (emphasis added) (footnotes omitted); *Myersville Citizens for a Rural Cmty., Inc.* v. *FERC,* 783 F.3d 1301, 1315 (D.C. Cir. 2015) (''the Commission's power to preempt state and local law is circumscribed by the Natural Gas Act's savings clause, which saves from preemption the 'rights of States' under the Clean Air Act and two other statutes.'') (citations omitted).

[27] *Ofc. of Consumers' Counsel* v. *FERC,* 655 F.2d 1132, 1142 (D.C. Cir. 1980) (''We bear in mind the caveat that an agency may not bootstrap itself into an area in which it has no jurisdiction by violating its statutory mandate.'') (citations, quotation marks, ellipsis omitted).

[28] *City of Clarksville, Tenn.* v. *FERC,* 888 F.3d 477, 479 (D.C. Cir. 2018) (*City of Clarksville*) (''Congress enacted the Natural Gas Act with the principal aim of 'encouraging the orderly development of plentiful supplies of natural gas at reasonable prices,' and 'protect[ing] consumers against exploitation at the hands of natural gas companies,'') (citations omitted); *see also* Alexandra B. Klass & Danielle Meinhardt, *Transporting Oil and Gas: U.S. Infrastructure Challenges,* 100 Iowa L. Rev. 947, 990–99 (Mar. 2015).

[29] *City of Clarksville,* 888 F.3d. at 479. (''Along with those main objectives, there are also several 'subsidiary purposes including conservation, environmental, and antitrust issues.' '') (quoting *Pub. Utils. Comm'n of Cal.* v. *FERC,* 900 F.2d 269, 281 (D.C. Cir. 1990)) (cleaned up). This does not mean that the Commission cannot properly impose conditions or mitigation to address environmental impacts *directly* related to the jurisdictional project; it merely recognizes that the Commission's main objective is to facilitate the expansion and preservation of natural gas service at just and reasonable rates and that doing so will inevitably entail some measure of environmental costs. These can sometimes be reduced or minimized, but never completely eliminated. Every project ever built has some degree of environmental impacts. The standard under the NGA cannot be zero impacts.

[30] Congress could easily have conferred that authority if it had wanted to. There is no indication that Congress intended or expected FERC to perform any environmental regulation when it created the agency. *See generally,* Clark Byse, *The Department of Energy Organization Act: Structure and Procedure,* 30 Admin. L. Rev. 193 (1978). This Commission's predecessor, the Federal Power Commission, existed for decades before EPA was created in 1970. And Congress began enacting legislation bearing on emissions decades before then as well. *See* Christopher D. Ahlers, *Origins of the Clean Air Act: A New Interpretation,* 45 Envtl. L. 75 (2015). Nor were the effects of GHG emissions unknown at that time. *See* Danny Lewis, *Scientists Have Been Talking About Greenhouse Gases for 191 Years, Smithsonian Magazine* (Aug. 3, 2015) (citing to Nobel Laureate Svante Arrhenius' 1896 paper ''On the Influence of Carbonic Acid in the Air upon the Temperature of the Ground'').

[31] *See United States* v. *Pub. Utils. Comm'n of Cal.,* 345 U.S. 295, 315 (1953) (explaining that recourse to legislative history is appropriate where ''the literal words would bring about an end completely at variance with the purpose of the statute.'') (citations omitted). The present circumstance is very nearly the opposite: We are urged to pursue ''an end completely at variance with the purpose of the statute'' and for which there is *no* support in the ''literal words.'' *Id.; see also Ctr. for Biological Diversity* v. *U.S. Army Corps of Eng'rs,* 941 F.3d 1288, 1299 (11th Cir. 2019) (*Ctr. for Biological Diversity*) (''Regulations cannot contradict their animating statutes or manufacture additional agency power.'') (citing *Brown & Williamson,* 529 U.S. at 125–26).

thinking about climate change when it passed the NGA,'' here's an inconvenient truth: *If Congress wants to change the Commission's mission under the NGA it has that power; FERC does not.*

18. Any authority to perform a public interest analysis under the NGA must be construed with reference to the animating purposes of the Act. It is not a free pass to pursue any policy objective—however important or compelling it may be—that is related in some way to jurisdictional facilities.[32] As the Court of Appeals for the D.C. Circuit has explained:

Any such authority to consider all factors bearing on ''the public interest'' must take into account what ''the public interest'' means *in the context of the Natural Gas Act.* FERC's authority to consider all factors bearing on the public interest when issuing certificates means authority to look into those factors which reasonably relate to the purposes for which FERC was given certification authority. *It does not imply authority to issue orders regarding any circumstance in which FERC's regulatory tools might be useful.*[33]

19. Whereas the Commission's role in certificating facilities under the NGA is explicit,[34] any purported authority for the Commission to regulate GHGs is conspicuously absent. The claim that the Commission can reject a needed facility due to GHG emissions using the public interest component in the NGA seems to be based on the following logic: To ascertain whether a facility serves the public convenience and necessity, the Commission must first determine whether the facility is in ''the public interest,'' which in turn entails considering factors such as ''environmental'' impacts from construction and operation of the proposed facility, as well as estimating and quantifying greenhouse gas emissions from the proposed facility, including both upstream emissions associated with gathering the gas and downstream emissions associated with its use, which the Commission is somehow empowered to deem to be too excessive to grant the certificate.[35] Suffice it to say, this tortured logic breaks apart in multiple places.[36]

20. Surely if Congress had any intention that GHG analyses should (or could) be the basis for rejecting certification of natural-gas facilities, it would have given the Commission clear statutory guidance as to when to reject on that basis. Instead, those who want the Commission to conjure up a standard on GHG emissions for deciding how much is *too* much are advocating for a standard resembling Justice Stewart's famous method for identifying obscenity, to wit, that he could not describe it, but ''I know it when I see it.'' [37] And the Supreme Court eventually had the good sense to abandon that ocular standard.[38]

21. Using GHG analysis to reject a certificate implicates an important judicial doctrine used in evaluating just how far an administrative agency can go in essentially *creating* public policy without clear textual support in statutory law. Now let's turn to that doctrine in this context.

B. The Major Questions Doctrine and the NGA

22. The Commission's actions today implicate the ''major questions doctrine,'' which Justice Gorsuch has recently explained as follows:

The federal government's powers . . . are not general, but limited and divided. Not only must the federal government properly invoke a constitutionally enumerated source of authority to regulate in this area or any other, it must also act consistently with the Constitution's separation of powers. And when it comes to that obligation, this Court has established at least one firm rule: ''We expect Congress to speak clearly'' if it wishes to assign to an executive agency decisions ''of vast economic and political significance.'' We sometimes call this the major questions doctrine.[39]

In short, the major questions doctrine presumes that Congress reserves major issues to itself, so unless a grant of authority to address a major issue is explicit in a statute administered by an agency, it cannot be inferred to have been granted.

