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# Presidential Documents

**Title 3—**

## The President

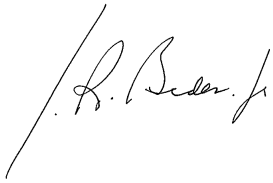
**Presidential Determination No. 2022–10 of March 10, 2022**

## Designation of the State of Qatar as a Major Non-NATO Ally

**Memorandum for the Secretary of State**

By the authority vested in me as President by the Constitution and the laws of the United States of America, and by section 517 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2321k) (the ''Act''), I hereby designate the State of Qatar as a major Non-NATO Ally of the United States for the purposes of the Act and the Arms Export Control Act (22 U.S.C. 2751 *et seq.*).

You are authorized and directed to publish this determination in the *Federal Register*.



The White House,
*Washington, March 10, 2022*

[FR Doc. 2022–05773
Filed 3–16–22; 8:45 am]
Billing code 4710–10–P

# Presidential Documents

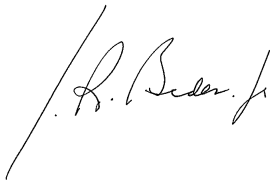
**Memorandum of March 12, 2022**

## Delegation of Authority Under Section 506(a)(1) of the Foreign Assistance Act of 1961

**Memorandum for the Secretary of State**

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 621 of the Foreign Assistance Act of 1961 (FAA), I hereby delegate to the Secretary of State the authority under section 506(a)(1) of the FAA to direct the drawdown of up to an aggregate value of $200 million in defense articles and services of the Department of Defense, and military education and training, to provide assistance to Ukraine and to make the determinations required under such section to direct such a drawdown.

You are authorized and directed to publish this memorandum in the *Federal Register*.



The White House,
*Washington, March 12, 2022*

[FR Doc. 2022–05774
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# Presidential Documents

**Proclamation 10348 of March 14, 2022**

## National Equal Pay Day, 2022

**By the President of the United States of America**

**A Proclamation**

Equal pay is a matter of justice, fairness, and dignity—it is about living up to our values and who we are as a Nation. For over 25 years, Equal Pay Day has helped draw attention to gender-based pay disparities by highlighting how far into a new year a woman must work, on average, to earn what a man did in the previous year.

This year, Equal Pay Day falls on March 15, the earliest we have ever marked the occasion. The earlier that Equal Pay Day arrives, the closer our Nation has come to achieving pay fairness. But while we should celebrate the progress we have made, as I have said in the past, we should not be satisfied until Equal Pay Day is no longer necessary at all.

In 2020, the average woman working full-time, year-round, for wages or a salary earned 83 cents for every dollar paid to their average male counterpart. And once again, the disparities are even greater for Black, Native American, Latina, and certain subpopulations of Asian women when compared to white men. Disabled women also continue to experience significant disparities and make 80 cents for every dollar compared to men with disabilities. The pay gap reflects outright discrimination as well as barriers that women face in accessing good-paying jobs and meeting caregiving responsibilities—including a lack of affordable child care, paid family and medical leave, and fair and predictable scheduling—which often prevent women from joining and staying in the workforce.

Over the course of a career, the pay gap can add up to hundreds of thousands of dollars in lost earnings, particularly for women of color, significantly impacting retirement savings and uniquely burdening households led by single mothers.

The Biden-Harris Administration has moved quickly to deliver results for women and working families and to dismantle the barriers that women face in the workplace. In our first full year in office, we saw the largest calendar year decline in unemployment. We also saw the strongest economic growth in nearly 4 decades, rising wages, and an estimated nearly 40 percent decline in child poverty. We have turned the tide on women's labor force participation, which the COVID–19 pandemic had pushed to a more than 30-year low. In addition, my Administration has taken key steps to address pay discrimination, including issuing an Executive Order directing the Office of Personnel Management to take appropriate steps to advance equal pay at Federal agencies. And I have raised the minimum wage for Federal contractors, which has significantly benefitted women—especially women of color—who are disproportionately represented in minimum-wage and low-wage jobs.

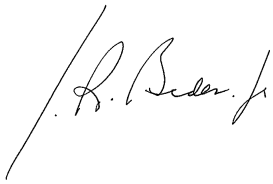
We can be proud of that progress—but there is more we need to do. My Administration is fighting to ensure that women have the free and fair choice to organize and collectively bargain for the wages and benefits they deserve and to access training for good-paying jobs in sectors where they have historically been underrepresented. We are working to eliminate anticompetitive barriers that keep women from bargaining for better pay and demanding dignity and respect in the workplace. I have continued to call

on the Congress to pass the Paycheck Fairness Act, which would help mitigate sex-based pay discrimination while ensuring greater transparency and reporting of disparities in wages. And I am continuing to work with the Congress to pass critical legislation that would lower the cost of child care, elder care, home-based health care, and other major barriers to working families, while raising compensation for care workers, who are disproportionately women of color and who have been underpaid and undervalued for far too long.

If we are going to continue our record-breaking recovery and build a truly strong and competitive economy for the future, we have to address the barriers that have long held women back from full participation and fair treatment in the workforce. The founding promise of our Nation is that all people are created equal—and my Administration is committed to ensuring that all Americans have a fair and equal opportunity to get ahead, so that one day soon we can render Equal Pay Day a relic of the past.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 15, 2022, as National Equal Pay Day. I call upon all Americans to recognize the full value of women's skills and their significant contributions to the labor force, acknowledge the injustice of wage inequality, and join efforts to achieve equal pay.

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



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# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

**[Docket Number RUS–20–TELECOM–0044]**

### 7 CFR Parts 1735 and 1737

**RIN 0572–AC48**

## Implementation of Telecommunications Provisions of the Agricultural Improvement Act of 2018

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Final rule; confirmation.

**SUMMARY:** The Rural Utilities Service, a Rural Development agency of the United States Department of Agriculture (USDA), hereinafter referred to as ''RUS'' or ''the Agency,'' published in the **Federal Register** on September 10, 2021, a final rule with request for comments. This document presents the opportunity for the Agency to provide its responses to the public comments received on the final rule and to confirm the final rule as published.

**DATES:** March 17, 2022.

**FOR FURTHER INFORMATION CONTACT:** Laurel Leverrier, Assistant Administrator, Telecommunications Program, Rural Utilities Service, U.S. Department of Agriculture, email: *laurel.leverrier@usda.gov,* telephone (202) 720–9556.

**SUPPLEMENTARY INFORMATION:** The RUS published a final rule with request for comments in the **Federal Register** on September 10, 2021 at 86 FR 50604. The final rule modified existing regulations to implement statutory provisions of the Agriculture Improvement Act of 2018 (2018 Farm Bill).

The comment period on the final rule closed November 9, 2021. Comments were received from five respondents. The comments provided and Agency responses are as follows:

### Respondent One

Respondent one is an individual that offered general comments on the importance of connectivity and how it can benefit rural areas and farmers.

*Agency Response:* Thank you for your comment.

### Respondent Two

Respondent two is a small company located in Kansas that started up specifically to offer broadband service with a grant through a COVID–19 response program. The company had to take on additional debt in order to expand their service and have provided general comments on their experience with providing service to a small area and the challenges they continue to face. They ''would like to see refinancing limits to 100 percent loans and 50 percent for non-RUS loans.'' They express the need for easier access to capital for network upgrades.

*Agency Response:* Thank you for your comment.

### Respondent Three

Respondent three is an organization that represents its member telecommunications companies and advocates on their behalf. They provided a general discussion on the changes made to the regulation and offered the following: ''The proposed rules for implementing the changes to the Rural Telephone Loan Program represent a good faith and commendable effort to carry out the will of Congress expressed in the 2018 Farm Bill, and USDA has the benefit of decades of experience (and countless success stories) at RUS in supporting rural telecom and coordinating with other federal programs. As RUS begins administering the revamped program, however, it will be important to recommit to such efforts, including identifying where providers are receiving USF or other program support to deploy to at least the RUS broadband standard, and limiting future USDA awards in those areas to the recipients of support or funding from these other programs instead of duplicating the existing network and putting scarce federal resources at risk.''

As part of their concern for identifying where existing providers are located, they recommended adding to § 1735.12 on nonduplication ''that such loan will not results in duplication of lines, facilities, or systems that are obligated to be built in the area in question to provide reasonably adequate services under other programs administered by the Agency or any other federal Agency.''

*Agency Response:* The Agency supports the respondent's comment and the Agency meets with other federal agencies that support the deployment of broadband facilities on a regular basis. We appreciate your suggestion and will keep it under consideration for a future change to the regulation. As the Agency works with our other federal partners, we will develop an overall strategy that ensures the most efficient use of all federal dollars allocated to providing broadband service.

### Respondent Four

Respondent four is an existing Native American RUS borrower that has been in operation over 60 years. They have outstanding loans in the telecommunications and broadband programs. They ''strongly support the included federal rule amendments and urge their expeditious implementation by the RUS.'' In support of and relating to these changes, the company offered a detailed summary of their existing operations and their hard work in providing modern, state-of-the-art telecommunications services to its customers. Their broadband penetration ''sits at approximately 58 percent and while the company understands the importance of making its broadband services more affordable, it has been unable to reduce its pricing given financial, cost recovery needs. As a small company providing broadband and voice services over a large, remote, and thinly populated area, the company faces significant cost recovery challenges.'' In recognition of their cost recovery and price affordability concerns, they have been in discussions with the Agency on extensions, revised loan terms or full refinancing options.

As to implementation of the final rule and issuance of the referenced funding opportunity announcement, ''the borrower urges RUS to move swiftly in its process, issuing the required public notice at the earliest opportunity. Furthermore, the company requests that the RUS in making funds available for refinancing establish a process for receiving and reviewing applications that fairly takes into account the interest of the company and other service providers.''

In its summary, the borrower ''urges the RUS to sufficiently clarify within the released Notice of Funding

Opportunity the differences in the informational requirements, review processes and the estimated timelines that will apply with respect to the RUS review of refinance applications vs. original loan applications. Also, given the informational requirements and steps necessary for full review and final action by the RUS should not be as extensive for refinance applications, the borrower encourages the RUS to implement a timeline for its acceptance and review of refinance applications that is different than, and much shorter, that the timelines will be established for the submittal, review and action on applications for new infrastructure loans.''

*Agency response:* The Agency is in the final phase of the funding announcement to open the Infrastructure Program to the new refinancing opportunities. The funding announcement will include the requirements that need to be satisfied to receive the refinancing. Applications will be processed as soon as they are submitted.

**Respondent Five**

Respondent five is a national trade association that represents small, rural telecommunications providers across rural America. Many of the rural location exchange carriers they represent have a long-standing relationship with the Agency going back more than 75 years. The respondent ''supports RUS' efforts that streamline the Loan Program and eliminate unnecessary requirements so that the Program operates more efficiently. In addition, the respondent supports some of the more substantive changes made to the Loan Program rules. Specifically, creating a minimum retail broadband service speed standard of 25/3 Mbps will help ensure rural areas are not left behind more populated areas when it comes to broadband service. In addition, broader loan restructuring and refinancing authority will allow RUS borrowers to take advantage of better interest rates. Finally, the creation of a public notice requirement for loan applications will help ensure funds are not used to duplicate existing networks; however, RUS should strengthen this provision by directly contacting incumbent service providers to let them know of a submitted application.''

*Agency response:* The Agency believes that the public notice requirements, set out by statute, sufficiently put incumbent service providers on notice that an application has been submitted under any program at USDA for retail broadband assistance.

The Agency did not receive any significant adverse comments during the public comment period on the final rule, and therefore confirms the rule without change.

**Christopher A. McLean,**

*Acting Administrator, Rural Utilities Service.*

[FR Doc. 2022–05496 Filed 3–16–22; 8:45 am]

**BILLING CODE 3410–15–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 21

**[Docket No. FAA–2020–1088]**

## Airworthiness Criteria: Special Class Airworthiness Criteria for the TELEGRID Technologies, Inc. TELEGRID DE2020 Unmanned Aircraft

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

**ACTION:** Issuance of final airworthiness criteria.

**SUMMARY:** The FAA announces the special class airworthiness criteria for the TELEGRID Technologies, Inc. Model TELEGRID DE2020 unmanned aircraft (UA). This document sets forth the airworthiness criteria the FAA finds to be appropriate and applicable for the UA design.

**DATES:** These airworthiness criteria are effective April 18, 2022.

**FOR FURTHER INFORMATION CONTACT:** Christopher J. Richards, Emerging Aircraft Strategic Policy Section, AIR–618, Strategic Policy Management Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 6020 28th Avenue South, Room 103, Minneapolis, MN 55450, telephone (612) 253–4559.

**SUPPLEMENTARY INFORMATION:**

### Background

TELEGRID Technologies, Inc. (TELEGRID) applied to the FAA on February 24, 2020, for a special class type certificate under Title 14, Code of Federal Regulations (14 CFR) 21.17(b) for the Model TELEGRID DE2020 unmanned aircraft system (UAS).

The Model TELEGRID DE2020 consists of a rotorcraft UA and its associated elements (AE) including communication links and components that control the UA. The Model TELEGRID DE2020 UA has a maximum gross takeoff weight of 24 pounds. It is approximately 39 inches in width, 39 inches in length, and 17 inches in height. The Model TELEGRID DE2020 UA uses battery-powered electric motors for vertical takeoff, landing, and forward flight. The UAS operations would rely on high levels of automation and may include multiple UA operated by a single pilot, up to a ratio of 20 UA to 1 pilot. TELEGRID anticipates operators will use the Model TELEGRID DE2020 for delivering packages. The proposed concept of operations (CONOPS) for the Model TELEGRID DE2020 identifies a maximum operating altitude of 400 feet above ground level (AGL), a maximum cruise speed of 22 knots (25 mph), operations beyond visual line of sight (BVLOS) of the pilot, and operations over human beings. TELEGRID has not requested type certification for flight into known icing for the Model TELEGRID DE2020.

The FAA issued a notice of proposed airworthiness criteria for the TELEGRID DE2020 UAS, which published in the **Federal Register** on November 20, 2020 (85 FR 74289).

### Summary of Changes From the Proposed Airworthiness Criteria

Based on the comments received, these final airworthiness criteria reflect the following changes, as explained in more detail under Discussion of Comments: A new section containing definitions; revisions to the CONOPS requirement; changing the term ''critical part'' to ''flight essential part'' in D&R.135; changing the basis of the durability and reliability testing from population density to limitations prescribed for the operating environment identified in the applicant's CONOPS per D&R.001; and, for the demonstration of certain required capabilities and functions as required by D&R.310.

Additionally, the FAA re-evaluated its approach to type certification of low-risk UA using durability and reliability testing. Safe UAS operations depend and rely on both the UA and the AE. As explained in FAA Memorandum AIR600–21–AIR–600–PM01, dated July 13, 2021, the FAA has revised the airworthiness criteria to define a boundary between the UA type certification and subsequent operational evaluations and approval processes for the UAS (*i.e.,* waivers, exemptions, and/or operating certificates).

To reflect that these airworthiness criteria rely on durability and reliability (D&R) testing for certification, the FAA changed the prefix of each section from ''UAS'' to ''D&R.''

Lastly, the FAA revised D&R.001(g) to clarify that the operational parameters listed in that paragraph are examples and not an all-inclusive list.

**Discussion of Comments**

The FAA received responses from 15 commenters. The majority of commenters were individuals. In addition to the individuals' comments, the FAA also received comments from the European Union Aviation Safety Agency (EASA), unmanned aircraft manufacturers, a helicopter operator, and organizations such as the Air Line Pilots Association (ALPA), Droneport Texas, LLC, the National Agricultural Aviation Association (NAAA), Northeast UAS Airspace Integration Research Alliance, Inc. (NUAIR), and the Small UAV Coalition.

**Support**

*Comment Summary:* ALPA, NUAIR, and the Small UAV Coalition expressed support for type certification as a special class of aircraft and establishing airworthiness criteria under § 21.17(b). The Small UAV Coalition also supported the FAA's proposed use of performance-based standards.

**Terminology: Loss of Flight**

*Comment Summary:* An individual commenter requested the FAA define the term ''loss of flight'' and clarify how it is different from ''loss of control.'' The commenter questioned whether loss of flight meant the UA could not continue its intended flight plan but could safely land or terminate the flight.

*FAA Response:* The FAA has added a new section, D&R.005, to define the terms ''loss of flight'' and ''loss of control'' for the purposes of these airworthiness criteria. ''Loss of flight'' refers to a UA's inability to complete its flight as planned, up to and through its originally planned landing. ''Loss of flight'' includes scenarios where the UA experiences controlled flight into terrain or obstacles, or any other collision, or a loss of altitude that is severe or non-recoverable. ''Loss of flight'' includes deploying a parachute or ballistic recovery system that leads to an unplanned landing outside the operator's designated recovery zone.

''Loss of control'' means an unintended departure of an aircraft from controlled flight. It includes control reversal or an undue loss of longitudinal, lateral, and directional stability and control. It also includes an upset or entry into an unscheduled or uncommanded attitude with high potential for uncontrolled impact with terrain. ''Loss of control'' means a spin, loss of control authority, loss of aerodynamic stability, divergent flight characteristic, or similar occurrence, which could generally lead to a crash.

**Terminology: Skill and Alertness of Pilot**

*Comment Summary:* Two commenters requested the FAA clarify terminology with respect to piloting skill and alertness. Droneport Texas LLC stated that the average pilot skill and alertness is currently undefined, as remote pilots do not undergo oral or practical examinations to obtain certification. NUAIR noted that, despite the definition of ''exceptional piloting skill and alertness'' in Advisory Circular (AC) 23–8C, *Flight Test Guide for Certification of Part 23 Airplanes,* there is a significant difference between the average skill and alertness of a remote pilot certified under 14 CFR part 107 and a pilot certified under 14 CFR part 61. The commenter requested the FAA clarify the minimum qualifications and ratings to perform as a remote pilot of a UAS with a type certificate.

*FAA Response:* These airworthiness criteria do not require exceptional piloting skill and alertness for testing. The FAA included this as a requirement to ensure the applicant passes testing by using pilots of average skill who have been certificated under part 61, as opposed to highly trained pilots with thousands of hours of flight experience.

**Concept of Operations**

The FAA proposed a requirement for the applicant to submit a CONOPS describing the UAS and identifying the intended operational concepts. The FAA explained in the preamble of the notice of proposed airworthiness criteria that the information in the CONOPS would determine parameters for testing and flight manual operating limitations.

*Comment Summary:* One commenter stated that the airworthiness criteria are generic and requested the FAA add language to proposed UAS.001 to clarify that some of the criteria may not be relevant or necessary.

*FAA Response:* Including the language requested by the commenter would be inappropriate, as these airworthiness criteria are project-specific. Thus, in this case, each element of these airworthiness criteria is a requirement specific to the type certification of TELEGRID's proposed UA design.

*Comment Summary:* ALPA requested the criteria specify that the applicant's CONOPS contain sufficient detail to determine the parameters and extent of testing, as well as operating limitations placed on the UAS for its operational uses.

*FAA Response:* The FAA agrees and has updated D&R.001 to clarify that the information required for inclusion in the CONOPS proposal (D&R.001(a) through (g)) must be described in sufficient detail to determine the parameters and extent of testing and operating limitations.

*Comment Summary:* ALPA requested the CONOPS include a description of a means to ensure separation from other aircraft and perform collision avoidance maneuvers. ALPA stated that its requested addition to the CONOPS is critical to the safety of other airspace users, as manned aircraft do not easily see most UAs.

*FAA Response:* The FAA agrees and has updated D&R.001 to require that the applicant identify collision avoidance equipment (whether onboard the UA or part of the AE), if the applicant requests to include that equipment.

*Comment Summary:* ALPA requested the FAA add security-related (other than cyber-security) requirements to the CONOPS criteria, including mandatory reporting of security occurrences, security training and awareness programs for all personnel involved in UAS operations, and security standards for the transportation of goods, similar to those for manned aviation.

*FAA Response:* The type certificate only establishes the approved design of the UA. Operations and operational requirements, including those regarding security occurrences, security training, and package delivery security standards (other than cybersecurity airworthiness design requirements) are beyond the scope of the airworthiness criteria established by this document and are not required for type certification.

*Comment Summary:* UAS.001(c) proposed to require that the applicant's CONOPS include a description of meteorological conditions. ALPA requested the FAA change UAS.001(c) to require a description of meteorological and environmental conditions and their operational limits. ALPA stated the CONOPS should include maximum wind speeds, maximum or minimum temperatures, maximum density altitudes, and other relevant phenomena that will limit operations or cause operations to terminate.

*FAA Response:* D&R.001(c) and D&R.125 address meteorological conditions, while D&R.001(g) addresses environmental considerations. The FAA determined that these criteria are sufficient to cover the weather phenomena mentioned by the commenter without specifically requiring identification of related operational limits.

**Control Station**

To address the risks associated with loss of control of the UA, the FAA proposed that the applicant design the control station to provide the pilot with all information necessary for continued safe flight and operation.

*Comment Summary:* ALPA and two individual commenters requested the FAA revise the proposed criteria to add requirements for the control station. Specifically, these commenters requested the FAA include the display of data and alert conditions to the pilot, physical security requirements for both the control station and the UAS storage area, design requirements that minimize negative impact of extended periods of low pilot workload, transfer of control between pilots, and human factors/human machine interface considerations for handheld controls. NUAIR requested the FAA designate the control station as a flight critical component for operations.

EASA and an individual commenter requested the FAA consider flexibility in some of the proposed criteria. EASA stated that the list of information in proposed UAS.100 is too prescriptive and contains information that may not be relevant for highly automated systems. The individual commenter requested that the FAA allow part-time or non-continuous displays of required information that do not influence the safety of the flight.

*FAA Response:* Although the scope of the proposed airworthiness criteria applied to the entire UAS, the FAA has re-evaluated its approach to type certification of low-risk unmanned aircraft using durability and reliability testing. A UA is an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft.[1] A UAS is defined as a UA and its AE, including communication links and the components that control the UA, that are required to operate the UAS safely and efficiently in the national airspace system.[2] As explained in FAA Memorandum AIR600–21–AIR–600–PM01, dated July 13, 2021, the FAA determined it will apply the regulations for type design approval, production approval, conformity, certificates of airworthiness, and maintenance to only the UA and not to the AE. However, because safe UAS operations depend and rely on both the UA and the AE, the FAA will consider the AE in assessing whether the UA meets the airworthiness criteria that comprise the certification basis.

While the AE items themselves will be outside the scope of the UA type design, the applicant will provide sufficient specifications for any aspect of the AE, including the control station, which could affect airworthiness. The FAA will approve either the specific AE or minimum specifications for the AE, as identified by the applicant, as part of the type certificate by including them as an operating limitation in the type certificate data sheet and flight manual. The FAA may impose additional operating limitations specific to the AE through conditions and limitations for inclusion in the operational approval (*i.e.,* waivers, exemptions, or a combination of these). In accordance with this approach, the FAA will consider the entirety of the UAS for operational approval and oversight.

Accordingly, the FAA has revised the criteria by replacing proposed section UAS.100, applicable to the control station design, with D&R.100, UA Signal Monitoring and Transmission, with substantively similar criteria that apply to the UA design.

The FAA has also added a new section, D&R.105, UAS AE Required for Safe UA Operations, which requires the applicant to provide information concerning the specifications of the AE. The FAA has moved the alert function requirement proposed in UAS.100(a) to new section D&R.105(a)(1)(i). As part of the clarification of the testing of the interaction between the UA and AE, the FAA has added a requirement to D&R.300(h) for D&R testing to use minimum specification AE. This addition requires the applicant to demonstrate that the limits proposed for those AE will allow the UA to operate as expected throughout its service life. Finally, the FAA has revised references throughout the airworthiness criteria from ''UAS'' to ''UA,'' as appropriate, to reflect the FAA determination that the regulations for type design approval, production approval, conformity, certificates of airworthiness, and maintenance apply to only the UA.

**Software**

The FAA proposed criteria on verification, configuration management, and problem reporting to minimize the existence of errors associated with UAS software.

*Comment Summary:* ALPA requested the FAA add language to the proposed criteria to ensure that some level of software engineering principles are used without being too prescriptive.

*FAA Response:* By combining the software testing requirement of D&R.110(a) with successful completion of the requirements in the entire ''Testing'' subpart, the acceptable level of software assurance will be identified and demonstrated. The configuration management system required by D&R.110(b) will ensure that the software is adequately documented and traceable both during and after the initial type certification activities.

*Comment Summary:* EASA suggested the criteria require that the applicant establish and correctly implement system requirements or a structured software development process for critical software.

*FAA Response:* Direct and specific evaluation of the software development process is more detailed than what the FAA intended with the proposed criteria, which use D&R testing to evaluate the UAS as a whole system, rather than evaluating individual components within the UA. Successful completion of the testing requirements provides confidence that the components that make up the UA provide an acceptable level of safety, commensurate to the low-risk nature of this aircraft. The FAA finds no change to the airworthiness criteria is needed.

*Comment Summary:* Two individual commenters requested the FAA require the manned aircraft software certification methodology in RTCA DO–178C, *Software Considerations in Airborne Systems and Equipment Certification,* for critical UA software.

*FAA Response:* Under these airworthiness criteria, only software that may affect the safe operation of the UA must be verified by test. To verify by test, the applicant will need to provide an assessment showing that other software is not subject to testing because it has no impact on the safe operation of the UA. For software that is subject to testing, the FAA may accept multiple options for software qualification, including DO–178C. Further, specifying that applicants must comply with DO–178 would be inconsistent with the FAA's intent to issue performance-based airworthiness criteria.

*Comment Summary:* NAAA stated that an overreliance of software in aircraft has been and continues to be a source of accidents and requested the FAA include criteria to prevent a midair collision.

*FAA Response:* The proper functioning of software is an important element of type certification, particularly with respect to flight controls and navigation. The airworthiness criteria in D&R.110 are meant to provide an acceptable level of safety commensurate with the risk posed by this UA. Additionally, the

[1] See 49 U.S.C. 44801(11).

[2] See 49 U.S.C. 44801(12).

airworthiness criteria require contingency planning per D&R.120 and the demonstration of the UA's ability to detect and avoid other aircraft in D&R.310, if requested by the applicant. The risk of a midair collision will be minimized by the operating limitations that result from testing based on the operational parameters identified by the applicant in its CONOPS (such as geographic operating boundaries, airspace classes, and congestion of the proposed operating area), rather than by specific mitigations built into the aircraft design itself. These criteria are sufficient due to the low-risk nature of the TELEGRID DE2020.

**Cybersecurity**

Because the UA requires a continuous wireless connection, the FAA proposed criteria to address the risks to the UAS from cybersecurity threats.

*Comment Summary:* ALPA requested adding a requirement for cybersecurity protection for navigation and position reporting systems such as Global Navigation Satellite System (GNSS). ALPA further requested the FAA include criteria to address specific cybersecurity vulnerabilities, such as jamming (denial of signal) and spoofing (false position data is inserted). ALPA stated that, for navigation, UAS primarily use GNSS—an unencrypted, open-source, low power transmission that can be jammed, spoofed, or otherwise manipulated.

*FAA Response:* The FAA will assess elements directly influencing the UA for cybersecurity under D&R.115 and will assess the AE as part of any operational approvals an operator may seek. D&R.115 (proposed as UAS.115) addresses intentional unauthorized electronic interactions, which includes, but is not limited to, hacking, jamming, and spoofing. These airworthiness criteria require the high-level outcome the UA must meet, rather than discretely identifying every aspect of cybersecurity the applicant will address.

**Contingency Planning**

The FAA proposed criteria requiring that the UAS be designed to automatically execute a predetermined action in the event of a loss of communication between the pilot and the UA. The FAA further proposed that the predetermined action be identified in the Flight Manual and that the UA be precluded from taking off when the quality of service is inadequate.

*Comment Summary:* ALPA requested the criteria encompass more than loss or degradation of the command and control (C2) link, as numerous types of critical part or systems failures can occur that include degraded capabilities, whether intermittent or sustained. ALPA requested the FAA add language to the proposed criteria to address specific failures such as loss of a primary navigation sensor, degradation or loss of navigation capability, and simultaneous impact of C2 and navigation links.

*FAA Response:* The airworthiness criteria address the issues raised by the commenter. Specifically, D&R.120(a) addresses actions the UA will automatically and immediately take when the operator no longer has control of the UA. Should the specific failures identified by ALPA result in the operator's loss of control, then the criteria require the UA to execute a predetermined action. Degraded navigation performance does not raise the same level of concern as a degraded or lost C2 link. For example, a UA may experience interference with a GPS signal on the ground, but then find acceptable signal strength when above a tree line or other obstruction. The airworthiness criteria require that neither degradation nor complete loss of GPS or C2, as either condition would be a failure of that system, result in unsafe loss of control or containment. The applicant must demonstrate this by test to meet the requirements of D&R.305(a)(3).

Under the airworthiness criteria, the minimum performance requirements for the C2 link, defining when the link is degraded to an unacceptable level, may vary among different UAS designs. The level of degradation that triggers a loss is dependent upon the specific UA characteristics; this level will be defined by the applicant and demonstrated to be acceptable by testing as required by D&R.305(a)(2) and D&R.310(a)(1).

*Comment Summary:* An individual commenter requested the FAA use distinct terminology for ''communication,'' used for communications with air traffic control, and ''C2 link,'' used for command and control between the remote pilot station and UA. The commenter questioned whether, in the proposed criteria, the FAA stated ''loss of communication between the pilot and the UA'' when it intended to state ''loss of C2 link.''

*FAA Response:* Communication extends beyond the C2 link and specific control inputs. This is why D&R.001 requires the applicant's CONOPS to include a description of the command, control, and communications functions. As long as the UA operates safely and predictably per its lost link contingency programming logic, a C2 interruption does not constitute a loss of control.

**Lightning**

The FAA proposed criteria to address the risks that would result from a lightning strike, accounting for the size and physical limitations of a UAS that could preclude traditional lightning protection features. The FAA further proposed that without lightning protection for the UA, the Flight Manual must include an operating limitation to prohibit flight into weather conditions with potential lightning.

*Comment Summary:* An individual requested the FAA revise the criteria to include a similar design mitigation or operating limitation for High Intensity Radiated Fields (HIRF). The commenter noted that HIRF is included in proposed UAS.300(e) as part of the expected environmental conditions that must be replicated in testing.

*FAA Response:* The airworthiness criteria, which are adopted as proposed, address the issue raised by the commenter. The applicant must identify tested HIRF exposure capabilities, if any, in the Flight Manual to comply with the criteria in D&R.200(a)(5). Information regarding HIRF capabilities is necessary for safe operation because proper communication and software execution may be impeded by HIRF-generated interference, which could result in loss of control of the UA. It is not feasible to measure HIRF at every potential location where the UA will operate; thus, requiring operating limitations for HIRF as requested by the commenter would be impractical.

**Adverse Weather Conditions**

The FAA proposed criteria either requiring that design characteristics protect the UAS from adverse weather conditions or prohibiting flight into known adverse weather conditions. The criteria proposed to define adverse weather conditions as rain, snow, and icing.

*Comment Summary:* ALPA and two individual commenters requested the FAA expand the proposed definition of adverse weather conditions. These commenters noted that because of the size and physical limitations of the Model TELEGRID DE2020, adverse weather should also include wind, downdraft, low-level wind shear (LLWS), microburst, and extreme mechanical turbulence.

*FAA Response:* No additional language needs to be added to the airworthiness criteria to address wind effects. The wind conditions specified by the commenters are part of normal UA flight operations. The applicant must demonstrate by flight test that the UA can withstand wind without failure

to meet the requirements of D&R.300(b)(9). The FAA developed the criteria in D&R.130 to address adverse weather conditions (rain, snow, and icing) that would require additional design characteristics for safe operation. Any operating limitations necessary for operation in adverse weather or wind conditions will be included in the Flight Manual as required by D&R.200.

*Comment Summary:* One commenter questioned whether the criteria proposed in UAS.130(c)(2), requiring a means to detect adverse weather conditions for which the UAS is not certificated to operate, is a prescriptive requirement to install an onboard detection system. The commenter requested, if that was the case, that the FAA allow alternative procedures to avoid flying in adverse weather conditions.

*FAA Response:* The language referred to by the commenter is not a prescriptive design requirement for an onboard detection system. The applicant may use any acceptable source to monitor weather in the area, whether onboard the UA or from an external source.

**Critical Parts**

The FAA proposed criteria for critical parts that were substantively the same as those in the existing standards for normal category rotorcraft under § 27.602, with changes to reflect UAS terminology and failure conditions. The criteria proposed to define a critical part as a part, the failure of which could result in a loss of flight or unrecoverable loss of control of the aircraft.

*Comment Summary:* EASA requested the FAA avoid using the term ''critical part,'' as it is a well-established term for complex manned aircraft categories and may create incorrect expectations on the oversight process for parts.

*FAA Response:* For purposes of the airworthiness criteria established for the TELEGRID Model TELEGRID DE2020, the FAA has changed the term ''critical part'' to ''flight essential part.''

*Comment Summary:* An individual commenter requested the FAA revise the proposed criteria such that a failure of a flight essential part would only occur if there is risk to third parties.

*FAA Response:* The definition of ''flight essential'' does not change regardless of whether on-board systems are capable of safely landing the UA when it is unable to continue its flight plan. Tying the definition of a flight essential part to the risk to third parties would result in different definitions for the part depending on where and how the UA is operated. These criteria for the Model TELEGRID DE2020 UA apply the same approach as for manned aircraft.

**Flight Manual**

The FAA proposed criteria for the Flight Manual that were substantively the same as the existing standards for normal category airplanes, with minor changes to reflect UAS terminology.

*Comment Summary:* ALPA requested the FAA revise the criteria to include normal, abnormal, and emergency operating procedures along with their respective checklist. ALPA further requested the checklist be contained in a quick reference handbook (QRH).

*FAA Response:* The FAA did not intend for the airworthiness criteria to exclude abnormal procedures from the flight manual. In these final airworthiness criteria, the FAA has changed ''normal and emergency operating procedures'' to ''operating procedures'' to encompass all operating conditions and align with 14 CFR 23.2620, which includes the airplane flight manual requirements for normal category airplanes. The FAA has not made any changes to add language that would require the checklists to be included in a QRH. FAA regulations do not require manned aircraft to have a QRH for type certification. Therefore, it would be inconsistent for the FAA to require a QRH for the TELEGRID Model TELEGRID DE2020 UA.

*Comment Summary:* ALPA requested the FAA revise the airworthiness criteria to require that the Flight Manual and QRH be readily available to the pilot at the control station.

*FAA Response:* ALPA's request regarding the Flight manual addresses an operational requirement, similar to 14 CFR 91.9 and is therefore not appropriate for type certification airworthiness criteria. Also, as previously discussed, FAA regulations do not require a QRH. Therefore, it would be inappropriate to require it to be readily available to the pilot at the control station.

*Comment Summary:* Droneport Texas LLC requested the FAA revise the airworthiness criteria to add required Flight Manual sections for routine maintenance and mission-specific equipment and procedures. The commenter stated that the remote pilot or personnel on the remote pilot-in-command's flight team accomplish most routine maintenance, and that the flight team usually does UA rigging with mission equipment.

*FAA Response:* The requested change is appropriate for a maintenance document rather than a flight manual because it addresses maintenance procedures rather than the piloting functions. The FAA also notes that, similar to the criteria for certain manned aircraft, the airworthiness criteria require that the applicant prepare instructions for continued airworthiness (ICA) in accordance with Appendix A to Part 23. As the applicant must provide any maintenance instructions and mission-specific information necessary for safe operation and continued operational safety of the UA, in accordance with D&R.205, no changes to the airworthiness criteria are necessary.

*Comment Summary:* An individual commenter requested the FAA revise the criteria in proposed UAS.200(b) to require that ''other information'' referred to in proposed UAS.200(a)(5) be approved by the FAA. The commenter noted that, as proposed, only the information listed in UAS.200(a)(1) through (4) must be FAA approved.

*FAA Response:* The change requested by the commenter would be inconsistent with the FAA's airworthiness standards for flight manuals for manned aircraft. Sections 23.2620(b), 25.1581(b), 27.1581(b), and 29.1581(b) include requirements for flight manuals to include operating limitations, operating procedures, performance information, loading information, and other information that is necessary safe operation because of design, operating, or handling characteristics, but limit FAA approval to operating limitations, operating procedures, performance information, and loading information.

Under § 23.2620(b)(1), for low-speed level 1 and level 2 airplanes, the FAA only approves the operating limitations. In applying a risk-based approach, the FAA has determined it would not be appropriate to hold the lowest risk UA to a higher standard than what is required for low speed level 1 and level 2 manned aircraft. Accordingly, the FAA has revised the airworthiness criteria to only require FAA approval of the operating limitations.

*Comment Summary:* NUAIR requested the FAA recognize that § 23.2620 is only applicable to the aircraft and does not address off-aircraft components such as the control station, control and non-payload communications (CNPC) data link, and launch and recovery equipment. The commenter noted that this is also true of industry consensus-based standards designed to comply with § 23.2620.

*FAA Response:* As explained in more detail in the Control Station section of this document, the FAA has revised the airworthiness criteria for the AE. The FAA will approve AE or minimum specifications for the AE that could affect airworthiness as an operating

limitation in the UA flight manual. The FAA will establish the approved AE or minimum specifications as operating limitations and include them in the UA type certificate data sheet and Flight Manual in accordance with D&R.105(c). The establishment of requirements for, and the approval of AE will be in accordance with FAA Memorandum AIR600–21–AIR–600–PM01, dated July 13, 2021.

**Durability and Reliability**

The FAA proposed durability and reliability testing that would require the applicant to demonstrate safe flight of the UAS across the entire operational envelope and up to all operational limitations, for all phases of flight and all aircraft configurations described in the applicant's CONOPS, with no failures that result in a loss of flight, loss of control, loss of containment, or emergency landing outside the operator's recovery area. The FAA further proposed that the unmanned aircraft would only be certificated for operations within the limitations, and for flight over areas no greater than the maximum population density, as described in the applicant's CONOPS and demonstrated by test.

*Comment Summary:* ALPA requested that the proposed certification criteria require all flights during testing be completed in both normal and non-normal or off-nominal scenarios with no failures that result in a loss of flight, loss of control, loss of containment, or emergency landing outside of the operator's recovery zone. Specifically, ALPA stated that testing must not require exceptional piloting skill or alertness and include, at a minimum: All phases of the flight envelope, including the highest UA to pilot ratios; the most adverse combinations of the conditions and configuration; the environmental conditions identified in the CONOPS; the different flight profiles and routes identified in the CONOPS; and exposure to EMI and HIRF.

*FAA Response:* No change is necessary because the introductory text and paragraphs (b)(7), (b)(9), (b)(10), (b)(13), (c), (d), (e), and (f) of D&R.300, which are adopted as proposed, contain the specific testing requirements requested by ALPA.

*Comment Summary:* Droneport Texas LLC requested the FAA revise the testing criteria to include, for operation at night, testing both with and without night vision aids. The commenter stated that because small UAS operation at night is waivable under 14 CFR part 107, manufacturers will likely make assumptions concerning a pilot's familiarity with night vision device-aided and unaided operations.

*FAA Response:* Under D&R.300(b)(11), the applicant must demonstrate by flight test that the UA can operate at night without failure using whatever equipment is onboard the UA itself. The pilot's familiarity, or lack thereof, with night vision equipment does not impact whether the UA is reliable and durable to complete testing without any failures.

*Comment Summary:* EASA requested the FAA clarify how testing durability and reliability commensurate to the maximum population density, as proposed, aligns with the Specific Operations Risk Assessment (SORA) approach that is open to operational mitigation, reducing the initial ground risk. An individual commenter requested the FAA provide more details about the correlation between the number of flight hours tested and the CONOPS environment (*e.g.,* population density). The commenter stated that this is one of the most fundamental requirements, and the FAA should ensure equal treatment to all current and future applicants.

*FAA Response:* In developing these testing criteria, the FAA sought to align the risk of UAS operations with the appropriate level of protection for human beings on the ground. The FAA proposed establishing the maximum population density demonstrated by durability and reliability testing as an operating limitation on the type certificate. However, the FAA has re-evaluated its approach and determined it to be more appropriate to connect the durability and reliability demonstrated during certification testing with the operating environment defined in the CONOPS.

Basing testing on maximum population density may result in limitations not commensurate with many actual operations. As population density broadly refers to the number of people living in a given area per square mile, it does not allow for evaluating variation in a local operating environment. For example, an operator may have a route in an urban environment with the actual flight path along a greenway; the number of human beings exposed to risk from the UA operating overhead would be significantly lower than the population density for the area. Conversely, an operator may have a route over an industrial area where few people live, but where, during business hours, there may be highly dense groups of people. Specific performance characteristics such as altitude and airspeed also factor into defining the boundaries for safe operation of the UA.

Accordingly, the FAA has revised D&R.300 to require the UA design to be durable and reliable when operated under the limitations prescribed for its operating environment. The information in the applicant's CONOPS will determine the operating environment for testing. For example, the minimum hours of reliability testing will be less for a UA conducting agricultural operations in a rural environment than if the same aircraft will be conducting package deliveries in an urban environment. The FAA will include the limitations that result from testing as operating limitations on the type certificate data sheet and in the UA Flight Manual. The FAA intends for this process to be similar to the process for establishing limitations prescribed for special purpose operations for restricted category aircraft. This allows for added flexibility in determining appropriate operating limitations, which will more closely reflect the operating environment.

Finally, a comparison of these criteria with EASA's SORA approach is beyond the scope of this document because the SORA is intended to result in an operational approval rather than a type certificate.

*Comment Summary:* EASA requested the FAA clarify how reliability at the aircraft level to ensure high-level safety objectives would enable validation of products under applicable bilateral agreements.

*FAA Response:* As the FAA and international aviation authorities are still developing general airworthiness standards for UA, it would be speculative for the FAA to comment on the validation process for any specific UA.

*Comment Summary:* EASA requested the FAA revise the testing criteria to include a compliance demonstration related to adverse combinations of the conditions and configurations and with respect to weather conditions and average pilot qualification.

*FAA Response:* No change is necessary because D&R.300(b)(7), (b)(9), (b)(10), (c), and (f), which are adopted as proposed, contain the specific testing requirements requested by EASA.

*Comment Summary:* EASA noted that, under the proposed criteria, testing involving a large number of flight hours will limit changes to the configuration.

*FAA Response:* Like manned aircraft, the requirements of 14 CFR part 21, subpart D, apply to UA for changes to type certificates. The FAA is developing procedures for processing type design

changes for UA type certificated using durability and reliability testing.

*Comment Summary:* EASA requested the FAA clarify whether the proposed testing criteria would require the applicant to demonstrate aspects that do not occur during a successful flight, such as the deployment of emergency recovery systems and fire protection/post-crash fire. EASA asked if these aspects are addressed by other means and what would be the applicable airworthiness criteria.

*FAA Response:* Equipment not required for normal operation of the UA do not require an evaluation for their specific functionality. D&R testing will show that the inclusion of any such equipment does not prevent normal operation. Therefore, the airworthiness criteria would not require functional testing of the systems described by EASA.

*Comment Summary:* An individual commenter requested the FAA specify the acceptable percentage of failures in the testing that would result in a ''loss of flight.'' The Small UAV Coalition requested the FAA clarify what constitutes an emergency landing outside an operator's landing area, as some UAS designs could include an onboard health system that initiates a landing to lessen the potential of a loss of control event. The commenter suggested that, in those cases, a landing in a safe location should not invalidate the test.

*FAA Response:* The airworthiness criteria require that all test points and flight hours occur with no failures result in a loss of flight, control, containment, or emergency landing outside the operator's recovery zone. The FAA has determined that there is no acceptable percentage of failures in testing. In addition, while the recovery zone may differ for each UAS design, an emergency or unplanned landing outside of a designated landing area would result in a test failure.

*Comment Summary:* The Small UAV Coalition requested that a single failure during testing not automatically restart counting the number of flight test operations set for a particular population density; rather, the applicant should have the option to identify the failure through root-cause and fault-tree analysis and provide a validated mitigation to ensure it will not recur. An individual commenter requested the FAA to clarify whether the purpose of the tests is to show compliance with a quantitative safety objective. The commenter further requested the FAA allow the applicant to reduce the number of flight testing hours if the applicant can present a predicted safety and reliability analysis.

*FAA Response:* The intent of the testing criteria is for the applicant to demonstrate the aircraft's durability and reliability through a successful accumulation of flight testing hours. The FAA does not intend to require analytical evaluation to be part of this process. However, the applicant will comply with these testing criteria using a means of compliance, accepted by the FAA, through the issue paper process. The means of compliance will be dependent on the CONOPS the applicant has proposed to meet.

**Probable Failures**

The FAA proposed criteria to evaluate how the UAS functions after probable failures, including failures related to propulsion systems, C2 link, GPS, critical flight control components with a single point of failure, control station, and any other equipment identified by the applicant.

*Comment Summary:* Droneport Texas LLC requested the FAA add a bird strike to the list of probable failures. The commenter stated that despite sense and avoid technologies, flocks of birds can overcome the maneuver capabilities of a UA and result in multiple, unintended failures.

*FAA Response:* Unlike manned aircraft, where aircraft size, design, and construct are critical to safe control of the aircraft after encountering a bird strike, the FAA determined testing for bird strike capabilities is not necessary for the Model TELEGRID DE2020 UA. The FAA has determined that a bird strike requirement is not necessary because the smaller size and lower operational speed of the TELEGRID DE2020 reduce the likelihood of a bird strike, combined with the reduced consequences of failure due to no persons onboard. Instead, the FAA is using a risk-based approach to tailor airworthiness requirements commensurate to the low-risk nature of the Model TELEGRID DE2020 UA.

*Comment Summary:* ALPA requested the FAA require that all probable failure tests occur at the critical phase and mode of flight and at the highest aircraft-to-pilot ratio. ALPA stated the proposed criteria are critically important for systems that rely on a single source to perform multi-label functions, such as GNSS, because failure or interruption of GNSS will lead to loss of positioning, navigation, and timing (PNT) and functions solely dependent on PNT, such as geo-fencing and contingency planning.

*FAA Response:* No change is necessary because D&R.300(c) requires that the testing occur at the critical phase and mode of flight and at the highest UA-to-pilot ratio.

*Comment Summary:* Droneport Texas LLC requested the FAA add recovery from vortex ring state (VRS) to the list of probable failures. The commenter stated the UA uses multiple rotors for lift and is therefore susceptible to VRS. The commenter further stated that because recovery from settling with power is beyond a pilot's average skill for purposes of airworthiness testing, the aircraft must be able to sense and recover from this condition without pilot assistance.

*FAA Response:* D&R.305 addresses probable failures related to specific components of the UAS. VRS is an aerodynamic condition a UA may encounter during flight testing; it is not a component subject to failure.

*Comment Summary:* Droneport Texas LLC also requested the FAA add a response to the Air Traffic Control-Zero (ATC-Zero) command to the list of probable failures. The commenter stated, based on lessons learned after the attacks on September 11, 2001, aircraft that can fly BVLOS should be able to respond to an ATC-Zero condition.

*FAA Response:* The commenter's request is more appropriate for the capabilities and functions testing criteria in D&R.310 than probable failures testing in D&R.305. D&R.310(a)(3) requires the applicant to demonstrate by test that the pilot has the ability to safely discontinue a flight. A pilot may discontinue a flight for a wide variety of reasons, including responding to an ATC-zero command.

*Comment Summary:* EASA stated the proposed language seems to require an additional analysis and safety assessment, which would be appropriate for the objective requirement of ensuring a probable failure does not result in a loss of containment or control. EASA further stated that an applicant's basic understanding of the systems architecture and effects of failures is essential.

*FAA Response:* The FAA agrees with the expectation that applicants understand the system architecture and effects of failures of a proposed design, which is why the criteria include a requirement for the applicant to test the specific equipment identified in D&R.305 and identify any other equipment that is not specifically identified in D&R.305 for testing. As the intent of the criteria is for the applicant to demonstrate compliance through testing, some analysis may be necessary to properly identify the appropriate

equipment to be evaluated for probable failures.

*Comment Summary:* An individual requested that probable failure testing apply not only to critical flight control components with a single point of failure, but also to any critical part with a single point of failure.

*FAA Response:* The purpose of probable failure testing in D&R.305 is to demonstrate that if certain equipment fails, it will fail safely. Adding probable failure testing for critical (now flight essential) parts would not add value to testing. If a part is essential for flight, its failure by definition in D&R.135(a) could result in a loss of flight or unrecoverable loss of control. For example, on a traditional airplane design, failure of a wing spar in flight would lead to loss of the aircraft. Because there is no way to show that a wing spar can fail safely, the applicant must provide its mandatory replacement time if applicable, structural inspection interval, and related structural inspection procedure in the Airworthiness Limitations section of the ICA. Similarly, under these airworthiness criteria, parts whose failure would inherently result in loss of flight or unrecoverable loss of control are not subjected to probable failure testing. Instead, they must be identified as flight essential components and included in the ICA.

To avoid confusion pertaining to probable failure testing, the FAA has removed the word ''critical'' from D&R.305(a)(5). In the final airworthiness criteria, probable failure testing required by D&R.305(a)(5) applies to ''Flight control components with a single point of failure.''

**Capabilities and Functions**

The FAA proposed criteria to require the applicant to demonstrate by test the minimum capabilities and functions necessary for the design. UAS.310(a) proposed to require the applicant to demonstrate, by test, the capability of the UAS to regain command and control of the UA after a C2 link loss, the sufficiency of the electrical system to carry all anticipated loads, and the ability of the pilot to override any pre-programming in order to resolve a potential unsafe operating condition in any phase of flight. UAS.310(b) proposed to require the applicant to demonstrate by test certain features if the applicant requests approval of those features (geo-fencing, external cargo, etc.). UAS.310(c) proposed to require the design of the UAS to safeguard against an unintended discontinuation of flight or release of cargo, whether by human action or malfunction.

*Comment Summary:* ALPA stated the pilot-in-command must always have the capability to input control changes to the UA and override any pre-programming without delay as needed for the safe management of the flight. The commenter requested that the FAA retain the proposed criteria that would allow the pilot to command to: Regain command and control of the UA after loss of the C2 link; safely discontinue the flight; and dynamically re-route the UA. In support, ALPA stated the ability of the pilot to continually command (re-route) the UA, including termination of the flight if necessary, is critical for safe operations and should always be available to the pilot.

Honeywell requested the FAA revise paragraphs (a)(3) and (a)(4) of the criteria (UAS.310) to allow for either the pilot or an augmenting system to safely discontinue the flight and re-route the UA. The commenter stated that a system comprised of detect and avoid, onboard autonomy, and ground system can be used for these functions. Therefore, the criteria should not require that only the pilot can do them.

An individual commenter requested the FAA remove UAS.310(a)(4) of the proposed criteria because requiring the ability for the pilot to dynamically re-route the UA is too prescriptive and redundant with the proposed requirement in UAS.310(a)(3), the ability of the pilot to discontinue the flight safely.

*FAA Response:* Because the pilot in command is directly responsible for the operation of the UA, the pilot must have the capability to command actions necessary for continued safety. This includes commanding a change to the flight path or, when appropriate, safely terminating a flight. The FAA notes that the ability for the pilot to safely discontinue a flight means the pilot has the means to terminate the flight and immediately and safely return the UA to the ground. This is different from the pilot having the means to dynamically re-route the UA, without terminating the flight, to avoid a conflict.

Therefore, the final airworthiness criteria include D&R.310(a) as proposed (UAS.310(a)).

*Comment Summary:* ALPA requested the FAA revise the criteria to require that all equipment, systems, and installations conform, at a minimum, to the standards of § 25.1309.

*FAA Response:* The FAA determined that traditional methodologies for manned aircraft, including the system safety analysis required by §§ 23.2510, 25.1309, 27.1309, or 29.1309, would be inappropriate to require for the TELEGRID Model TELEGRID DE2020 due to its smaller size and reduced level of complexity. Instead, the FAA finds that system reliability through testing will ensure the safety of this design.

*Comment Summary:* ALPA requested the FAA revise the criteria to add a requirement to demonstrate the ability of the UA and pilot to perform all of the contingency plans identified in proposed UAS.120.

*FAA Response:* No change is necessary because D&R.120 and D&R.305(a)(2), together, require what ALPA requests in its comment. Under D&R.120, the applicant must design the UA to execute a predetermined action in the event of a loss of the C2 link. D&R.305(a)(2) requires the applicant to demonstrate by test that a lost C2 link will not result in a loss of containment or control of the UA. Thus, if the applicant does not demonstrate the predetermined contingency plan resulting from a loss of the C2 link when conducting D&R.305 testing, the test would be a failure due to loss of containment.

*Comment Summary:* ALPA and an individual commenter requested the FAA revise the criteria so that geo-fencing is a required feature and not optional due to the safety concerns that could result from a UA exiting its operating area.

*FAA Response:* To ensure safe flight, the applicant must test the proposed safety functions, such as geo-fencing, that are part of the type design of the Model TELEGRID DE2020 UA. The FAA determined that geo-fencing is an optional feature because it is one way, but not the only way, to ensure a safely contained operation.

*Comment Summary:* ALPA requested the FAA revise the criteria so that capability to detect and avoid other aircraft and obstacles is a required feature and not optional.

*FAA Response:* D&R.310(a)(4) requires the applicant demonstrate the ability for the pilot to safely re-route the UA in flight to avoid a dynamic hazard. The FAA did not prescribe specific design features such as a collision avoidance system to meet D&R.310(a)(4) because there are multiple means to minimize the risk of collision.

*Comment Summary:* McMahon Helicopter Services requested that the airworthiness criteria require a demonstration of sense-and-avoid technology that will automatically steer the UA away from manned aircraft, regardless of whether the manned aircraft has a transponder. NAAA and an individual commenter requested that the FAA require ADS–B in/out and traffic avoidance software on all UAS. The Small UAV Coalition requested the

FAA establish standards for collision avoidance technology, as the proposed criteria are not sufficient for compliance with the operational requirement to see and avoid other aircraft (§ 91.113). The commenters stated that these technologies are necessary to avoid a mid-air collision between UA and manned aircraft.

*FAA Response:* D&R.310(a)(4) requires the applicant demonstrate the ability for the UA to be safely re-routed in flight to avoid a dynamic hazard. The FAA did not prescribe specific design features, such as the technologies suggested by the commenters, to meet D&R.310(a)(4) because they are not the only means for complying with the operational requirement to see and avoid other aircraft. If an applicant chooses to equip their UA with onboard collision avoidance technology, those capabilities and functions must be demonstrated by test per D&R.310(b)(5).

**Verification of Limits**

The FAA proposed to require an evaluation of the UA's performance, maneuverability, stability, and control with a factor of safety.

*Comment Summary:* EASA requested that the FAA revise its approach to require a similar compliance demonstration as EASA's for ''light UAS.'' EASA stated the FAA's proposed criteria for verification of limits, combined with the proposed Flight Manual requirements, seem to replace a traditional Subpart Flight.[3] EASA further stated the FAA's approach in the proposed airworthiness criteria might necessitate more guidance and means of compliance than the traditional structure.

*FAA Response:* The FAA's airworthiness criteria will vary from EASA's light UAS certification requirements, resulting in associated differences in compliance demonstrations. At this time, comment on means of compliance and related guidance material, which are still under development with the FAA and with EASA, would be speculative.

**Propulsion**

*Comment Summary:* ALPA requested the FAA conduct an analysis to determine battery reliability and safety, taking into account wind and weather conditions and their effect on battery life. ALPA expressed concern with batteries as the only source of power for an aircraft in the NAS. ALPA further requested the FAA not grant exemptions for battery reserve requirements.

*FAA Response:* Because batteries are a flight essential part, the applicant must establish mandatory instructions or life limits for batteries under the requirements of D&R.135. In addition, when the applicant conducts its D&R testing, D&R.300(i) prevents the applicant from exceeding the maintenance intervals or life limits for those batteries. To the extent the commenter's request addresses fuel reserves, that is an operational requirement, not a certification requirement, and therefore beyond the scope of this document.

**Additional Airworthiness Criteria Identified by Commenters**

*Comment Summary:* McMahon Helicopter Services requested that the criteria require anti-collision and navigation lighting certified to existing FAA standards for brightness and size. The commenter stated that these standards were based on human factors for nighttime and daytime recognition and are not simply a lighting requirement. An individual commenter requested that the criteria include a requirement for position lighting and anti-collision beacons meeting TSO–30c Level III. NAAA requested the criteria require a strobe light and high visibility paint scheme to aid in visual detection of the UA by other aircraft.

*FAA Response:* The FAA determined it is unnecessary for these airworthiness criteria to prescribe specific design features for anti-collision or navigation lighting. The FAA will address anti-collision lighting as part of any operational approval, similar to the rules in 14 CFR 107.29(a)(2) and (b) for small UAS.

*Comment Summary:* ALPA requested the FAA add a new section with minimum standards for Global Navigation Satellite System (GNSS), as the UAS will likely rely heavily upon GNSS for navigation and to ensure that the UA does not stray outside of its approved airspace. ALPA stated that technological advances have made such devices available at an appropriate size, weight, and power for UAs.

*FAA Response:* The airworthiness criteria in D&R.100 (UA Signal Monitoring and Transmission), D&R.110 (Software), D&R.115 (Cybersecurity), and D&R.305(a)(3) (probable failures related to GPS) sufficiently address design requirements and testing of navigation systems. Even if the applicant uses a TSO-approved GNSS, these airworthiness criteria require a demonstration that the UA operates successfully without loss of containment. Successful completion of these tests demonstrates that the navigation subsystems are acceptable.

*Comment Summary:* ALPA requested the FAA revise the criteria to add a new section requiring equipage to comply with the FAA's new rules on Remote Identification of Unmanned Aircraft (86 FR 4390, Jan. 15, 2021). An individual commenter questioned the need for public tracking and identification of drones in the event of a crash or violation of FAA flight rules.

*FAA Response:* The FAA issued the final rule, Remote Identification of Unmanned Aircraft, after providing an opportunity for public notice and comment. The final rule is codified at 14 CFR part 89. Part 89 contains the remote identification requirements for unmanned aircraft certificated and produced under part 21 after September 16, 2022.

**Pilot Ratio**

*Comment Summary:* ALPA, NAAA, and one individual questioned the safety of multiple Model TELEGRID DE2020 UA operated by a single pilot, up to a ratio of 20 UA to 1 pilot. ALPA stated that even with high levels of automation, the pilot must still manage the safe operation and maintain situational awareness of multiple aircraft in their flight path, aircraft systems, integration with traffic, obstacles, and other hazards during normal, abnormal, and emergency conditions. As a result, ALPA recommended the FAA conduct additional studies to better understand the feasibility of a single pilot operating multiple UA before developing airworthiness criteria. The Small UAV Coalition requested the FAA provide criteria for an aircraft-to-pilot ratio higher than 20:1.

*FAA Response:* These airworthiness criteria are specific to the Model TELEGRID DE2020 UA and, as discussed previously in this preamble, operations of the Model TELEGRID DE2020 UA may include multiple UA operated by a single pilot, up to a ratio of 20 UA to 1 pilot. Additionally, these airworthiness criteria require the applicant to demonstrate the durability and reliability of the UA design by flight test, at the highest aircraft-to-pilot ratio, without exceptional piloting skill or alertness. In addition, D&R.305(c) requires the applicant to demonstrate probable failures by test at the highest aircraft-to-pilot ratio. Should the pilot ratio cause a loss of containment or control of the UA, then the applicant will fail this testing.

*Comment Summary:* ALPA stated that to allow a UAS-pilot ratio of up to 20:1

[3] In the FAA's aircraft airworthiness standards (parts 23, 25, 27 and 29), subpart B of each is titled Flight.

safely, the possibility that the pilot will need to intervene with multiple UA simultaneously must be ''extremely remote.'' ALPA questioned whether this is feasible given the threat of GNSS interference or unanticipated wind gusts exceeding operational limits.

*FAA Response:* The FAA's guidance in AC 23.1309–1E, *System Safety Analysis and Assessment for Part 23 Airplanes* defines ''extremely remote failure conditions'' as failure conditions not anticipated to occur during the total life of an airplane, but which may occur a few times when considering the total operational life of all airplanes of the same type. When assessing the likelihood of a pilot needing to intervene with multiple UA simultaneously, the minimum reliability requirements will be determined based on the applicant's proposed CONOPS.

**Noise**

*Comment Summary:* An individual commenter expressed concern about noise pollution.

*FAA Response:* The Model TELEGRID DE2020 will need to comply with FAA noise certification standards. If the FAA determines that 14 CFR part 36 does not contain adequate standards for this design, the agency will propose and seek public comment on a rule of particular applicability for noise requirements under a separate rulemaking docket.

**Operating Altitude**

*Comment Summary:* ALPA, McMahon Helicopter Services, and NAAA commented on the operation of UAS at or below 400 feet AGL. ALPA, McMahon Helicopter Services, and NAAA requested the airworthiness criteria contain measures for safe operation at low altitudes so that UAS are not a hazard to manned aircraft, especially operations involving helicopters; air tours; agricultural applications; emergency medical services; air tanker firefighting; power line and pipeline patrol and maintenance; fish and wildlife service; animal control; military and law enforcement; seismic operations; ranching and livestock relocation; and mapping.

*FAA Response:* The type certificate only establishes the approved design of the UA. These airworthiness criteria require the applicant show compliance for the UA altitude sought for type certification. While this may result in operating limitations in the flight manual, the type certificate is not an approval for operations. Operations and operational requirements are beyond the scope of this document.

**Guidance Material**

*Comment Summary:* NUAIR requested the FAA complete and publish its draft AC 21.17–XX, *Type Certification Basis for Unmanned Aircraft Systems (UAS),* to provide additional guidance, including templates, to those who seek a type design approval for UAS. NUAIR also requested the FAA recognize the industry consensus-based standards applicable to UAS, as Transport Canada has by publishing its AC 922–001, *Remotely Piloted Aircraft Systems Safety Assurance.*

*FAA Response:* The FAA will continue to develop policy and guidance for UA type certification and will publish guidance as soon as practicable. The FAA encourages consensus standards bodies to develop means of compliance and submit them to the FAA for acceptance. Regarding Transport Canada AC 922–001, that AC addresses operational approval rather than type certification.

**Safety Management**

*Comment Summary:* ALPA requested the FAA ensure that operations, including UA integrity, fall under the safety management system. ALPA further requested the FAA convene a Safety Risk Management Panel before allowing operators to commence operations and that the FAA require operators to have an active safety management system, including a non-punitive safety culture, where incident and continuing airworthiness issues can be reported.

*FAA Response:* The type certificate only establishes the approved design of the UA, including the Flight Manual and ICA. Operations and operational requirements, including safety management and oversight of operations and maintenance, are beyond the scope of this document.

**Process**

*Comment Summary:* ALPA supported the FAA's type certification of UAS as a ''special class'' of aircraft under § 21.17(b) but requested that it be temporary.

*FAA Response:* As the FAA stated in its notice of policy issued August 11, 2020 (85 FR 58251, September 18, 2020), the FAA will use the type certification process under § 21.17(b) for some unmanned aircraft with no occupants onboard. The FAA further stated in its policy that it may also issue type certificates under § 21.17(a) for airplane and rotorcraft UAS designs where the airworthiness standards in part 23, 25, 27, or 29, respectively, are appropriate. The FAA, in the future, may consider establishing appropriate generally applicable airworthiness standards for UA that are not certificated under the existing standards in parts 23, 25, 27, or 29.

**Out of Scope Comments**

The FAA received and reviewed several comments that were general, stated the commenter's viewpoint or opposition without a suggestion specific to the proposed criteria, or did not make a request the FAA can act on. These comments are beyond the scope of this document.

**Applicability**

These airworthiness criteria, established under the provisions of § 21.17(b), are applicable to the TELEGRID Model TELEGRID DE2020 UA. Should TELEGRID wish to apply these airworthiness criteria to other UA models, it must submit a new type certification application.

**Conclusion**

This action affects only certain airworthiness criteria for the TELEGRID Model TELEGRID DE2020 UA. It is not a standard of general applicability.

**Authority Citation**

The authority citation for these airworthiness criteria is as follows:

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

**Airworthiness Criteria**

Pursuant to the authority delegated to me by the Administrator, the following airworthiness criteria are issued as part of the type certification basis for the TELEGRID Model TELEGRID DE2020 unmanned aircraft. The FAA finds that compliance with these criteria appropriately mitigates the risks associated with the design and concept of operations and provides an equivalent level of safety to existing rules.

**General**

*D&R.001 Concept of Operations*

The applicant must define and submit to the FAA a concept of operations (CONOPS) proposal describing the unmanned aircraft system (UAS) operation in the national airspace system for which unmanned aircraft (UA) type certification is requested. The CONOPS proposal must include, at a minimum, a description of the following information in sufficient detail to determine the parameters and extent of testing and operating limitations:

(a) The intended type of operations;

(b) UA specifications;

(c) Meteorological conditions;

(d) Operators, pilots, and personnel responsibilities;

(e) Control station, support equipment, and other associated elements (AE) necessary to meet the airworthiness criteria;

(f) Command, control, and communication functions;

(g) Operational parameters (such as population density, geographic operating boundaries, airspace classes, launch and recovery area, congestion of proposed operating area, communications with air traffic control, line of sight, and aircraft separation); and

(h) Collision avoidance equipment, whether onboard the UA or part of the AE, if requested.

*D&R.005 Definitions*

For purposes of these airworthiness criteria, the following definitions apply.

(a) Loss of Control: Loss of control means an unintended departure of an aircraft from controlled flight. It includes control reversal or an undue loss of longitudinal, lateral, and directional stability and control. It also includes an upset or entry into an unscheduled or uncommanded attitude with high potential for uncontrolled impact with terrain. A loss of control means a spin, loss of control authority, loss of aerodynamic stability, divergent flight characteristics, or similar occurrence, which could generally lead to crash.

(b) Loss of Flight: Loss of flight means a UA's inability to complete its flight as planned, up to and through its originally planned landing. It includes scenarios where the UA experiences controlled flight into terrain, obstacles, or any other collision, or a loss of altitude that is severe or non-reversible. Loss of flight also includes deploying a parachute or ballistic recovery system that leads to an unplanned landing outside the operator's designated recovery zone.

**Design and Construction**

*D&R.100 UA Signal Monitoring and Transmission*

The UA must be designed to monitor and transmit to the AE all information required for continued safe flight and operation. This information includes, at a minimum, the following:

(a) Status of all critical parameters for all energy storage systems;

(b) Status of all critical parameters for all propulsion systems;

(c) Flight and navigation information as appropriate, such as airspeed, heading, altitude, and location; and

(d) Communication and navigation signal strength and quality, including contingency information or status.

*D&R.105 UAS AE Required for Safe UA Operations*

(a) The applicant must identify and submit to the FAA all AE and interface conditions of the UAS that affect the airworthiness of the UA or are otherwise necessary for the UA to meet these airworthiness criteria. As part of this requirement—

(1) The applicant may identify either specific AE or minimum specifications for the AE.

(i) If minimum specifications are identified, they must include the critical requirements of the AE, including performance, compatibility, function, reliability, interface, pilot alerting, and environmental requirements.

(ii) Critical requirements are those that if not met would impact the ability to operate the UA safely and efficiently.

(2) The applicant may use an interface control drawing, a requirements document, or other reference, titled so that it is clearly designated as AE interfaces to the UA.

(b) The applicant must show the FAA the AE or minimum specifications identified in paragraph (a) of this section meet the following:

(1) The AE provide the functionality, performance, reliability, and information to assure UA airworthiness in conjunction with the rest of the design;

(2) The AE are compatible with the UA capabilities and interfaces;

(3) The AE must monitor and transmit to the pilot all information required for safe flight and operation, including but not limited to those identified in D&R.100; and

(4) The minimum specifications, if identified, are correct, complete, consistent, and verifiable to assure UA airworthiness.

(c) The FAA will establish the approved AE or minimum specifications as operating limitations and include them in the UA type certificate data sheet and Flight Manual.

(d) The applicant must develop any maintenance instructions necessary to address implications from the AE on the airworthiness of the UA. Those instructions will be included in the instructions for continued airworthiness (ICA) required by D&R.205.

*D&R.110 Software*

To minimize the existence of software errors, the applicant must:

(a) Verify by test all software that may impact the safe operation of the UA;

(b) Utilize a configuration management system that tracks, controls, and preserves changes made to software throughout the entire life cycle; and

(c) Implement a problem reporting system that captures and records defects and modifications to the software.

*D&R.115 Cybersecurity*

(a) UA equipment, systems, and networks, addressed separately and in relation to other systems, must be protected from intentional unauthorized electronic interactions that may result in an adverse effect on the security or airworthiness of the UA. Protection must be ensured by showing that the security risks have been identified, assessed, and mitigated as necessary.

(b) When required by paragraph (a) of this section, procedures and instructions to ensure security protections are maintained must be included in the ICA.

*D&R.120 Contingency Planning*

(a) The UA must be designed so that, in the event of a loss of the command and control (C2) link, the UA will automatically and immediately execute a safe predetermined flight, loiter, landing, or termination.

(b) The applicant must establish the predetermined action in the event of a loss of the C2 link and include it in the UA Flight Manual.

(c) The UA Flight Manual must include the minimum performance requirements for the C2 data link defining when the C2 link is degraded to a level where remote active control of the UA is no longer ensured. Takeoff when the C2 link is degraded below the minimum link performance requirements must be prevented by design or prohibited by an operating limitation in the UA Flight Manual.

*D&R.125 Lightning*

(a) Except as provided in paragraph (b) of this section, the UA must have design characteristics that will protect the UA from loss of flight or loss of control due to lightning.

(b) If the UA has not been shown to protect against lightning, the UA Flight Manual must include an operating limitation to prohibit flight into weather conditions conducive to lightning activity.

*D&R.130 Adverse Weather Conditions*

(a) For purposes of this section, ''adverse weather conditions'' means rain, snow, and icing.

(b) Except as provided in paragraph (c) of this section, the UA must have design characteristics that will allow the UA to operate within the adverse weather conditions specified in the

CONOPS without loss of flight or loss of control.

(c) For adverse weather conditions for which the UA is not approved to operate, the applicant must develop operating limitations to prohibit flight into known adverse weather conditions and either:

(1) Develop operating limitations to prevent inadvertent flight into adverse weather conditions; or

(2) Provide a means to detect any adverse weather conditions for which the UA is not certificated to operate and show the UA's ability to avoid or exit those conditions.

*D&R.135 Flight Essential Parts*

(a) A flight essential part is a part, the failure of which could result in a loss of flight or unrecoverable loss of UA control.

(b) If the type design includes flight essential parts, the applicant must establish a flight essential parts list. The applicant must develop and define mandatory maintenance instructions or life limits, or a combination of both, to prevent failures of flight essential parts. Each of these mandatory actions must be included in the Airworthiness Limitations Section of the ICA.

**Operating Limitations and Information**

*D&R.200 Flight Manual*

The applicant must provide a Flight Manual with each UA.

(a) The UA Flight Manual must contain the following information:

(1) UA operating limitations;

(2) UA operating procedures;

(3) Performance information;

(4) Loading information; and

(5) Other information that is necessary for safe operation because of design, operating, or handling characteristics.

(b) Those portions of the UA Flight Manual containing the information specified in paragraph (a)(1) of this section must be approved by the FAA.

*D&R.205 Instructions for Continued Airworthiness*

The applicant must prepare ICA for the UA in accordance with Appendix A to Part 23, as appropriate, that are acceptable to the FAA. The ICA may be incomplete at type certification if a program exists to ensure their completion prior to delivery of the first UA or issuance of a standard airworthiness certificate, whichever occurs later.

**Testing**

*D&R.300 Durability and Reliability*

The UA must be designed to be durable and reliable when operated under the limitations prescribed for its operating environment, as documented in its CONOPS and included as operating limitations on the type certificate data sheet and in the UA Flight Manual. The durability and reliability must be demonstrated by flight test in accordance with the requirements of this section and completed with no failures that result in a loss of flight, loss of control, loss of containment, or emergency landing outside the operator's recovery area.