23. Whether this Commission can reject a certificate based on a GHG analysis—a certificate that otherwise would be approved under the NGA—is undeniably a major question of public policy. It will have enormous implications for the lives of everyone in this country, given the inseparability of energy security from economic security. Yet the Supreme Court has made it clear that broad deference to administrative agencies on major questions of public policy is *not* in order when statutes are lacking in any explicit statutory grant of authority.[40] ''*When much is sought from a statute, much must be shown. . . .* [B]road assertions of administrative

[32] *NAACP* v. *FPC,* 425 U.S. at 665–670 (noting that, although ''the eradication of discrimination in our society is an important national goal,'' the Supreme Court has ''consistently held that the use of the words 'public interest' in a regulatory statute is not a broad license to promote the general welfare. Rather, the words take meaning from the purposes of the regulatory legislation'' which, for the [Federal Power Act] and [Natural Gas Act], are ''to encourage the orderly development of plentiful supplies of electricity and natural gas at reasonable prices.''); *see also Brown & Williamson,* 529 U.S. at 161 (''no matter how important, conspicuous, and controversial the issue, and regardless of how likely the public is to hold the Executive Branch politically accountable, . . . an administrative agency's power to regulate in the public interest must always be grounded in a valid grant of authority from Congress.'') (quotation marks, citation omitted).

[33] *Office of Consumers' Counsel* v. *FERC,* 655 F.2d at 1147 (emphases added).

[34] *See, e.g.,* NGA §§ 7(e), 15 U.S.C. 717f(e) (apart from statutory exceptions, ''a certificate *shall* be issued to any qualified applicant . . . if it is found that the applicant is able and willing properly to do the acts and to perform the service proposed,'' and, among other things, to comply with ''the requirements, rules and regulations of the Commission . . .'') (emphasis added).

[35] Certificate Policy Statement at PP 4–6; GHG Policy Statement at P 39 (citing *Sabal Trail,* 867 F.3d at 1372–73).

[36] I won't belabor the point, but just to reiterate: a ''public convenience and necessity'' analysis is not a generalized ''public interest'' analysis, as courts have recognized. *See, supra,* P 13 & n.24 and *infra,* P 27. The ''environmental'' impacts appropriately considered in a certification proceeding must surely be limited in some way to the proposed facility itself since both upstream gathering and downstream use are beyond the Commission's statutory jurisdiction. *See City of Clarksville,* 888 F.3d at 479 (identifying ''environmental'' concerns as a ''subsidiary'' purpose of the NGA).

[37] *Jacobellis* v. *Ohio,* 378 U.S. 184, 197 (1964) (Stewart, J., concurring); *see also* Catherine Morehouse, *Glick, Danly spar over gas pipeline reviews as FERC considers project's climate impacts for first time,* Utility Dive (Mar. 19, 2021) (quoting Chairman Glick regarding use of GHG emissions analysis in *N. Natural Gas Co.,* 174 FERC ¶ 61,189 (2021): ''We essentially used the eyeball test. . . .''). Shorn of its irrelevant disquisition on EPA's stationary source regulations, today's GHG policy statement enshrines an eyeball test as the trigger for subjecting virtually all certificate applicants to the time-consuming and costly EIS process. GHG Statement at PP 88–95.

[38] *Miller* v. *California,* 413 U.S. 15 (1973).

[39] *NFIB,* 142 S. Ct. at 667 (Gorsuch, J., concurring) (citations omitted).

[40] *UARG,* 573 U.S. 302, 324 (2014) (''When an agency claims to discover in a long-extant statute an unheralded power to regulate 'a significant portion of the American economy,' *Brown & Williamson,* 529 U.S. at 159 . . . , we typically greet its announcement with a measure of skepticism. We expect Congress to speak clearly if it wishes to assign to an agency decisions of vast 'economic and political significance.' *Id.* at 160.''); *Gundy* v. *United States,* 139 S. Ct. 2116, 2141–42 (2019) (*Gundy*) (Gorsuch, J., dissenting) (''Under our precedents, an agency can fill in statutory gaps where 'statutory circumstances' indicate that Congress meant to grant it such powers. But we don't follow that rule when the 'statutory gap' concerns 'a question of deep economic and political significance' that is central to the statutory scheme. So we've rejected agency demands that we defer to their attempts to rewrite rules for billions of dollars in healthcare tax credits, to assume control over millions of small greenhouse gas sources, and to ban cigarettes.) (citations omitted).

power demand *unmistakable legislative* support.'' [41]

24. There is no ''unmistakable legislative support'' for the powers the Commission asserts today. A broad power to regulate upstream and downstream GHG emissions and their global impacts has simply *not* been delegated to this Commission.[42] To the extent the federal government has such power, it has been delegated elsewhere. ''Of necessity, Congress selects different regulatory regimes to address different problems.'' [43] The U.S. Environmental Protection Agency (EPA) is charged with regulating greenhouse gas emissions under the Clean Air Act.[44] By contrast, Congress established in the NGA a regulatory regime to address entirely different problems, namely, the need to develop the nation's natural gas resources and to protect ratepayers from unjust and unreasonable rates for gas shipped in the flow of interstate commerce. If it chose, Congress could enact legislation that would invest the Commission with authority to constrain the development and bringing to market of natural gas resources, but the fact is that Congress has chosen *not* to do so. On the contrary, every time Congress has enacted natural gas legislation, it has been to *promote* the development of natural gas resources, not throw up barriers to them.[45]

25. The fact that the NGA requires the Commission to make some form of public interest determination in the course of a certificate proceeding does not furnish a basis for the Commission to arrogate to itself the authority to constrain the development of natural gas resources on the grounds of their potential greenhouse gas emissions. As now-Justice Kavanaugh has explained: ''If an agency wants to exercise expansive regulatory authority over some major social or economic activity . . . *regulating greenhouse gas emitters, for example*—an ambiguous grant of statutory authority is not enough. Congress must *clearly authorize* an agency to take such a major regulatory action.'' [46] Congress has *not* ''clearly authorize[d]'' this Commission to regulate greenhouse gas emitters, nor to deny certificates to facilities whose construction and operation would be in the public convenience and necessity, simply because the construction and operation of such infrastructure may result in some amount of greenhouse gas emissions.[47] ''Even if the text were ambiguous, the sheer scope of the . . . claimed authority . . . would counsel against'' such an expansive interpretation.[48]

26. The fact that the Commission has absolutely no standard against which to measure the impact of natural gas production upstream or use downstream of the facilities it certificates is also important. In order for Congress to delegate any authority to an executive agency, it must legislatively set forth an intelligible principle for the agency to follow.[49] There is no such ''intelligible principle'' for the Commission to follow when it comes to greenhouse gas emissions.

27. Although the NGA requires the Commission to determine whether a proposed facility is in the ''public convenience and necessity,'' the term ''has always been understood to mean 'need' for the service. To the extent the environment is considered, such consideration is limited to the effects stemming from the construction and operation of the proposed facilities.'' [50] The term ''public convenience and necessity'' has long been understood to refer most essentially to the public's need for service on terms that are just and reasonable, *i.e.,* that are low enough for the public to pay the rates and high enough for the provider to maintain a profitable business.[51] That understanding was reflected in various statutes employing the term, including the Natural Gas Act.[52] And it was further reflected in the earliest ''public convenience and necessity'' analyses under the NGA.[53]

28. To summarize: Whether and how to regulate GHG emissions is a major question of vast economic and political significance. Congress has not explicitly authorized the Commission to regulate in this area as required under the major questions doctrine, nor has it laid down an intelligible principle for the Commission to follow as required by the non-delegation doctrine. Moreover,

[41] *In re MCP No. 165,* 20 F.4th 264, 267–268 (6th Cir. 2021) (Sutton, C.J., dissenting from denial of initial hearing en banc) (emphases added).

[42] *Panhandle E. Pipe Line Co.* v. *Pub. Serv. Comm'n of Ind.,* 332 U.S. 507, 516 (1947) (''three things, and three things only Congress drew within its own regulatory power, delegated by the [Natural Gas] Act to its agent, the Federal Power Commission. These were: (1) The transportation of natural gas in interstate commerce; (2) its sale in interstate commerce for resale; and (3) natural gas companies engaged in such transportation or sale.''); *cf. Ala. Assn.,* 141 S. Ct. at 2488 (invalidating the CDC's eviction moratorium because the ''downstream connection between eviction and the interstate spread of disease is markedly different from the direct targeting of disease that characterizes the measures identified in the statute'').

[43] *Am. Elec. Power Co.* v. *Conn.,* 564 U.S. 410, 426 (2011).

[44] *Id.* (''*Congress delegated to EPA the decision whether and how to regulate carbon-dioxide emissions from powerplants*'') (emphasis added); *Am. Lung Ass'n.* v. *EPA,* 985 F.3d at 959–60 (D.C. Cir. 2021) (''there is no question that the regulation of greenhouse gas emissions by power plants across the Nation falls squarely within the EPA's wheelhouse.''). Consider for a moment how strange it would be for Congress to delegate regulation of GHG emissions from electric power plants to EPA, while somehow delegating regulation of GHG emissions from natural gas fired power plants to FERC. Yet that is what today's orders presuppose.

[45] *See Mountain Valley Pipeline, LLC,* 171 FERC ¶ 61,232 (2020) (McNamee, Comm'r, concurring at PP 32–40) (discussing decades' worth of legislative enactments, all of which ''indicates that the Commission's authority over upstream production and downstream use of natural gas has been further limited by Congress.'').

[46] *U.S. Telecom Ass'n* v. *FCC,* 855 F.3d 381, 422 (Kavanaugh, J. dissenting) (emphases added); *see also NFIB,* 142 S. Ct. at 665 (''the question . . . is whether the Act plainly authorizes the Secretary's mandate. It does not.'').

[47] We cannot assume a Congressional intent to regulate *every* incidence of greenhouse gas emissions. As Justice Ginsberg observed, ''we each emit carbon dioxide merely by breathing.'' *Am. Elec. Power Co.* v. *Conn.,* 564 U.S. at 426.

[48] *Ala. Ass'n.,* 141 S. Ct. at 2489.

[49] Congress may ''delegate power under broad general directives'' so long as it sets forth ''an intelligible principle'' to guide the delegee. *Mistretta* v. *United States,* 488 U.S. 361, 372 (1989). *See Gundy,* 139 S. Ct. at 2129 (''a delegation is constitutional so long as Congress has set out an 'intelligible principle' to guide the delegee's exercise of authority. Or in a related formulation, the Court has stated that a delegation is permissible if Congress has made clear to the delegee the general policy he must pursue and the boundaries of his authority.'') (citations, internal quotations omitted).

[50] *Mountain Valley,* 171 FERC ¶ 61,232 (McNamee, Comm'r, concurring at P 41); *see also id.* PP 15–47.

[51] *See generally,* Ford P. Hall, *Certificates of Public Convenience and Necessity,* 28 Mich. L. Rev. 276 (1930) (analyzing the meaning of ''public convenience and necessity'' in state laws antedating passage of the NGA, and concluding that it is the need of the consuming public, without which it will be inconvenienced, that is the critical question to be answered).

[52] The first such statute appears to have been the Interstate Commerce Act (ICA). The Supreme Court explicitly held that the use of the term ''public convenience and necessity'' was chosen in the knowledge that it would be understood against the background of its historical usage. *ICC* v. *Parker,* 326 U.S. 60, 65 (1945) (construing ''public convenience and necessity'' under the ICA and recognizing that Congress' decision to use a term with such a long history indicated Congress intended ''a continuation of the administrative and judicial interpretation of the language.'') When it passed the NGA, Congress was similarly cognizant of having employed the same concept as in the ICA. *See,* Robert Christin et al., *Considering the Public Convenience and Necessity in Pipeline Certificate Cases under the Natural Gas Act,* 38 Energy L.J. 115, 120 (2017) (citing Comm. on Interstate Commerce, Interstate Transportation and Sale of Natural Gas, S. Rep. No. 75–1162, at 5 (Aug. 9, 1937) and noting that ''the concept of a regulatory agency determining whether a private entity's proposal was in the public convenience and necessity was an established practice when the NGA was enacted.'').

[53] *See In re Kan. Pipe Line & Gas Co.,* 2 FPC 29, 56 (1939) (''We view the term [public convenience and necessity] as meaning a public need or benefit without which the public is inconvenienced to the extent of being handicapped in pursuit of business or comfort or both without which the public generally in the area involved is denied to its detriment that which is enjoyed by the public of other areas similarly situated.'')

EPA, in coordination with the states, already has authority to regulate in this area as specified in federal statutes, which is far removed from this Commission's core expertise and traditional responsibilities.

29. Let's now turn to the second major question.

C. GHG Analysis Under NEPA

30. Is this Commission required or allowed by NEPA [54] to *reject* a certificate for a natural gas facility—*one that would otherwise be approved under the NGA*—based on a GHG analysis conducted as part of the NEPA environmental review? And rejection includes attaching mitigation conditions so onerous (or coercing through deficiency letters) that they render the project unfeasible.[55]

31. Again, the short answer is no. NEPA does not contain a shred of specific textual authority requiring or allowing the Commission to *reject* based on a NEPA review of estimated GHG impacts (indirect or direct) a certificate application for a facility that otherwise would be found necessary to serve the public under the NGA. Nor would it: As an information-forcing statute, NEPA imposes no substantive obligations.[56]

32. Even conducting an analysis of indirect GHG effects under NEPA goes too far. The Supreme Court has explicitly rejected the idea that an ''an agency's action is considered a cause of an environmental effect [under NEPA] even when the agency has no statutory authority to prevent that effect.'' [57] Rather, NEPA ''requires a reasonably close causal relationship between the environmental effect and the alleged cause,'' that is analogous to ''the familiar doctrine of proximate cause from tort law.'' [58] While this might leave some difficult judgments at the margins, estimates of the potential global impacts of possible non-jurisdictional upstream or downstream activity—as today's orders purport to require [59]—is not a close call.

33. First off, in determining how far an agency's NEPA responsibilities run, one ''must look to the underlying policies or legislative intent in order to draw a manageable line between those causal changes that may make an actor responsible for an effect and those that do not.'' [60] As discussed at length above, there is no way of drawing a plausible line, much less a manageable one, from the Commission's certificating responsibilities under the NGA and the possible consequences of global climate change—consequences which, however potentially grave, are remote from this agency's limited statutory mission under the NGA.

34. Second, speculating about the possible future impact on global climate change of a facility's potential GHG emissions does not assist the Commission in its decision-making and therefore violates the ''rule of reason'': Where an agency lacks the power to do anything about the possible environmental impacts, it is not obligated to analyze them under NEPA.[61] Again, the Supreme Court has explained, ''inherent in NEPA and its implementing regulations is a 'rule of reason,' which ensures that agencies determine whether and to what extent to prepare an EIS based on the usefulness of any new potential information to the decision-making process. Where the preparation of an EIS would serve 'no purpose' in light of NEPA's regulatory scheme as a whole, no rule of reason worthy of the title would require an agency to prepare an EIS.'' [62]

35. This conclusion becomes even more obvious when considered alongside the undeniable fact that neither NEPA nor any other statute contains a scintilla of guidance as to which specific metrics are to be used to determine when the Commission can or must reject a project based on a GHG analysis. The Commission today establishes a threshold of 100,000 metric tons of CO_2e of annual project emissions for purposes of its analysis of natural gas projects under NEPA.[63] The rationale for establishing this threshold has literally *nothing* to do with the

[54] NEPA, 42 U.S.C. 4321 *et seq.,* requires all federal agencies to undertake an ''environmental assessment'' of their actions, typically including the preparation of an ''environmental impact statement'' of proposed ''major federal actions.'' As discussed below, the purpose of the EA and EIS is for the agency to be fully informed of the impact of its decisions. NEPA does not mandate any specific action by the agency in response to an EA or EIS, other than to make an informed decision. *See, e.g.,* Steven M. Siros, et al., *Pipeline Projects—The Evolving Role of Greenhouse Gas Emissions Analyses under NEPA,* 41 Energy L.J. 47 (May 2020); *see also Sabal Trail,* 867 F.3d at 1367–68 (describing NEPA as ''primarily information-forcing'' and noting that courts ''should not '' 'flyspeck'' an agency's environmental analysis, looking for any deficiency no matter how minor.' '') (quoting *Nevada* v. *Dep't of Energy,* 457 F.3d 78, 93 (D.C. Cir. 2006)).