(a) Once a UA has begun testing to show compliance with this section, all flights for that UA must be included in the flight test report.

(b) Tests must include an evaluation of the entire flight envelope across all phases of operation and must address, at a minimum, the following:

(1) Flight distances;

(2) Flight durations;

(3) Route complexity;

(4) Weight;

(5) Center of gravity;

(6) Density altitude;

(7) Outside air temperature;

(8) Airspeed;

(9) Wind;

(10) Weather;

(11) Operation at night, if requested;

(12) Energy storage system capacity; and

(13) Aircraft to pilot ratio.

(c) Tests must include the most adverse combinations of the conditions and configurations in paragraph (b) of this section.

(d) Tests must show a distribution of the different flight profiles and routes representative of the type of operations identified in the CONOPS.

(e) Tests must be conducted in conditions consistent with the expected environmental conditions identified in the CONOPS, including electromagnetic interference (EMI) and high intensity radiated fields (HIRF).

(f) Tests must not require exceptional piloting skill or alertness.

(g) Any UAS used for testing must be subject to the same worst-case ground handling, shipping, and transportation loads as those allowed in service.

(h) Any UA used for testing must use AE that meet, but do not exceed, the minimum specifications identified under D&R.105. If multiple AE are identified, the applicant must demonstrate each configuration.

(i) Any UAS used for testing must be maintained and operated in accordance with the ICA and UA Flight Manual. No maintenance beyond the intervals established in the ICA will be allowed to show compliance with this section.

(j) If cargo operations or external-load operations are requested, tests must show, throughout the flight envelope and with the cargo or external-load at the most critical combinations of weight and center of gravity, that—

(1) The UA is safely controllable and maneuverable; and

(2) The cargo or external-load are retainable and transportable.

*D&R.305 Probable Failures*

The UA must be designed such that a probable failure will not result in a loss of containment or control of the UA. This must be demonstrated by test.

(a) Probable failures related to the following equipment, at a minimum, must be addressed:

(1) Propulsion systems;

(2) C2 link;

(3) Global Positioning System (GPS);

(4) Flight control components with a single point of failure;

(5) Control station; and

(6) Any other AE identified by the applicant.

(b) Any UA used for testing must be operated in accordance with the UA Flight Manual.

(c) Each test must occur at the critical phase and mode of flight, and at the highest aircraft-to-pilot ratio.

*D&R.310 Capabilities and Functions*

(a) All of the following required UAS capabilities and functions must be demonstrated by test:

(1) Capability to regain command and control of the UA after the C2 link has been lost.

(2) Capability of the electrical system to power all UA systems and payloads.

(3) Ability for the pilot to safely discontinue the flight.

(4) Ability for the pilot to dynamically re-route the UA.

(5) Ability to safely abort a takeoff.

(6) Ability to safely abort a landing and initiate a go-around.

(b) The following UAS capabilities and functions, if requested for approval, must be demonstrated by test:

(1) Continued flight after degradation of the propulsion system.

(2) Geo-fencing that contains the UA within a designated area, in all operating conditions.

(3) Positive transfer of the UA between control stations that ensures only one control station can control the UA at a time.

(4) Capability to release an external cargo load to prevent loss of control of the UA.

(5) Capability to detect and avoid other aircraft and obstacles.

(c) The UA must be designed to safeguard against inadvertent discontinuation of the flight and inadvertent release of cargo or external load.

*D&R.315 Fatigue*

The structure of the UA must be shown to withstand the repeated loads expected during its service life without failure. A life limit for the airframe must be established, demonstrated by test, and included in the ICA.

*D&R.320 Verification of Limits*

The performance, maneuverability, stability, and control of the UA within the flight envelope described in the UA Flight Manual must be demonstrated at a minimum of 5% over maximum gross weight with no loss of control or loss of flight.

Issued in Washington, DC, on February 23, 2022.

**Ian Lucas,**

*Manager, Policy Implementation Section, Policy and Innovation Division, Aircraft Certification Service.*

[FR Doc. 2022–05609 Filed 3–16–22; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 21

**[Docket No. FAA–2020–1083]**

## Airworthiness Criteria: Special Class Airworthiness Criteria for the 3DRobotics Government Services 3DR–GS H520–G Unmanned Aircraft

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

**ACTION:** Issuance of final airworthiness criteria.

**SUMMARY:** The FAA announces the special class airworthiness criteria for the 3DRobotics Government Services Model 3DR–GS H520–G unmanned aircraft (UA). This document sets forth the airworthiness criteria the FAA finds to be appropriate and applicable for the UA design.

**DATES:** These airworthiness criteria are effective April 18, 2022.

**FOR FURTHER INFORMATION CONTACT:** Christopher J. Richards, Emerging Aircraft Strategic Policy Section, AIR–618, Strategic Policy Management Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 6020 28th Avenue South, Room 103, Minneapolis, MN 55450, telephone (612) 253–4559.

**SUPPLEMENTARY INFORMATION:**

### Background

3DRobotics Government Services (3DR) applied to the FAA on May 1, 2019, for a special class type certificate under Title 14, Code of Federal Regulations (14 CFR) 21.17(b) for the Model 3DR–GS H520–G unmanned aircraft system (UAS).

The Model 3DR–GS H520–G consists of a rotorcraft UA and its associated elements (AE) including communication links and components that control the UA. The Model 3DR–GS H520–G UA has a maximum gross takeoff weight of five pounds. It is approximately 20 inches in width, 18 inches in length, and 12 inches in height. The Model 3DR–GS H520–G UA uses battery-powered electric motors for vertical takeoff, landing, and forward flight. The UA may be manually operated or may rely on high levels of automation. The UAS may include multiple UA operated by a single pilot, up to a ratio of 20 UA to 1 pilot. 3DR anticipates operators will use the Model 3DR–GS H520–G for inspection or surveying of critical infrastructure. The proposed concept of operations (CONOPS) for the Model 3DR–GS H520–G identifies a maximum operating altitude of 400 feet above ground level (AGL), a maximum cruise speed of 33 knots (38 mph), operations within visual line of sight of the pilot, operations at night, and operations in sparsely populated areas. 3DR has not requested type certification for flight into known icing for the Model 3DR–GS H520–G.

The FAA issued a notice of proposed airworthiness criteria for the 3DR–GS H520–G UAS, which published in the **Federal Register** on November 24, 2020 (85 FR 74926).

### Summary of Changes From the Proposed Airworthiness Criteria

Based on the comments received, these final airworthiness criteria reflect the following changes, as explained in more detail under Discussion of Comments: A new section containing definitions; revisions to the CONOPS requirement; changing the term ''critical part'' to ''flight essential part'' in D&R.135; changing the basis of the durability and reliability testing from population density to limitations prescribed for the operating environment identified in the applicant's CONOPS per D&R.001; and, for the demonstration of certain required capabilities and functions as required by D&R.310.

Additionally, the FAA re-evaluated its approach to type certification of low-risk UA using durability and reliability testing. Safe UAS operations depend and rely on both the UA and the AE. As explained in FAA Memorandum AIR600–21–AIR–600–PM01, dated July 13, 2021, the FAA has revised the airworthiness criteria to define a boundary between the UA type certification and subsequent operational evaluations and approval processes for the UAS (*i.e.,* waivers, exemptions, and/or operating certificates).

To reflect that these airworthiness criteria rely on durability and reliability (D&R) testing for certification, the FAA changed the prefix of each section from ''UAS'' to ''D&R.''

Lastly, the FAA revised D&R.001(g) to clarify that the operational parameters listed in that paragraph are examples and not an all-inclusive list.

### Discussion of Comments

The FAA received responses from 15 commenters. The majority of the commenters were individuals. In addition to the individuals' comments, the FAA also received comments from the European Union Aviation Safety Agency (EASA), unmanned aircraft manufacturers, a helicopter operator, and organizations such as the Air Line Pilots Association (ALPA), Droneport Texas, LLC, Northeast UAS Airspace Integration Research Alliance, Inc. (NUAIR), and the Small UAV Coalition.

### Support

*Comment Summary:* ALPA, NUAIR, and the Small UAV Coalition expressed support for type certification as a special class of aircraft and establishing airworthiness criteria under § 21.17(b). The Small UAV Coalition also supported the FAA's proposed use of performance-based standards.

### Terminology: Loss of Flight

*Comment Summary:* An individual commenter requested the FAA define the term ''loss of flight'' and clarify how it is different from ''loss of control.'' The commenter questioned whether loss of flight meant the UA could not continue its intended flight plan but could safely land or terminate the flight.

*FAA Response:* The FAA has added a new section, D&R.005, to define the terms ''loss of flight'' and ''loss of control'' for the purposes of these airworthiness criteria. ''Loss of flight'' refers to a UA's inability to complete its flight as planned, up to and through its originally planned landing. ''Loss of flight'' includes scenarios where the UA experiences controlled flight into terrain or obstacles, or any other collision, or a loss of altitude that is severe or non-recoverable. ''Loss of flight'' includes deploying a parachute or ballistic recovery system that leads to an unplanned landing outside the operator's designated recovery zone.

''Loss of control'' means an unintended departure of an aircraft from controlled flight. It includes control

reversal or an undue loss of longitudinal, lateral, and directional stability and control. It also includes an upset or entry into an unscheduled or uncommanded attitude with high potential for uncontrolled impact with terrain. ''Loss of control'' means a spin, loss of control authority, loss of aerodynamic stability, divergent flight characteristic, or similar occurrence, which could generally lead to a crash.

**Terminology: Skill and Alertness of Pilot**

*Comment Summary:* Two commenters requested the FAA clarify terminology with respect to piloting skill and alertness. Droneport Texas LLC stated that the average pilot skill and alertness is currently undefined, as remote pilots do not undergo oral or practical examinations to obtain certification. NUAIR noted that, despite the definition of ''exceptional piloting skill and alertness'' in Advisory Circular (AC) 23–8C, *Flight Test Guide for Certification of Part 23 Airplanes,* there is a significant difference between the average skill and alertness of a remote pilot certified under 14 CFR part 107 and a pilot certified under 14 CFR part 61. The commenter requested the FAA clarify the minimum qualifications and ratings to perform as a remote pilot of a UAS with a type certificate.

*FAA Response:* These airworthiness criteria do not require exceptional piloting skill and alertness for testing. The FAA included this as a requirement to ensure the applicant passes testing by using pilots of average skill who have been certificated under part 61, as opposed to highly trained pilots with thousands of hours of flight experience.

**Concept of Operations**

The FAA proposed a requirement for the applicant to submit a CONOPS describing the UAS and identifying the intended operational concepts. The FAA explained in the preamble of the notice of proposed airworthiness criteria that the information in the CONOPS would determine parameters for testing and flight manual operating limitations.

*Comment Summary:* One commenter stated that the airworthiness criteria are generic and requested the FAA add language to proposed UAS.001 to clarify that some of the criteria may not be relevant or necessary.

*FAA Response:* Including the language requested by the commenter would be inappropriate, as these airworthiness criteria are project-specific. Thus, in this case, each element of these airworthiness criteria is a requirement specific to the type certification of 3DR's proposed UA design.

*Comment Summary:* ALPA requested the criteria specify that the applicant's CONOPS contain sufficient detail to determine the parameters and extent of testing, as well as operating limitations placed on the UAS for its operational uses.

*FAA Response:* The FAA agrees and has updated D&R.001 to clarify that the information required for inclusion in the CONOPS proposal (D&R.001(a) through (g)) must be described in sufficient detail to determine the parameters and extent of testing and operating limitations.

*Comment Summary:* ALPA requested the CONOPS include a description of a means to ensure separation from other aircraft and perform collision avoidance maneuvers. ALPA stated that its requested addition to the CONOPS is critical to the safety of other airspace users, as manned aircraft do not easily see most UAs.

*FAA Response:* The FAA agrees and has updated D&R.001 to require that the applicant identify collision avoidance equipment (whether onboard the UA or part of the AE), if the applicant requests to include that equipment.

*Comment Summary:* ALPA requested the FAA add security-related (other than cyber-security) requirements to the CONOPS criteria, including mandatory reporting of security occurrences, security training and awareness programs for all personnel involved in UAS operations, and security standards for the transportation of goods, similar to those for manned aviation.

*FAA Response:* The type certificate only establishes the approved design of the UA. Operations and operational requirements, including those regarding security occurrences, security training, and package delivery security standards (other than cybersecurity airworthiness design requirements) are beyond the scope of the airworthiness criteria established by this document and are not required for type certification.

*Comment Summary:* UAS.001(c) proposed to require that the applicant's CONOPS include a description of meteorological conditions. ALPA requested the FAA change UAS.001(c) to require a description of meteorological and environmental conditions and their operational limits. ALPA stated the CONOPS should include maximum wind speeds, maximum or minimum temperatures, maximum density altitudes, and other relevant phenomena that will limit operations or cause operations to terminate.

*FAA Response:* D&R.001(c) and D&R.125 address meteorological conditions, while D&R.001(g) addresses environmental considerations. The FAA determined that these criteria are sufficient to cover the weather phenomena mentioned by the commenter without specifically requiring identification of related operational limits.

**Control Station**

To address the risks associated with loss of control of the UA, the FAA proposed that the applicant design the control station to provide the pilot with all information necessary for continued safe flight and operation.

*Comment Summary:* ALPA and one individual commenter requested the FAA revise the proposed criteria to add requirements for the control station. Specifically, these commenters requested the FAA include the display of data and alert conditions to the pilot, physical security requirements for both the control station and the UAS storage area, design requirements that minimize negative impact of extended periods of low pilot workload, transfer of control between pilots, and human factors/human machine interface considerations for handheld controls. NUAIR requested the FAA designate the control station as a flight critical component for operations.

EASA and an individual commenter requested the FAA consider flexibility in some of the proposed criteria. EASA stated that the list of information in proposed UAS.100 is too prescriptive and contains information that may not be relevant for highly automated systems. The individual commenter requested that the FAA allow part-time or non-continuous displays of required information that do not influence the safety of the flight.

*FAA Response:* Although the scope of the proposed airworthiness criteria applied to the entire UAS, the FAA has re-evaluated its approach to type certification of low-risk unmanned aircraft using durability and reliability testing. A UA is an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft.[1] A UAS is defined as a UA and its AE, including communication links and the components that control the UA, that are required to operate the UAS safely and efficiently in the national airspace system.[2] As explained in FAA Memorandum AIR600–21–AIR–600–PM01, dated July 13, 2021, the FAA

[1] See 49 U.S.C. 44801(11).

[2] See 49 U.S.C. 44801(12).

determined it will apply the regulations for type design approval, production approval, conformity, certificates of airworthiness, and maintenance to only the UA and not to the AE. However, because safe UAS operations depend and rely on both the UA and the AE, the FAA will consider the AE in assessing whether the UA meets the airworthiness criteria that comprise the certification basis.

While the AE items themselves will be outside the scope of the UA type design, the applicant will provide sufficient specifications for any aspect of the AE, including the control station, which could affect airworthiness. The FAA will approve either the specific AE or minimum specifications for the AE, as identified by the applicant, as part of the type certificate by including them as an operating limitation in the type certificate data sheet and flight manual. The FAA may impose additional operating limitations specific to the AE through conditions and limitations for inclusion in the operational approval (*i.e.,* waivers, exemptions, or a combination of these). In accordance with this approach, the FAA will consider the entirety of the UAS for operational approval and oversight.

Accordingly, the FAA has revised the criteria by replacing proposed section UAS.100, applicable to the control station design, with D&R.100, UA Signal Monitoring and Transmission, with substantively similar criteria that apply to the UA design.

The FAA has also added a new section, D&R.105, UAS AE Required for Safe UA Operations, which requires the applicant to provide information concerning the specifications of the AE. The FAA has moved the alert function requirement proposed in UAS.100(a) to new section D&R.105(a)(1)(i). As part of the clarification of the testing of the interaction between the UA and AE, the FAA has added a requirement to D&R.300(h) for D&R testing to use minimum specification AE. This addition requires the applicant to demonstrate that the limits proposed for those AE will allow the UA to operate as expected throughout its service life. Finally, the FAA has revised references throughout the airworthiness criteria from ''UAS'' to ''UA,'' as appropriate, to reflect the FAA determination that the regulations for type design approval, production approval, conformity, certificates of airworthiness, and maintenance apply to only the UA.

**Software**

The FAA proposed criteria on verification, configuration management, and problem reporting to minimize the existence of errors associated with UAS software.

*Comment Summary:* ALPA requested the FAA add language to the proposed criteria to ensure that some level of software engineering principles are used without being too prescriptive.

*FAA Response:* By combining the software testing requirement of D&R.110(a) with successful completion of the requirements in the entire ''Testing'' subpart, the acceptable level of software assurance will be identified and demonstrated. The configuration management system required by D&R.110(b) will ensure that the software is adequately documented and traceable both during and after the initial type certification activities.

*Comment Summary:* EASA suggested the criteria require that the applicant establish and correctly implement system requirements or a structured software development process for critical software.

*FAA Response:* Direct and specific evaluation of the software development process is more detailed than what the FAA intended with the proposed criteria, which use D&R testing to evaluate the UAS as a whole system, rather than evaluating individual components within the UA. Successful completion of the testing requirements provides confidence that the components that make up the UA provide an acceptable level of safety, commensurate to the low-risk nature of this aircraft. The FAA finds no change to the airworthiness criteria is needed.

*Comment Summary:* Two individual commenters requested the FAA require the manned aircraft software certification methodology in RTCA DO–178C, *Software Considerations in Airborne Systems and Equipment Certification,* for critical UA software.

*FAA Response:* Under these airworthiness criteria, only software that may affect the safe operation of the UA must be verified by test. To verify by test, the applicant will need to provide an assessment showing that other software is not subject to testing because it has no impact on the safe operation of the UA. For software that is subject to testing, the FAA may accept multiple options for software qualification, including DO–178C. Further, specifying that applicants must comply with DO–178 would be inconsistent with the FAA's intent to issue performance-based airworthiness criteria.

**Cybersecurity**

Because the UA requires a continuous wireless connection, the FAA proposed criteria to address the risks to the UAS from cybersecurity threats.

*Comment Summary:* ALPA requested adding a requirement for cybersecurity protection for navigation and position reporting systems such as Global Navigation Satellite System (GNSS). ALPA further requested the FAA include criteria to address specific cybersecurity vulnerabilities, such as jamming (denial of signal) and spoofing (false position data is inserted). ALPA stated that, for navigation, UAS primarily use GNSS—an unencrypted, open-source, low power transmission that can be jammed, spoofed, or otherwise manipulated.

*FAA Response:* The FAA will assess elements directly influencing the UA for cybersecurity under D&R.115 and will assess the AE as part of any operational approvals an operator may seek. D&R.115 (proposed as UAS.115) addresses intentional unauthorized electronic interactions, which includes, but is not limited to, hacking, jamming, and spoofing. These airworthiness criteria require the high-level outcome the UA must meet, rather than discretely identifying every aspect of cybersecurity the applicant will address.

**Contingency Planning**

The FAA proposed criteria requiring that the UAS be designed to automatically execute a predetermined action in the event of a loss of communication between the pilot and the UA. The FAA further proposed that the predetermined action be identified in the Flight Manual and that the UA be precluded from taking off when the quality of service is inadequate.

*Comment Summary:* ALPA requested the criteria encompass more than loss or degradation of the command and control (C2) link, as numerous types of critical part or systems failures can occur that include degraded capabilities, whether intermittent or sustained. ALPA requested the FAA add language to the proposed criteria to address specific failures such as loss of a primary navigation sensor, degradation or loss of navigation capability, and simultaneous impact of C2 and navigation links.

*FAA Response:* The airworthiness criteria address the issues raised by ALPA. Specifically, D&R.120(a) addresses actions the UA will automatically and immediately take when the operator no longer has control of the UA. Should the specific failures identified by ALPA result in the operator's loss of control, then the criteria require the UA to execute a predetermined action. Degraded navigation performance does not raise the same level of concern as a degraded or lost C2 link. For example, a UA may

experience interference with a GPS signal on the ground, but then find acceptable signal strength when above a tree line or other obstruction. The airworthiness criteria require that neither degradation nor complete loss of GPS or C2, as either condition would be a failure of that system, result in unsafe loss of control or containment. The applicant must demonstrate this by test to meet the requirements of D&R.305(a)(3).

Under the airworthiness criteria, the minimum performance requirements for the C2 link, defining when the link is degraded to an unacceptable level, may vary among different UAS designs. The level of degradation that triggers a loss is dependent upon the specific UA characteristics; this level will be defined by the applicant and demonstrated to be acceptable by testing as required by D&R.305(a)(2) and D&R.310(a)(1).

*Comment Summary:* An individual commenter requested the FAA use distinct terminology for ''communication,'' used for communications with air traffic control, and ''C2 link,'' used for command and control between the remote pilot station and UA. The commenter questioned whether, in the proposed criteria, the FAA stated ''loss of communication between the pilot and the UA'' when it intended to state ''loss of C2 link.''

*FAA Response:* Communication extends beyond the C2 link and specific control inputs. This is why D&R.001 requires the applicant's CONOPS to include a description of the command, control, and communications functions. As long as the UA operates safely and predictably per its lost link contingency programming logic, a C2 interruption does not constitute a loss of control.

**Lightning**

The FAA proposed criteria to address the risks that would result from a lightning strike, accounting for the size and physical limitations of a UAS that could preclude traditional lightning protection features. The FAA further proposed that without lightning protection for the UA, the Flight Manual must include an operating limitation to prohibit flight into weather conditions with potential lightning.

*Comment Summary:* An individual requested the FAA revise the criteria to include a similar design mitigation or operating limitation for High Intensity Radiated Fields (HIRF). The commenter noted that HIRF is included in proposed UAS.300(e) as part of the expected environmental conditions that must be replicated in testing.

*FAA Response:* The airworthiness criteria, which are adopted as proposed, address the issue raised by the commenter. The applicant must identify tested HIRF exposure capabilities, if any, in the Flight Manual to comply with the criteria in D&R.200(a)(5). Information regarding HIRF capabilities is necessary for safe operation because proper communication and software execution may be impeded by HIRF-generated interference, which could result in loss of control of the UA. It is not feasible to measure HIRF at every potential location where the UA will operate; thus, requiring operating limitations for HIRF as requested by the commenter would be impractical.

**Adverse Weather Conditions**

The FAA proposed criteria either requiring that design characteristics protect the UAS from adverse weather conditions or prohibiting flight into known adverse weather conditions. The criteria proposed to define adverse weather conditions as rain, snow, and icing.

*Comment Summary:* ALPA, Droneport Texas LLC, and two individual commenters requested the FAA expand the proposed definition of adverse weather conditions. These commenters noted that because of the size and physical limitations of the Model 3DR–GS H520–G, adverse weather should also include wind, downdraft, low-level wind shear (LLWS), microburst, and extreme mechanical turbulence.

*FAA Response:* No additional language needs to be added to the airworthiness criteria to address wind effects. The wind conditions specified by the commenters are part of normal UA flight operations. The applicant must demonstrate by flight test that the UA can withstand wind without failure to meet the requirements of D&R.300(b)(9). The FAA developed the criteria in D&R.130 to address adverse weather conditions (rain, snow, and icing) that would require additional design characteristics for safe operation. Any operating limitations necessary for operation in adverse weather or wind conditions will be included in the Flight Manual as required by D&R.200.

*Comment Summary:* One commenter questioned whether the criteria proposed in UAS.130(c)(2), requiring a means to detect adverse weather conditions for which the UAS is not certificated to operate, is a prescriptive requirement to install an onboard detection system. The commenter requested, if that was the case, that the FAA allow alternative procedures to avoid flying in adverse weather conditions.

*FAA Response:* The language referred to by the commenter is not a prescriptive design requirement for an onboard detection system. The applicant may use any acceptable source to monitor weather in the area, whether onboard the UA or from an external source.

**Critical Parts**

The FAA proposed criteria for critical parts that were substantively the same as those in the existing standards for normal category rotorcraft under § 27.602, with changes to reflect UAS terminology and failure conditions. The criteria proposed to define a critical part as a part, the failure of which could result in a loss of flight or unrecoverable loss of control of the aircraft.

*Comment Summary:* EASA requested the FAA avoid using the term ''critical part,'' as it is a well-established term for complex manned aircraft categories and may create incorrect expectations on the oversight process for parts.

*FAA Response:* For purposes of the airworthiness criteria established for the 3DR Model 3DR–GS H520–G UA, the FAA has changed the term ''critical part'' to ''flight essential part.''

*Comment Summary:* An individual commenter requested the FAA revise the proposed criteria such that a failure of a flight essential part would only occur if there is risk to third parties.

*FAA Response:* The definition of ''flight essential'' does not change regardless of whether on-board systems are capable of safely landing the UA when it is unable to continue its flight plan. Tying the definition of a flight essential part to the risk to third parties would result in different definitions for the part depending on where and how the UA is operated. These criteria for the Model 3DR–GS H520–G UA apply the same approach as for manned aircraft.

**Flight Manual**

The FAA proposed criteria for the Flight Manual that were substantively the same as the existing standards for normal category airplanes, with minor changes to reflect UAS terminology.

*Comment Summary:* ALPA requested the FAA revise the criteria to include normal, abnormal, and emergency operating procedures along with their respective checklist. ALPA further requested the checklist be contained in a quick reference handbook (QRH).

*FAA Response:* The FAA did not intend for the airworthiness criteria to exclude abnormal procedures from the flight manual. In these final airworthiness criteria, the FAA has changed ''normal and emergency

operating procedures'' to ''operating procedures'' to encompass all operating conditions and align with 14 CFR 23.2620, which includes the airplane flight manual requirements for normal category airplanes. The FAA has not made any changes to add language that would require the checklists to be included in a QRH. FAA regulations do not require manned aircraft to have a QRH for type certification. Therefore, it would be inconsistent for the FAA to require a QRH for the 3DR Model 3DR–GS H520–G UA.

*Comment Summary:* ALPA requested the FAA revise the airworthiness criteria to require that the Flight Manual and QRH be readily available to the pilot at the control station.

*FAA Response:* ALPA's request regarding the Flight manual addresses an operational requirement, similar to 14 CFR 91.9 and is therefore not appropriate for type certification airworthiness criteria. Also, as previously discussed, FAA regulations do not require a QRH. Therefore, it would be inappropriate to require it to be readily available to the pilot at the control station.

*Comment Summary:* Droneport Texas LLC requested the FAA revise the airworthiness criteria to add required Flight Manual sections for routine maintenance and mission-specific equipment and procedures. The commenter stated that the remote pilot or personnel on the remote pilot-in-command's flight team accomplish most routine maintenance, and that the flight team usually does UA rigging with mission equipment.

*FAA Response:* The requested change is appropriate for a maintenance document rather than a flight manual because it addresses maintenance procedures rather than the piloting functions. The FAA also notes that, similar to the criteria for certain manned aircraft, the airworthiness criteria require that the applicant prepare instructions for continued airworthiness (ICA) in accordance with Appendix A to Part 23. As the applicant must provide any maintenance instructions and mission-specific information necessary for safe operation and continued operational safety of the UA, in accordance with D&R.205, no changes to the airworthiness criteria are necessary.

*Comment Summary:* An individual commenter requested the FAA revise the criteria in proposed UAS.200(b) to require that ''other information'' referred to in proposed UAS.200(a)(5) be approved by the FAA. The commenter noted that, as proposed, only the information listed in UAS.200(a)(1) through (4) must be FAA approved.

*FAA Response:* The change requested by the commenter would be inconsistent with the FAA's airworthiness standards for flight manuals for manned aircraft. Sections 23.2620(b), 25.1581(b), 27.1581(b), and 29.1581(b) include requirements for flight manuals to include operating limitations, operating procedures, performance information, loading information, and other information that is necessary safe operation because of design, operating, or handling characteristics, but limit FAA approval to operating limitations, operating procedures, performance information, and loading information.

Under § 23.2620(b)(1), for low-speed level 1 and level 2 airplanes, the FAA only approves the operating limitations. In applying a risk-based approach, the FAA has determined it would not be appropriate to hold the lowest risk UA to a higher standard than what is required for low speed level 1 and level 2 manned aircraft. Accordingly, the FAA has revised the airworthiness criteria to only require FAA approval of the operating limitations.

*Comment Summary:* NUAIR requested the FAA recognize that § 23.2620 is only applicable to the aircraft and does not address off-aircraft components such as the control station, control and non-payload communications (CNPC) data link, and launch and recovery equipment. The commenter noted that this is also true of industry consensus-based standards designed to comply with § 23.2620.

*FAA Response:* As explained in more detail in the Control Station section of this document, the FAA has revised the airworthiness criteria for the AE. The FAA will approve AE or minimum specifications for the AE that could affect airworthiness as an operating limitation in the UA flight manual. The FAA will establish the approved AE or minimum specifications as operating limitations and include them in the UA type certificate data sheet and Flight Manual in accordance with D&R.105(c). The establishment of requirements for and the approval of AE will be in accordance with FAA Memorandum AIR600–21–AIR–600–PM01, dated July 13, 2021.

**Instructions for Continued Airworthiness**

The FAA proposed criteria for ICA that were substantively the same as those in the existing standards for normal category airplanes, with minor changes to reflect UA terminology instead of airplane terminology.

*Comment Summary:* One individual commenter requested the airworthiness criteria contain maintenance, repair, and overhaul standards for the continued safe operation of the UAS after type certification. Specifically, the commenter suggested a maintenance program, maintenance record, maintenance manual, minimum equipment list, illustrated parts catalog, service bulletin, parts manufacturer approval, technical standard order, airworthiness directive, and technician qualification approval systems for each type of commercial UAS.

*FAA Response:* The airworthiness criteria pertaining to ICA (D&R.205), which are adopted as proposed, require that the applicant prepare ICA in accordance with Appendix A to Part 23, similar to manned aircraft. Appendix A to Part 23 requires maintenance servicing information, instructions, inspection and overhaul periods, and other continued airworthiness information, such as that suggested by the commenter.

**Durability and Reliability**

The FAA proposed durability and reliability testing that would require the applicant to demonstrate safe flight of the UAS across the entire operational envelope and up to all operational limitations, for all phases of flight and all aircraft configurations described in the applicant's CONOPS, with no failures that result in a loss of flight, loss of control, loss of containment, or emergency landing outside the operator's recovery area. The FAA further proposed that the unmanned aircraft would only be certificated for operations within the limitations, and for flight over areas no greater than the maximum population density, as described in the applicant's CONOPS and demonstrated by test.

*Comment Summary:* ALPA requested that the proposed certification criteria require all flights during testing be completed in both normal and non-normal or off-nominal scenarios with no failures that result in a loss of flight, loss of control, loss of containment, or emergency landing outside of the operator's recovery zone. Specifically, ALPA stated that testing must not require exceptional piloting skill or alertness and include, at a minimum: All phases of the flight envelope, including the highest UA to pilot ratios; the most adverse combinations of the conditions and configuration; the environmental conditions identified in the CONOPS; the different flight profiles and routes identified in the CONOPS; and exposure to EMI and HIRF.

*FAA Response:* No change is necessary because the introductory text and paragraphs (b)(7), (b)(9), (b)(10),

(b)(13), (c), (d), (e), and (f) of D&R.300, which are adopted as proposed, contain the specific testing requirements requested by ALPA.

*Comment Summary:* Droneport Texas LLC requested the FAA revise the testing criteria to include, for operation at night, testing both with and without night vision aids. The commenter stated that because small UAS operation at night is waivable under 14 CFR part 107, manufacturers will likely make assumptions concerning a pilot's familiarity with night vision device-aided and unaided operations.

*FAA Response:* Under D&R.300(b)(11), the applicant must demonstrate by flight test that the UA can operate at night without failure using whatever equipment is onboard the UA itself. The pilot's familiarity, or lack thereof, with night vision equipment does not impact whether the UA is reliable and durable to complete testing without any failures.

*Comment Summary:* EASA requested the FAA clarify how testing durability and reliability commensurate to the maximum population density, as proposed, aligns with the Specific Operations Risk Assessment (SORA) approach that is open to operational mitigation, reducing the initial ground risk. An individual commenter requested the FAA provide more details about the correlation between the number of flight hours tested and the CONOPS environment (*e.g.,* population density). The commenter stated that this is one of the most fundamental requirements, and the FAA should ensure equal treatment to all current and future applicants.

*FAA Response:* In developing these testing criteria, the FAA sought to align the risk of UAS operations with the appropriate level of protection for human beings on the ground. The FAA proposed establishing the maximum population density demonstrated by durability and reliability testing as an operating limitation on the type certificate. However, the FAA has re-evaluated its approach and determined it to be more appropriate to connect the durability and reliability demonstrated during certification testing with the operating environment defined in the CONOPS.

Basing testing on maximum population density may result in limitations not commensurate with many actual operations. As population density broadly refers to the number of people living in a given area per square mile, it does not allow for evaluating variation in a local operating environment. For example, an operator may have a route in an urban environment with the actual flight path along a greenway; the number of human beings exposed to risk from the UA operating overhead would be significantly lower than the population density for the area. Conversely, an operator may have a route over an industrial area where few people live, but where, during business hours, there may be highly dense groups of people. Specific performance characteristics such as altitude and airspeed also factor into defining the boundaries for safe operation of the UA.

Accordingly, the FAA has revised D&R.300 to require the UA design to be durable and reliable when operated under the limitations prescribed for its operating environment. The information in the applicant's CONOPS will determine the operating environment for testing. For example, the minimum hours of reliability testing will be less for a UA conducting agricultural operations in a rural environment than if the same aircraft will be conducting package deliveries in an urban environment. The FAA will include the limitations that result from testing as operating limitations on the type certificate data sheet and in the UA Flight Manual. The FAA intends for this process to be similar to the process for establishing limitations prescribed for special purpose operations for restricted category aircraft. This allows for added flexibility in determining appropriate operating limitations, which will more closely reflect the operating environment.

Finally, a comparison of these criteria with EASA's SORA approach is beyond the scope of this document because the SORA is intended to result in an operational approval rather than a type certificate.

*Comment Summary:* EASA requested the FAA clarify how reliability at the aircraft level to ensure high-level safety objectives would enable validation of products under applicable bilateral agreements.

*FAA Response:* As the FAA and international aviation authorities are still developing general airworthiness standards for UA, it would be speculative for the FAA to comment on the validation process for any specific UA.

*Comment Summary:* EASA requested the FAA revise the testing criteria to include a compliance demonstration related to adverse combinations of the conditions and configurations and with respect to weather conditions and average pilot qualification.

*FAA Response:* No change is necessary because D&R.300(b)(7), (b)(9), (b)(10), (c), and (f), which are adopted as proposed, contain the specific testing requirements requested by EASA.

*Comment Summary:* EASA noted that, under the proposed criteria, testing involving a large number of flight hours will limit changes to the configuration.

*FAA Response:* Like manned aircraft, the requirements of 14 CFR part 21, subpart D, apply to UA for changes to type certificates. The FAA is developing procedures for processing type design changes for UA type certificated using durability and reliability testing.

*Comment Summary:* EASA requested the FAA clarify whether the proposed testing criteria would require the applicant to demonstrate aspects that do not occur during a successful flight, such as the deployment of emergency recovery systems and fire protection/post-crash fire. EASA asked if these aspects are addressed by other means and what would be the applicable airworthiness criteria.

*FAA Response:* Equipment not required for normal operation of the UA do not require an evaluation for their specific functionality. D&R testing will show that the inclusion of any such equipment does not prevent normal operation. Therefore, the airworthiness criteria would not require functional testing of the systems described by EASA.

*Comment Summary:* An individual commenter requested the FAA specify the acceptable percentage of failures in the testing that would result in a ''loss of flight.'' The Small UAV Coalition requested the FAA clarify what constitutes an emergency landing outside an operator's landing area, as some UAS designs could include an onboard health system that initiates a landing to lessen the potential of a loss of control event. The commenter suggested that, in those cases, a landing in a safe location should not invalidate the test.