[55] NGA § 7(e), 15 U.S.C. 717f(e), authorizes the Commission to attach to a certificate ''such reasonable terms and conditions as the public convenience and necessity may require.'' There is no analytical difference between the Commission's authority to reject a certificate application and its authority to mitigate it. *See Nat'l Fuel Gas Supply Corp.* v. *FERC,* 909 F.2d 1519, 1522 (D.C. Cir. 1990) (''The Commission may not, . . . when it lacks the power to promote the public interest directly, do so indirectly by attaching a condition to a certificate that is, in its unconditional form, already in the public convenience and necessity.'') (citations omitted). That the Commission may be tempted to abuse its conditioning authority has long been recognized. *See* Carl I. Wheat, *Administration by the Federal Power Commission of the Certificate Provisions of the Natural Gas Act,* 14 Geo. Wash. L. Rev. 194, 214–215 (1945) (''It is particularly important that the Commission . . . steel itself against the somewhat natural temptation to attempt to use such 'conditions' as substitutes or 'shortcuts' for other (and more appropriate) methods of regulation prescribed in the statute. . . . . [W]hatever may be said with respect to conditions concerning rates and other matters over which the Commission has specific authority under other provisions of the Act, it would appear clear that the power to prescribe 'reasonable conditions' in certificates cannot be greater in scope than the statutory authority of the Commission.'')

[56] ''[*I*]*t is now well settled that NEPA itself does not mandate particular results, but simply prescribes the necessary process.* If the adverse environmental effects of the proposed action are adequately identified and evaluated, *the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs.* . . . Other statutes may impose substantive environmental obligations on federal agencies, . . . *but NEPA merely prohibits uninformed—rather than unwise—agency action.*'' *Robertson* v. *Methow Valley Citizens Council,* 490 U.S. 332, 350–51 (1989) (citations omitted; emphases added). *See also, e.g., Minisink Residents for Envtl. Preserv. & Safety* v. *FERC,* 762 F.3d 97, 112 (D.C. Cir. 2014) (same).

[57] *Dep't. of Transp.* v. *Pub. Citizen,* 541 U.S. 752, 767 (2004) (*Pub. Citizen*). This principle has been incorporated into the implementing regulations of the Council of Environmental Quality (CEQ), an executive branch agency. *See* 40 CFR. § 1508.1(g)(2) (2021) (''Effects do not include those effects that the agency has no ability to prevent due to its limited statutory authority or would occur regardless of the proposed action'').

[58] *Pub. Citizen,* 541 U.S. at 767 (citations omitted).

[59] Certificate Policy Statement at PP 73–76; GHG Policy Statement at PP 28–31.

[60] *Pub. Citizen,* 541 U.S. at 767 (citations omitted).

[61] *See, e.g., Sabal Trail,* 867 F.3d at 1372 (citing *Pub. Citizen,* 541 U.S. at 770) (''when the agency has no *legal* power to prevent a certain environmental effect, there is no decision to inform, and the agency need not analyze the effect in its NEPA review.'') (emphasis in original); *Citizens Against Burlington, Inc.* v. *Busey,* 938 F.2d 190, 195 (D.C. Cir. 1991) (''an agency need follow only a 'rule of reason' in preparing an EIS . . . and . . . this rule of reason governs both *which* alternatives the agency must discuss, and the *extent* to which it must discuss them.'') (internal citations and quotations omitted, emphasis in original). To state the obvious: We have absolutely no way of knowing how much an individual project may or may not contribute to global climate change for any number of reasons, including because there is no way for us to meaningfully evaluate the release of GHG emissions if the facility in question were not to be certificated. Notwithstanding, today, the majority boasts of forcing virtually every certificate applicant into the EIS process. GHG Policy Statement at PP 80, 88.

[62] *Pub. Citizen,* 541 U.S. at 767 (citations omitted).

[63] GHG Policy Statement at P 80, 88. For purposes of determining what emissions count toward the 100,000 metric tons per year threshold, the majority states that this number is measured based on ''the construction, operational, downstream, and, where determined to be reasonably foreseeable, upstream GHG emissions that reoccur annually over the life of the project.'' *Id.* P 80 & n.197.

Commission's NGA obligations, or even with its NEPA obligations. It consists of little more than piggybacking on EPA's approach to regulating stationary sources.[64] Today's order boasts that this new threshold will capture projects ''transporting an average of 5,200 dekatherms per day and projects involving the operation of *one* or more compressor stations or LNG facilities'' [65] and that this threshold ''will capture over 99% of GHG emissions from Commission-regulated natural gas projects.'' [66]

36. These are just arbitrarily chosen numbers. A proliferation of quantification does not constitute reasoned decision-making. All of the important questions about the creation and application of this threshold remain unanswered: Is there anything in either the NGA or NEPA to indicate how much is too much and should be rejected? Or how little is low enough to get under the red line? No. If the Commission is attempting to quantify *indirect* global GHG impacts, as EPA now suggests we do,[67] how much global impact is too much and requires rejection of the certificate? How much impact is *not* too much? Should rejection only be based on impacts on the United States? North America? The Western Hemisphere? The planet? Where is the line? Again, there is absolutely no statutory provision that answers these questions as to the application of GHG metrics in a certificate proceeding brought under the NGA. The complete absence of any statutory guidance on the seminal question of ''how much is too much?'' would render any action by the Commission to reject a certificate based on any metric as ''arbitrary and capricious'' in the fullest sense.[68]

37. I recognize that the 100,000 metric tons marker adopted in today's orders is not a threshold for rejecting a proposed project but only for subjecting it to further scrutiny in the form of an EIS. But this is no small matter—completion of an EIS is extremely cost-intensive and time-consuming and, in addition, creates a plethora of opportunities for opponents of the project who otherwise lack meritorious objections to it, to run up the costs, to cause delays, and to create new grounds for the inevitable appeals challenging the certificate even if the applicant does manage to obtain it.[69]

38. NEPA provides no statutory authority to reject a gas project that would otherwise be approved under the NGA. How could it? As is well-known, the duties NEPA imposes are essentially procedural and informational.[70] The Commission's regulations implementing NEPA reflect its limits by noting that, ''[t]he Commission will comply with the regulations of the Council on Environmental Quality *except where those regulations are inconsistent with the statutory requirements of the Commission.*'' [71]

39. It's not actually very difficult to see how the approach the majority adopts today is ''inconsistent with the statutory requirements of the Commission.'' [72] I will repeat that the purpose of the NGA is to *promote* the development, transportation, and sale at reasonable rates of natural gas. I will repeat that the NGA conveys only *limited* jurisdictional authority; that NEPA conveys *no* jurisdictional authority; that a *different* agency is responsible for regulating GHGs; and that such regulation is a *major issue* that Congress would have to speak to *unambiguously,* which it clearly has *not* done. And yet under the analysis embraced by the majority today, this Commission purports to impose onerous—possibly fatal—regulatory requirements on certificate applicants in order to generate reams of highly speculative data that have no meaningful role to play in the execution of this agency's statutory duties.[73] In fact, it contravenes the purposes of the NGA in at least two obvious ways: First, by bringing extrinsic considerations to bear on the Commission's decision-making, and second, by causing needless delay in the process.[74]

40. There is no meaningful way of evaluating any of the critical issues, and no statutory authority to actually do anything about upstream or downstream emissions,[75] but unlimited ways to find fault with any analysis. Even though they aren't supposed to ''flyspeck'' an agency's NEPA analysis, judges who wish to impose their own policy preferences will be tempted to do exactly that. And once the agency undertakes to address an issue in its NEPA analysis, it is subject to the APA's ''reasoned decision-making'' standard of

[64] *Id.* PP 88–93 (acknowledging that the Supreme Court has partially invalidated EPA's regulatory regime).

[65] *Id.* P 89 (emphasis added).

[66] *Id.* P 95. It appears that the majority's intent is to force all applicants into the EIS process. This will undeniably cause each application to become far more costly and time-consuming, both obvious disincentives to even trying.

[67] EPA Comments, *Iroquois Gas Transmission Sys., L.P.,* Docket No. CP20–48–000 at 1–2 (filed Dec. 20, 2021) (EPA Dec. 20, 2021 Letter).

[68] And yet, as a practical matter, applicants must spend years of work and possibly millions of dollars (or more) in preparatory tasks like lining up financing, securing local political support, obtaining permits, etc. All this extensive legwork is needed just to put an application in to the Commission. Today's orders effectively tell applicants that their application could be rejected for any reason or no reason at all. Nor does the majority even do the courtesy of providing a target for the applicant to aim at.

[69] *See* Bradley C. Karkkainen, *Whither NEPA?,* N.Y.U. Envtl. L.J. 333, 339 & n.31 (2004) (noting that ''Department of Energy EISs produced prior to 1994 had a mean cost of $6.3 million and a median cost of $1.2 million; following an aggressive effort to reduce costs, after 1994 the mean cost fell to $5.1 million, but the median cost rose to $2.7 million.'')

[70] *See, Nat. Res. Def. Council, Inc.* v. *EPA,* 822 F.2d 104, 129 (D.C. Cir. 1987) (''NEPA, as a procedural device, *does not work a broadening of the agency's substantive powers.* Whatever action the agency chooses to take must, of course, be within its province in the first instance.'') (citations omitted, emphasis added); *Balt. Gas & Elec. Co.* v. *Natural Res. Defense Council, Inc.,* 462 U.S. 87, 97 (1983) (acknowledging NEPA's ''twin aims'' as obligating an agency ''to consider every significant aspect of the environmental impact of a proposed action'' and ensuring ''that the agency will inform the public that it has indeed considered environmental concerns in its decision-making process,'' but noting that ''Congress in enacting NEPA, however, did not require agencies to elevate environmental concerns over other appropriate considerations.'') (citations, alterations omitted).

[71] 18 CFR 380.1 (2021) (emphasis added); *see also* 40 CFR 1500.3(a) (2021) (compliance with the CEQ regulations ''is applicable to and binding on all Federal agencies . . . except where compliance would be inconsistent with other statutory requirements'').

[72] 18 CFR 380.1 (2021). *See* The Hon. Joseph T. Kelliher Jan. 7, 2022 Comments, *Technical Conference on Greenhouse Gas Mitigation: Natural Gas Act Sections 3 and 7 Authorizations,* Docket No. PL21–3–000 at 2 (The Hon. Joseph T. Kelliher Jan. 7, 2022 Comments) (''if imposing mitigation for direct and indirect emissions discourages or forestalls pipeline development, the mitigation policy is directly contrary to the principal purpose of the Natural Gas Act and must be set aside.'').

[73] Bradley C. Karkkainen, *Whither NEPA?,* N.Y.U. Envtl. L.J. at 345–346 (noting that fear of NEPA challenges has led agencies to '''kitchen sink' EISs'' to reduce the risk of reversal, but that almost nobody actually reads them ''and those who attempt to do so may find it difficult to separate the good information from the junk. Contrary to conventional wisdom, more information is not always better.''); *see also, Pub. Citizen,* 541 U.S. at 768–769 (''NEPA's purpose is not to generate paperwork—even excellent paperwork—but to foster excellent action.'') (quoting then-in effect 40 CFR 1500.1(c) (2003)).

[74] The delay is clearly part of the point. Why else funnel virtually every certificate applicant into the EIS process? *See e.g.,* Bradley C. Karkkainen, *Whither NEPA?,* N.Y.U. Envtl. L.J. at 339–40 (observing that NEPA has become ''a highly effective tool that environmental NGOs and others can use to raise the financial and political costs of projects they oppose and stretch out decisions over an extended time frame, giving time to rally political opposition.''). *See also* P 47, *infra.*

[75] In fact, even if the Commission had the authority to impose upstream or downstream GHG emissions mitigation, or to deny certificates of public convenience and necessity on that basis, the majority admits that it is by no means obvious that doing so would actually prevent or even meaningfully reduce global climate change or the problems associated with it. *See* GHG Policy Statement at P 88 (noting that ''[e]ven if deep reductions in GHG emissions are achieved, the planet is projected to warm by at least 1.5 degrees Celsius (°C) by 2050;'' and that ''even relatively minor GHG emissions pose a significant threat'').

review.[76] Thus the effect is to ramp up dramatically the legal uncertainties and costs facing any certificate applicant.

D. The Policy Statements Rest on Inadequate Legal Authority

41. Today's orders rely to a remarkable degree on a smattering of statements from a handful of recent orders. Simply put, these authorities are simply ''too slender a reed'' [77] to support the great weight today's orders place on them.

42. Neither *Sabal Trail* [78] nor *Birckhead,*[79] nor the more recent *Vecinos* [80] opinion from the D.C. Circuit changes any of the analysis above. Indeed, to the extent language from those cases is interpreted as requiring the Commission to exercise authority *not* found in statutes—and these opinions are more confusing than clear, as well as inconsistent with the D.C. Circuit's own precedent—then such an interpretation would be contrary to the Supreme Court's major question doctrine. Be that as it may, while I recognize that *Sabal Trail* and *Vecinos* are presently applicable to this Commission, neither of those cases individually nor both of them together provide a lawful basis for *rejecting* a certificate for a facility that is otherwise found to be needed under the NGA solely because of its estimated potential impacts on global climate change.[81]

43. Virtually the entire structure of the majority's fundamental policy changes rests on a single line from *Sabal Trail.*[82] That statement is itself predicated on an idiosyncratic reading of *Public Citizen* and the D.C. Circuit's own precedents.[83] *Sabal Trail* rather facilely distinguished existing D.C. Circuit precedent on the grounds that, in contrast to those cases, the same agency that was performing the EIS was also authorized to approve or deny the certificate.[84] It reasoned that because the Commission could take ''environmental'' issues into account in its public interest analysis, and GHG emissions raise ''environmental'' issues, it must therefore follow that the Commission could deny a certificate based on projected GHG emissions estimates.