*FAA Response:* The airworthiness criteria require that all test points and flight hours occur with no failures result in a loss of flight, control, containment, or emergency landing outside the operator's recovery zone. The FAA has determined that there is no acceptable percentage of failures in testing. In addition, while the recovery zone may differ for each UAS design, an emergency or unplanned landing outside of a designated landing area would result in a test failure.

*Comment Summary:* The Small UAV Coalition requested that a single failure during testing not automatically restart counting the number of flight test operations set for a particular population density; rather, the applicant should have the option to identify the

failure through root-cause and fault-tree analysis and provide a validated mitigation to ensure it will not recur. An individual commenter requested the FAA to clarify whether the purpose of the tests is to show compliance with a quantitative safety objective. The commenter further requested the FAA allow the applicant to reduce the number of flight testing hours if the applicant can present a predicted safety and reliability analysis.

*FAA Response:* The intent of the testing criteria is for the applicant to demonstrate the aircraft's durability and reliability through a successful accumulation of flight testing hours. The FAA does not intend to require analytical evaluation to be part of this process. However, the applicant will comply with these testing criteria using a means of compliance, accepted by the FAA, through the issue paper process. The means of compliance will be dependent on the CONOPS the applicant has proposed to meet.

**Probable Failures**

The FAA proposed criteria to evaluate how the UAS functions after probable failures, including failures related to propulsion systems, C2 link, GPS, critical flight control components with a single point of failure, control station, and any other equipment identified by the applicant.

*Comment Summary:* Droneport Texas LLC requested the FAA add a bird strike to the list of probable failures. The commenter stated that despite sense and avoid technologies, flocks of birds can overcome the maneuver capabilities of a UA and result in multiple, unintended failures.

*FAA Response:* Unlike manned aircraft, where aircraft size, design, and construct are critical to safe control of the aircraft after encountering a bird strike, the FAA determined testing for bird strike capabilities is not necessary for the Model 3DR–GS H520–G UA. The FAA has determined that a bird strike requirement is not necessary because the smaller size and lower operational speed of the 3DR–GS H520–G reduce the likelihood of a bird strike, combined with the reduced consequences of failure due to no persons onboard. Instead, the FAA is using a risk-based approach to tailor airworthiness requirements commensurate to the low-risk nature of the Model 3DR–GS H520–G UA.

*Comment Summary:* ALPA requested the FAA require that all probable failure tests occur at the critical phase and mode of flight and at the highest aircraft-to-pilot ratio. ALPA stated the proposed criteria are critically important for systems that rely on a single source to perform multi-label functions, such as GNSS, because failure or interruption of GNSS will lead to loss of positioning, navigation, and timing (PNT) and functions solely dependent on PNT, such as geo-fencing and contingency planning.

*FAA Response:* No change is necessary because D&R.300(c) requires that the testing occur at the critical phase and mode of flight and at the highest UA-to-pilot ratio.

*Comment Summary:* Droneport Texas LLC requested the FAA add recovery from vortex ring state (VRS) to the list of probable failures. The commenter stated the UA uses multiple rotors for lift and is therefore susceptible to VRS. The commenter further stated that because recovery from settling with power is beyond a pilot's average skill for purposes of airworthiness testing, the aircraft must be able to sense and recover from this condition without pilot assistance.

*FAA Response:* D&R.305 addresses probable failures related to specific components of the UAS. VRS is an aerodynamic condition a UA may encounter during flight testing; it is not a component subject to failure.

*Comment Summary:* Droneport Texas LLC also requested the FAA add a response to the Air Traffic Control-Zero (ATC-Zero) command to the list of probable failures. The commenter stated, based on lessons learned after the attacks on September 11, 2001, aircraft that can fly beyond visual line of sight should be able to respond to an ATC-Zero condition.

*FAA Response:* The commenter's request is more appropriate for the capabilities and functions testing criteria in D&R.310 than probable failures testing in D&R.305. D&R.310(a)(3) requires the applicant to demonstrate by test that the pilot has the ability to safely discontinue a flight. A pilot may discontinue a flight for a wide variety of reasons, including responding to an ATC-zero command.

*Comment Summary:* EASA stated the proposed language seems to require an additional analysis and safety assessment, which would be appropriate for the objective requirement of ensuring a probable failure does not result in a loss of containment or control. EASA further stated that an applicant's basic understanding of the systems architecture and effects of failures is essential.

*FAA Response:* The FAA agrees with the expectation that applicants understand the system architecture and effects of failures of a proposed design, which is why the criteria include a requirement for the applicant to test the specific equipment identified in D&R.305 and identify any other equipment that is not specifically identified in D&R.305 for testing. As the intent of the criteria is for the applicant to demonstrate compliance through testing, some analysis may be necessary to properly identify the appropriate equipment to be evaluated for probable failures.

*Comment Summary:* An individual requested that probable failure testing apply not only to critical flight control components with a single point of failure, but also to any critical part with a single point of failure.

*FAA Response:* The purpose of probable failure testing in D&R.305 is to demonstrate that if certain equipment fails, it will fail safely. Adding probable failure testing for critical (now flight essential) parts would not add value to testing. If a part is essential for flight, its failure by definition in D&R.135(a) could result in a loss of flight or unrecoverable loss of control. For example, on a traditional airplane design, failure of a wing spar in flight would lead to loss of the aircraft. Because there is no way to show that a wing spar can fail safely, the applicant must provide its mandatory replacement time if applicable, structural inspection interval, and related structural inspection procedure in the Airworthiness Limitations section of the ICA. Similarly, under these airworthiness criteria, parts whose failure would inherently result in loss of flight or unrecoverable loss of control are not subjected to probable failure testing. Instead, they must be identified as flight essential components and included in the ICA.

To avoid confusion pertaining to probable failure testing, the FAA has removed the word ''critical'' from D&R.305(a)(5). In the final airworthiness criteria, probable failure testing required by D&R.305(a)(5) applies to ''Flight control components with a single point of failure.''

**Capabilities and Functions**

The FAA proposed criteria to require the applicant to demonstrate by test the minimum capabilities and functions necessary for the design. UAS.310(a) proposed to require the applicant to demonstrate, by test, the capability of the UAS to regain command and control of the UA after a C2 link loss, the sufficiency of the electrical system to carry all anticipated loads, and the ability of the pilot to override any pre-programming in order to resolve a potential unsafe operating condition in

any phase of flight. UAS.310(b) proposed to require the applicant to demonstrate by test certain features if the applicant requests approval of those features (geo-fencing, external cargo, etc.). UAS.310(c) proposed to require the design of the UAS to safeguard against an unintended discontinuation of flight or release of cargo, whether by human action or malfunction.

*Comment Summary:* ALPA stated the pilot-in-command must always have the capability to input control changes to the UA and override any pre-programming without delay as needed for the safe management of the flight. The commenter requested that the FAA retain the proposed criteria that would allow the pilot to command to: Regain command and control of the UA after loss of the C2 link; safely discontinue the flight; and dynamically re-route the UA. In support, ALPA stated the ability of the pilot to continually command (re-route) the UA, including termination of the flight if necessary, is critical for safe operations and should always be available to the pilot.

Honeywell requested the FAA revise paragraphs (a)(3) and (a)(4) of the criteria (UAS.310) to allow for either the pilot or an augmenting system to safely discontinue the flight and re-route the UA. The commenter stated that a system comprised of detect and avoid, onboard autonomy, and ground system can be used for these functions. Therefore, the criteria should not require that only the pilot can do them.

An individual commenter requested the FAA remove UAS.310(a)(4) of the proposed criteria because requiring the ability for the pilot to dynamically re-route the UA is too prescriptive and redundant with the proposed requirement in UAS.310(a)(3), the ability of the pilot to discontinue the flight safely.

*FAA Response:* Because the pilot in command is directly responsible for the operation of the UA, the pilot must have the capability to command actions necessary for continued safety. This includes commanding a change to the flight path or, when appropriate, safely terminating a flight. The FAA notes that the ability for the pilot to safely discontinue a flight means the pilot has the means to terminate the flight and immediately and safely return the UA to the ground. This is different from the pilot having the means to dynamically re-route the UA, without terminating the flight, to avoid a conflict.

Therefore, the final airworthiness criteria include D&R.310(a) as proposed (UAS.310(a)).

*Comment Summary:* ALPA requested the FAA revise the criteria to require that all equipment, systems, and installations conform, at a minimum, to the standards of § 25.1309.

*FAA Response:* The FAA determined that traditional methodologies for manned aircraft, including the system safety analysis required by §§ 23.2510, 25.1309, 27.1309, or 29.1309, would be inappropriate to require for the 3DR Model 3DR–GS H520–G due to its smaller size and reduced level of complexity. Instead, the FAA finds that system reliability through testing will ensure the safety of this design.

*Comment Summary:* ALPA requested the FAA revise the criteria to add a requirement to demonstrate the ability of the UA and pilot to perform all of the contingency plans identified in proposed UAS.120.

*FAA Response:* No change is necessary because D&R.120 and D&R.305(a)(2), together, require what ALPA requests in its comment. Under D&R.120, the applicant must design the UA to execute a predetermined action in the event of a loss of the C2 link. D&R.305(a)(2) requires the applicant to demonstrate by test that a lost C2 link will not result in a loss of containment or control of the UA. Thus, if the applicant does not demonstrate the predetermined contingency plan resulting from a loss of the C2 link when conducting D&R.305 testing, the test would be a failure due to loss of containment.

*Comment Summary:* ALPA and an individual commenter requested the FAA revise the criteria so that geo-fencing is a required feature and not optional due to the safety concerns that could result from a UA exiting its operating area.

*FAA Response:* To ensure safe flight, the applicant must test the proposed safety functions, such as geo-fencing, that are part of the type design of the Model 3DR–GS H520–G UA. The FAA determined that geo-fencing is an optional feature because it is one way, but not the only way, to ensure a safely contained operation.

*Comment Summary:* ALPA requested the FAA revise the criteria so that capability to detect and avoid other aircraft and obstacles is a required feature and not optional.

*FAA Response:* D&R.310(a)(4) requires the applicant demonstrate the ability for the pilot to safely re-route the UA in flight to avoid a dynamic hazard. The FAA did not prescribe specific design features such as a collision avoidance system to meet D&R.310(a)(4) because there are multiple means to minimize the risk of collision.

*Comment Summary:* McMahon Helicopter Services requested that the airworthiness criteria require a demonstration of sense-and-avoid technology that will automatically steer the UA away from manned aircraft, regardless of whether the manned aircraft has a transponder. An individual commenter requested that the FAA require ADS–B in/out and traffic avoidance software on all UAS. The Small UAV Coalition requested the FAA establish standards for collision avoidance technology, as the proposed criteria are not sufficient for compliance with the operational requirement to see and avoid other aircraft (§ 91.113). The commenters stated that these technologies are necessary to avoid a mid-air collision between UA and manned aircraft.

*FAA Response:* D&R.310(a)(4) requires the applicant demonstrate the ability for the UA to be safely re-routed in flight to avoid a dynamic hazard. The FAA did not prescribe specific design features, such as the technologies suggested by the commenters, to meet D&R.310(a)(4) because they are not the only means for complying with the operational requirement to see and avoid other aircraft. If an applicant chooses to equip their UA with onboard collision avoidance technology, those capabilities and functions must be demonstrated by test per D&R.310(b)(5).

**Verification of Limits**

The FAA proposed to require an evaluation of the UA's performance, maneuverability, stability, and control with a factor of safety.

*Comment Summary:* EASA requested that the FAA revise its approach to require a similar compliance demonstration as EASA's for ''light UAS.'' EASA stated the FAA's proposed criteria for verification of limits, combined with the proposed Flight Manual requirements, seem to replace a traditional Subpart Flight.[3] EASA further stated the FAA's approach in the proposed airworthiness criteria might necessitate more guidance and means of compliance than the traditional structure.

*FAA Response:* The FAA's airworthiness criteria will vary from EASA's light UAS certification requirements, resulting in associated differences in compliance demonstrations. At this time, comment on means of compliance and related guidance material, which are still under development with the FAA and with EASA, would be speculative.

[3] In the FAA's aircraft airworthiness standards (parts 23, 25, 27 and 29), subpart B of each is titled Flight.

**Propulsion**

*Comment Summary:* ALPA requested the FAA conduct an analysis to determine battery reliability and safety, taking into account wind and weather conditions and their effect on battery life. ALPA expressed concern with batteries as the only source of power for an aircraft in the NAS. ALPA further requested the FAA not grant exemptions for battery reserve requirements.

*FAA Response:* Because batteries are a flight essential part, the applicant must establish mandatory instructions or life limits for batteries under the requirements of D&R.135. In addition, when the applicant conducts its D&R testing, D&R.300(i) prevents the applicant from exceeding the maintenance intervals or life limits for those batteries. To the extent the commenter's request addresses fuel reserves, that is an operational requirement, not a certification requirement, and therefore beyond the scope of this document.

**Additional Airworthiness Criteria Identified by Commenters**

*Comment Summary:* McMahon Helicopter Services requested that the criteria require anti-collision and navigation lighting certified to existing FAA standards for brightness and size. The commenter stated that these standards were based on human factors for nighttime and daytime recognition and are not simply a lighting requirement. An individual commenter requested that the criteria include a requirement for position lighting and anti-collision beacons meeting TSO–30c Level III.

*FAA Response:* The FAA determined it is unnecessary for these airworthiness criteria to prescribe specific design features for anti-collision or navigation lighting. The FAA will address anti-collision lighting as part of any operational approval, similar to the rules in 14 CFR 107.29(a)(2) and (b) for small UAS.

*Comment Summary:* ALPA requested the FAA add a new section with minimum standards for Global Navigation Satellite System (GNSS), as the UAS will likely rely heavily upon GNSS for navigation and to ensure that the UA does not stray outside of its approved airspace. ALPA stated that technological advances have made such devices available at an appropriate size, weight, and power for UAs.

*FAA Response:* The airworthiness criteria in D&R.100 (UA Signal Monitoring and Transmission), D&R.110 (Software), D&R.115 (Cybersecurity), and D&R.305(a)(3) (probable failures related to GPS) sufficiently address design requirements and testing of navigation systems. Even if the applicant uses a TSO-approved GNSS, these airworthiness criteria require a demonstration that the UA operates successfully without loss of containment. Successful completion of these tests demonstrates that the navigation subsystems are acceptable.

*Comment Summary:* ALPA requested the FAA revise the criteria to add a new section requiring equipage to comply with the FAA's new rules on Remote Identification of Unmanned Aircraft (86 FR 4390, Jan. 15, 2021). An individual commenter questioned the need for public tracking and identification of drones in the event of a crash or violation of FAA flight rules.

*FAA Response:* The FAA issued the final rule, Remote Identification of Unmanned Aircraft, after providing an opportunity for public notice and comment. The final rule is codified at 14 CFR part 89. Part 89 contains the remote identification requirements for unmanned aircraft certificated and produced under part 21 after September 16, 2022.

**Pilot Ratio**

*Comment Summary:* ALPA and one individual questioned the safety of multiple Model 3DR–GS H520–G UA operated by a single pilot, up to a ratio of 20 UA to 1 pilot. ALPA stated that even with high levels of automation, the pilot must still manage the safe operation and maintain situational awareness of multiple aircraft in their flight path, aircraft systems, integration with traffic, obstacles, and other hazards during normal, abnormal, and emergency conditions. As a result, ALPA recommended the FAA conduct additional studies to better understand the feasibility of a single pilot operating multiple UA before developing airworthiness criteria. The Small UAV Coalition requested the FAA provide criteria for an aircraft-to-pilot ratio higher than 20:1.

*FAA Response:* These airworthiness criteria are specific to the Model 3DR–GS H520–G UA and, as discussed previously in this preamble, operations of the Model 3DR–GS H520–G UA may include multiple UA operated by a single pilot, up to a ratio of 20 UA to 1 pilot. Additionally, these airworthiness criteria require the applicant to demonstrate the durability and reliability of the UA design by flight test, at the highest aircraft-to-pilot ratio, without exceptional piloting skill or alertness. In addition, D&R.305(c) requires the applicant to demonstrate probable failures by test at the highest aircraft-to-pilot ratio. Should the pilot ratio cause a loss of containment or control of the UA, then the applicant will fail this testing.

*Comment Summary:* ALPA stated that to allow a UAS-pilot ratio of up to 20:1 safely, the possibility that the pilot will need to intervene with multiple UA simultaneously must be ''extremely remote.'' ALPA questioned whether this is feasible given the threat of GNSS interference or unanticipated wind gusts exceeding operational limits.

*FAA Response:* The FAA's guidance in AC 23.1309–1E, *System Safety Analysis and Assessment for Part 23 Airplanes* defines ''extremely remote failure conditions'' as failure conditions not anticipated to occur during the total life of an airplane, but which may occur a few times when considering the total operational life of all airplanes of the same type. When assessing the likelihood of a pilot needing to intervene with multiple UA simultaneously, the minimum reliability requirements will be determined based on the applicant's proposed CONOPS.

**Noise**

*Comment Summary:* An individual commenter expressed concern about noise pollution.

*FAA Response:* The Model 3DR–GS H520–G will need to comply with FAA noise certification standards. If the FAA determines that 14 CFR part 36 does not contain adequate standards for this design, the agency will propose and seek public comment on a rule of particular applicability for noise requirements under a separate rulemaking docket.

**Operating Altitude**

*Comment Summary:* ALPA and McMahon Helicopter Services commented on the operation of UAS at or below 400 feet AGL. ALPA and McMahon Helicopter Services requested the airworthiness criteria contain measures for safe operation at low altitudes so that UAS are not a hazard to manned aircraft, especially operations involving helicopters; air tours; agricultural applications; emergency medical services; air tanker firefighting; power line and pipeline patrol and maintenance; fish and wildlife service; animal control; military and law enforcement; seismic operations; ranching and livestock relocation; and mapping.

*FAA Response:* The type certificate only establishes the approved design of the UA. These airworthiness criteria require the applicant show compliance for the UA altitude sought for type certification. While this may result in

operating limitations in the flight manual, the type certificate is not an approval for operations. Operations and operational requirements are beyond the scope of this document.

**Guidance Material**

*Comment Summary:* NUAIR requested the FAA complete and publish its draft AC 21.17–XX, *Type Certification Basis for Unmanned Aircraft Systems (UAS),* to provide additional guidance, including templates, to those who seek a type design approval for UAS. NUAIR also requested the FAA recognize the industry consensus-based standards applicable to UAS, as Transport Canada has by publishing its AC 922–001, *Remotely Piloted Aircraft Systems Safety Assurance.*

*FAA Response:* The FAA will continue to develop policy and guidance for UA type certification and will publish guidance as soon as practicable. The FAA encourages consensus standards bodies to develop means of compliance and submit them to the FAA for acceptance. Regarding Transport Canada AC 922–001, that AC addresses operational approval rather than type certification.

**Safety Management**

*Comment Summary:* ALPA requested the FAA ensure that operations, including UA integrity, fall under the safety management system. ALPA further requested the FAA convene a Safety Risk Management Panel before allowing operators to commence operations and that the FAA require operators to have an active safety management system, including a non-punitive safety culture, where incident and continuing airworthiness issues can be reported.

*FAA Response:* The type certificate only establishes the approved design of the UA, including the Flight Manual and ICA. Operations and operational requirements, including safety management and oversight of operations and maintenance, are beyond the scope of this document.

**Process**

*Comment Summary:* ALPA supported the FAA's type certification of UAS as a ''special class'' of aircraft under § 21.17(b) but requested that it be temporary.

*FAA Response:* As the FAA stated in its notice of policy issued August 11, 2020 (85 FR 58251, September 18, 2020), the FAA will use the type certification process under § 21.17(b) for some unmanned aircraft with no occupants onboard. The FAA further stated in its policy that it may also issue type certificates under § 21.17(a) for airplane and rotorcraft UAS designs where the airworthiness standards in part 23, 25, 27, or 29, respectively, are appropriate. The FAA, in the future, may consider establishing appropriate generally applicable airworthiness standards for UA that are not certificated under the existing standards in parts 23, 25, 27, or 29.

**Out of Scope Comments**

The FAA received and reviewed several comments that were general, stated the commenter's viewpoint or opposition without a suggestion specific to the proposed criteria, or did not make a request the FAA can act on. These comments are beyond the scope of this document.

**Applicability**

These airworthiness criteria, established under the provisions of § 21.17(b), are applicable to the 3DR Model 3DR–GS H520–G UA. Should 3DR wish to apply these airworthiness criteria to other UA models, it must submit a new type certification application.

**Conclusion**

This action affects only certain airworthiness criteria for the 3DR Model 3DR–GS H520–G UA. It is not a standard of general applicability.

**Authority Citation**

The authority citation for these airworthiness criteria is as follows:

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

**Airworthiness Criteria**

Pursuant to the authority delegated to me by the Administrator, the following airworthiness criteria are issued as part of the type certification basis for the 3DR Model 3DR–GS H520–G unmanned aircraft. The FAA finds that compliance with these criteria appropriately mitigates the risks associated with the design and concept of operations and provides an equivalent level of safety to existing rules.

**General**

*D&R.001 Concept of Operations*

The applicant must define and submit to the FAA a concept of operations (CONOPS) proposal describing the unmanned aircraft system (UAS) operation in the national airspace system for which unmanned aircraft (UA) type certification is requested. The CONOPS proposal must include, at a minimum, a description of the following information in sufficient detail to determine the parameters and extent of testing and operating limitations:

(a) The intended type of operations;

(b) UA specifications;

(c) Meteorological conditions;

(d) Operators, pilots, and personnel responsibilities;

(e) Control station, support equipment, and other associated elements (AE) necessary to meet the airworthiness criteria;

(f) Command, control, and communication functions;

(g) Operational parameters (such as population density, geographic operating boundaries, airspace classes, launch and recovery area, congestion of proposed operating area, communications with air traffic control, line of sight, and aircraft separation); and

(h) Collision avoidance equipment, whether onboard the UA or part of the AE, if requested.

*D&R.005 Definitions*

For purposes of these airworthiness criteria, the following definitions apply.

(a) *Loss of Control:* Loss of control means an unintended departure of an aircraft from controlled flight. It includes control reversal or an undue loss of longitudinal, lateral, and directional stability and control. It also includes an upset or entry into an unscheduled or uncommanded attitude with high potential for uncontrolled impact with terrain. A loss of control means a spin, loss of control authority, loss of aerodynamic stability, divergent flight characteristics, or similar occurrence, which could generally lead to crash.

(b) *Loss of Flight:* Loss of flight means a UA's inability to complete its flight as planned, up to and through its originally planned landing. It includes scenarios where the UA experiences controlled flight into terrain, obstacles, or any other collision, or a loss of altitude that is severe or non-reversible. Loss of flight also includes deploying a parachute or ballistic recovery system that leads to an unplanned landing outside the operator's designated recovery zone.

**Design and Construction**

*D&R.100 UA Signal Monitoring and Transmission*

The UA must be designed to monitor and transmit to the AE all information required for continued safe flight and operation. This information includes, at a minimum, the following:

(a) Status of all critical parameters for all energy storage systems;

(b) Status of all critical parameters for all propulsion systems;

(c) Flight and navigation information as appropriate, such as airspeed, heading, altitude, and location; and

(d) Communication and navigation signal strength and quality, including contingency information or status.

*D&R.105 UAS AE Required for Safe UA Operations*

(a) The applicant must identify and submit to the FAA all AE and interface conditions of the UAS that affect the airworthiness of the UA or are otherwise necessary for the UA to meet these airworthiness criteria. As part of this requirement—

(1) The applicant may identify either specific AE or minimum specifications for the AE.

(i) If minimum specifications are identified, they must include the critical requirements of the AE, including performance, compatibility, function, reliability, interface, pilot alerting, and environmental requirements.

(ii) Critical requirements are those that if not met would impact the ability to operate the UA safely and efficiently.

(2) The applicant may use an interface control drawing, a requirements document, or other reference, titled so that it is clearly designated as AE interfaces to the UA.

(b) The applicant must show the FAA the AE or minimum specifications identified in paragraph (a) of this section meet the following:

(1) The AE provide the functionality, performance, reliability, and information to assure UA airworthiness in conjunction with the rest of the design;

(2) The AE are compatible with the UA capabilities and interfaces;

(3) The AE must monitor and transmit to the pilot all information required for safe flight and operation, including but not limited to those identified in D&R.100; and

(4) The minimum specifications, if identified, are correct, complete, consistent, and verifiable to assure UA airworthiness.

(c) The FAA will establish the approved AE or minimum specifications as operating limitations and include them in the UA type certificate data sheet and Flight Manual.

(d) The applicant must develop any maintenance instructions necessary to address implications from the AE on the airworthiness of the UA. Those instructions will be included in the instructions for continued airworthiness (ICA) required by D&R.205.

*D&R.110 Software*

To minimize the existence of software errors, the applicant must:

(a) Verify by test all software that may impact the safe operation of the UA;

(b) Utilize a configuration management system that tracks, controls, and preserves changes made to software throughout the entire life cycle; and

(c) Implement a problem reporting system that captures and records defects and modifications to the software.

*D&R.115 Cybersecurity*

(a) UA equipment, systems, and networks, addressed separately and in relation to other systems, must be protected from intentional unauthorized electronic interactions that may result in an adverse effect on the security or airworthiness of the UA. Protection must be ensured by showing that the security risks have been identified, assessed, and mitigated as necessary.

(b) When required by paragraph (a) of this section, procedures and instructions to ensure security protections are maintained must be included in the ICA.

*D&R.120 Contingency Planning*

(a) The UA must be designed so that, in the event of a loss of the command and control (C2) link, the UA will automatically and immediately execute a safe predetermined flight, loiter, landing, or termination.

(b) The applicant must establish the predetermined action in the event of a loss of the C2 link and include it in the UA Flight Manual.

(c) The UA Flight Manual must include the minimum performance requirements for the C2 data link defining when the C2 link is degraded to a level where remote active control of the UA is no longer ensured. Takeoff when the C2 link is degraded below the minimum link performance requirements must be prevented by design or prohibited by an operating limitation in the UA Flight Manual.

*D&R.125 Lightning*

(a) Except as provided in paragraph (b) of this section, the UA must have design characteristics that will protect the UA from loss of flight or loss of control due to lightning.

(b) If the UA has not been shown to protect against lightning, the UA Flight Manual must include an operating limitation to prohibit flight into weather conditions conducive to lightning activity.

*D&R.130 Adverse Weather Conditions*

(a) For purposes of this section, ''adverse weather conditions'' means rain, snow, and icing.

(b) Except as provided in paragraph (c) of this section, the UA must have design characteristics that will allow the UA to operate within the adverse weather conditions specified in the CONOPS without loss of flight or loss of control.

(c) For adverse weather conditions for which the UA is not approved to operate, the applicant must develop operating limitations to prohibit flight into known adverse weather conditions and either:

(1) Develop operating limitations to prevent inadvertent flight into adverse weather conditions; or

(2) Provide a means to detect any adverse weather conditions for which the UA is not certificated to operate and show the UA's ability to avoid or exit those conditions.

*D&R.135 Flight Essential Parts*

(a) A flight essential part is a part, the failure of which could result in a loss of flight or unrecoverable loss of UA control.

(b) If the type design includes flight essential parts, the applicant must establish a flight essential parts list. The applicant must develop and define mandatory maintenance instructions or life limits, or a combination of both, to prevent failures of flight essential parts. Each of these mandatory actions must be included in the Airworthiness Limitations Section of the ICA.

**Operating Limitations and Information**

*D&R.200 Flight Manual*

The applicant must provide a Flight Manual with each UA.

(a) The UA Flight Manual must contain the following information:

(1) UA operating limitations;

(2) UA operating procedures;

(3) Performance information;

(4) Loading information; and

(5) Other information that is necessary for safe operation because of design, operating, or handling characteristics.

(b) Those portions of the UA Flight Manual containing the information specified in paragraph (a)(1) of this section must be approved by the FAA.

*D&R.205 Instructions for Continued Airworthiness*

The applicant must prepare ICA for the UA in accordance with Appendix A to Part 23, as appropriate, that are acceptable to the FAA. The ICA may be incomplete at type certification if a program exists to ensure their completion prior to delivery of the first UA or issuance of a standard airworthiness certificate, whichever occurs later.

**Testing**

*D&R.300 Durability and Reliability*

The UA must be designed to be durable and reliable when operated under the limitations prescribed for its operating environment, as documented in its CONOPS and included as operating limitations on the type certificate data sheet and in the UA Flight Manual. The durability and reliability must be demonstrated by flight test in accordance with the requirements of this section and completed with no failures that result in a loss of flight, loss of control, loss of containment, or emergency landing outside the operator's recovery area.

(a) Once a UA has begun testing to show compliance with this section, all flights for that UA must be included in the flight test report.

(b) Tests must include an evaluation of the entire flight envelope across all phases of operation and must address, at a minimum, the following:

(1) Flight distances;

(2) Flight durations;

(3) Route complexity;

(4) Weight;

(5) Center of gravity;

(6) Density altitude;

(7) Outside air temperature;

(8) Airspeed;

(9) Wind;

(10) Weather;

(11) Operation at night, if requested;

(12) Energy storage system capacity; and

(13) Aircraft to pilot ratio.

(c) Tests must include the most adverse combinations of the conditions and configurations in paragraph (b) of this section.

(d) Tests must show a distribution of the different flight profiles and routes representative of the type of operations identified in the CONOPS.

(e) Tests must be conducted in conditions consistent with the expected environmental conditions identified in the CONOPS, including electromagnetic interference (EMI) and high intensity radiated fields (HIRF).

(f) Tests must not require exceptional piloting skill or alertness.

(g) Any UAS used for testing must be subject to the same worst-case ground handling, shipping, and transportation loads as those allowed in service.

(h) Any UA used for testing must use AE that meet, but do not exceed, the minimum specifications identified under D&R.105. If multiple AE are identified, the applicant must demonstrate each configuration.

(i) Any UAS used for testing must be maintained and operated in accordance with the ICA and UA Flight Manual. No maintenance beyond the intervals established in the ICA will be allowed to show compliance with this section.

(j) If cargo operations or external-load operations are requested, tests must show, throughout the flight envelope and with the cargo or external-load at the most critical combinations of weight and center of gravity, that—

(1) The UA is safely controllable and maneuverable; and

(2) The cargo or external-load are retainable and transportable.

*D&R.305 Probable Failures*

The UA must be designed such that a probable failure will not result in a loss of containment or control of the UA. This must be demonstrated by test.

(a) Probable failures related to the following equipment, at a minimum, must be addressed:

(1) Propulsion systems;

(2) C2 link;

(3) Global Positioning System (GPS);

(4) Flight control components with a single point of failure;

(5) Control station; and

(6) Any other AE identified by the applicant.

(b) Any UA used for testing must be operated in accordance with the UA Flight Manual.

(c) Each test must occur at the critical phase and mode of flight, and at the highest aircraft-to-pilot ratio.

*D&R.310 Capabilities and Functions*

(a) All of the following required UAS capabilities and functions must be demonstrated by test:

(1) Capability to regain command and control of the UA after the C2 link has been lost.

(2) Capability of the electrical system to power all UA systems and payloads.

(3) Ability for the pilot to safely discontinue the flight.

(4) Ability for the pilot to dynamically re-route the UA.

(5) Ability to safely abort a takeoff.

(6) Ability to safely abort a landing and initiate a go-around.

(b) The following UAS capabilities and functions, if requested for approval, must be demonstrated by test:

(1) Continued flight after degradation of the propulsion system.

(2) Geo-fencing that contains the UA within a designated area, in all operating conditions.

(3) Positive transfer of the UA between control stations that ensures only one control station can control the UA at a time.

(4) Capability to release an external cargo load to prevent loss of control of the UA.

(5) Capability to detect and avoid other aircraft and obstacles.

(c) The UA must be designed to safeguard against inadvertent discontinuation of the flight and inadvertent release of cargo or external load.

*D&R.315 Fatigue*

The structure of the UA must be shown to withstand the repeated loads expected during its service life without failure. A life limit for the airframe must be established, demonstrated by test, and included in the ICA.

*D&R.320 Verification of Limits*

The performance, maneuverability, stability, and control of the UA within the flight envelope described in the UA Flight Manual must be demonstrated at a minimum of 5% over maximum gross weight with no loss of control or loss of flight.

Issued in Washington, DC, on March 4, 2022.

**Ian Lucas,**

*Manager, Policy Implementation Section, Policy and Innovation Division, Aircraft Certification Service.*

[FR Doc. 2022–05611 Filed 3–16–22; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 21

**[Docket No. FAA–2020–1087]**

## Airworthiness Criteria: Special Class Airworthiness Criteria for the Wingcopter GmbH 198 US Unmanned Aircraft

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

**ACTION:** Issuance of final airworthiness criteria.

**SUMMARY:** The FAA announces the special class airworthiness criteria for the Wingcopter GmbH Model 198 US unmanned aircraft (UA). This document sets forth the airworthiness criteria the FAA finds to be appropriate and applicable for the UA design.

**DATES:** These airworthiness criteria are effective April 18, 2022.

**FOR FURTHER INFORMATION CONTACT:** Christopher J. Richards, Emerging Aircraft Strategic Policy Section, AIR–618, Strategic Policy Management Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 6020 28th Avenue South, Room 103, Minneapolis, MN 55450, telephone (612) 253–4559.

**SUPPLEMENTARY INFORMATION:**

**Background**

Wingcopter GmbH (Wingcopter) applied to the FAA on March 17, 2020, for a special class type certificate under title 14, Code of Federal Regulations (14 CFR), § 21.17(b) for the Model 198 US unmanned aircraft system (UAS).

The Model 198 US consists of a powered lift UA and its associated elements (AE) including communication links and components that control the UA. The Model 198 US UA has a maximum gross takeoff weight of 53 pounds. It has a wingspan of approximately 78 inches, is approximately 60 inches in length, and 22 inches in height. The Model 198 US UA uses battery-powered electric motors for vertical takeoff, landing, and forward flight. The UAS operations would rely on high levels of automation and may include multiple UA operated by a single pilot, up to a ratio of 20 UA to 1 pilot. Wingcopter anticipates operators will use the Model 198 US for delivering packages. The proposed concept of operations (CONOPS) for the Model 198 US identifies a maximum operating altitude of 400 feet above ground level (AGL), a maximum cruise speed of 70 knots, operations beyond visual line of sight (BVLOS) of the pilot, and operations over human beings. Wingcopter has not requested type certification for flight into known icing for the Model 198 US.

The FAA issued a notice of proposed airworthiness criteria for the Wingcopter 198 US UAS, which published in the **Federal Register** on November 20, 2020 (85 FR 74275).

**Summary of Changes From the Proposed Airworthiness Criteria**

Based on the comments received, these final airworthiness criteria reflect the following changes, as explained in more detail under Discussion of Comments: A new section containing definitions; revisions to the CONOPS requirement; changing the term ''critical part'' to ''flight essential part'' in D&R.135; changing the basis of the durability and reliability testing from population density to limitations prescribed for the operating environment identified in the applicant's CONOPS per D&R.001; and, for the demonstration of certain required capabilities and functions as required by D&R.310.

Additionally, the FAA re-evaluated its approach to type certification of low-risk UA using durability and reliability testing. Safe UAS operations depend and rely on both the UA and the AE. As explained in FAA Memorandum AIR600–21–AIR–600–PM01, dated July 13, 2021, the FAA has revised the airworthiness criteria to define a boundary between the UA type certification and subsequent operational evaluations and approval processes for the UAS (*i.e.,* waivers, exemptions, and/or operating certificates).

To reflect that these airworthiness criteria rely on durability and reliability (D&R) testing for certification, the FAA changed the prefix of each section from ''UAS'' to ''D&R.''

Lastly, the FAA revised D&R.001(g) to clarify that the operational parameters listed in that paragraph are examples and not an all-inclusive list.

**Discussion of Comments**

The FAA received responses from 15 commenters. The majority of the commenters were individuals. In addition to the individuals' comments, the FAA also received comments from the European Union Aviation Safety Agency (EASA), unmanned aircraft manufacturers, a helicopter operator, and organizations such as the Air Line Pilots Association (ALPA), Droneport Texas, LLC, the National Agricultural Aviation Association (NAAA), Northeast UAS Airspace Integration Research Alliance, Inc. (NUAIR), and the Small UAV Coalition.