44. *Sabal Trail* acknowledged that ''*Freeport* and its companion cases rested on the premise that FERC had no legal authority to prevent the adverse environmental effects of natural gas exports.'' [85] Specifically, ''FERC was forbidden to rely on the effects of gas exports *as a justification for* denying an upgrade license.'' [86] In contrast with those cases—all of which addressed certification of LNG facilities under NGA § 3 as opposed to interstate transportation facilities under NGA § 7—the court in *Sabal Trail* concluded that, under NGA § 7, by contrast, ''FERC is not so limited. Congress broadly instructed the agency to consider 'the public convenience and necessity' when evaluating applications to construct and operate interstate pipelines.'' [87] It thus concluded that, ''[b]ecause FERC could deny a pipeline certificate on the ground that the pipeline would be too harmful for the environment, the agency is a 'legally relevant cause' of the direct and indirect environmental effects of pipelines that it approves. *See Freeport,* 827 F.3d at 47. *Public Citizen* thus did not excuse FERC from considering these indirect effects.'' [88]

45. But the *Sabal Trail* court never considered with reference to the Commission's statutory authority the proper scope of that public interest analysis or the extent to which ''environmental'' issues could be considered in that context. It simply assumed the Commission's authority to be unlimited. But as discussed above, Congress drafted the NGA for the purpose of filling a specific gap in regulatory authority. The only way *Sabal Trail* would be correct is if Congress had ''clearly authorized'' the Commission to evaluate geographically and temporally remote impacts of non-jurisdictional activity in its ''public convenience and necessity'' determinations. As discussed above, that conclusion is clearly, irredeemably, wrong.[89]

46. As for *Vecinos,* there, the court compounds that error both by relying uncritically on *Sabal Trail* and by finding fault with the Commission for failing to connect its decision not to use the Social Cost of Carbon to Petitioners' argument that it was required to do so under 40 CFR. § 1502.21(c).[90] That regulation sets forth an agency's obligations when ''information relevant to reasonably foreseeable significant adverse impacts cannot be obtained.'' [91] But global climate change is only a ''foreseeable significant adverse impact'' of the Commission's action *if* the Commission's authority extends as far

[76] *Vecinos Para El Bienestar de la Comunidad Costera* v. *FERC,* 6 F.4th 1321, 1329 (D.C. Cir. 2021) (*Vecinos*) (''Because the Commission failed to respond to significant opposing viewpoints concerning the adequacy of its analyses of the projects' greenhouse gas emissions, we find its analyses deficient under NEPA and the APA.'').

[77] *Cf.* The Hon. Joseph T. Kelliher Jan. 7, 2022 Comments at 3.

[78] *Sabal Trail,* 867 F.3d 1357. In support of its assertion of broad discretion in attaching conditions to a certificate, the majority also cites to *ANR Pipeline Co.* v. *FERC,* 876 F.2d 124, 129 (D.C. Cir. 1989) (*ANR Pipeline*). Certificate Policy Statement at P 74 & n. 190. Since the Commission's conditioning authority is limited in the same way as its certificating authority, there is little reason to discuss it separately. I will only note in passing that, although the court described the Commission's conditioning authority as ''extremely broad,'' the only issue actually before the court in *ANR Pipeline* was the validity of certificate terms imposed in furtherance of the Commission's core duty to ensure that rates are non-discriminatory. *Id.*

[79] *Birckhead* v. *FERC,* 925 F.3d 510 (D.C. Cir. 2019) (rejecting, for failure to raise the issue before the Commission, a claim that NEPA requires FERC to analyze downstream GHG emissions). Since *Birckhead* was decided on jurisdictional grounds, any substantive commentary in that order is mere dicta and I will not discuss it further.

[80] *Vecinos,* 6 F.4th 1321.

[81] Both orders suffer from a number of infirmities that don't bear belaboring in this context. In brief, however, *Sabal Trail* reads the Commission's duty to ''balance 'the public benefits against the adverse effects of the project, including adverse environmental effects,' '' *Sabal Trail,* 867 F.3d at 1373 (quoting *Minisink Residents for Envtl. Pres. & Safety* v. *FERC,* 762 F.3d 97 at 101–02 and citing *Myersville Citizens for a Rural Cmty.* v. *FERC,* 783 F.3d at 1309), far too expansively, and *Vecinos* compounds that error. Both orders are discussed below.

[82] Namely, ''[b]ecause FERC could deny a pipeline certificate on the ground that the pipeline would be too harmful for the environment, the agency is a 'legally relevant cause' of the direct and indirect environmental effects of pipelines that it approves.'' *Sabal Trail,* 867 F.3d at 1373. The other orders the majority relies on depend vitally on this statement. *See, e.g.,* Certificate Policy Statement at PP 75 & n. 192 (citing *Birckhead*); 86 & n. 207 (citing *Vecinos*); GHG Policy Statement at PP 13, 36–38 (citing *Birckhead*) and P 14 & n. 38 (citing *Vecinos*).

[83] *See Ctr. for Biological Diversity,* 941 F.3d at 1300 (''the legal analysis in *Sabal Trail* is questionable at best. It fails to take seriously the rule of reason announced in *Public Citizen* or to account for the untenable consequences of its decision. The *Sabal Trail* court narrowly focused on the reasonable foreseeability of the downstream effects, as understood colloquially, while breezing past other statutory limits and precedents—such as *Metropolitan* [*Edison Co.* v. *People Against Nuclear Energy,* 460 U.S. 776 (1983)] and *Public Citizen*—clarifying what effects are cognizable under NEPA.'').

[84] *Sabal Trail,* 867 F.3d at 1372–1373. In each of the D.C. Circuit orders *Sabal Trail* purported to distinguish, the court had found that FERC did not have to analyze, because it could not regulate, downstream emissions.

[85] *Id.* at 1373 (citing *Sierra Club* v. *FERC* (*Freeport*), 827 F.3d 36, 47 (D.C. Cir. 2016). The ''companion cases'' are *Sierra Club* v. *FERC* (*Sabine Pass*), 827 F.3d 59 (D.C. Cir. 2016) and *EarthReports, Inc.* v. *FERC,* 828 F.3d 949 (D.C. Cir. 2016).

[86] *Sabal Trail,* 867 F.3d at 1373 (emphasis in original).

[87] *Id.* (citations omitted).

[88] *Id.*

[89] *Supra,* Section I.B. *Cf. ICC* v. *Parker,* 326 U.S. 60, 65 (1945) (construing ''public convenience and necessity'' under the Interstate Commerce Act and recognizing that Congress' decision to use a term with such a long history indicated Congress intended ''a continuation of the administrative and judicial interpretation of the language.''). Far from being ''a continuation of the administrative and judicial interpretation of the language,'' construing it to extend to an analysis of global GHG emissions is novel and unprecedented.

[90] *Vecinos,* 6 F.4th at 1328–30.

[91] 40 CFR. § 1502.21(c).

as the *Sabal Trail* court said it does. For the reasons set out in this statement, I respectfully disagree. Nor am I alone in my disagreement.[92]

47. Finally, as to the contention that the Commission is bound to follow *Sabal Trail* notwithstanding its errors, I would simply point out that intervening Supreme Court precedents—such as *NFIB* [93] and *Ala. Ass'n.* [94]—have not just significantly weakened, but utterly eviscerated the conceptual underpinnings of *Sabal Trail*'s limitless construction of the Commission's public interest inquiry under the NGA's ''public convenience and necessity'' analysis.[95] It is folly for this Commission to proceed heedless of the Supreme Court's recent rulings that agencies may not use ambiguous or limited grants of statutory authority in unprecedented ways to make policy on major questions that Congress has reserved for itself. But that's exactly what the Commission does today.[96]

48. We are indeed bound to follow judicial precedent, but we don't get to ''cherry pick'' one precedent such as *Sabal Trail* because we like that particular opinion, while ignoring the many other conflicting precedents, especially those more recent rulings from the Supreme Court itself applying the major question doctrine. These more recent opinions light up *Sabal Trail* as a clear outlier.