**Support**

*Comment Summary:* ALPA, NUAIR, and the Small UAV Coalition expressed support for type certification as a special class of aircraft and establishing airworthiness criteria under § 21.17(b). The Small UAV Coalition also supported the FAA's proposed use of performance-based standards.

**Terminology: Loss of Flight**

*Comment Summary:* An individual commenter requested the FAA define the term ''loss of flight'' and clarify how it is different from ''loss of control.'' The commenter questioned whether loss of flight meant the UA could not continue its intended flight plan but could safely land or terminate the flight.

*FAA Response:* The FAA has added a new section, D&R.005, to define the terms ''loss of flight'' and ''loss of control'' for the purposes of these airworthiness criteria. ''Loss of flight'' refers to a UA's inability to complete its flight as planned, up to and through its originally planned landing. ''Loss of flight'' includes scenarios where the UA experiences controlled flight into terrain or obstacles, or any other collision, or a loss of altitude that is severe or non-recoverable. ''Loss of flight'' includes deploying a parachute or ballistic recovery system that leads to an unplanned landing outside the operator's designated recovery zone.

''Loss of control'' means an unintended departure of an aircraft from controlled flight. It includes control reversal or an undue loss of longitudinal, lateral, and directional stability and control. It also includes an upset or entry into an unscheduled or uncommanded attitude with high potential for uncontrolled impact with terrain. ''Loss of control'' means a spin, loss of control authority, loss of aerodynamic stability, divergent flight characteristic, or similar occurrence, which could generally lead to a crash.

**Terminology: Skill and Alertness of Pilot**

*Comment Summary:* Two commenters requested the FAA clarify terminology with respect to piloting skill and alertness. Droneport Texas LLC stated that the average pilot skill and alertness is currently undefined, as remote pilots do not undergo oral or practical examinations to obtain certification. NUAIR noted that, despite the definition of ''exceptional piloting skill and alertness'' in Advisory Circular (AC) 23–8C, *Flight Test Guide for Certification of Part 23 Airplanes,* there is a significant difference between the average skill and alertness of a remote pilot certified under 14 CFR part 107 and a pilot certified under 14 CFR part 61. The commenter requested the FAA clarify the minimum qualifications and ratings to perform as a remote pilot of a UAS with a type certificate.

*FAA Response:* These airworthiness criteria do not require exceptional piloting skill and alertness for testing. The FAA included this as a requirement to ensure the applicant passes testing by using pilots of average skill who have been certificated under part 61, as opposed to highly trained pilots with thousands of hours of flight experience.

**Concept of Operations**

The FAA proposed a requirement for the applicant to submit a CONOPS describing the UAS and identifying the intended operational concepts. The FAA explained in the preamble of the notice of proposed airworthiness criteria that the information in the CONOPS would determine parameters for testing and flight manual operating limitations.

*Comment Summary:* One commenter stated that the airworthiness criteria are generic and requested the FAA add language to proposed UAS.001 to clarify that some of the criteria may not be relevant or necessary.

*FAA Response:* Including the language requested by the commenter would be inappropriate, as these

airworthiness criteria are project-specific. Thus, in this case, each element of these airworthiness criteria is a requirement specific to the type certification of Wingcopter's proposed UA design.

*Comment Summary:* ALPA requested the criteria specify that the applicant's CONOPS contain sufficient detail to determine the parameters and extent of testing, as well as operating limitations placed on the UAS for its operational uses.

*FAA Response:* The FAA agrees and has updated D&R.001 to clarify that the information required for inclusion in the CONOPS proposal (D&R.001(a) through (g)), must be described in sufficient detail to determine the parameters and extent of testing and operating limitations.

*Comment Summary:* ALPA requested the CONOPS include a description of a means to ensure separation from other aircraft and perform collision avoidance maneuvers. ALPA stated that its requested addition to the CONOPS is critical to the safety of other airspace users, as manned aircraft do not easily see most UAs.

*FAA Response:* The FAA agrees and has updated D&R.001 to require that the applicant identify collision avoidance equipment (whether onboard the UA or part of the AE), if the applicant requests to include that equipment.

*Comment Summary:* ALPA requested the FAA add security-related (other than cyber-security) requirements to the CONOPS criteria, including mandatory reporting of security occurrences, security training and awareness programs for all personnel involved in UAS operations, and security standards for the transportation of goods, similar to those for manned aviation.

*FAA Response:* The type certificate only establishes the approved design of the UA. Operations and operational requirements, including those regarding security occurrences, security training, and package delivery security standards (other than cybersecurity airworthiness design requirements) are beyond the scope of the airworthiness criteria established by this document and are not required for type certification.

*Comment Summary:* UAS.001(c) proposed to require that the applicant's CONOPS include a description of meteorological conditions. ALPA requested the FAA change UAS.001(c) to require a description of meteorological and environmental conditions and their operational limits. ALPA stated the CONOPS should include maximum wind speeds, maximum or minimum temperatures, maximum density altitudes, and other relevant phenomena that will limit operations or cause operations to terminate.

*FAA Response:* D&R.001(c) and D&R.125 address meteorological conditions, while D&R.001(g) addresses environmental considerations. The FAA determined that these criteria are sufficient to cover the weather phenomena mentioned by the commenter without specifically requiring identification of related operational limits.

**Control Station**

To address the risks associated with loss of control of the UA, the FAA proposed that the applicant design the control station to provide the pilot with all information necessary for continued safe flight and operation.

*Comment Summary:* ALPA and two individual commenters requested the FAA revise the proposed criteria to add requirements for the control station. Specifically, these commenters requested the FAA include the display of data and alert conditions to the pilot, physical security requirements for both the control station and the UAS storage area, design requirements that minimize negative impact of extended periods of low pilot workload, transfer of control between pilots, and human factors/human machine interface considerations for handheld controls. NUAIR requested the FAA designate the control station as a flight critical component for operations.

EASA and an individual commenter requested the FAA consider flexibility in some of the proposed criteria. EASA stated that the list of information in proposed UAS.100 is too prescriptive and contains information that may not be relevant for highly automated systems. The individual commenter requested that the FAA allow part-time or non-continuous displays of required information that do not influence the safety of the flight.

*FAA Response:* Although the scope of the proposed airworthiness criteria applied to the entire UAS, the FAA has re-evaluated its approach to type certification of low-risk unmanned aircraft using durability and reliability testing. A UA is an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft.[1] A UAS is defined as a UA and its AE, including communication links and the components that control the UA, that are required to operate the UAS safely and efficiently in the national airspace system.[2] As explained in FAA Memorandum AIR600–21–AIR–600–PM01, dated July 13, 2021, the FAA determined it will apply the regulations for type design approval, production approval, conformity, certificates of airworthiness, and maintenance to only the UA and not to the AE. However, because safe UAS operations depend and rely on both the UA and the AE, the FAA will consider the AE in assessing whether the UA meets the airworthiness criteria that comprise the certification basis.

While the AE items themselves will be outside the scope of the UA type design, the applicant will provide sufficient specifications for any aspect of the AE, including the control station, which could affect airworthiness. The FAA will approve either the specific AE or minimum specifications for the AE, as identified by the applicant, as part of the type certificate by including them as an operating limitation in the type certificate data sheet and flight manual. The FAA may impose additional operating limitations specific to the AE through conditions and limitations for inclusion in the operational approval (*i.e.,* waivers, exemptions, or a combination of these). In accordance with this approach, the FAA will consider the entirety of the UAS for operational approval and oversight.

Accordingly, the FAA has revised the criteria by replacing proposed section UAS.100, applicable to the control station design, with D&R.100, UA Signal Monitoring and Transmission, with substantively similar criteria that apply to the UA design.

The FAA has also added a new section, D&R.105, UAS AE Required for Safe UA Operations, which requires the applicant to provide information concerning the specifications of the AE The FAA has moved the alert function requirement proposed in UAS.100(a) to new section D&R.105(a)(1)(i). As part of the clarification of the testing of the interaction between the UA and AE, the FAA has added a requirement to D&R.300(h) for D&R testing to use minimum specification AE. This addition requires the applicant to demonstrate that the limits proposed for those AE will allow the UA to operate as expected throughout its service life. Finally, the FAA has revised references throughout the airworthiness criteria from ''UAS'' to ''UA,'' as appropriate, to reflect the FAA determination that the regulations for type design approval, production approval, conformity, certificates of airworthiness, and maintenance apply to only the UA.

[1] See 49 U.S.C. 44801(11).

[2] See 49 U.S.C. 44801(12).

**Software**

The FAA proposed criteria on verification, configuration management, and problem reporting to minimize the existence of errors associated with UAS software.

*Comment Summary:* ALPA requested the FAA add language to the proposed criteria to ensure that some level of software engineering principles are used without being too prescriptive.

*FAA Response:* By combining the software-testing requirement of D&R.110(a) with successful completion of the requirements in the entire ''Testing'' subpart, the acceptable level of software assurance will be identified and demonstrated. The configuration management system required by D&R.110(b) will ensure that the software is adequately documented and traceable both during and after the initial type certification activities.

*Comment Summary:* EASA suggested the criteria require that the applicant establish and correctly implement system requirements or a structured software development process for critical software.

*FAA Response:* Direct and specific evaluation of the software development process is more detailed than what the FAA intended with the proposed criteria, which use D&R testing to evaluate the UAS as a whole system, rather than evaluating individual components within the UA. Successful completion of the testing requirements provides confidence that the components that make up the UA provide an acceptable level of safety, commensurate to the low-risk nature of this aircraft. The FAA finds no change to the airworthiness criteria is needed.

*Comment Summary:* Two individual commenters requested the FAA require the manned aircraft software certification methodology in RTCA DO–178C, *Software Considerations in Airborne Systems and Equipment Certification,* for critical UA software.

*FAA Response:* Under these airworthiness criteria, only software that may affect the safe operation of the UA must be verified by test. To verify by test, the applicant will need to provide an assessment showing that other software is not subject to testing because it has no impact on the safe operation of the UA. For software that is subject to testing, the FAA may accept multiple options for software qualification, including DO–178C. Further, specifying that applicants must comply with DO–178 would be inconsistent with the FAA's intent to issue performance-based airworthiness criteria.

*Comment Summary:* NAAA stated that an overreliance of software in aircraft has been and continues to be a source of accidents and requested the FAA include criteria to prevent a midair collision.

*FAA Response:* The proper functioning of software is an important element of type certification, particularly with respect to flight controls and navigation. The airworthiness criteria in D&R.110 are meant to provide an acceptable level of safety commensurate with the risk posed by this UA. Additionally, the airworthiness criteria require contingency planning per D&R.120 and the demonstration of the UA's ability to detect and avoid other aircraft in D&R.310, if requested by the applicant. The risk of a midair collision will be minimized by the operating limitations that result from testing based on the operational parameters identified by the applicant in its CONOPS (such as geographic operating boundaries, airspace classes, and congestion of the proposed operating area), rather than by specific mitigations built into the aircraft design itself. These criteria are sufficient due to the low-risk nature of the Model 198 US.

**Cybersecurity**

Because the UA requires a continuous wireless connection, the FAA proposed criteria to address the risks to the UAS from cybersecurity threats.

*Comment Summary:* ALPA requested adding a requirement for cybersecurity protection for navigation and position reporting systems such as Global Navigation Satellite System (GNSS). ALPA further requested the FAA include criteria to address specific cybersecurity vulnerabilities, such as jamming (denial of signal) and spoofing (false position data is inserted). ALPA stated that, for navigation, UAS primarily use GNSS—an unencrypted, open-source, low power transmission that can be jammed, spoofed, or otherwise manipulated.

*FAA Response:* The FAA will assess elements directly influencing the UA for cybersecurity under D&R.115 and will assess the AE as part of any operational approvals an operator may seek. D&R.115 (proposed as UAS.115) addresses intentional unauthorized electronic interactions, which includes, but is not limited to, hacking, jamming, and spoofing. These airworthiness criteria require the high-level outcome the UA must meet, rather than discretely identifying every aspect of cybersecurity the applicant will address.

**Contingency Planning**

The FAA proposed criteria requiring that the UAS be designed to automatically execute a predetermined action in the event of a loss of communication between the pilot and the UA. The FAA further proposed that the predetermined action be identified in the Flight Manual and that the UA be precluded from taking off when the quality of service is inadequate.

*Comment Summary:* ALPA requested the criteria encompass more than loss or degradation of the command and control (C2) link, as numerous types of critical part or systems failures can occur that include degraded capabilities, whether intermittent or sustained. ALPA requested the FAA add language to the proposed criteria to address specific failures such as loss of a primary navigation sensor, degradation or loss of navigation capability, and simultaneous impact of C2 and navigation links.

*FAA Response:* The airworthiness criteria address the issues raised by ALPA. Specifically, D&R.120(a) addresses actions the UA will automatically and immediately take when the operator no longer has control of the UA. Should the specific failures identified by ALPA result in the operator's loss of control, then the criteria require the UA to execute a predetermined action. Degraded navigation performance does not raise the same level of concern as a degraded or lost C2 link. For example, a UA may experience interference with a GPS signal on the ground, but then find acceptable signal strength when above a tree line or other obstruction. The airworthiness criteria require that neither degradation nor complete loss of GPS or C2, as either condition would be a failure of that system, result in unsafe loss of control or containment. The applicant must demonstrate this by test to meet the requirements of D&R.305(a)(3).

Under the airworthiness criteria, the minimum performance requirements for the C2 link, defining when the link is degraded to an unacceptable level, may vary among different UAS designs. The level of degradation that triggers a loss is dependent upon the specific UA characteristics; this level will be defined by the applicant and demonstrated to be acceptable by testing as required by D&R.305(a)(2) and D&R.310(a)(1).

*Comment Summary:* An individual commenter requested the FAA use distinct terminology for ''communication,'' used for communications with air traffic control, and ''C2 link,'' used for command and control between the remote pilot station and UA. The commenter questioned whether, in the proposed criteria, the FAA stated ''loss of communication

between the pilot and the UA'' when it intended to state ''loss of C2 link.''

*FAA Response:* Communication extends beyond the C2 link and specific control inputs. This is why D&R.001 requires the applicant's CONOPS to include a description of the command, control, and communications functions. As long as the UA operates safely and predictably per its lost link contingency programming logic, a C2 interruption does not constitute a loss of control.

**Lightning**

The FAA proposed criteria to address the risks that would result from a lightning strike, accounting for the size and physical limitations of a UAS that could preclude traditional lightning protection features. The FAA further proposed that without lightning protection for the UA, the Flight Manual must include an operating limitation to prohibit flight into weather conditions with potential lightning.

*Comment Summary:* An individual requested the FAA revise the criteria to include a similar design mitigation or operating limitation for High Intensity Radiated Fields (HIRF). The commenter noted that HIRF is included in proposed UAS.300(e) as part of the expected environmental conditions that must be replicated in testing.

*FAA Response:* The airworthiness criteria, which are adopted as proposed, address the issue raised by the commenter. The applicant must identify tested HIRF exposure capabilities, if any, in the Flight Manual to comply with the criteria in D&R.200(a)(5). Information regarding HIRF capabilities is necessary for safe operation because proper communication and software execution may be impeded by HIRF-generated interference, which could result in loss of control of the UA. It is not feasible to measure HIRF at every potential location where the UA will operate; thus, requiring operating limitations for HIRF as requested by the commenter would be impractical.

**Adverse Weather Conditions**

The FAA proposed criteria either requiring that design characteristics protect the UAS from adverse weather conditions or prohibiting flight into known adverse weather conditions. The criteria proposed to define adverse weather conditions as rain, snow, and icing.

*Comment Summary:* ALPA and two individual commenters requested the FAA expand the proposed definition of adverse weather conditions. These commenters noted that because of the size and physical limitations of the Model 198 US, adverse weather should also include wind, downdraft, low-level wind shear (LLWS), microburst, and extreme mechanical turbulence.

*FAA Response:* No additional language needs to be added to the airworthiness criteria to address wind effects. The wind conditions specified by the commenters are part of normal UA flight operations. The applicant must demonstrate by flight test that the UA can withstand wind without failure to meet the requirements of D&R.300(b)(9). The FAA developed the criteria in D&R.130 to address adverse weather conditions (rain, snow, and icing) that would require additional design characteristics for safe operation. Any operating limitations necessary for operation in adverse weather or wind conditions will be included in the Flight Manual as required by D&R.200.

*Comment Summary:* One commenter questioned whether the criteria proposed in UAS.130(c)(2), requiring a means to detect adverse weather conditions for which the UAS is not certificated to operate, is a prescriptive requirement to install an onboard detection system. The commenter requested, if that was the case, that the FAA allow alternative procedures to avoid flying in adverse weather conditions.

*FAA Response:* The language referred to by the commenter is not a prescriptive design requirement for an onboard detection system. The applicant may use any acceptable source to monitor weather in the area, whether onboard the UA or from an external source.

**Critical Parts**

The FAA proposed criteria for critical parts that were substantively the same as those in the existing standards for normal category rotorcraft under § 27.602, with changes to reflect UAS terminology and failure conditions. The criteria proposed to define a critical part as a part, the failure of which could result in a loss of flight or unrecoverable loss of control of the aircraft.

*Comment Summary:* EASA requested the FAA avoid using the term ''critical part,'' as it is a well-established term for complex manned aircraft categories and may create incorrect expectations on the oversight process for parts.

*FAA Response:* For purposes of the airworthiness criteria established for the Wingcopter Model 198 US UA, the FAA has changed the term ''critical part'' to ''flight essential part.''

*Comment Summary:* An individual commenter requested the FAA revise the proposed criteria such that a failure of a flight essential part would only occur if there is risk to third parties.

*FAA Response:* The definition of ''flight essential'' does not change regardless of whether on-board systems are capable of safely landing the UA when it is unable to continue its flight plan. Tying the definition of a flight essential part to the risk to third parties would result in different definitions for the part depending on where and how the UA is operated. These criteria for the Model 198 US UA apply the same approach as for manned aircraft.

**Flight Manual**

The FAA proposed criteria for the Flight Manual that were substantively the same as the existing standards for normal category airplanes, with minor changes to reflect UAS terminology.

*Comment Summary:* ALPA requested the FAA revise the criteria to include normal, abnormal, and emergency operating procedures along with their respective checklist. ALPA further requested the checklist be contained in a quick reference handbook (QRH).

*FAA Response:* The FAA did not intend for the airworthiness criteria to exclude abnormal procedures from the flight manual. In these final airworthiness criteria, the FAA has changed ''normal and emergency operating procedures'' to ''operating procedures'' to encompass all operating conditions and align with 14 CFR 23.2620, which includes the airplane flight manual requirements for normal category airplanes. The FAA has not made any changes to add language that would require the checklists to be included in a QRH. FAA regulations do not require manned aircraft to have a QRH for type certification. Therefore, it would be inconsistent for the FAA to require a QRH for the Wingcopter Model 198 US UA.

*Comment Summary:* ALPA requested the FAA revise the airworthiness criteria to require that the Flight Manual and QRH be readily available to the pilot at the control station.

*FAA Response:* ALPA's request regarding the Flight manual addresses an operational requirement, similar to 14 CFR 91.9 and is therefore not appropriate for type certification airworthiness criteria. Also, as previously discussed, FAA regulations do not require a QRH. Therefore, it would be inappropriate to require it to be readily available to the pilot at the control station.

*Comment Summary:* Droneport Texas LLC requested the FAA revise the airworthiness criteria to add required Flight Manual sections for routine maintenance and mission-specific equipment and procedures. The commenter stated that the remote pilot

or personnel on the remote pilot-in-command's flight team accomplish most routine maintenance, and that the flight team usually does UA rigging with mission equipment.

*FAA Response:* The requested change is appropriate for a maintenance document rather than a flight manual because it addresses maintenance procedures rather than the piloting functions. The FAA also notes that, similar to the criteria for certain manned aircraft, the airworthiness criteria require that the applicant prepare instructions for continued airworthiness (ICA) in accordance with appendix A to part 23. As the applicant must provide any maintenance instructions and mission-specific information necessary for safe operation and continued operational safety of the UA, in accordance with D&R.205, no changes to the airworthiness criteria are necessary.

*Comment Summary:* An individual commenter requested the FAA revise the criteria in proposed UAS.200(b) to require that ''other information'' referred to in proposed UAS.200(a)(5) be approved by the FAA. The commenter noted that, as proposed, only the information listed in UAS.200(a)(1) through (4) must be FAA approved.

*FAA Response:* The change requested by the commenter would be inconsistent with the FAA's airworthiness standards for flight manuals for manned aircraft. Sections 23.2620(b), 25.1581(b), 27.1581(b), and 29.1581(b) include requirements for flight manuals to include operating limitations, operating procedures, performance information, loading information, and other information that is necessary safe operation because of design, operating, or handling characteristics, but limit FAA approval to operating limitations, operating procedures, performance information, and loading information.

Under § 23.2620(b)(1), for low-speed level 1 and level 2 airplanes, the FAA only approves the operating limitations. In applying a risk-based approach, the FAA has determined it would not be appropriate to hold the lowest risk UA to a higher standard than what is required for low speed level 1 and level 2 manned aircraft. Accordingly, the FAA has revised the airworthiness criteria to only require FAA approval of the operating limitations.

*Comment Summary:* NUAIR requested the FAA recognize that § 23.2620 is only applicable to the aircraft and does not address off-aircraft components such as the control station, control and non-payload communications (CNPC) data link, and launch and recovery equipment. The commenter noted that this is also true of industry consensus-based standards designed to comply with § 23.2620.

*FAA Response:* As explained in more detail in the Control Station section of this document, the FAA has revised the airworthiness criteria for the AE. The FAA will approve AE or minimum specifications for the AE that could affect airworthiness as an operating limitation in the UA flight manual. The FAA will establish the approved AE or minimum specifications as operating limitations and include them in the UA type certificate data sheet and Flight Manual in accordance with D&R.105(c). The establishment of requirements for, and the approval of AE will be in accordance with FAA Memorandum AIR600–21–AIR–600–PM01, dated July 13, 2021.

**Durability and Reliability**

The FAA proposed durability and reliability testing that would require the applicant to demonstrate safe flight of the UAS across the entire operational envelope and up to all operational limitations, for all phases of flight and all aircraft configurations described in the applicant's CONOPS, with no failures that result in a loss of flight, loss of control, loss of containment, or emergency landing outside the operator's recovery area. The FAA further proposed that the unmanned aircraft would only be certificated for operations within the limitations, and for flight over areas no greater than the maximum population density, as described in the applicant's CONOPS and demonstrated by test.

*Comment Summary:* ALPA requested that the proposed certification criteria require all flights during testing be completed in both normal and non-normal or off-nominal scenarios with no failures that result in a loss of flight, loss of control, loss of containment, or emergency landing outside of the operator's recovery zone. Specifically, ALPA stated that testing must not require exceptional piloting skill or alertness and include, at a minimum: All phases of the flight envelope, including the highest UA to pilot ratios; the most adverse combinations of the conditions and configuration; the environmental conditions identified in the CONOPS; the different flight profiles and routes identified in the CONOPS; and exposure to EMI and HIRF.

*FAA Response:* No change is necessary because the introductory text and paragraphs (b)(7), (b)(9), (b)(10), (b)(13), (c), (d), (e), and (f) of D&R.300, which are adopted as proposed, contain the specific testing requirements requested by ALPA.

*Comment Summary:* Droneport Texas LLC requested the FAA revise the testing criteria to include, for operation at night, testing both with and without night vision aids. The commenter stated that because small UAS operation at night is waivable under 14 CFR part 107, manufacturers will likely make assumptions concerning a pilot's familiarity with night vision device-aided and unaided operations.

*FAA Response:* Under D&R.300(b)(11), the applicant must demonstrate by flight test that the UA can operate at night without failure using whatever equipment is onboard the UA itself. The pilot's familiarity, or lack thereof, with night vision equipment does not impact whether the UA is reliable and durable to complete testing without any failures.

*Comment Summary:* EASA requested the FAA clarify how testing durability and reliability commensurate to the maximum population density, as proposed, aligns with the Specific Operations Risk Assessment (SORA) approach that is open to operational mitigation, reducing the initial ground risk. An individual commenter requested the FAA provide more details about the correlation between the number of flight hours tested and the CONOPS environment (*e.g.,* population density). The commenter stated that this is one of the most fundamental requirements, and the FAA should ensure equal treatment to all current and future applicants.

*FAA Response:* In developing these testing criteria, the FAA sought to align the risk of UAS operations with the appropriate level of protection for human beings on the ground. The FAA proposed establishing the maximum population density demonstrated by durability and reliability testing as an operating limitation on the type certificate. However, the FAA has re-evaluated its approach and determined it to be more appropriate to connect the durability and reliability demonstrated during certification testing with the operating environment defined in the CONOPS.

Basing testing on maximum population density may result in limitations not commensurate with many actual operations. As population density broadly refers to the number of people living in a given area per square mile, it does not allow for evaluating variation in a local operating environment. For example, an operator may have a route in an urban environment with the actual flight path along a greenway; the number of human beings exposed to risk from the UA operating overhead would be

significantly lower than the population density for the area. Conversely, an operator may have a route over an industrial area where few people live, but where, during business hours, there may be highly dense groups of people. Specific performance characteristics such as altitude and airspeed also factor into defining the boundaries for safe operation of the UA.

Accordingly, the FAA has revised D&R.300 to require the UA design to be durable and reliable when operated under the limitations prescribed for its operating environment. The information in the applicant's CONOPS will determine the operating environment for testing. For example, the minimum hours of reliability testing will be less for a UA conducting agricultural operations in a rural environment than if the same aircraft will be conducting package deliveries in an urban environment. The FAA will include the limitations that result from testing as operating limitations on the type certificate data sheet and in the UA Flight Manual. The FAA intends for this process to be similar to the process for establishing limitations prescribed for special purpose operations for restricted category aircraft. This allows for added flexibility in determining appropriate operating limitations, which will more closely reflect the operating environment.

Finally, a comparison of these criteria with EASA's SORA approach is beyond the scope of this document because the SORA is intended to result in an operational approval rather than a type certificate.

*Comment Summary:* EASA requested the FAA clarify how reliability at the aircraft level to ensure high-level safety objectives would enable validation of products under applicable bilateral agreements.

*FAA Response:* As the FAA and international aviation authorities are still developing general airworthiness standards for UA, it would be speculative for the FAA to comment on the validation process for any specific UA.

*Comment Summary:* EASA requested the FAA revise the testing criteria to include a compliance demonstration related to adverse combinations of the conditions and configurations and with respect to weather conditions and average pilot qualification.

*FAA Response:* No change is necessary because D&R.300(b)(7), (b)(9), (b)(10), (c), and (f), which are adopted as proposed, contain the specific testing requirements requested by EASA.

*Comment Summary:* EASA noted that, under the proposed criteria, testing involving a large number of flight hours will limit changes to the configuration.

*FAA Response:* Like manned aircraft, the requirements of 14 CFR part 21, subpart D, apply to UA for changes to type certificates. The FAA is developing procedures for processing type design changes for UA type certificated using durability and reliability testing.

*Comment Summary:* EASA requested the FAA clarify whether the proposed testing criteria would require the applicant to demonstrate aspects that do not occur during a successful flight, such as the deployment of emergency recovery systems and fire protection/post-crash fire. EASA asked if these aspects are addressed by other means and what would be the applicable airworthiness criteria.

*FAA Response:* Equipment not required for normal operation of the UA do not require an evaluation for their specific functionality. D&R testing will show that the inclusion of any such equipment does not prevent normal operation. Therefore, the airworthiness criteria would not require functional testing of the systems described by EASA.

*Comment Summary:* An individual commenter requested the FAA specify the acceptable percentage of failures in the testing that would result in a ''loss of flight.'' The Small UAV Coalition requested the FAA clarify what constitutes an emergency landing outside an operator's landing area, as some UAS designs could include an onboard health system that initiates a landing to lessen the potential of a loss of control event. The commenter suggested that, in those cases, a landing in a safe location should not invalidate the test.

*FAA Response:* The airworthiness criteria require that all test points and flight hours occur with no failures result in a loss of flight, control, containment, or emergency landing outside the operator's recovery zone. The FAA has determined that there is no acceptable percentage of failures in testing. In addition, while the recovery zone may differ for each UAS design, an emergency or unplanned landing outside of a designated landing area would result in a test failure.

*Comment Summary:* The Small UAV Coalition requested that a single failure during testing not automatically restart counting the number of flight test operations set for a particular population density; rather, the applicant should have the option to identify the failure through root-cause and fault-tree analysis and provide a validated mitigation to ensure it will not recur. An individual commenter requested the FAA to clarify whether the purpose of the tests is to show compliance with a quantitative safety objective. The commenter further requested the FAA allow the applicant to reduce the number of flight testing hours if the applicant can present a predicted safety and reliability analysis.

*FAA Response:* The intent of the testing criteria is for the applicant to demonstrate the aircraft's durability and reliability through a successful accumulation of flight testing hours. The FAA does not intend to require analytical evaluation to be part of this process. However, the applicant will comply with these testing criteria using a means of compliance, accepted by the FAA, through the issue paper process. The means of compliance will be dependent on the CONOPS the applicant has proposed to meet.

**Probable Failures**

The FAA proposed criteria to evaluate how the UAS functions after probable failures, including failures related to propulsion systems, C2 link, GPS, critical flight control components with a single point of failure, control station, and any other equipment identified by the applicant.

*Comment Summary:* Droneport Texas LLC requested the FAA add a bird strike to the list of probable failures. The commenter stated that despite sense and avoid technologies, flocks of birds can overcome the maneuver capabilities of a UA and result in multiple, unintended failures.

*FAA Response:* Unlike manned aircraft, where aircraft size, design, and construct are critical to safe control of the aircraft after encountering a bird strike, the FAA determined testing for bird strike capabilities is not necessary for the Model 198 US UA. The FAA has determined that a bird strike requirement is not necessary because the smaller size and lower operational speed of the 198 US reduce the likelihood of a bird strike, combined with the reduced consequences of failure due to no persons onboard. Instead, the FAA is using a risk-based approach to tailor airworthiness requirements commensurate to the low-risk nature of the Model 198 US UA.

*Comment Summary:* ALPA requested the FAA require that all probable failure tests occur at the critical phase and mode of flight and at the highest aircraft-to-pilot ratio. ALPA stated the proposed criteria are critically important for systems that rely on a single source to perform multi-label functions, such as GNSS, because failure or interruption of GNSS will lead to loss of positioning, navigation, and

timing (PNT) and functions solely dependent on PNT, such as geo-fencing and contingency planning.

*FAA Response:* No change is necessary because D&R.300(c) requires that the testing occur at the critical phase and mode of flight and at the highest UA-to-pilot ratio.

*Comment Summary:* Droneport Texas LLC requested the FAA add recovery from vortex ring state (VRS) to the list of probable failures. The commenter stated the UA uses multiple rotors for lift and is therefore susceptible to VRS. The commenter further stated that because recovery from settling with power is beyond a pilot's average skill for purposes of airworthiness testing, the aircraft must be able to sense and recover from this condition without pilot assistance.

*FAA Response:* D&R.305 addresses probable failures related to specific components of the UAS. VRS is an aerodynamic condition a UA may encounter during flight testing; it is not a component subject to failure.

*Comment Summary:* Droneport Texas LLC also requested the FAA add a response to the Air Traffic Control-Zero (ATC-Zero) command to the list of probable failures. The commenter stated, based on lessons learned after the attacks on September 11, 2001, aircraft that can fly BVLOS should be able to respond to an ATC-Zero condition.

*FAA Response:* The commenter's request is more appropriate for the capabilities and functions testing criteria in D&R.310 than probable failures testing in D&R.305. D&R.310(a)(3) requires the applicant to demonstrate by test that the pilot has the ability to safely discontinue a flight. A pilot may discontinue a flight for a wide variety of reasons, including responding to an ATC-zero command.

*Comment Summary:* EASA stated the proposed language seems to require an additional analysis and safety assessment, which would be appropriate for the objective requirement of ensuring a probable failure does not result in a loss of containment or control. EASA further stated that an applicant's basic understanding of the systems architecture and effects of failures is essential.

*FAA Response:* The FAA agrees with the expectation that applicants understand the system architecture and effects of failures of a proposed design, which is why the criteria include a requirement for the applicant to test the specific equipment identified in D&R.305 and identify any other equipment that is not specifically identified in D&R.305 for testing. As the intent of the criteria is for the applicant to demonstrate compliance through testing, some analysis may be necessary to properly identify the appropriate equipment to be evaluated for probable failures.

*Comment Summary:* An individual requested that probable failure testing apply not only to critical flight control components with a single point of failure, but also to any critical part with a single point of failure.

*FAA Response:* The purpose of probable failure testing in D&R.305 is to demonstrate that if certain equipment fails, it will fail safely. Adding probable failure testing for critical (now flight essential) parts would not add value to testing. If a part is essential for flight, its failure by definition in D&R.135(a) could result in a loss of flight or unrecoverable loss of control. For example, on a traditional airplane design, failure of a wing spar in flight would lead to loss of the aircraft. Because there is no way to show that a wing spar can fail safely, the applicant must provide its mandatory replacement time if applicable, structural inspection interval, and related structural inspection procedure in the Airworthiness Limitations section of the ICA. Similarly, under these airworthiness criteria, parts whose failure would inherently result in loss of flight or unrecoverable loss of control are not subjected to probable failure testing. Instead, they must be identified as flight essential components and included in the ICA.

To avoid confusion pertaining to probable failure testing, the FAA has removed the word ''critical'' from D&R.305(a)(5). In the final airworthiness criteria, probable failure testing required by D&R.305(a)(5) applies to ''Flight control components with a single point of failure.''

**Capabilities and Functions**

The FAA proposed criteria to require the applicant to demonstrate by test the minimum capabilities and functions necessary for the design. UAS.310(a) proposed to require the applicant to demonstrate, by test, the capability of the UAS to regain command and control of the UA after a C2 link loss, the sufficiency of the electrical system to carry all anticipated loads, and the ability of the pilot to override any pre-programming in order to resolve a potential unsafe operating condition in any phase of flight. UAS.310(b) proposed to require the applicant to demonstrate by test certain features if the applicant requests approval of those features (geo-fencing, external cargo, etc.). UAS.310(c) proposed to require the design of the UAS to safeguard against an unintended discontinuation of flight or release of cargo, whether by human action or malfunction.

*Comment Summary:* ALPA stated the pilot-in-command must always have the capability to input control changes to the UA and override any pre-programming without delay as needed for the safe management of the flight. The commenter requested that the FAA retain the proposed criteria that would allow the pilot to command to: Regain command and control of the UA after loss of the C2 link; safely discontinue the flight; and dynamically re-route the UA. In support, ALPA stated the ability of the pilot to continually command (re-route) the UA, including termination of the flight if necessary, is critical for safe operations and should always be available to the pilot.

Honeywell requested the FAA revise paragraphs (a)(3) and (a)(4) of the criteria (UAS.310) to allow for either the pilot or an augmenting system to safely discontinue the flight and re-route the UA. The commenter stated that a system comprised of detect and avoid, onboard autonomy, and ground system can be used for these functions. Therefore, the criteria should not require that only the pilot can do them.

An individual commenter requested the FAA remove UAS.310(a)(4) of the proposed criteria because requiring the ability for the pilot to dynamically re-route the UA is too prescriptive and redundant with the proposed requirement in UAS.310(a)(3), the ability of the pilot to discontinue the flight safely.

*FAA Response:* Because the pilot in command is directly responsible for the operation of the UA, the pilot must have the capability to command actions necessary for continued safety. This includes commanding a change to the flight path or, when appropriate, safely terminating a flight. The FAA notes that the ability for the pilot to safely discontinue a flight means the pilot has the means to terminate the flight and immediately and safely return the UA to the ground. This is different from the pilot having the means to dynamically re-route the UA, without terminating the flight, to avoid a conflict.