II. The Real Debate Is About Public Policy not Law

49. Preventing the construction of each and every natural gas project is the overt public-policy goal of many well-funded interest groups working to reduce or eliminate natural gas usage.[97] Today's orders, whatever the intent, will have the undeniable effect of advancing that *policy* goal, and we should not deny the obvious. Rather than bringing legal certainty to the Commission's certificate orders,[98] today's orders will greatly increase the costs and uncertainty associated with this Commission's own handling of certificate applications. In fact, by purporting to apply today's new policy retroactively on applications that have already been submitted (and in many instances pending for years), today's action is deeply unfair: It judges by an entirely new set of standards applications that were prepared and submitted to meet the old standards and essentially opens all of them to be relitigated.[99] The undoubted effect of these orders will be to interpose additional months or years of delay on project applicants and to increase exponentially the vulnerability on appeal of any Commission orders that do approve a project.

50. Recently I said the Commission's new rule on unlimited late interventions in certificate cases was ''not a legal standard, but a legal weapon.'' [100] The new certificate policy approved today is the mother of all legal weapons. There is no question that it will be wielded against each and every natural gas facility both at the Commission and in the inevitable appeals, making the costs of even pursuing a natural gas project insuperable.

51. Let me emphasize that every person or organization pursuing the policy goal of ending the use of natural gas by opposing every natural gas facility has an absolute right under the First Amendment to engage in such advocacy. However, whether to end the use of natural gas by banning the construction of all new natural gas projects is a public policy question of immense importance, one that affects the lives and livelihoods of tens of millions of Americans and their communities, as well as the country's national security. In a democracy, such a huge policy question should *only* be decided by legislators elected by the people, not by unelected judges or administrative agencies.[101]

52. This public-policy context is absolutely relevant to these orders because it illustrates that the long-running controversy at this Commission over the use of GHG analyses in natural-gas certificate cases, whether it's a demand to quantify indirect impacts from upstream production and downstream use,[102] or a demand to apply an administratively-constructed

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[92] *See supra,* n. 83.

[93] *NFIB,* 142 S. Ct. 661.

[94] *Ala. Ass'n.,* 141 S. Ct. 2485 at 2489.

[95] *See generally, Allegheny Def. Project* v. *FERC,* 964 F.3d 1, 18 (D.C. Cir. 2020) (noting that circuit court precedent may be departed from ''when intervening developments in the law—such as Supreme Court decisions—have removed or weakened the conceptual underpinnings of the prior decision.'') (cleaned up, citation omitted).

[96] In his *NFIB* concurrence, Justice Gorsuch states: ''Sometimes Congress passes broadly worded statutes seeking to resolve important policy questions in a field while leaving an agency to work out the details of implementation. Later, the agency may seek to exploit some gap, ambiguity, or doubtful expression in Congress's statutes to assume responsibilities far beyond its initial assignment. The major questions doctrine guards against this possibility by recognizing that Congress does not usually hide elephants in mouseholes.'' 142 S. Ct. at 669 (Gorsuch, J., concurring) (citations, alterations omitted). It would be hard to find a better description of the path the Commission has taken to arrive at today's orders.

[97] *See, e.g.,* Bloomberg Philanthropies, *https://www.bloomberg.org/environment/moving-beyond-carbon/* (''Launched in 2019 with a $500 million investment from Mike Bloomberg and Bloomberg Philanthropies, Beyond Carbon . . . . works . . . to . . . *stop the construction of proposed gas plants.*'') (last visited Feb. 8, 2022) (emphasis added); Sierra Club, *https://www.sierraclub.org/policy/energy/fracking,* (''There are no 'clean' fossil fuels. The Sierra Club is committed to *eliminating the use of fossil fuels,* including coal, *natural gas* and oil, as soon as possible'') (emphases added) (last visited Feb. 8, 2022); Natural Resources Defense Council, *https://www.nrdc.org/issues/reduce-fossil-fuels* (''Oil, *gas,* and other fossil fuels come with grave consequences for our health and our future. . . . *NRDC is pushing America to move beyond these dirty fuels. We fight dangerous energy development on all fronts*'') (emphases added) (last visited Feb. 8, 2022); Press Release, *NRDC Receives $100 million from Bezos Earth Fund to Accelerate Climate Action* (Nov. 16, 2020), available at *https://www.nrdc.org/media/2020/201116* (''The Bezos Earth Fund grant will be used to help NRDC advance climate solutions and legislation at the state level, move the needle on policies and programs focused on *reducing oil and gas production*'') (emphasis added) (last visited Feb. 8, 2022); Sebastian Herrera, *Jeff Bezos Pledges $10 Billion to Tackle Climate Change,* Wall Street Journal (Feb. 17, 2020) (''Mr. Bezos . . . said the *Bezos Earth Fund* would help back scientists, *activists, [non-governmental organizations]*'') (emphasis added); *see also,* Ellie Potter, *Environmentalists launch campaign to ban gas from US clean energy program, S&P Global Platts* (Sep. 2, 2021) (quoting Collin Rees, U.S. Campaign Manager for Oil Change International, ''Clean energy means *no gas* and no other fossil fuels, period.'') (emphases added); Sean Sullivan, *FERC sets sights on gas infrastructure policy in 2022,* S&P Capital IQ (Dec. 31, 2021) (quoting Maya van Rossum, head of Delaware Riverkeeper Network, ''we are not changing course at all: We continue to take on *every* pipeline, LNG, and fracked gas project as urgently as we did before, knowing we will have to *invest heavily to stop it* . . .'') (emphases added).

[98] *See* Letter of Chairman Richard Glick to Sen. John Barasso, M.D. (Feb. 1, 2022) (''Preparing an EIS to consider the reasonably foreseeable GHG emissions that may be attributed to a project proposed under section 7 of the NGA allows the Commission to issue more legally durable orders on which all stakeholders can depend, including project developers.''); Letter of Commissioner Allison Clements to Sen. John Barasso, M.D. (Feb. 1, 2022) (''I will do my part to assure that the updated policy will be a legally durable framework for fairly and efficiently considering certificate applications—one that serves the public interest and increases regulatory certainty for all stakeholders.''); *see also,* Corey Paul, *FERC Dems argue legal benefits from climate reviews outweigh gas project delays,* S&P Capital IQ Pro (Feb. 3, 2022).

[99] Certificate Policy Statement at P 100 (''the Commission will apply the Updated Policy Statement to any currently pending applications for new certificates. Applicants will be given the opportunity to supplement the record and explain how their proposals are consistent with this Updated Policy Statement, and stakeholders will have an opportunity to respond to any such filings.'')

[100] *Adelphia Gateway, LLC,* 178 FERC ¶ 61,030 (2022) (Christie, Comm'r concurring at P 4) (available at: *https://www.ferc.gov/news-events/news/item-c-3-commissioner-christies-partial-concurrence-and-partial-dissent-adelphia*).