Therefore, the final airworthiness criteria include D&R.310(a) as proposed (UAS.310(a)).

*Comment Summary:* ALPA requested the FAA revise the criteria to require that all equipment, systems, and installations conform, at a minimum, to the standards of § 25.1309.

*FAA Response:* The FAA determined that traditional methodologies for

manned aircraft, including the system safety analysis required by § 23.2510, § 25.1309, § 27.1309, or § 29.1309, would be inappropriate to require for the Wingcopter Model 198 US due to its smaller size and reduced level of complexity. Instead, the FAA finds that system reliability through testing will ensure the safety of this design.

*Comment Summary:* ALPA requested the FAA revise the criteria to add a requirement to demonstrate the ability of the UA and pilot to perform all of the contingency plans identified in proposed UAS.120.

*FAA Response:* No change is necessary because D&R.120 and D&R.305(a)(2), together, require what ALPA requests in its comment. Under D&R.120, the applicant must design the UA to execute a predetermined action in the event of a loss of the C2 link. D&R.305(a)(2) requires the applicant to demonstrate by test that a lost C2 link will not result in a loss of containment or control of the UA. Thus, if the applicant does not demonstrate the predetermined contingency plan resulting from a loss of the C2 link when conducting D&R.305 testing, the test would be a failure due to loss of containment.

*Comment Summary:* ALPA and an individual commenter requested the FAA revise the criteria so that geo-fencing is a required feature and not optional due to the safety concerns that could result from a UA exiting its operating area.

*FAA Response:* To ensure safe flight, the applicant must test the proposed safety functions, such as geo-fencing, that are part of the type design of the Model 198 US UA. The FAA determined that geo-fencing is an optional feature because it is one way, but not the only way, to ensure a safely contained operation.

*Comment Summary:* ALPA requested the FAA revise the criteria so that capability to detect and avoid other aircraft and obstacles is a required feature and not optional.

*FAA Response:* D&R.310(a)(4) requires the applicant demonstrate the ability for the pilot to safely re-route the UA in flight to avoid a dynamic hazard. The FAA did not prescribe specific design features such as a collision avoidance system to meet D&R.310(a)(4) because there are multiple means to minimize the risk of collision.

*Comment Summary:* McMahon Helicopter Services requested that the airworthiness criteria require a demonstration of sense-and-avoid technology that will automatically steer the UA away from manned aircraft, regardless of whether the manned aircraft has a transponder. NAAA and an individual commenter requested that the FAA require ADS–B in/out and traffic avoidance software on all UAS. The Small UAV Coalition requested the FAA establish standards for collision avoidance technology, as the proposed criteria are not sufficient for compliance with the operational requirement to see and avoid other aircraft (§ 91.113). The commenters stated that these technologies are necessary to avoid a mid-air collision between UA and manned aircraft.

*FAA Response:* D&R.310(a)(4) requires the applicant demonstrate the ability for the UA to be safely re-routed in flight to avoid a dynamic hazard. The FAA did not prescribe specific design features, such as the technologies suggested by the commenters, to meet D&R.310(a)(4) because they are not the only means for complying with the operational requirement to see and avoid other aircraft. If an applicant chooses to equip their UA with onboard collision avoidance technology, those capabilities and functions must be demonstrated by test per D&R.310(b)(5).

**Verification of Limits**

The FAA proposed to require an evaluation of the UA's performance, maneuverability, stability, and control with a factor of safety.

*Comment Summary:* EASA requested that the FAA revise its approach to require a similar compliance demonstration as EASA's for ''light UAS.'' EASA stated the FAA's proposed criteria for verification of limits, combined with the proposed Flight Manual requirements, seem to replace a traditional Subpart Flight.[3] EASA further stated the FAA's approach in the proposed airworthiness criteria might necessitate more guidance and means of compliance than the traditional structure.

*FAA Response:* The FAA's airworthiness criteria will vary from EASA's light UAS certification requirements, resulting in associated differences in compliance demonstrations. At this time, comment on means of compliance and related guidance material, which are still under development with the FAA and with EASA, would be speculative.

**Propulsion**

*Comment Summary:* ALPA requested the FAA conduct an analysis to determine battery reliability and safety, taking into account wind and weather conditions and their effect on battery life. ALPA expressed concern with batteries as the only source of power for an aircraft in the NAS. ALPA further requested the FAA not grant exemptions for battery reserve requirements.

*FAA Response:* Because batteries are a flight essential part, the applicant must establish mandatory instructions or life limits for batteries under the requirements of D&R.135. In addition, when the applicant conducts its D&R testing, D&R.300(i) prevents the applicant from exceeding the maintenance intervals or life limits for those batteries. To the extent the commenter's request addresses fuel reserves, that is an operational requirement, not a certification requirement, and therefore beyond the scope of this document.

**Additional Airworthiness Criteria Identified by Commenters**

*Comment Summary:* McMahon Helicopter Services requested that the criteria require anti-collision and navigation lighting certified to existing FAA standards for brightness and size. The commenter stated that these standards were based on human factors for nighttime and daytime recognition and are not simply a lighting requirement. An individual commenter requested that the criteria include a requirement for position lighting and anti-collision beacons meeting TSO–30c Level III. NAAA requested the criteria require a strobe light and high visibility paint scheme to aid in visual detection of the UA by other aircraft.

*FAA Response:* The FAA determined it is unnecessary for these airworthiness criteria to prescribe specific design features for anti-collision or navigation lighting. The FAA will address anti-collision lighting as part of any operational approval, similar to the rules in 14 CFR 107.29(a)(2) and (b) for small UAS.

*Comment Summary:* ALPA requested the FAA add a new section with minimum standards for Global Navigation Satellite System (GNSS), as the UAS will likely rely heavily upon GNSS for navigation and to ensure that the UA does not stray outside of its approved airspace. ALPA stated that technological advances have made such devices available at an appropriate size, weight, and power for UAs.

*FAA Response:* The airworthiness criteria in D&R.100 (UA Signal Monitoring and Transmission), D&R.110 (Software), D&R.115 (Cybersecurity), and D&R.305(a)(3) (probable failures related to GPS) sufficiently address design requirements and testing of navigation systems. Even if the

[3] In the FAA's aircraft airworthiness standards (parts 23, 25, 27, and 29), subpart B of each is titled Flight.

applicant uses a TSO-approved GNSS, these airworthiness criteria require a demonstration that the UA operates successfully without loss of containment. Successful completion of these tests demonstrates that the navigation subsystems are acceptable.

*Comment Summary:* ALPA requested the FAA revise the criteria to add a new section requiring equipage to comply with the FAA's new rules on Remote Identification of Unmanned Aircraft (86 FR 4390, Jan. 15, 2021). An individual commenter questioned the need for public tracking and identification of drones in the event of a crash or violation of FAA flight rules.

*FAA Response:* The FAA issued the final rule, Remote Identification of Unmanned Aircraft, after providing an opportunity for public notice and comment. The final rule is codified at 14 CFR part 89. Part 89 contains the remote identification requirements for unmanned aircraft certificated and produced under part 21 after September 16, 2022.

**Pilot Ratio**

*Comment Summary:* ALPA, NAAA, and one individual questioned the safety of multiple Model 198 US UA operated by a single pilot, up to a ratio of 20 UA to 1 pilot. ALPA stated that even with high levels of automation, the pilot must still manage the safe operation and maintain situational awareness of multiple aircraft in their flight path, aircraft systems, integration with traffic, obstacles, and other hazards during normal, abnormal, and emergency conditions. As a result, ALPA recommended the FAA conduct additional studies to better understand the feasibility of a single pilot operating multiple UA before developing airworthiness criteria. The Small UAV Coalition requested the FAA provide criteria for an aircraft-to-pilot ratio higher than 20:1.

*FAA Response:* These airworthiness criteria are specific to the Model 198 US UA and, as discussed previously in this preamble, operations of the Model 198 US UA may include multiple UA operated by a single pilot, up to a ratio of 20 UA to 1 pilot. Additionally, these airworthiness criteria require the applicant to demonstrate the durability and reliability of the UA design by flight test, at the highest aircraft-to-pilot ratio, without exceptional piloting skill or alertness. In addition, D&R.305(c) requires the applicant to demonstrate probable failures by test at the highest aircraft-to-pilot ratio. Should the pilot ratio cause a loss of containment or control of the UA, then the applicant will fail this testing.

*Comment Summary:* ALPA stated that to allow a UAS-pilot ratio of up to 20:1 safely, the possibility that the pilot will need to intervene with multiple UA simultaneously must be ''extremely remote.'' ALPA questioned whether this is feasible given the threat of GNSS interference or unanticipated wind gusts exceeding operational limits.

*FAA Response:* The FAA's guidance in AC 23.1309–1E, *System Safety Analysis and Assessment for Part 23 Airplanes* defines ''extremely remote failure conditions'' as failure conditions not anticipated to occur during the total life of an airplane, but which may occur a few times when considering the total operational life of all airplanes of the same type. When assessing the likelihood of a pilot needing to intervene with multiple UA simultaneously, the minimum reliability requirements will be determined based on the applicant's proposed CONOPS.

**Noise**

*Comment Summary:* An individual commenter expressed concern about noise pollution.

*FAA Response:* The Model 198 US will need to comply with FAA noise certification standards. If the FAA determines that 14 CFR part 36 does not contain adequate standards for this design, the agency will propose and seek public comment on a rule of particular applicability for noise requirements under a separate rulemaking docket.

**Operating Altitude**

*Comment Summary:* ALPA, McMahon Helicopter Services, and NAAA commented on the operation of UAS at or below 400 feet AGL. ALPA, McMahon Helicopter Services, and NAAA requested the airworthiness criteria contain measures for safe operation at low altitudes so that UAS are not a hazard to manned aircraft, especially operations involving helicopters; air tours; agricultural applications; emergency medical services; air tanker firefighting; power line and pipeline patrol and maintenance; fish and wildlife service; animal control; military and law enforcement; seismic operations; ranching and livestock relocation; and mapping.

*FAA Response:* The type certificate only establishes the approved design of the UA. These airworthiness criteria require the applicant show compliance for the UA altitude sought for type certification. While this may result in operating limitations in the flight manual, the type certificate is not an approval for operations. Operations and operational requirements are beyond the scope of this document.

**Guidance Material**

*Comment Summary:* NUAIR requested the FAA complete and publish its draft AC 21.17–XX, *Type Certification Basis for Unmanned Aircraft Systems (UAS),* to provide additional guidance, including templates, to those who seek a type design approval for UAS. NUAIR also requested the FAA recognize the industry consensus-based standards applicable to UAS, as Transport Canada has by publishing its AC 922–001, *Remotely Piloted Aircraft Systems Safety Assurance.*

*FAA Response:* The FAA will continue to develop policy and guidance for UA type certification and will publish guidance as soon as practicable. The FAA encourages consensus standards bodies to develop means of compliance and submit them to the FAA for acceptance. Regarding Transport Canada AC 922–001, that AC addresses operational approval rather than type certification.

**Safety Management**

*Comment Summary:* ALPA requested the FAA ensure that operations, including UA integrity, fall under the safety management system. ALPA further requested the FAA convene a Safety Risk Management Panel before allowing operators to commence operations and that the FAA require operators to have an active safety management system, including a non-punitive safety culture, where incident and continuing airworthiness issues can be reported.

*FAA Response:* The type certificate only establishes the approved design of the UA, including the Flight Manual and ICA. Operations and operational requirements, including safety management and oversight of operations and maintenance, are beyond the scope of this document.

**Process**

*Comment Summary:* ALPA supported the FAA's type certification of UAS as a ''special class'' of aircraft under § 21.17(b) but requested that it be temporary.

*FAA Response:* As the FAA stated in its notice of policy issued August 11, 2020 (85 FR 58251, September 18, 2020), the FAA will use the type certification process under § 21.17(b) for some unmanned aircraft with no occupants onboard. The FAA further stated in its policy that it may also issue type certificates under § 21.17(a) for airplane and rotorcraft UAS designs

where the airworthiness standards in part 23, 25, 27, or 29, respectively, are appropriate. The FAA, in the future, may consider establishing appropriate generally applicable airworthiness standards for UA that are not certificated under the existing standards in part 23, 25, 27, or 29.

**Out of Scope Comments**

The FAA received and reviewed several comments that were general, stated the commenter's viewpoint or opposition without a suggestion specific to the proposed criteria, or did not make a request the FAA can act on. These comments are beyond the scope of this document.

**Applicability**

These airworthiness criteria, established under the provisions of § 21.17(b), are applicable to the Wingcopter Model 198 US UA. Should Wingcopter wish to apply these airworthiness criteria to other UA models, it must submit a new type certification application.

**Conclusion**

This action affects only certain airworthiness criteria for the Wingcopter Model 198 US UA. It is not a standard of general applicability.

**Authority Citation**

The authority citation for these airworthiness criteria is as follows:

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

**Airworthiness Criteria**

Pursuant to the authority delegated to me by the Administrator, the following airworthiness criteria are issued as part of the type certification basis for the Wingcopter Model 198 US unmanned aircraft. The FAA finds that compliance with these criteria appropriately mitigates the risks associated with the design and concept of operations and provides an equivalent level of safety to existing rules.

**General**

*D&R.001 Concept of Operations*

The applicant must define and submit to the FAA a concept of operations (CONOPS) proposal describing the unmanned aircraft system (UAS) operation in the national airspace system for which unmanned aircraft (UA) type certification is requested. The CONOPS proposal must include, at a minimum, a description of the following information in sufficient detail to determine the parameters and extent of testing and operating limitations:

(a) The intended type of operations;

(b) UA specifications;

(c) Meteorological conditions;

(d) Operators, pilots, and personnel responsibilities;

(e) Control station, support equipment, and other associated elements (AE) necessary to meet the airworthiness criteria;

(f) Command, control, and communication functions;

(g) Operational parameters (such as population density, geographic operating boundaries, airspace classes, launch and recovery area, congestion of proposed operating area, communications with air traffic control, line of sight, and aircraft separation); and

(h) Collision avoidance equipment, whether onboard the UA or part of the AE, if requested.

*D&R.005 Definitions*

For purposes of these airworthiness criteria, the following definitions apply.

(a) *Loss of Control:* Loss of control means an unintended departure of an aircraft from controlled flight. It includes control reversal or an undue loss of longitudinal, lateral, and directional stability and control. It also includes an upset or entry into an unscheduled or uncommanded attitude with high potential for uncontrolled impact with terrain. A loss of control means a spin, loss of control authority, loss of aerodynamic stability, divergent flight characteristics, or similar occurrence, which could generally lead to crash.

(b) *Loss of Flight:* Loss of flight means a UA's inability to complete its flight as planned, up to and through its originally planned landing. It includes scenarios where the UA experiences controlled flight into terrain, obstacles, or any other collision, or a loss of altitude that is severe or non-reversible. Loss of flight also includes deploying a parachute or ballistic recovery system that leads to an unplanned landing outside the operator's designated recovery zone.

**Design and Construction**

*D&R.100 UA Signal Monitoring and Transmission*

The UA must be designed to monitor and transmit to the AE all information required for continued safe flight and operation. This information includes, at a minimum, the following:

(a) Status of all critical parameters for all energy storage systems;

(b) Status of all critical parameters for all propulsion systems;

(c) Flight and navigation information as appropriate, such as airspeed, heading, altitude, and location; and

(d) Communication and navigation signal strength and quality, including contingency information or status.

*D&R.105 UAS AE Required for Safe UA Operations*

(a) The applicant must identify and submit to the FAA all AE and interface conditions of the UAS that affect the airworthiness of the UA or are otherwise necessary for the UA to meet these airworthiness criteria. As part of this requirement—

(1) The applicant may identify either specific AE or minimum specifications for the AE.

(i) If minimum specifications are identified, they must include the critical requirements of the AE, including performance, compatibility, function, reliability, interface, pilot alerting, and environmental requirements.

(ii) Critical requirements are those that if not met would impact the ability to operate the UA safely and efficiently.

(2) The applicant may use an interface control drawing, a requirements document, or other reference, titled so that it is clearly designated as AE interfaces to the UA.

(b) The applicant must show the FAA the AE or minimum specifications identified in paragraph (a) of this section meet the following:

(1) The AE provide the functionality, performance, reliability, and information to assure UA airworthiness in conjunction with the rest of the design;

(2) The AE are compatible with the UA capabilities and interfaces;

(3) The AE must monitor and transmit to the pilot all information required for safe flight and operation, including but not limited to those identified in D&R.100; and

(4) The minimum specifications, if identified, are correct, complete, consistent, and verifiable to assure UA airworthiness.

(c) The FAA will establish the approved AE or minimum specifications as operating limitations and include them in the UA type certificate data sheet and Flight Manual.

(d) The applicant must develop any maintenance instructions necessary to address implications from the AE on the airworthiness of the UA. Those instructions will be included in the instructions for continued airworthiness (ICA) required by D&R.205.

*D&R.110 Software*

To minimize the existence of software errors, the applicant must:

(a) Verify by test all software that may impact the safe operation of the UA;

(b) Utilize a configuration management system that tracks,

controls, and preserves changes made to software throughout the entire life cycle; and

(c) Implement a problem reporting system that captures and records defects and modifications to the software.

*D&R.115 Cybersecurity*

(a) UA equipment, systems, and networks, addressed separately and in relation to other systems, must be protected from intentional unauthorized electronic interactions that may result in an adverse effect on the security or airworthiness of the UA. Protection must be ensured by showing that the security risks have been identified, assessed, and mitigated as necessary.

(b) When required by paragraph (a) of this section, procedures and instructions to ensure security protections are maintained must be included in the ICA.

*D&R.120 Contingency Planning*

(a) The UA must be designed so that, in the event of a loss of the command and control (C2) link, the UA will automatically and immediately execute a safe predetermined flight, loiter, landing, or termination.

(b) The applicant must establish the predetermined action in the event of a loss of the C2 link and include it in the UA Flight Manual.

(c) The UA Flight Manual must include the minimum performance requirements for the C2 data link defining when the C2 link is degraded to a level where remote active control of the UA is no longer ensured. Takeoff when the C2 link is degraded below the minimum link performance requirements must be prevented by design or prohibited by an operating limitation in the UA Flight Manual.

*D&R.125 Lightning*

(a) Except as provided in paragraph (b) of this section, the UA must have design characteristics that will protect the UA from loss of flight or loss of control due to lightning.

(b) If the UA has not been shown to protect against lightning, the UA Flight Manual must include an operating limitation to prohibit flight into weather conditions conducive to lightning activity.

*D&R.130 Adverse Weather Conditions*

(a) For purposes of this section, ''adverse weather conditions'' means rain, snow, and icing.

(b) Except as provided in paragraph (c) of this section, the UA must have design characteristics that will allow the UA to operate within the adverse weather conditions specified in the CONOPS without loss of flight or loss of control.

(c) For adverse weather conditions for which the UA is not approved to operate, the applicant must develop operating limitations to prohibit flight into known adverse weather conditions and either:

(1) Develop operating limitations to prevent inadvertent flight into adverse weather conditions; or

(2) Provide a means to detect any adverse weather conditions for which the UA is not certificated to operate and show the UA's ability to avoid or exit those conditions.

*D&R.135 Flight Essential Parts*

(a) A flight essential part is a part, the failure of which could result in a loss of flight or unrecoverable loss of UA control.

(b) If the type design includes flight essential parts, the applicant must establish a flight essential parts list. The applicant must develop and define mandatory maintenance instructions or life limits, or a combination of both, to prevent failures of flight essential parts. Each of these mandatory actions must be included in the Airworthiness Limitations Section of the ICA.

**Operating Limitations and Information**

*D&R.200 Flight Manual*

The applicant must provide a Flight Manual with each UA.

(a) The UA Flight Manual must contain the following information:

(1) UA operating limitations;

(2) UA operating procedures;

(3) Performance information;

(4) Loading information; and

(5) Other information that is necessary for safe operation because of design, operating, or handling characteristics.

(b) Those portions of the UA Flight Manual containing the information specified in paragraph (a)(1) of this section must be approved by the FAA.

*D&R.205 Instructions for Continued Airworthiness*

The applicant must prepare ICA for the UA in accordance with Appendix A to Part 23, as appropriate, that are acceptable to the FAA. The ICA may be incomplete at type certification if a program exists to ensure their completion prior to delivery of the first UA or issuance of a standard airworthiness certificate, whichever occurs later.

**Testing**

*D&R.300 Durability and Reliability*

The UA must be designed to be durable and reliable when operated under the limitations prescribed for its operating environment, as documented in its CONOPS and included as operating limitations on the type certificate data sheet and in the UA Flight Manual. The durability and reliability must be demonstrated by flight test in accordance with the requirements of this section and completed with no failures that result in a loss of flight, loss of control, loss of containment, or emergency landing outside the operator's recovery area.

(a) Once a UA has begun testing to show compliance with this section, all flights for that UA must be included in the flight test report.

(b) Tests must include an evaluation of the entire flight envelope across all phases of operation and must address, at a minimum, the following:

(1) Flight distances;

(2) Flight durations;

(3) Route complexity;

(4) Weight;

(5) Center of gravity;

(6) Density altitude;

(7) Outside air temperature;

(8) Airspeed;

(9) Wind;

(10) Weather;

(11) Operation at night, if requested;

(12) Energy storage system capacity; and

(13) Aircraft to pilot ratio.

(c) Tests must include the most adverse combinations of the conditions and configurations in paragraph (b) of this section.

(d) Tests must show a distribution of the different flight profiles and routes representative of the type of operations identified in the CONOPS.

(e) Tests must be conducted in conditions consistent with the expected environmental conditions identified in the CONOPS, including electromagnetic interference (EMI) and high intensity radiated fields (HIRF).

(f) Tests must not require exceptional piloting skill or alertness.

(g) Any UAS used for testing must be subject to the same worst-case ground handling, shipping, and transportation loads as those allowed in service.

(h) Any UA used for testing must use AE that meet, but do not exceed, the minimum specifications identified under D&R.105. If multiple AE are identified, the applicant must demonstrate each configuration.

(i) Any UAS used for testing must be maintained and operated in accordance with the ICA and UA Flight Manual. No maintenance beyond the intervals established in the ICA will be allowed to show compliance with this section.

(j) If cargo operations or external-load operations are requested, tests must

show, throughout the flight envelope and with the cargo or external-load at the most critical combinations of weight and center of gravity, that—

(1) The UA is safely controllable and maneuverable; and

(2) The cargo or external-load are retainable and transportable.

*D&R.305 Probable Failures*

The UA must be designed such that a probable failure will not result in a loss of containment or control of the UA. This must be demonstrated by test.

(a) Probable failures related to the following equipment, at a minimum, must be addressed:

(1) Propulsion systems;

(2) C2 link;

(3) Global Positioning System (GPS);

(4) Flight control components with a single point of failure;

(5) Control station; and

(6) Any other AE identified by the applicant.

(b) Any UA used for testing must be operated in accordance with the UA Flight Manual.

(c) Each test must occur at the critical phase and mode of flight, and at the highest aircraft-to-pilot ratio.

*D&R.310 Capabilities and Functions*

(a) All of the following required UAS capabilities and functions must be demonstrated by test:

(1) Capability to regain command and control of the UA after the C2 link has been lost.

(2) Capability of the electrical system to power all UA systems and payloads.

(3) Ability for the pilot to safely discontinue the flight.

(4) Ability for the pilot to dynamically re-route the UA.

(5) Ability to safely abort a takeoff.

(6) Ability to safely abort a landing and initiate a go-around.

(b) The following UAS capabilities and functions, if requested for approval, must be demonstrated by test:

(1) Continued flight after degradation of the propulsion system.

(2) Geo-fencing that contains the UA within a designated area, in all operating conditions.

(3) Positive transfer of the UA between control stations that ensures only one control station can control the UA at a time.

(4) Capability to release an external cargo load to prevent loss of control of the UA.

(5) Capability to detect and avoid other aircraft and obstacles.

(c) The UA must be designed to safeguard against inadvertent discontinuation of the flight and inadvertent release of cargo or external load.

*D&R.315 Fatigue*

The structure of the UA must be shown to withstand the repeated loads expected during its service life without failure. A life limit for the airframe must be established, demonstrated by test, and included in the ICA.

*D&R.320 Verification of Limits*

The performance, maneuverability, stability, and control of the UA within the flight envelope described in the UA Flight Manual must be demonstrated at a minimum of 5% over maximum gross weight with no loss of control or loss of flight.

Issued in Washington, DC, on March 4, 2022.

**Ian Lucas,**

*Manager, Policy Implementation Section, Policy and Innovation Division, Aircraft Certification Service.*

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 21

**[Docket No. FAA–2020–1091]**

## Airworthiness Criteria: Special Class Airworthiness Criteria for the Flirtey Inc. Flirtey F4.5 Unmanned Aircraft

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

**ACTION:** Issuance of final airworthiness criteria.

**SUMMARY:** The FAA announces the special class airworthiness criteria for the Flirtey Inc. Model Flirtey F4.5 unmanned aircraft (UA). This document sets forth the airworthiness criteria the FAA finds to be appropriate and applicable for the UA design.

**DATES:** These airworthiness criteria are effective April 18, 2022.

**FOR FURTHER INFORMATION CONTACT:** Christopher J. Richards, Emerging Aircraft Strategic Policy Section, AIR–618, Strategic Policy Management Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 6020 28th Avenue South, Room 103, Minneapolis, MN 55450, telephone (612) 253–4559.

**SUPPLEMENTARY INFORMATION:**

### Background

Flirtey Inc. (Flirtey) applied to the FAA on November 12, 2018, for a special class type certificate under title 14, Code of Federal Regulations (14 CFR), § 21.17(b) for the Model Flirtey F4.5 UA.

The Model Flirtey F4.5 consists of a rotorcraft UA and its associated elements (AE) including communication links and components that control the UA. The Model Flirtey F4.5 UA has a maximum gross takeoff weight of 38 pounds. It is approximately 78 inches in width, 78 inches in length, and 21 inches in height. The Model Flirtey F4.5 UA uses battery-powered electric motors for vertical takeoff, landing, and forward flight. The UAS operations would rely on high levels of automation and may include multiple UA operated by a single pilot, up to a ratio of 20 UA to 1 pilot. Flirtey anticipates operators will use the Model Flirtey F4.5 for delivering medical supplies and packages. The proposed concept of operations (CONOPS) for the Model Flirtey F4.5 identifies a maximum operating altitude of 400 feet above ground level (AGL), a maximum cruise speed of 24 knots, operations beyond visual line of sight (BVLOS) of the pilot, and operations over human beings. Flirtey has not requested type certification for flight into known icing for the Model Flirtey F4.5.

The FAA issued a notice of proposed airworthiness criteria for the Flirtey F4.5 UAS, which published in the **Federal Register** on November 24, 2020 (85 FR 74922).

### Summary of Changes From the Proposed Airworthiness Criteria

Based on the comments received, these final airworthiness criteria reflect the following changes, as explained in more detail under Discussion of Comments: A new section containing definitions; revisions to the CONOPS requirement; changing the term ''critical part'' to ''flight essential part'' in D&R.135; changing the basis of the durability and reliability testing from population density to limitations prescribed for the operating environment identified in the applicant's CONOPS per D&R.001; and, for the demonstration of certain required capabilities and functions as required by D&R.310.

Additionally, the FAA re-evaluated its approach to type certification of low-risk UA using durability and reliability testing. Safe UAS operations depend and rely on both the UA and the AE. As explained in FAA Memorandum AIR600–21–AIR–600–PM01, dated July 13, 2021, the FAA has revised the airworthiness criteria to define a boundary between the UA type certification and subsequent operational evaluations and approval processes for

the UAS (*i.e.,* waivers, exemptions, and/or operating certificates).

To reflect that these airworthiness criteria rely on durability and reliability (D&R) testing for certification, the FAA changed the prefix of each section from ''UAS'' to ''D&R.''

Lastly, the FAA revised D&R.001(g) to clarify that the operational parameters listed in that paragraph are examples and not an all-inclusive list.

**Discussion of Comments**

The FAA received responses from 14 commenters. The majority of the commenters were individuals. In addition to the individuals' comments, the FAA also received comments from the European Union Aviation Safety Agency (EASA), unmanned aircraft manufacturers, a helicopter operator, and organizations such as the Air Line Pilots Association (ALPA), Droneport Texas, LLC, the National Agricultural Aviation Association (NAAA), Northeast UAS Airspace Integration Research Alliance, Inc. (NUAIR), and the Small UAV Coalition.

**Support**

*Comment Summary:* ALPA, NUAIR, and the Small UAV Coalition expressed support for type certification as a special class of aircraft and establishing airworthiness criteria under § 21.17(b). The Small UAV Coalition also supported the FAA's proposed use of performance-based standards.

**Terminology: Loss of flight**

*Comment Summary:* An individual commenter requested the FAA define the term ''loss of flight'' and clarify how it is different from ''loss of control.'' The commenter questioned whether loss of flight meant the UA could not continue its intended flight plan but could safely land or terminate the flight.

*FAA Response:* The FAA has added a new section, D&R.005, to define the terms ''loss of flight'' and ''loss of control'' for the purposes of these airworthiness criteria. ''Loss of flight'' refers to a UA's inability to complete its flight as planned, up to and through its originally planned landing. ''Loss of flight'' includes scenarios where the UA experiences controlled flight into terrain or obstacles, or any other collision, or a loss of altitude that is severe or non-recoverable. ''Loss of flight'' includes deploying a parachute or ballistic recovery system that leads to an unplanned landing outside the operator's designated recovery zone.

''Loss of control'' means an unintended departure of an aircraft from controlled flight. It includes control reversal or an undue loss of longitudinal, lateral, and directional stability and control. It also includes an upset or entry into an unscheduled or uncommanded attitude with high potential for uncontrolled impact with terrain. ''Loss of control'' means a spin, loss of control authority, loss of aerodynamic stability, divergent flight characteristic, or similar occurrence, which could generally lead to a crash.

**Terminology: Skill and Alertness of Pilot**

*Comment Summary:* Two commenters requested the FAA clarify terminology with respect to piloting skill and alertness. Droneport Texas LLC stated that the average pilot skill and alertness is currently undefined, as remote pilots do not undergo oral or practical examinations to obtain certification. NUAIR noted that, despite the definition of ''exceptional piloting skill and alertness'' in Advisory Circular (AC) 23–8C, *Flight Test Guide for Certification of Part 23 Airplanes,* there is a significant difference between the average skill and alertness of a remote pilot certified under 14 CFR part 107 and a pilot certified under 14 CFR part 61. The commenter requested the FAA clarify the minimum qualifications and ratings to perform as a remote pilot of a UAS with a type certificate.

*FAA Response:* These airworthiness criteria do not require exceptional piloting skill and alertness for testing. The FAA included this as a requirement to ensure the applicant passes testing by using pilots of average skill who have been certificated under part 61, as opposed to highly trained pilots with thousands of hours of flight experience.

**Concept of Operations**

The FAA proposed a requirement for the applicant to submit a CONOPS describing the UAS and identifying the intended operational concepts. The FAA explained in the preamble of the notice of proposed airworthiness criteria that the information in the CONOPS would determine parameters for testing and flight manual operating limitations.

*Comment Summary:* One commenter stated that the airworthiness criteria are generic and requested the FAA add language to proposed UAS.001 to clarify that some of the criteria may not be relevant or necessary.

*FAA Response:* Including the language requested by the commenter would be inappropriate, as these airworthiness criteria are project-specific. Thus, in this case, each element of these airworthiness criteria is a requirement specific to the type certification of Flirtey's proposed UA design.

*Comment Summary:* ALPA requested the criteria specify that the applicant's CONOPS contain sufficient detail to determine the parameters and extent of testing, as well as operating limitations placed on the UAS for its operational uses.

*FAA Response:* The FAA agrees and has updated D&R.001 to clarify that the information required for inclusion in the CONOPS proposal (D&R.001(a) through (g)) must be described in sufficient detail to determine the parameters and extent of testing and operating limitations.

*Comment Summary:* ALPA requested the CONOPS include a description of a means to ensure separation from other aircraft and perform collision avoidance maneuvers. ALPA stated that its requested addition to the CONOPS is critical to the safety of other airspace users, as manned aircraft do not easily see most UAs.

*FAA Response:* The FAA agrees and has updated D&R.001 to require that the applicant identify collision avoidance equipment (whether onboard the UA or part of the AE), if the applicant requests to include that equipment.

*Comment Summary:* ALPA requested the FAA add security-related (other than cyber-security) requirements to the CONOPS criteria, including mandatory reporting of security occurrences, security training and awareness programs for all personnel involved in UAS operations, and security standards for the transportation of goods, similar to those for manned aviation.

*FAA Response:* The type certificate only establishes the approved design of the UA. Operations and operational requirements, including those regarding security occurrences, security training, and package delivery security standards (other than cybersecurity airworthiness design requirements) are beyond the scope of the airworthiness criteria established by this document and are not required for type certification.

*Comment Summary:* UAS.001(c) proposed to require that the applicant's CONOPS include a description of meteorological conditions. ALPA requested the FAA change UAS.001(c) to require a description of meteorological and environmental conditions and their operational limits. ALPA stated the CONOPS should include maximum wind speeds, maximum or minimum temperatures, maximum density altitudes, and other relevant phenomena that will limit operations or cause operations to terminate.

*FAA Response:* D&R.001(c) and D&R.125 address meteorological conditions, while D&R.001(g) addresses

environmental considerations. The FAA determined that these criteria are sufficient to cover the weather phenomena mentioned by the commenter without specifically requiring identification of related operational limits.

**Control Station**

To address the risks associated with loss of control of the UA, the FAA proposed that the applicant design the control station to provide the pilot with all information necessary for continued safe flight and operation.

*Comment Summary:* ALPA and one individual commenter requested the FAA revise the proposed criteria to add requirements for the control station. Specifically, these commenters requested the FAA include the display of data and alert conditions to the pilot, physical security requirements for both the control station and the UAS storage area, design requirements that minimize negative impact of extended periods of low pilot workload, transfer of control between pilots, and human factors/human machine interface considerations for handheld controls. NUAIR requested the FAA designate the control station as a flight critical component for operations.

EASA and an individual commenter requested the FAA consider flexibility in some of the proposed criteria. EASA stated that the list of information in proposed UAS.100 is too prescriptive and contains information that may not be relevant for highly automated systems. The individual commenter requested that the FAA allow part-time or non-continuous displays of required information that do not influence the safety of the flight.

*FAA Response:* Although the scope of the proposed airworthiness criteria applied to the entire UAS, the FAA has re-evaluated its approach to type certification of low-risk unmanned aircraft using durability and reliability testing. A UA is an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft.[1] A UAS is defined as a UA and its AE, including communication links and the components that control the UA, that are required to operate the UAS safely and efficiently in the national airspace system.[2] As explained in FAA Memorandum AIR600–21–AIR–600–PM01, dated July 13, 2021, the FAA determined it will apply the regulations for type design approval, production approval, conformity, certificates of airworthiness, and maintenance to only the UA and not to the AE. However, because safe UAS operations depend and rely on both the UA and the AE, the FAA will consider the AE in assessing whether the UA meets the airworthiness criteria that comprise the certification basis.

While the AE items themselves will be outside the scope of the UA type design, the applicant will provide sufficient specifications for any aspect of the AE, including the control station, which could affect airworthiness. The FAA will approve either the specific AE or minimum specifications for the AE, as identified by the applicant, as part of the type certificate by including them as an operating limitation in the type certificate data sheet and flight manual. The FAA may impose additional operating limitations specific to the AE through conditions and limitations for inclusion in the operational approval (*i.e.,* waivers, exemptions, or a combination of these). In accordance with this approach, the FAA will consider the entirety of the UAS for operational approval and oversight.

Accordingly, the FAA has revised the criteria by replacing proposed section UAS.100, applicable to the control station design, with D&R.100, UA Signal Monitoring and Transmission, with substantively similar criteria that apply to the UA design.

The FAA has also added a new section, D&R.105, UAS AE Required for Safe UA Operations, which requires the applicant to provide information concerning the specifications of the AE. The FAA has moved the alert function requirement proposed in UAS.100(a) to new section D&R.105(a)(1)(i). As part of the clarification of the testing of the interaction between the UA and AE, the FAA has added a requirement to D&R.300(h) for D&R testing to use minimum specification AE. This addition requires the applicant to demonstrate that the limits proposed for those AE will allow the UA to operate as expected throughout its service life. Finally, the FAA has revised references throughout the airworthiness criteria from ''UAS'' to ''UA,'' as appropriate, to reflect the FAA determination that the regulations for type design approval, production approval, conformity, certificates of airworthiness, and maintenance apply to only the UA.

**Software**

The FAA proposed criteria on verification, configuration management, and problem reporting to minimize the existence of errors associated with UAS software.

*Comment Summary:* ALPA requested the FAA add language to the proposed criteria to ensure that some level of software engineering principles are used without being too prescriptive.

*FAA Response:* By combining the software testing requirement of D&R.110(a) with successful completion of the requirements in the entire ''Testing'' subpart, the acceptable level of software assurance will be identified and demonstrated. The configuration management system required by D&R.110(b) will ensure that the software is adequately documented and traceable both during and after the initial type certification activities.

*Comment Summary:* EASA suggested the criteria require that the applicant establish and correctly implement system requirements or a structured software development process for critical software.

*FAA Response:* Direct and specific evaluation of the software development process is more detailed than what the FAA intended with the proposed criteria, which use D&R testing to evaluate the UAS as a whole system, rather than evaluating individual components within the UA. Successful completion of the testing requirements provides confidence that the components that make up the UA provide an acceptable level of safety, commensurate to the low-risk nature of this aircraft. The FAA finds no change to the airworthiness criteria is needed.

*Comment Summary:* Two individual commenters requested the FAA require the manned aircraft software certification methodology in RTCA DO–178C, *Software Considerations in Airborne Systems and Equipment Certification,* for critical UA software.

*FAA Response:* Under these airworthiness criteria, only software that may affect the safe operation of the UA must be verified by test. To verify by test, the applicant will need to provide an assessment showing that other software is not subject to testing because it has no impact on the safe operation of the UA. For software that is subject to testing, the FAA may accept multiple options for software qualification, including DO–178C. Further, specifying that applicants must comply with DO–178 would be inconsistent with the FAA's intent to issue performance-based airworthiness criteria.

*Comment Summary:* NAAA stated that an overreliance of software in aircraft has been and continues to be a source of accidents and requested the FAA include criteria to prevent a midair collision.

*FAA Response:* The proper functioning of software is an important

[1] See 49 U.S.C. 44801(11).

[2] See 49 U.S.C. 44801(12).

element of type certification, particularly with respect to flight controls and navigation. The airworthiness criteria in D&R.110 are meant to provide an acceptable level of safety commensurate with the risk posed by this UA. Additionally, the airworthiness criteria require contingency planning per D&R.120 and the demonstration of the UA's ability to detect and avoid other aircraft in D&R.310, if requested by the applicant. The risk of a midair collision will be minimized by the operating limitations that result from testing based on the operational parameters identified by the applicant in its CONOPS (such as geographic operating boundaries, airspace classes, and congestion of the proposed operating area), rather than by specific mitigations built into the aircraft design itself. These criteria are sufficient due to the low-risk nature of the Model Flirtey F4.5.

**Cybersecurity**

Because the UA requires a continuous wireless connection, the FAA proposed criteria to address the risks to the UAS from cybersecurity threats.

*Comment Summary:* ALPA requested adding a requirement for cybersecurity protection for navigation and position reporting systems such as Global Navigation Satellite System (GNSS). ALPA further requested the FAA include criteria to address specific cybersecurity vulnerabilities, such as jamming (denial of signal) and spoofing (false position data is inserted). ALPA stated that, for navigation, UAS primarily use GNSS—an unencrypted, open-source, low power transmission that can be jammed, spoofed, or otherwise manipulated.

*FAA Response:* The FAA will assess elements directly influencing the UA for cybersecurity under D&R.115 and will assess the AE as part of any operational approvals an operator may seek. D&R.115 (proposed as UAS.115) addresses intentional unauthorized electronic interactions, which includes, but is not limited to, hacking, jamming, and spoofing. These airworthiness criteria require the high-level outcome the UA must meet, rather than discretely identifying every aspect of cybersecurity the applicant will address.

**Contingency Planning**

The FAA proposed criteria requiring that the UAS be designed to automatically execute a predetermined action in the event of a loss of communication between the pilot and the UA. The FAA further proposed that the predetermined action be identified in the Flight Manual and that the UA be precluded from taking off when the quality of service is inadequate.

*Comment Summary:* ALPA requested the criteria encompass more than loss or degradation of the command and control (C2) link, as numerous types of critical part or systems failures can occur that include degraded capabilities, whether intermittent or sustained. ALPA requested the FAA add language to the proposed criteria to address specific failures such as loss of a primary navigation sensor, degradation or loss of navigation capability, and simultaneous impact of C2 and navigation links.

*FAA Response:* The airworthiness criteria address the issues raised by ALPA. Specifically, D&R.120(a) addresses actions the UA will automatically and immediately take when the operator no longer has control of the UA. Should the specific failures identified by ALPA result in the operator's loss of control, then the criteria require the UA to execute a predetermined action. Degraded navigation performance does not raise the same level of concern as a degraded or lost C2 link. For example, a UA may experience interference with a GPS signal on the ground, but then find acceptable signal strength when above a tree line or other obstruction. The airworthiness criteria require that neither degradation nor complete loss of GPS or C2, as either condition would be a failure of that system, result in unsafe loss of control or containment. The applicant must demonstrate this by test to meet the requirements of D&R.305(a)(3).

Under the airworthiness criteria, the minimum performance requirements for the C2 link, defining when the link is degraded to an unacceptable level, may vary among different UAS designs. The level of degradation that triggers a loss is dependent upon the specific UA characteristics; this level will be defined by the applicant and demonstrated to be acceptable by testing as required by D&R.305(a)(2) and D&R.310(a)(1).

*Comment Summary:* An individual commenter requested the FAA use distinct terminology for ''communication,'' used for communications with air traffic control, and ''C2 link,'' used for command and control between the remote pilot station and UA. The commenter questioned whether, in the proposed criteria, the FAA stated ''loss of communication between the pilot and the UA'' when it intended to state ''loss of C2 link.''

*FAA Response:* Communication extends beyond the C2 link and specific control inputs. This is why D&R.001 requires the applicant's CONOPS to include a description of the command, control, and communications functions. As long as the UA operates safely and predictably per its lost link contingency programming logic, a C2 interruption does not constitute a loss of control.

**Lightning**

The FAA proposed criteria to address the risks that would result from a lightning strike, accounting for the size and physical limitations of a UAS that could preclude traditional lightning protection features. The FAA further proposed that without lightning protection for the UA, the Flight Manual must include an operating limitation to prohibit flight into weather conditions with potential lightning.

*Comment Summary:* An individual requested the FAA revise the criteria to include a similar design mitigation or operating limitation for High Intensity Radiated Fields (HIRF). The commenter noted that HIRF is included in proposed UAS.300(e) as part of the expected environmental conditions that must be replicated in testing.

*FAA Response:* The airworthiness criteria, which are adopted as proposed, address the issue raised by the commenter. The applicant must identify tested HIRF exposure capabilities, if any, in the Flight Manual to comply with the criteria in D&R.200(a)(5). Information regarding HIRF capabilities is necessary for safe operation because proper communication and software execution may be impeded by HIRF-generated interference, which could result in loss of control of the UA. It is not feasible to measure HIRF at every potential location where the UA will operate; thus, requiring operating limitations for HIRF as requested by the commenter would be impractical.

**Adverse Weather Conditions**

The FAA proposed criteria either requiring that design characteristics protect the UAS from adverse weather conditions or prohibiting flight into known adverse weather conditions. The criteria proposed to define adverse weather conditions as rain, snow, and icing.

*Comment Summary:* ALPA and two individual commenters requested the FAA expand the proposed definition of adverse weather conditions. These commenters noted that because of the size and physical limitations of the Model Flirtey F4.5, adverse weather should also include wind, downdraft, low-level wind shear (LLWS), microburst, and extreme mechanical turbulence.

*FAA Response:* No additional language needs to be added to the

airworthiness criteria to address wind effects. The wind conditions specified by the commenters are part of normal UA flight operations. The applicant must demonstrate by flight test that the UA can withstand wind without failure to meet the requirements of D&R.300(b)(9). The FAA developed the criteria in D&R.130 to address adverse weather conditions (rain, snow, and icing) that would require additional design characteristics for safe operation. Any operating limitations necessary for operation in adverse weather or wind conditions will be included in the Flight Manual as required by D&R.200.

*Comment Summary:* One commenter questioned whether the criteria proposed in UAS.130(c)(2), requiring a means to detect adverse weather conditions for which the UAS is not certificated to operate, is a prescriptive requirement to install an onboard detection system. The commenter requested, if that was the case, that the FAA allow alternative procedures to avoid flying in adverse weather conditions.

*FAA Response:* The language referred to by the commenter is not a prescriptive design requirement for an onboard detection system. The applicant may use any acceptable source to monitor weather in the area, whether onboard the UA or from an external source.

**Critical Parts**

The FAA proposed criteria for critical parts that were substantively the same as those in the existing standards for normal category rotorcraft under § 27.602, with changes to reflect UAS terminology and failure conditions. The criteria proposed to define a critical part as a part, the failure of which could result in a loss of flight or unrecoverable loss of control of the aircraft.

*Comment Summary:* EASA requested the FAA avoid using the term ''critical part,'' as it is a well-established term for complex manned aircraft categories and may create incorrect expectations on the oversight process for parts.

*FAA Response:* For purposes of the airworthiness criteria established for the Flirtey Model F4.5 UA, the FAA has changed the term ''critical part'' to ''flight essential part.''

*Comment Summary:* An individual commenter requested the FAA revise the proposed criteria such that a failure of a flight essential part would only occur if there is risk to third parties.

*FAA Response:* The definition of ''flight essential'' does not change regardless of whether on-board systems are capable of safely landing the UA when it is unable to continue its flight plan. Tying the definition of a flight essential part to the risk to third parties would result in different definitions for the part depending on where and how the UA is operated. These criteria for the Model Flirtey F4.5 UA apply the same approach as for manned aircraft.

**Flight Manual**

The FAA proposed criteria for the Flight Manual that were substantively the same as the existing standards for normal category airplanes, with minor changes to reflect UAS terminology.

*Comment Summary:* ALPA requested the FAA revise the criteria to include normal, abnormal, and emergency operating procedures along with their respective checklist. ALPA further requested the checklist be contained in a quick reference handbook (QRH).

*FAA Response:* The FAA did not intend for the airworthiness criteria to exclude abnormal procedures from the flight manual. In these final airworthiness criteria, the FAA has changed ''normal and emergency operating procedures'' to ''operating procedures'' to encompass all operating conditions and align with 14 CFR 23.2620, which includes the airplane flight manual requirements for normal category airplanes. The FAA has not made any changes to add language that would require the checklists to be included in a QRH. FAA regulations do not require manned aircraft to have a QRH for type certification. Therefore, it would be inconsistent for the FAA to require a QRH for the Flirtey Model Flirtey F4.5 UA.

*Comment Summary:* ALPA requested the FAA revise the airworthiness criteria to require that the Flight Manual and QRH be readily available to the pilot at the control station.

*FAA Response:* ALPA's request regarding the Flight manual addresses an operational requirement, similar to 14 CFR 91.9 and is therefore not appropriate for type certification airworthiness criteria. Also, as previously discussed, FAA regulations do not require a QRH. Therefore, it would be inappropriate to require it to be readily available to the pilot at the control station.

*Comment Summary:* Droneport Texas LLC requested the FAA revise the airworthiness criteria to add required Flight Manual sections for routine maintenance and mission-specific equipment and procedures. The commenter stated that the remote pilot or personnel on the remote pilot-in-command's flight team accomplish most routine maintenance, and that the flight team usually does UA rigging with mission equipment.

*FAA Response:* The requested change is appropriate for a maintenance document rather than a flight manual because it addresses maintenance procedures rather than the piloting functions. The FAA also notes that, similar to the criteria for certain manned aircraft, the airworthiness criteria require that the applicant prepare instructions for continued airworthiness (ICA) in accordance with appendix A to part 23. As the applicant must provide any maintenance instructions and mission-specific information necessary for safe operation and continued operational safety of the UA, in accordance with D&R.205, no changes to the airworthiness criteria are necessary.

*Comment Summary:* An individual commenter requested the FAA revise the criteria in proposed UAS.200(b) to require that ''other information'' referred to in proposed UAS.200(a)(5) be approved by the FAA. The commenter noted that, as proposed, only the information listed in UAS.200(a)(1) through (4) must be FAA approved.

*FAA Response:* The change requested by the commenter would be inconsistent with the FAA's airworthiness standards for flight manuals for manned aircraft. Sections 23.2620(b), 25.1581(b), 27.1581(b), and 29.1581(b) include requirements for flight manuals to include operating limitations, operating procedures, performance information, loading information, and other information that is necessary safe operation because of design, operating, or handling characteristics, but limit FAA approval to operating limitations, operating procedures, performance information, and loading information.

Under § 23.2620(b)(1), for low-speed level 1 and level 2 airplanes, the FAA only approves the operating limitations. In applying a risk-based approach, the FAA has determined it would not be appropriate to hold the lowest risk UA to a higher standard than what is required for low speed level 1 and level 2 manned aircraft. Accordingly, the FAA has revised the airworthiness criteria to only require FAA approval of the operating limitations.

*Comment Summary:* NUAIR requested the FAA recognize that § 23.2620 is only applicable to the aircraft and does not address off-aircraft components such as the control station, control and non-payload communications (CNPC) data link, and launch and recovery equipment. The commenter noted that this is also true of industry consensus-based standards designed to comply with § 23.2620.

*FAA Response:* As explained in more detail in the Control Station section of

this document, the FAA has revised the airworthiness criteria for the AE. The FAA will approve AE or minimum specifications for the AE that could affect airworthiness as an operating limitation in the UA flight manual. The FAA will establish the approved AE or minimum specifications as operating limitations and include them in the UA type certificate data sheet and Flight Manual in accordance with D&R.105(c). The establishment of requirements for, and the approval of AE will be in accordance with FAA Memorandum AIR600–21–AIR–600–PM01, dated July 13, 2021.

**Durability and Reliability**

The FAA proposed durability and reliability testing that would require the applicant to demonstrate safe flight of the UAS across the entire operational envelope and up to all operational limitations, for all phases of flight and all aircraft configurations described in the applicant's CONOPS, with no failures that result in a loss of flight, loss of control, loss of containment, or emergency landing outside the operator's recovery area. The FAA further proposed that the unmanned aircraft would only be certificated for operations within the limitations, and for flight over areas no greater than the maximum population density, as described in the applicant's CONOPS and demonstrated by test.

*Comment Summary:* ALPA requested that the proposed certification criteria require all flights during testing be completed in both normal and non-normal or off-nominal scenarios with no failures that result in a loss of flight, loss of control, loss of containment, or emergency landing outside of the operator's recovery zone. Specifically, ALPA stated that testing must not require exceptional piloting skill or alertness and include, at a minimum: All phases of the flight envelope, including the highest UA to pilot ratios; the most adverse combinations of the conditions and configuration; the environmental conditions identified in the CONOPS; the different flight profiles and routes identified in the CONOPS; and exposure to EMI and HIRF.

*FAA Response:* No change is necessary because the introductory text and paragraphs (b)(7), (b)(9), (b)(10), (b)(13), (c), (d), (e), and (f) of D&R.300, which are adopted as proposed, contain the specific testing requirements requested by ALPA.

*Comment Summary:* Droneport Texas LLC requested the FAA revise the testing criteria to include, for operation at night, testing both with and without night vision aids. The commenter stated that because small UAS operation at night is waivable under 14 CFR part 107, manufacturers will likely make assumptions concerning a pilot's familiarity with night vision device-aided and unaided operations.

*FAA Response:* Under D&R.300(b)(11), the applicant must demonstrate by flight test that the UA can operate at night without failure using whatever equipment is onboard the UA itself. The pilot's familiarity, or lack thereof, with night vision equipment does not impact whether the UA is reliable and durable to complete testing without any failures.

*Comment Summary:* EASA requested the FAA clarify how testing durability and reliability commensurate to the maximum population density, as proposed, aligns with the Specific Operations Risk Assessment (SORA) approach that is open to operational mitigation, reducing the initial ground risk. An individual commenter requested the FAA provide more details about the correlation between the number of flight hours tested and the CONOPS environment (*e.g.,* population density). The commenter stated that this is one of the most fundamental requirements, and the FAA should ensure equal treatment to all current and future applicants.

*FAA Response:* In developing these testing criteria, the FAA sought to align the risk of UAS operations with the appropriate level of protection for human beings on the ground. The FAA proposed establishing the maximum population density demonstrated by durability and reliability testing as an operating limitation on the type certificate. However, the FAA has re-evaluated its approach and determined it to be more appropriate to connect the durability and reliability demonstrated during certification testing with the operating environment defined in the CONOPS.

Basing testing on maximum population density may result in limitations not commensurate with many actual operations. As population density broadly refers to the number of people living in a given area per square mile, it does not allow for evaluating variation in a local operating environment. For example, an operator may have a route in an urban environment with the actual flight path along a greenway; the number of human beings exposed to risk from the UA operating overhead would be significantly lower than the population density for the area. Conversely, an operator may have a route over an industrial area where few people live, but where, during business hours, there may be highly dense groups of people. Specific performance characteristics such as altitude and airspeed also factor into defining the boundaries for safe operation of the UA.

Accordingly, the FAA has revised D&R.300 to require the UA design to be durable and reliable when operated under the limitations prescribed for its operating environment. The information in the applicant's CONOPS will determine the operating environment for testing. For example, the minimum hours of reliability testing will be less for a UA conducting agricultural operations in a rural environment than if the same aircraft will be conducting package deliveries in an urban environment. The FAA will include the limitations that result from testing as operating limitations on the type certificate data sheet and in the UA Flight Manual. The FAA intends for this process to be similar to the process for establishing limitations prescribed for special purpose operations for restricted category aircraft. This allows for added flexibility in determining appropriate operating limitations, which will more closely reflect the operating environment.

Finally, a comparison of these criteria with EASA's SORA approach is beyond the scope of this document because the SORA is intended to result in an operational approval rather than a type certificate.

*Comment Summary:* EASA requested the FAA clarify how reliability at the aircraft level to ensure high-level safety objectives would enable validation of products under applicable bilateral agreements.

*FAA Response:* As the FAA and international aviation authorities are still developing general airworthiness standards for UA, it would be speculative for the FAA to comment on the validation process for any specific UA.

*Comment Summary:* EASA requested the FAA revise the testing criteria to include a compliance demonstration related to adverse combinations of the conditions and configurations and with respect to weather conditions and average pilot qualification.

*FAA Response:* No change is necessary because D&R.300(b)(7), (b)(9), (b)(10), (c), and (f), which are adopted as proposed, contain the specific testing requirements requested by EASA.

*Comment Summary:* EASA noted that, under the proposed criteria, testing involving a large number of flight hours will limit changes to the configuration.

*FAA Response:* Like manned aircraft, the requirements of 14 CFR part 21, subpart D, apply to UA for changes to

type certificates. The FAA is developing procedures for processing type design changes for UA type certificated using durability and reliability testing.

*Comment Summary:* EASA requested the FAA clarify whether the proposed testing criteria would require the applicant to demonstrate aspects that do not occur during a successful flight, such as the deployment of emergency recovery systems and fire protection/post-crash fire. EASA asked if these aspects are addressed by other means and what would be the applicable airworthiness criteria.

*FAA Response:* Equipment not required for normal operation of the UA do not require an evaluation for their specific functionality. D&R testing will show that the inclusion of any such equipment does not prevent normal operation. Therefore, the airworthiness criteria would not require functional testing of the systems described by EASA.

*Comment Summary:* An individual commenter requested the FAA specify the acceptable percentage of failures in the testing that would result in a ''loss of flight.'' The Small UAV Coalition requested the FAA clarify what constitutes an emergency landing outside an operator's landing area, as some UAS designs could include an onboard health system that initiates a landing to lessen the potential of a loss of control event. The commenter suggested that, in those cases, a landing in a safe location should not invalidate the test.

*FAA Response:* The airworthiness criteria require that all test points and flight hours occur with no failures result in a loss of flight, control, containment, or emergency landing outside the operator's recovery zone. The FAA has determined that there is no acceptable percentage of failures in testing. In addition, while the recovery zone may differ for each UAS design, an emergency or unplanned landing outside of a designated landing area would result in a test failure.

*Comment Summary:* The Small UAV Coalition requested that a single failure during testing not automatically restart counting the number of flight test operations set for a particular population density; rather, the applicant should have the option to identify the failure through root-cause and fault-tree analysis and provide a validated mitigation to ensure it will not recur. An individual commenter requested the FAA to clarify whether the purpose of the tests is to show compliance with a quantitative safety objective. The commenter further requested the FAA allow the applicant to reduce the number of flight testing hours if the applicant can present a predicted safety and reliability analysis.

*FAA Response:* The intent of the testing criteria is for the applicant to demonstrate the aircraft's durability and reliability through a successful accumulation of flight testing hours. The FAA does not intend to require analytical evaluation to be part of this process. However, the applicant will comply with these testing criteria using a means of compliance, accepted by the FAA, through the issue paper process. The means of compliance will be dependent on the CONOPS the applicant has proposed to meet.

**Probable Failures**

The FAA proposed criteria to evaluate how the UAS functions after probable failures, including failures related to propulsion systems, C2 link, GPS, critical flight control components with a single point of failure, control station, and any other equipment identified by the applicant.

*Comment Summary:* Droneport Texas LLC requested the FAA add a bird strike to the list of probable failures. The commenter stated that despite sense and avoid technologies, flocks of birds can overcome the maneuver capabilities of a UA and result in multiple, unintended failures.

*FAA Response:* Unlike manned aircraft, where aircraft size, design, and construct are critical to safe control of the aircraft after encountering a bird strike, the FAA determined testing for bird strike capabilities is not necessary for the Model Flirtey F4.5 UA. The FAA has determined that a bird strike requirement is not necessary because the smaller size and lower operational speed of the Flirtey F4.5 reduce the likelihood of a bird strike, combined with the reduced consequences of failure due to no persons onboard. Instead, the FAA is using a risk-based approach to tailor airworthiness requirements commensurate to the low-risk nature of the Model Flirtey F4.5 UA.

*Comment Summary:* ALPA requested the FAA require that all probable failure tests occur at the critical phase and mode of flight and at the highest aircraft-to-pilot ratio. ALPA stated the proposed criteria are critically important for systems that rely on a single source to perform multi-label functions, such as GNSS, because failure or interruption of GNSS will lead to loss of positioning, navigation, and timing (PNT) and functions solely dependent on PNT, such as geo-fencing and contingency planning.

*FAA Response:* No change is necessary because D&R.300(c) requires that the testing occur at the critical phase and mode of flight and at the highest UA-to-pilot ratio.

*Comment Summary:* Droneport Texas LLC requested the FAA add recovery from vortex ring state (VRS) to the list of probable failures. The commenter stated the UA uses multiple rotors for lift and is therefore susceptible to VRS. The commenter further stated that because recovery from settling with power is beyond a pilot's average skill for purposes of airworthiness testing, the aircraft must be able to sense and recover from this condition without pilot assistance.

*FAA Response:* D&R.305 addresses probable failures related to specific components of the UAS. VRS is an aerodynamic condition a UA may encounter during flight testing; it is not a component subject to failure.

*Comment Summary:* Droneport Texas LLC also requested the FAA add a response to the Air Traffic Control-Zero (ATC-Zero) command to the list of probable failures. The commenter stated, based on lessons learned after the attacks on September 11, 2001, aircraft that can fly BVLOS should be able to respond to an ATC-Zero condition.

*FAA Response:* The commenter's request is more appropriate for the capabilities and functions testing criteria in D&R.310 than probable failures testing in D&R.305. D&R.310(a)(3) requires the applicant to demonstrate by test that the pilot has the ability to safely discontinue a flight. A pilot may discontinue a flight for a wide variety of reasons, including responding to an ATC-zero command.

*Comment Summary:* EASA stated the proposed language seems to require an additional analysis and safety assessment, which would be appropriate for the objective requirement of ensuring a probable failure does not result in a loss of containment or control. EASA further stated that an applicant's basic understanding of the systems architecture and effects of failures is essential.

*FAA Response:* The FAA agrees with the expectation that applicants understand the system architecture and effects of failures of a proposed design, which is why the criteria include a requirement for the applicant to test the specific equipment identified in D&R.305 and identify any other equipment that is not specifically identified in D&R.305 for testing. As the intent of the criteria is for the applicant to demonstrate compliance through

testing, some analysis may be necessary to properly identify the appropriate equipment to be evaluated for probable failures.

*Comment Summary:* An individual requested that probable failure testing apply not only to critical flight control components with a single point of failure, but also to any critical part with a single point of failure.

*FAA Response:* The purpose of probable failure testing in D&R.305 is to demonstrate that if certain equipment fails, it will fail safely. Adding probable failure testing for critical (now flight essential) parts would not add value to testing. If a part is essential for flight, its failure by definition in D&R.135(a) could result in a loss of flight or unrecoverable loss of control. For example, on a traditional airplane design, failure of a wing spar in flight would lead to loss of the aircraft. Because there is no way to show that a wing spar can fail safely, the applicant must provide its mandatory replacement time if applicable, structural inspection interval, and related structural inspection procedure in the Airworthiness Limitations section of the ICA. Similarly, under these airworthiness criteria, parts whose failure would inherently result in loss of flight or unrecoverable loss of control are not subjected to probable failure testing. Instead, they must be identified as flight essential components and included in the ICA.

To avoid confusion pertaining to probable failure testing, the FAA has removed the word ''critical'' from D&R.305(a)(5). In the final airworthiness criteria, probable failure testing required by D&R.305(a)(5) applies to ''Flight control components with a single point of failure.''

**Capabilities and Functions**

The FAA proposed criteria to require the applicant to demonstrate by test the minimum capabilities and functions necessary for the design. UAS.310(a) proposed to require the applicant to demonstrate, by test, the capability of the UAS to regain command and control of the UA after a C2 link loss, the sufficiency of the electrical system to carry all anticipated loads, and the ability of the pilot to override any pre-programming in order to resolve a potential unsafe operating condition in any phase of flight. UAS.310(b) proposed to require the applicant to demonstrate by test certain features if the applicant requests approval of those features (geo-fencing, external cargo, etc.). UAS.310(c) proposed to require the design of the UAS to safeguard against an unintended discontinuation of flight or release of cargo, whether by human action or malfunction.

*Comment Summary:* ALPA stated the pilot-in-command must always have the capability to input control changes to the UA and override any pre-programming without delay as needed for the safe management of the flight. The commenter requested that the FAA retain the proposed criteria that would allow the pilot to command to: Regain command and control of the UA after loss of the C2 link; safely discontinue the flight; and dynamically re-route the UA. In support, ALPA stated the ability of the pilot to continually command (re-route) the UA, including termination of the flight if necessary, is critical for safe operations and should always be available to the pilot.

Honeywell requested the FAA revise paragraphs (a)(3) and (a)(4) of the criteria (UAS.310) to allow for either the pilot or an augmenting system to safely discontinue the flight and re-route the UA. The commenter stated that a system comprised of detect and avoid, onboard autonomy, and ground system can be used for these functions. Therefore, the criteria should not require that only the pilot can do them.

An individual commenter requested the FAA remove UAS.310(a)(4) of the proposed criteria because requiring the ability for the pilot to dynamically re-route the UA is too prescriptive and redundant with the proposed requirement in UAS.310(a)(3), the ability of the pilot to discontinue the flight safely.

*FAA Response:* Because the pilot in command is directly responsible for the operation of the UA, the pilot must have the capability to command actions necessary for continued safety. This includes commanding a change to the flight path or, when appropriate, safely terminating a flight. The FAA notes that the ability for the pilot to safely discontinue a flight means the pilot has the means to terminate the flight and immediately and safely return the UA to the ground. This is different from the pilot having the means to dynamically re-route the UA, without terminating the flight, to avoid a conflict.

Therefore, the final airworthiness criteria include D&R.310(a) as proposed (UAS.310(a)).

*Comment Summary:* ALPA requested the FAA revise the criteria to require that all equipment, systems, and installations conform, at a minimum, to the standards of § 25.1309.

*FAA Response:* The FAA determined that traditional methodologies for manned aircraft, including the system safety analysis required by § 23.2510, § 25.1309, § 27.1309, or § 29.1309, would be inappropriate to require for the Flirtey Model Flirtey F4.5 due to its smaller size and reduced level of complexity. Instead, the FAA finds that system reliability through testing will ensure the safety of this design.

*Comment Summary:* ALPA requested the FAA revise the criteria to add a requirement to demonstrate the ability of the UA and pilot to perform all of the contingency plans identified in proposed UAS.120.

*FAA Response:* No change is necessary because D&R.120 and D&R.305(a)(2), together, require what ALPA requests in its comment. Under D&R.120, the applicant must design the UA to execute a predetermined action in the event of a loss of the C2 link. D&R.305(a)(2) requires the applicant to demonstrate by test that a lost C2 link will not result in a loss of containment or control of the UA. Thus, if the applicant does not demonstrate the predetermined contingency plan resulting from a loss of the C2 link when conducting D&R.305 testing, the test would be a failure due to loss of containment.

*Comment Summary:* ALPA and an individual commenter requested the FAA revise the criteria so that geo-fencing is a required feature and not optional due to the safety concerns that could result from a UA exiting its operating area.

*FAA Response:* To ensure safe flight, the applicant must test the proposed safety functions, such as geo-fencing, that are part of the type design of the Model Flirtey F4.5 UA. The FAA determined that geo-fencing is an optional feature because it is one way, but not the only way, to ensure a safely contained operation.

*Comment Summary:* ALPA requested the FAA revise the criteria so that capability to detect and avoid other aircraft and obstacles is a required feature and not optional.

*FAA Response:* D&R.310(a)(4) requires the applicant demonstrate the ability for the pilot to safely re-route the UA in flight to avoid a dynamic hazard. The FAA did not prescribe specific design features such as a collision avoidance system to meet D&R.310(a)(4) because there are multiple means to minimize the risk of collision.

*Comment Summary:* McMahon Helicopter Services requested that the airworthiness criteria require a demonstration of sense-and-avoid technology that will automatically steer the UA away from manned aircraft, regardless of whether the manned aircraft has a transponder. NAAA and an individual commenter requested that the FAA require ADS–B in/out and

traffic avoidance software on all UAS. The Small UAV Coalition requested the FAA establish standards for collision avoidance technology, as the proposed criteria are not sufficient for compliance with the operational requirement to see and avoid other aircraft (§ 91.113). The commenters stated that these technologies are necessary to avoid a mid-air collision between UA and manned aircraft.

*FAA Response:* D&R.310(a)(4) requires the applicant demonstrate the ability for the UA to be safely re-routed in flight to avoid a dynamic hazard. The FAA did not prescribe specific design features, such as the technologies suggested by the commenters, to meet D&R.310(a)(4) because they are not the only means for complying with the operational requirement to see and avoid other aircraft. If an applicant chooses to equip their UA with onboard collision avoidance technology, those capabilities and functions must be demonstrated by test per D&R.310(b)(5).

**Verification of Limits**

The FAA proposed to require an evaluation of the UA's performance, maneuverability, stability, and control with a factor of safety.

*Comment Summary:* EASA requested that the FAA revise its approach to require a similar compliance demonstration as EASA's for ''light UAS.'' EASA stated the FAA's proposed criteria for verification of limits, combined with the proposed Flight Manual requirements, seem to replace a traditional Subpart Flight.[3] EASA further stated the FAA's approach in the proposed airworthiness criteria might necessitate more guidance and means of compliance than the traditional structure.

*FAA Response:* The FAA's airworthiness criteria will vary from EASA's light UAS certification requirements, resulting in associated differences in compliance demonstrations. At this time, comment on means of compliance and related guidance material, which are still under development with the FAA and with EASA, would be speculative.

**Propulsion**

*Comment Summary:* ALPA requested the FAA conduct an analysis to determine battery reliability and safety, taking into account wind and weather conditions and their effect on battery life. ALPA expressed concern with batteries as the only source of power for an aircraft in the NAS. ALPA further requested the FAA not grant exemptions for battery reserve requirements.

*FAA Response:* Because batteries are a flight essential part, the applicant must establish mandatory instructions or life limits for batteries under the requirements of D&R.135. In addition, when the applicant conducts its D&R testing, D&R.300(i) prevents the applicant from exceeding the maintenance intervals or life limits for those batteries. To the extent the commenter's request addresses fuel reserves, that is an operational requirement, not a certification requirement, and therefore beyond the scope of this document.

**Additional Airworthiness Criteria Identified by Commenters**

*Comment Summary:* McMahon Helicopter Services requested that the criteria require anti-collision and navigation lighting certified to existing FAA standards for brightness and size. The commenter stated that these standards were based on human factors for nighttime and daytime recognition and are not simply a lighting requirement. An individual commenter requested that the criteria include a requirement for position lighting and anti-collision beacons meeting TSO–30c Level III. NAAA requested the criteria require a strobe light and high visibility paint scheme to aid in visual detection of the UA by other aircraft.

*FAA Response:* The FAA determined it is unnecessary for these airworthiness criteria to prescribe specific design features for anti-collision or navigation lighting. The FAA will address anti-collision lighting as part of any operational approval, similar to the rules in 14 CFR 107.29(a)(2) and (b) for small UAS.

*Comment Summary:* ALPA requested the FAA add a new section with minimum standards for Global Navigation Satellite System (GNSS), as the UAS will likely rely heavily upon GNSS for navigation and to ensure that the UA does not stray outside of its approved airspace. ALPA stated that technological advances have made such devices available at an appropriate size, weight, and power for UAs.

*FAA Response:* The airworthiness criteria in D&R.100 (UA Signal Monitoring and Transmission), D&R.110 (Software), D&R.115 (Cybersecurity), and D&R.305(a)(3) (probable failures related to GPS) sufficiently address design requirements and testing of navigation systems. Even if the applicant uses a TSO-approved GNSS, these airworthiness criteria require a demonstration that the UA operates successfully without loss of containment. Successful completion of these tests demonstrates that the navigation subsystems are acceptable.

*Comment Summary:* ALPA requested the FAA revise the criteria to add a new section requiring equipage to comply with the FAA's new rules on Remote Identification of Unmanned Aircraft (86 FR 4390, Jan. 15, 2021). An individual commenter questioned the need for public tracking and identification of drones in the event of a crash or violation of FAA flight rules.

*FAA Response:* The FAA issued the final rule, Remote Identification of Unmanned Aircraft, after providing an opportunity for public notice and comment. The final rule is codified at 14 CFR part 89. Part 89 contains the remote identification requirements for unmanned aircraft certificated and produced under part 21 after September 16, 2022.

**Pilot Ratio**

*Comment Summary:* ALPA and an individual questioned the safety of multiple Model Flirtey F4.5 UA operated by a single pilot, up to a ratio of 20 UA to 1 pilot. ALPA stated that even with high levels of automation, the pilot must still manage the safe operation and maintain situational awareness of multiple aircraft in their flight path, aircraft systems, integration with traffic, obstacles, and other hazards during normal, abnormal, and emergency conditions. As a result, ALPA recommended the FAA conduct additional studies to better understand the feasibility of a single pilot operating multiple UA before developing airworthiness criteria. The Small UAV Coalition requested the FAA provide criteria for an aircraft-to-pilot ratio higher than 20:1.

*FAA Response:* These airworthiness criteria are specific to the Model Flirtey F4.5 UA and, as discussed previously in this preamble, operations of the Model Flirtey F4.5 UA may include multiple UA operated by a single pilot, up to a ratio of 20 UA to 1 pilot. Additionally, these airworthiness criteria require the applicant to demonstrate the durability and reliability of the UA design by flight test, at the highest aircraft-to-pilot ratio, without exceptional piloting skill or alertness. In addition, D&R.305(c) requires the applicant to demonstrate probable failures by test at the highest aircraft-to-pilot ratio. Should the pilot ratio cause a loss of containment or control of the UA, then the applicant will fail this testing.