[101] *See Am. Lung Ass'n* v. *EPA,* 985 F.3d at 1003 (Walker, J., concurring in part and dissenting in part) (''whatever multi-billion-dollar regulatory power the federal government might enjoy, it's found on the open floor of an accountable Congress, not in the impenetrable halls of an administrative agency—even if that agency is an overflowing font of good sense.'') (citing U.S. Const. art I, § 1).

[102] GHG Policy Statement at PP 27–28, 31, & n.97. *See also,* EPA Dec. 20, 2021 Letter.

metric such as the Social Cost of Carbon [103]—and then use GHG analyses to *reject* (or mitigate to death, or impose costly delays on) a gas project—has far less to do with the law itself and far more to do with promoting preferred *public policy* goals.

53. EPA admits as much in a remarkably (perhaps unwittingly) revealing passage in a letter to this Commission:

> EPA reaffirms the suggestion that the Commission avoid expressing project-level emissions as a percentage of national or state emissions. Conveying the information in this way *inappropriately diminishes* the significance of project-level GHG emissions. Instead, EPA continues to recommend disclosing *the increasing conflict between GHG emissions and national, state, and local GHG reduction policies and goals . . .*[104]

54. So according to EPA, this Commission—which is supposed to be *independent* of the current (or any) presidential administration, by the way—should literally manipulate how it presents GHG data in order to avoid ''inappropriately'' diminishing the impact. As EPA reveals, this is really not about data or any specific GHG metric at all, but is really about pursuing *public policy* goals, especially those of the current presidential administration that runs EPA.[105]

55. The EPA's purported guidance to this Commission illustrates that the real debate here is not over the minutiae of one methodology versus another, or whether one methodology is ''generally accepted in the scientific community'' and another is not,[106] or whether one particular esoteric formula is purportedly required by a regulation issued by the CEQ [107] and another does not meet the CEQ's directives.

56. The real debate over the use of GHG analyses in certificate proceedings is about public policy, not law, and ultimately comes down to these questions: *Who makes major decisions of public policy in our constitutional system?* Legislators elected by the people or unelected administrative agencies or judges? *Who decides?* [108]

III. Conclusions

57. Based on the analysis above the following legal conclusions can be drawn:

58. *First,* the Commission may not reject a certificate based solely on an estimate of the impacts of GHG emissions, indirect or direct. Nor, on the basis of such GHG estimates, may the Commission attach to a certificate (or coerce through deficiency letters) conditions that represent a *de facto* rejection by rendering the project financially or technically unfeasible.

59. *Second,* the Commission can consider the direct GHG impacts of the specific facility for which a certificate is sought, just as it analyzes other direct environmental impacts of a project, and can attach reasonable and feasible conditions to the certificate designed to reduce or minimize the direct GHG impacts caused by the facility, just as it does with other environmental impacts.

60. *Third,* the conditions the Commission can impose are, like its other powers, limited to the authorities granted to it by Congress and the purposes for which they are given. So, no, the Commission may not impose conditions on a certificate to mitigate upstream or downstream GHG emissions arising from non-jurisdictional activity.

61. These legal conclusions do not mean that responding to climate change is not a compelling policy necessity for the nation. In my view it is, as I stated above.[109]

62. However, neither my policy views—nor those of any other member of this Commission—can confer additional legal authority on FERC.[110] For in our democracy, it is the *elected* legislators who have the exclusive power to determine the major policies that respond to a global challenge such as climate change. Further, the argument that administrative agencies must enact policies to address major problems whenever Congress is too slow, too polarized, or too prone to unsatisfying compromises, must be utterly rejected.[111] That is not how it is supposed to work in a democracy.

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[103] GHG Policy Statement at P 96. *See also, e.g., Vecinos,* 6 F.4th at 1328–1329.

[104] EPA Dec. 20, 2021 Letter at 4 (emphases added).

[105] This Commission's independence reflects a conscious choice on Congress' part to insulate certain of its functions from the vicissitudes of political pressure. *See generally,* Sharon B. Jacobs, *The Statutory Separation of Powers,* 129 Yale L.J. 378 (2019) (explaining that some but not all of the Federal Power Commission's authorities were transferred to FERC, which was intended at least in part to counterbalance presidential influence). Succumbing to the pressure of EPA and others would sacrifice that crucial independence in meaningful ways.

[106] *Cf. Vecinos,* 6 F.4th at 1329.

[107] It has been observed that the values associated with the imputed social costs of GHG emissions have fluctuated dramatically from one administration to the next. *See, e.g.,* Garrett S. Kral, *What's In a Number: The Social Cost of Carbon,* Geo. Envtl. L. Rev. Online 1 (Aug. 19, 2021) (comparing the social cost of GHG emissions under the Trump administration with the interim social cost under the Biden administration and noting ''the value of SC–GHGs have fluctuated. A lot.''). This degree of abrupt fluctuation—*e.g.,* the social cost of carbon increasing from $7 per ton to $51 per ton—can only be explained by politics, not science.

[108] *NFIB,* 142 S. Ct. at 667 (Gorsuch, J. Concurring). (''The central question we face today is: *Who decides?*'') (emphasis added).

[109] *See* P 5 and n.12, *supra.*

[110] *Office of Consumers Counsel,* 655 F.2d at 1142 (''an agency may not bootstrap itself into an area in which it has no jurisdiction by violating its statutory mandate'') (quoting *FMC* v. *Seatrain Lines, Inc.,* 411 U.S. 726, 745 (1973)) (ellipsis omitted); *see also In re MCP No. 165,* 20 F.4th 264, 269 (6th Cir. 2021) (Sutton, C.J., dissenting) (''As the Supreme Court recently explained in invalidating an eviction moratorium promulgated by the Center for Disease Control, 'our system does not permit agencies to act unlawfully even in pursuit of desirable ends.' *Ala. Ass'n of Realtors,* 141 S. Ct. at 2490. Shortcuts in furthering preferred policies, even urgent policies, rarely end well, and *they always undermine, sometimes permanently, American vertical and horizontal separation of powers, the true mettle of the U.S. Constitution, the true long-term guardian of liberty.*'') (emphasis added).

[111] This argument is often put forth by the legal, academic, and corporate elites who assume that an administrative agency will enact the public policies they prefer when Congress will not. Such an expectation is perfectly rational since these elites disproportionately have the resources that are most effective in achieving desired outcomes in the administrative process, which is largely an insiders' game. The body of work on the economic theory of regulatory capture over the past half-century is relevant to this topic. *See generally,* Susan E. Dudley, *Let's Not Forget George Stigler's Lessons about Regulatory Capture,* Regulatory Studies Center (May 20, 2021) (available at *https://regulatorystudies.columbian.gwu.edu/let%E2%80%99s-not-forget-george-stigler%E2%80%99s-lessons-about-regulatory-capture*). And it is not just for-profit corporate elites at work here, so are other special interests who seek desired policy outcomes from administrative action rather than from the often messy and hard democratic processes of seeking to persuade voters to elect members of Congress who agree with you. *See, e.g.,* n. 97, *supra.*

63. For if democracy means anything at all, it means that the people have an inherent right to choose the legislators to whom the people grant the power to decide the major questions of public policy that impact how the people live their daily lives. Unelected federal judges and executive-branch administrators, no matter how enlightened they and other elites may regard themselves to be, do not have the power to decide such questions; they only have the power to carry out the duly-enacted laws of the United States, including the most important law of all, the Constitution. That is the basic constitutional framework of the United States and it is the same for any liberal democracy worth the name.

For these reasons, I respectfully dissent.

Mark C. Christie,

Commissioner.

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