*Comment Summary:* ALPA stated that to allow a UAS-pilot ratio of up to 20:1 safely, the possibility that the pilot will

[3] In the FAA's aircraft airworthiness standards (parts 23, 25, 27, and 29), subpart B of each is titled Flight.

need to intervene with multiple UA simultaneously must be ''extremely remote.'' ALPA questioned whether this is feasible given the threat of GNSS interference or unanticipated wind gusts exceeding operational limits.

*FAA Response:* The FAA's guidance in AC 23.1309–1E, *System Safety Analysis and Assessment for Part 23 Airplanes* defines ''extremely remote failure conditions'' as failure conditions not anticipated to occur during the total life of an airplane, but which may occur a few times when considering the total operational life of all airplanes of the same type. When assessing the likelihood of a pilot needing to intervene with multiple UA simultaneously, the minimum reliability requirements will be determined based on the applicant's proposed CONOPS.

**Noise**

*Comment Summary:* An individual commenter expressed concern about noise pollution.

*FAA Response:* The Model Flirtey F4.5 will need to comply with FAA noise certification standards. If the FAA determines that 14 CFR part 36 does not contain adequate standards for this design, the agency will propose and seek public comment on a rule of particular applicability for noise requirements under a separate rulemaking docket.

**Operating Altitude**

*Comment Summary:* ALPA, McMahon Helicopter Services, and NAAA commented on the operation of UAS at or below 400 feet AGL. ALPA, McMahon Helicopter Services, and NAAA requested the airworthiness criteria contain measures for safe operation at low altitudes so that UAS are not a hazard to manned aircraft, especially operations involving helicopters; air tours; agricultural applications; emergency medical services; air tanker firefighting; power line and pipeline patrol and maintenance; fish and wildlife service; animal control; military and law enforcement; seismic operations; ranching and livestock relocation; and mapping.

*FAA Response:* The type certificate only establishes the approved design of the UA. These airworthiness criteria require the applicant show compliance for the UA altitude sought for type certification. While this may result in operating limitations in the flight manual, the type certificate is not an approval for operations. Operations and operational requirements are beyond the scope of this document.

**Guidance Material**

*Comment Summary:* NUAIR requested the FAA complete and publish its draft AC 21.17–XX, *Type Certification Basis for Unmanned Aircraft Systems (UAS),* to provide additional guidance, including templates, to those who seek a type design approval for UAS. NUAIR also requested the FAA recognize the industry consensus-based standards applicable to UAS, as Transport Canada has by publishing its AC 922–001, *Remotely Piloted Aircraft Systems Safety Assurance.*

*FAA Response:* The FAA will continue to develop policy and guidance for UA type certification and will publish guidance as soon as practicable. The FAA encourages consensus standards bodies to develop means of compliance and submit them to the FAA for acceptance. Regarding Transport Canada AC 922–001, that AC addresses operational approval rather than type certification.

**Safety Management**

*Comment Summary:* ALPA requested the FAA ensure that operations, including UA integrity, fall under the safety management system. ALPA further requested the FAA convene a Safety Risk Management Panel before allowing operators to commence operations and that the FAA require operators to have an active safety management system, including a non-punitive safety culture, where incident and continuing airworthiness issues can be reported.

*FAA Response:* The type certificate only establishes the approved design of the UA, including the Flight Manual and ICA. Operations and operational requirements, including safety management and oversight of operations and maintenance, are beyond the scope of this document.

**Process**

*Comment Summary:* ALPA supported the FAA's type certification of UAS as a ''special class'' of aircraft under § 21.17(b) but requested that it be temporary.

*FAA Response:* As the FAA stated in its notice of policy issued August 11, 2020 (85 FR 58251, September 18, 2020), the FAA will use the type certification process under § 21.17(b) for some unmanned aircraft with no occupants onboard. The FAA further stated in its policy that it may also issue type certificates under § 21.17(a) for airplane and rotorcraft UAS designs where the airworthiness standards in part 23, 25, 27, or 29, respectively, are appropriate. The FAA, in the future, may consider establishing appropriate generally applicable airworthiness standards for UA that are not certificated under the existing standards in part 23, 25, 27, or 29.

**Out of Scope Comments**

The FAA received and reviewed several comments that were general, stated the commenter's viewpoint or opposition without a suggestion specific to the proposed criteria, or did not make a request the FAA can act on. These comments are beyond the scope of this document.

**Applicability**

These airworthiness criteria, established under the provisions of § 21.17(b), are applicable to the Flirtey Model Flirtey F4.5 UA. Should Flirtey wish to apply these airworthiness criteria to other UA models, it must submit a new type certification application.

**Conclusion**

This action affects only certain airworthiness criteria for the Flirtey Model Flirtey F4.5 UA. It is not a standard of general applicability.

**Authority Citation**

The authority citation for these airworthiness criteria is as follows:

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

**Airworthiness Criteria**

Pursuant to the authority delegated to me by the Administrator, the following airworthiness criteria are issued as part of the type certification basis for the Flirtey Model Flirtey F4.5 unmanned aircraft. The FAA finds that compliance with these criteria appropriately mitigates the risks associated with the design and concept of operations and provides an equivalent level of safety to existing rules.

**General**

*D&R.001 Concept of Operations*

The applicant must define and submit to the FAA a concept of operations (CONOPS) proposal describing the unmanned aircraft system (UAS) operation in the national airspace system for which unmanned aircraft (UA) type certification is requested. The CONOPS proposal must include, at a minimum, a description of the following information in sufficient detail to determine the parameters and extent of testing and operating limitations:

(a) The intended type of operations;
(b) UA specifications;
(c) Meteorological conditions;

(d) Operators, pilots, and personnel responsibilities;

(e) Control station, support equipment, and other associated elements (AE) necessary to meet the airworthiness criteria;

(f) Command, control, and communication functions;

(g) Operational parameters (such as population density, geographic operating boundaries, airspace classes, launch and recovery area, congestion of proposed operating area, communications with air traffic control, line of sight, and aircraft separation); and

(h) Collision avoidance equipment, whether onboard the UA or part of the AE, if requested.

*D&R.005 Definitions*

For purposes of these airworthiness criteria, the following definitions apply.

(a) *Loss of Control:* Loss of control means an unintended departure of an aircraft from controlled flight. It includes control reversal or an undue loss of longitudinal, lateral, and directional stability and control. It also includes an upset or entry into an unscheduled or uncommanded attitude with high potential for uncontrolled impact with terrain. A loss of control means a spin, loss of control authority, loss of aerodynamic stability, divergent flight characteristics, or similar occurrence, which could generally lead to crash.

(b) *Loss of Flight:* Loss of flight means a UA's inability to complete its flight as planned, up to and through its originally planned landing. It includes scenarios where the UA experiences controlled flight into terrain, obstacles, or any other collision, or a loss of altitude that is severe or non-reversible. Loss of flight also includes deploying a parachute or ballistic recovery system that leads to an unplanned landing outside the operator's designated recovery zone.

**Design and Construction**

*D&R.100 UA Signal Monitoring and Transmission*

The UA must be designed to monitor and transmit to the AE all information required for continued safe flight and operation. This information includes, at a minimum, the following:

(a) Status of all critical parameters for all energy storage systems;

(b) Status of all critical parameters for all propulsion systems;

(c) Flight and navigation information as appropriate, such as airspeed, heading, altitude, and location; and

(d) Communication and navigation signal strength and quality, including contingency information or status.

*D&R.105 UAS AE Required for Safe UA Operations*

(a) The applicant must identify and submit to the FAA all AE and interface conditions of the UAS that affect the airworthiness of the UA or are otherwise necessary for the UA to meet these airworthiness criteria. As part of this requirement—

(1) The applicant may identify either specific AE or minimum specifications for the AE.

(i) If minimum specifications are identified, they must include the critical requirements of the AE, including performance, compatibility, function, reliability, interface, pilot alerting, and environmental requirements.

(ii) Critical requirements are those that if not met would impact the ability to operate the UA safely and efficiently.

(2) The applicant may use an interface control drawing, a requirements document, or other reference, titled so that it is clearly designated as AE interfaces to the UA.

(b) The applicant must show the FAA the AE or minimum specifications identified in paragraph (a) of this section meet the following:

(1) The AE provide the functionality, performance, reliability, and information to assure UA airworthiness in conjunction with the rest of the design;

(2) The AE are compatible with the UA capabilities and interfaces;

(3) The AE must monitor and transmit to the pilot all information required for safe flight and operation, including but not limited to those identified in D&R.100; and

(4) The minimum specifications, if identified, are correct, complete, consistent, and verifiable to assure UA airworthiness.

(c) The FAA will establish the approved AE or minimum specifications as operating limitations and include them in the UA type certificate data sheet and Flight Manual.

(d) The applicant must develop any maintenance instructions necessary to address implications from the AE on the airworthiness of the UA. Those instructions will be included in the instructions for continued airworthiness (ICA) required by D&R.205.

*D&R.110 Software*

To minimize the existence of software errors, the applicant must:

(a) Verify by test all software that may impact the safe operation of the UA;

(b) Utilize a configuration management system that tracks, controls, and preserves changes made to software throughout the entire life cycle; and

(c) Implement a problem reporting system that captures and records defects and modifications to the software.

*D&R.115 Cybersecurity*

(a) UA equipment, systems, and networks, addressed separately and in relation to other systems, must be protected from intentional unauthorized electronic interactions that may result in an adverse effect on the security or airworthiness of the UA. Protection must be ensured by showing that the security risks have been identified, assessed, and mitigated as necessary.

(b) When required by paragraph (a) of this section, procedures and instructions to ensure security protections are maintained must be included in the ICA.

*D&R.120 Contingency Planning*

(a) The UA must be designed so that, in the event of a loss of the command and control (C2) link, the UA will automatically and immediately execute a safe predetermined flight, loiter, landing, or termination.

(b) The applicant must establish the predetermined action in the event of a loss of the C2 link and include it in the UA Flight Manual.

(c) The UA Flight Manual must include the minimum performance requirements for the C2 data link defining when the C2 link is degraded to a level where remote active control of the UA is no longer ensured. Takeoff when the C2 link is degraded below the minimum link performance requirements must be prevented by design or prohibited by an operating limitation in the UA Flight Manual.

*D&R.125 Lightning*

(a) Except as provided in paragraph (b) of this section, the UA must have design characteristics that will protect the UA from loss of flight or loss of control due to lightning.

(b) If the UA has not been shown to protect against lightning, the UA Flight Manual must include an operating limitation to prohibit flight into weather conditions conducive to lightning activity.

*D&R.130 Adverse Weather Conditions*

(a) For purposes of this section, ''adverse weather conditions'' means rain, snow, and icing.

(b) Except as provided in paragraph (c) of this section, the UA must have design characteristics that will allow the UA to operate within the adverse weather conditions specified in the

CONOPS without loss of flight or loss of control.

(c) For adverse weather conditions for which the UA is not approved to operate, the applicant must develop operating limitations to prohibit flight into known adverse weather conditions and either:

(1) Develop operating limitations to prevent inadvertent flight into adverse weather conditions; or

(2) Provide a means to detect any adverse weather conditions for which the UA is not certificated to operate and show the UA's ability to avoid or exit those conditions.

*D&R.135 Flight Essential Parts*

(a) A flight essential part is a part, the failure of which could result in a loss of flight or unrecoverable loss of UA control.

(b) If the type design includes flight essential parts, the applicant must establish a flight essential parts list. The applicant must develop and define mandatory maintenance instructions or life limits, or a combination of both, to prevent failures of flight essential parts. Each of these mandatory actions must be included in the Airworthiness Limitations Section of the ICA.

**Operating Limitations and Information**

*D&R.200 Flight Manual*

The applicant must provide a Flight Manual with each UA.

(a) The UA Flight Manual must contain the following information:

(1) UA operating limitations;

(2) UA operating procedures;

(3) Performance information;

(4) Loading information; and

(5) Other information that is necessary for safe operation because of design, operating, or handling characteristics.

(b) Those portions of the UA Flight Manual containing the information specified in paragraph (a)(1) of this section must be approved by the FAA.

*D&R.205 Instructions for Continued Airworthiness*

The applicant must prepare ICA for the UA in accordance with Appendix A to Part 23, as appropriate, that are acceptable to the FAA. The ICA may be incomplete at type certification if a program exists to ensure their completion prior to delivery of the first UA or issuance of a standard airworthiness certificate, whichever occurs later.

**Testing**

*D&R.300 Durability and Reliability*

The UA must be designed to be durable and reliable when operated under the limitations prescribed for its operating environment, as documented in its CONOPS and included as operating limitations on the type certificate data sheet and in the UA Flight Manual. The durability and reliability must be demonstrated by flight test in accordance with the requirements of this section and completed with no failures that result in a loss of flight, loss of control, loss of containment, or emergency landing outside the operator's recovery area.

(a) Once a UA has begun testing to show compliance with this section, all flights for that UA must be included in the flight test report.

(b) Tests must include an evaluation of the entire flight envelope across all phases of operation and must address, at a minimum, the following:

(1) Flight distances;

(2) Flight durations;

(3) Route complexity;

(4) Weight;

(5) Center of gravity;

(6) Density altitude;

(7) Outside air temperature;

(8) Airspeed;

(9) Wind;

(10) Weather;

(11) Operation at night, if requested;

(12) Energy storage system capacity; and

(13) Aircraft to pilot ratio.

(c) Tests must include the most adverse combinations of the conditions and configurations in paragraph (b) of this section.

(d) Tests must show a distribution of the different flight profiles and routes representative of the type of operations identified in the CONOPS.

(e) Tests must be conducted in conditions consistent with the expected environmental conditions identified in the CONOPS, including electromagnetic interference (EMI) and high intensity radiated fields (HIRF).

(f) Tests must not require exceptional piloting skill or alertness.

(g) Any UAS used for testing must be subject to the same worst-case ground handling, shipping, and transportation loads as those allowed in service.

(h) Any UA used for testing must use AE that meet, but do not exceed, the minimum specifications identified under D&R.105. If multiple AE are identified, the applicant must demonstrate each configuration.

(i) Any UAS used for testing must be maintained and operated in accordance with the ICA and UA Flight Manual. No maintenance beyond the intervals established in the ICA will be allowed to show compliance with this section.

(j) If cargo operations or external-load operations are requested, tests must show, throughout the flight envelope and with the cargo or external-load at the most critical combinations of weight and center of gravity, that—

(1) The UA is safely controllable and maneuverable; and

(2) The cargo or external-load are retainable and transportable.

*D&R.305 Probable Failures*

The UA must be designed such that a probable failure will not result in a loss of containment or control of the UA. This must be demonstrated by test.

(a) Probable failures related to the following equipment, at a minimum, must be addressed:

(1) Propulsion systems;

(2) C2 link;

(3) Global Positioning System (GPS);

(4) Flight control components with a single point of failure;

(5) Control station; and

(6) Any other AE identified by the applicant.

(b) Any UA used for testing must be operated in accordance with the UA Flight Manual.

(c) Each test must occur at the critical phase and mode of flight, and at the highest aircraft-to-pilot ratio.

*D&R.310 Capabilities and Functions*

(a) All of the following required UAS capabilities and functions must be demonstrated by test:

(1) Capability to regain command and control of the UA after the C2 link has been lost.

(2) Capability of the electrical system to power all UA systems and payloads.

(3) Ability for the pilot to safely discontinue the flight.

(4) Ability for the pilot to dynamically re-route the UA.

(5) Ability to safely abort a takeoff.

(6) Ability to safely abort a landing and initiate a go-around.

(b) The following UAS capabilities and functions, if requested for approval, must be demonstrated by test:

(1) Continued flight after degradation of the propulsion system.

(2) Geo-fencing that contains the UA within a designated area, in all operating conditions.

(3) Positive transfer of the UA between control stations that ensures only one control station can control the UA at a time.

(4) Capability to release an external cargo load to prevent loss of control of the UA.

(5) Capability to detect and avoid other aircraft and obstacles.

(c) The UA must be designed to safeguard against inadvertent discontinuation of the flight and inadvertent release of cargo or external load.

*D&R.315 Fatigue*

The structure of the UA must be shown to withstand the repeated loads expected during its service life without failure. A life limit for the airframe must be established, demonstrated by test, and included in the ICA.

*D&R.320 Verification of Limits*

The performance, maneuverability, stability, and control of the UA within the flight envelope described in the UA Flight Manual must be demonstrated at a minimum of 5% over maximum gross weight with no loss of control or loss of flight.

Issued in Washington, DC, on March 1, 2022.

**Ian Lucas,**

*Manager, Policy Implementation Section, Policy and Innovation Division, Aircraft Certification Service.*

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## DEPARTMENT OF HOMELAND SECURITY

## U.S. Customs and Border Protection

## DEPARTMENT OF THE TREASURY

## 19 CFR Part 12

**[CBP Dec. 22–06]**

**RIN 1515–AE67**

## Imposition of Import Restrictions on Categories of Archaeological and Ethnological Material of Albania

**AGENCIES:** U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the U.S. Customs and Border Protection (CBP) regulations to reflect the imposition of import restrictions on certain categories of archaeological and ethnological material of the Republic of Albania (Albania). These restrictions are being imposed pursuant to an agreement between the United States and Albania that has been entered into under the authority of the Convention on Cultural Property Implementation Act. This final rule amends the CBP regulations by adding Albania to the list of countries which have a bilateral agreement with the United States that imposes cultural property import restrictions. This final rule also contains the Designated List that describes the types of archaeological and ethnological material to which the restrictions apply.

**DATES:** Effective on March 17, 2022.

**FOR FURTHER INFORMATION CONTACT:** For legal aspects, W. Richmond Beevers, Chief, Cargo Security, Carriers and Restricted Merchandise Branch, Regulations and Rulings, Office of Trade, (202) 325–0084, *otrculturalproperty@cbp.dhs.gov.* For operational aspects, Julie L. Stoeber, Chief, 1USG Branch, Trade Policy and Programs, Office of Trade, (202) 945–7064, *1USGBranch@cbp.dhs.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

The Convention on Cultural Property Implementation Act, Public Law 97–446, 19 U.S.C. 2601 *et seq.* (hereinafter, ''the Cultural Property Implementation Act''), implements the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (hereinafter, ''the Convention'' (823 U.N.T.S. 231 (1972)). Pursuant to the Cultural Property Implementation Act, the United States entered into a bilateral agreement with the Republic of Albania (Albania) to impose import restrictions on certain archaeological and ethnological material from Albania. This rule announces the imposition of import restrictions on certain archaeological and ethnological material from Albania.

### Determinations

Under 19 U.S.C. 2602(a)(1), the United States must make certain determinations before entering into an agreement to impose import restrictions under 19 U.S.C. 2602(a)(2). On May 26, 2021, the Acting Assistant Secretary for Educational and Cultural Affairs, United States Department of State, after consultation with and recommendation by the Cultural Property Advisory Committee, made the determinations required under the statute with respect to certain archaeological and ethnological material originating in Albania that is described in the Designated List set forth below in this document.

These determinations include the following: (1) That Albania's cultural heritage is in jeopardy from pillage of certain types of archaeological material representing Albania's cultural heritage ranging in date from approximately 300,000 B.C. to A.D. 1750, and certain types of ethnological material representing Albania's cultural heritage ranging in date from approximately A.D. 400 to 1913 (19 U.S.C. 2602(a)(1)(A)); (2) that the Albanian government has taken measures consistent with the Convention to protect its cultural patrimony (19 U.S.C. 2602(a)(1)(B)); (3) that import restrictions imposed by the United States would be of substantial benefit in deterring a serious situation of pillage and remedies less drastic are not available (19 U.S.C. 2602(a)(1)(C)); and (4) that the application of import restrictions as set forth in this final rule is consistent with the general interests of the international community in the interchange of cultural property among nations for scientific, cultural, and educational purposes (19 U.S.C. 2602(a)(1)(D)). The Acting Assistant Secretary also found that the material described in the determinations meets the statutory definition of ''archaeological or ethnological material of the State Party'' (19 U.S.C. 2601(2)).

### The Agreement

On August 23, 2021, the Governments of the United States and Albania signed a bilateral agreement, ''Memorandum of Understanding between the United States of America and the Republic of Albania Concerning the Imposition of Import Restrictions on Categories of Archaeological and Ethnological Material of Albania'' (hereinafter, ''the Agreement''), pursuant to the provisions of 19 U.S.C. 2602(a)(2). The Agreement entered into force on February 28, 2022, following the exchange of diplomatic notes, and enables the promulgation of import restrictions on certain categories of archaeological material ranging in date from approximately 300,000 B.C. to A.D. 1750, and ethnological material ranging in date from approximately A.D. 400 to 1913. A list of the categories of archaeological and ethnological material subject to the import restrictions is set forth later in this document.

### Restrictions and Amendment to the Regulations

In accordance with the Agreement, importation of material designated below is subject to the restrictions of 19 U.S.C. 2606 and § 12.104g(a) of title 19 of the Code of Federal Regulations (19 CFR 12.104g(a)) and will be restricted from entry into the United States unless the conditions set forth in 19 U.S.C. 2606 and § 12.104c of the CBP regulations (19 CFR 12.104c) are met. CBP is amending § 12.104g(a) of the CBP regulations (19 CFR 12.104g(a)) to indicate that these import restrictions have been imposed.

Import restrictions listed at 19 CFR 12.104g(a) are effective for no more than five years beginning on the date on which the Agreement enters into force with respect to the United States. This period may be extended for additional

periods of not more than five years if it is determined that the factors which justified the Agreement still pertain and no cause for suspension of the Agreement exists. The import restrictions will expire on February 28, 2027, unless extended.

**Designated List of Archaeological and Ethnological Material of Albania**

The Agreement between the United States and Albania includes, but is not limited to, the categories of objects described in the Designated List set forth below. Importation of material on this list is restricted unless the material is accompanied by documentation certifying that the material left Albania legally and not in violation of the export laws of Albania.

The Designated List includes certain archaeological and ethnological material from Albania. The archaeological material in the Designated List includes archaeological material from the Middle Paleolithic to the Ottoman period, ranging in date from approximately 300,000 B.C. to A.D. 1750. The ethnological material in the Designated List includes ethnological material from the Byzantine, Medieval, and Ottoman periods, ranging in date from approximately A.D. 400 to Albanian independence in 1913. The Designated List is representative only. Any dates and dimensions are approximate.

*Simplified Chronology*

*Paleolithic*: c. 300,000–10,000 B.C.
*Mesolithic:* c. 10,000–6,000 B.C.
*Neolithic:* c. 6,000–4500 B.C.
*Eneolithic/Chalcolithic/Copper Age*: c. 4500–3100 B.C.
*Bronze Age:* c. 3100–1000 B.C.
*Iron Age:* c. 1000–450 B.C.
*Proto-Urban/Urban period:* c. 650–27 B.C.
*Roman period:* 27 B.C.–A.D. 395
*Byzantine/Medieval period:* A.D. 395–c. 1500
*Ottoman period:* c. A.D. 1500–1913

**Categories of Archaeological and Ethnological Material**

I. Archaeological Material
- A. Stone
- B. Metal
- C. Ceramic, Clay, and Terracotta
- D. Bone, Ivory, Shell, Wood, and Other Organics
- E. Glass, Faience, and Semi-Precious Stone
- F. Textiles
- G. Leather, Papyrus, and Parchment
- H. Rock Art, Paintings, and Drawings
- I. Mosaics

II. Ethnological Material
- A. Architectural Elements
- B. Funerary Objects
- C. Ritual and Ceremonial Objects
- D. Paintings
- E. Written Records
- F. Textiles
- G. Weapons and Armor

**I. Archaeological Material**

Archaeological material covered by the Agreement represents the following periods, styles, and cultures: Paleolithic, Mesolithic, Neolithic, Chalcolithic, Bronze Age, Iron Age, Urban period, Roman period, Byzantine/Medieval period, and Ottoman period.

*A. Stone*

1. Sculpture

a. Architectural Elements—Primarily in marble, limestone, and gypsum; including blocks from walls, floors, and ceilings; acroteria, antefixes, architrave, water spouts, columns, capitals, bases, lintels, jambs, friezes, pediments, tympanum, metopes, and pilasters; doors, door frames, and window fittings; caryatids, altars, prayer niches (*mihrabs*), screens, wellheads, fountains, mosaics, and tiles. This category also includes relief and inlay sculpture that may have been part of a building, such as friezes of sculptured stone figures set into inlaid stone. May be plain, molded, carved, or inscribed. Decorative motifs may be incised or in high relief.

b. Monuments and Stelae—Types include menhir, votive statues, funerary and votive stelae, bases and base revetments, and carved relief vases and slabs, usually in limestone, marble, or basalt. Common subject matter also includes figural, vegetative, floral, or decorative motifs. These may be painted, carved with relief sculpture, and/or carry dedicatory or funerary inscriptions.

c. Sarcophagi and Ossuaries—In marble and limestone. The sides and lids of sarcophagi and ossuaries may have relief sculptures of human and animal figures, inscriptions, monograms, and floral and geometric decoration.

d. Statuary—Both large and small, in marble, limestone, sandstone, and other stone. Subject matter includes human and animal figures and groups of figures in the round, as well as floral, vegetal and abstract elements, including fragments of statues.

2. Vessels and Containers—In marble, steatite, rock crystal, and other stone. Types include conventional shapes, such as bowls, cups, jars, jugs, and lamps, or may be in the shape of a human or animal, or part of a human or animal.

3. Furniture—In marble and other stone. Types include tables, thrones, beds, funerary furniture, and other burial elements.

4. Tools and Weapons—In flint, chert, obsidian, limestone, and other hard stone. Types include small tools, large and small blades, borers, scrapers, sickles, awls, harpoons, cores, loom weights, and arrow heads. Ground stone types include grinders (*e.g.,* mortars, pestles, millstones, and/or whetstones), choppers, axes, hammers, molds, and mace heads.

5. Seals and Stamps—These are small devices with at least one side engraved with a design for stamping or sealing, often in marble, limestone, and various semiprecious stones, including rock crystal, amethyst, jasper, agate, steatite, and carnelian. Shapes can include cylinders, buttons, and prismatic.

6. Jewelry and Beads—Jewelry made of or decorated with colored and semi-precious stones, including beads, necklaces, pendants, cameos, crowns, earrings, finger rings, bracelets, anklets, belts, girdles, pins, hair ornaments, and arm bands. May be incised or cut as gems or cameos.

*B. Metal*

1. Sculpture

a. Statuary—Large and small statuary, primarily in bronze, including fragments of statues. Subject matter includes human and animal figures, masks, plaques, and groups of figures in the round.

b. Reliefs—In gold, bronze, or lead. Types include plaques, burial masks, leaves, and appliqués with images of gods, mythical creatures, or other figures.

c. Inscribed or Decorated Sheets—In bronze and lead. Engraved inscriptions, ''military diplomas,'' ''curse tablets,'' and thin metal sheets with engraved or impressed designs often used as attachments to furniture.

2. Vessels and Containers—In copper, bronze, gold, and silver. Bronze may be gilded or silver-plated. Types include conventional shapes, such as bowls, cups, jars, jugs, strainers, cauldrons, candelabras, and lamps, or may be in the shape of a human or animal or part of a human or animal.

3. Jewelry and Personal Adornment—In copper, bronze, silver, and gold. Types include earrings, ear caps, pendants, bracelets, necklaces, spiraliform tubes, brooches, torques, belts, belt buckles, belt ends/appliqués, fibulas with chain pendants, plates, spangles, diadems, pins, dress pins, finger rings, hair rings, chains, spirals, ornaments, beads, mirrors, wreaths, cuffs, and pectoral crosses.

4. Tools—In bronze, iron, lead, and copper. Types include socketed hammers, spearheads, lanceheads,

daggers, knives, axes, double axes, hooks, weights, scrapers, trowels, keys, strigils, and other tools of physicians and artisans.

5. Weapons and Armor—In copper, bronze, lead and iron. This category includes common weapon types, such as daggers, arrows, swords, spears, javelins, axes, rapiers, and maces. Body armor is also included, such as helmets, cuirasses, shin guards, shields, horse armor, and chariot decoration. Some may have inscriptions or be otherwise decorated with engraved, embossed, or perforated designs.

6. Seals and Stamps—These are small devices with at least one side engraved with a design for sealing or stamping, often in bronze, copper, gold, silver, tin, or lead. Types include rings, amulets, stamps, and seals with shank.

7. Ship and Boat Material—Parts and fragments from shipwrecks in bronze, lead, and iron, including anchors.

8. Coins—This category includes coins of Illyrian, Greek, Macedonian, Roman provincial, Byzantine, Medieval, and Ottoman types that circulated primarily in Albania, ranging in date from approximately the 6th century B.C. to A.D. 1750. Coins were made in copper, bronze, silver, and gold. Examples are generally round, have writing, and show imagery of animals, buildings, symbols, or royal or imperial figures.

*C. Ceramic, Clay, and Terracotta*

1. Sculpture

a. Architectural Elements—Baked clay (terracotta) elements used to decorate buildings. Elements include tiles, acroteria, antefixes, painted and relief plaques, metopes, cornices, roof tiles, pipes, and revetments, as well as wall and floor decorations in plaster. May be painted as icons.

b. Statuary—Large and small statuary. Subject matter includes human and animal figures and groups of figures in the round, human body parts, shrines, houses, ovens, rhyta, strainers, and chariots. This includes figurines which may be anthropomorphic, zoomorphic, vegetal, furniture-like, schematic, or flat.

2. Vessels—Ceramic types, forms, and decoration vary among archaeological styles over time. Forms may be handmade or produced with ceramic wheels, plain or decorated, and may be glazed, unglazed, slipped, painted, burnished, engraved, and/or incised. They may be produced in Albania or imported at or near the time of production. Some of the most well-known types are highlighted below:

a. Neolithic Pottery—Early Neolithic types include thick-walled, coarse, fine, fine with sand inclusion, red, brown, and black pottery. Decorations, applications, and paint include sandy slip, barbotine, red monochrome, or dark brown paint on red barbotine ware. Middle Neolithic types include gray or black, lustrous, incised, and beaded pottery. Decorations include incised bands filled with dots or lines, incised spiral motifs, or white paint. Late Neolithic types include light yellow ocherous fabric, red ocherous fabric with painted decoration, black ware with incisions and appliqués, brown on light painted, clay mixed with sand, brown with broad lines and triangles, unpolished, net patterns, zig-zag lines, fine, polished, painted, multi-colored, linear-geometric, and spiral pottery. Shapes include globular, spherical, hemispherical, and biconical vessels.

b. Chalcolithic Pottery—This category includes similar types and decorations as described above for earlier periods, with the addition of thick-walled, thin-walled mixed with sand, gray surface, brown surface, black surface, fine, and gray-black pottery. They may be painted, incised, encrusted, recessed, or in relief, sometimes representing combined techniques. Prominently black monochrome with fluted decoration. Shapes include squat biconical bodies with cylindrical necks and bowls with incurving rims.

c. Bronze Age Pottery—Types include thick-walled and thin-walled vessels, which are black, gray, gray-black, red, light beige, or ocherous yellow, handmade and wheel-made, as well as Mycenaean (Late Helladic) imported wares. Decorations include bands, punctuated plastic bands, incised linear or curvilinear motifs, geometric motifs, horizontal bands with or without holes, finger impressed bands, matte-painted with geometric patterns, applied plastic decoration, monochrome painted motifs, and/or piercing at juncture of rim and handle. Shapes include pots with handles rising above the rim, vessels with wide necks and exaggerated vertical handles, vessels with bulbous bodies, wide necks, and thick lips, cups with handles, piriform cups with handles that rise above the rim, vessels with elbow or axeblade-shaped handles, vessels with wish bone handles, bowls, vessels with wide throats, vessels with horizontal handles, vessels with handle and spout, short open vessels with two handles, and double vessels.

d. Iron Age Pottery—Types include brown, gray, red, black, clean fabric mixed with sand, thin-walled, and smooth surface pottery, both handmade and wheel-made. Decorations include brown matte-painted linear or curvilinear motifs, narrow ribbing, incised geometric patterns, including triangles and concentric bands, and red paint on black glaze. Shapes include vessels with globular bodies and cylindrical or conical necks with vertical handles, jars with globular necks, beaked jugs, spherical vessels, double vessels, vessels with narrow throats, vessels with handles rising above the rim, pots, beaked *oinochoe, skyphoi, amphorae,* conical bowls with upright or incurving rims, hemispherical bowls, cups with various profiles, chalices, *biphora,* and vessels with four handles.

e. Illyrian, Greek, and Hellenistic Pottery—Types include thin and thick-walled vessels; proto-Corinthian, Corinthian, Attic, Devollian, black-glazed, and other types. Decorations include thick black gloss, as well as Attic and other imported Black Figure and Red Figure vessels, including local imitations of these types. Shapes include *lekythoi* (small, thin-walled jars), large storage *amphorae, oinochoe, pyxides, unguentaria, skyphoi,* and others.

f. Roman Pottery—Types include fineware, coarseware, red gloss, red slip, black slip, lead glaze, and others. Shapes include cooking ware, jars, beakers, bowls, plates, vases, *amphorae,* and others.

g. Byzantine/Medieval Pottery—Types include thin and thick-walled vessels with fine to coarse fabrics, often deep red to purplish with lime inclusions and sandy texture, or dark orange with many lime inclusions and voids. Decorations include red slips, plain glazes, colored glazes, particularly green and silver, sgraffito incised naturalistic, geometric, and figural decoration, painted geometric motifs, including dots, ridge surface treatment, and proto-Maiolica ware. Shapes include *amphorae,* open and closed jugs, large storage vessels with small handles, and shallow plate-like vessels.

h. Ottoman Pottery—Types include thin and thick-walled vessels with fine to coarse fabrics, often deep red to purplish with lime inclusions and sandy texture. Decorations include plain glazes, colored glazes, particularly green and brown, painted glaze, sgraffito incised decoration, painted geometric motif, and Maiolica ware.

3. Objects of Daily Use—This type includes objects of daily use including tools, spindle whorls, weights, and lamps.

4. Inscriptions—These are typically unbaked and should be handled with extreme care, even when hard fired through accidental burning. They typically take the form of tablets, which

may be shaped like leaves or may be rectangular or square. In various languages and scripts.

*D. Bone, Ivory, Shell, Wood, and Other Organics*

1. Small Statuary and Figurines—This category includes human and animal figures and groups of figures in the round.

2. Personal Ornaments and Objects of Daily Use—In bone, ivory, shell, amber, and other organics. Types include tools, ornaments, beads, amulets, combs, pins, spoons, small containers, bracelets, and buckles.

3. Seals and Stamps—These are small objects with at least one side engraved with a design for stamping or sealing. They may be discoid, cuboid, conoid, or in the shape of animals or mythological creatures.

4. Tools and Weapons—Bone, ivory, and horn were used to produce and decorate weapons and tools. Types include needles, awls, chisels, hoes, picks, knives, spearheads, harpoons, and blades.

5. Human and Animal Remains—Skeletal remains from human and animal bodies, found in burials or preserved in other contexts.

6. Musical Instruments—In bone, ivory, and tortoise shell. Types include pipes and flutes.

7. Inscriptions and Writing—On wood, particularly wooden sticks, ivory, and others. In various languages and scripts.

8. Ship and Boat Material—This includes whole or pieces that compose a ship or boat, including logs, planks, and other fittings.

*E. Glass, Faience, and Semi-Precious Stone*

1. Architectural Elements—This includes glass inlay and tesserae pieces from floor and wall mosaics, mirrors, and windows.

2. Vessels—Types include small jars, bowls, animal shaped containers, goblets, spherical containers, candle holders, and perfume jars (*unguentaria*).

3. Beads and Jewelry—Jewelry such as bracelets and rings, pendants, and beads in various shapes (*e.g.,* circular or globular), may be decorated with symbolic and/or floral reliefs.

*F. Textiles*

This category includes clothing or clothing fragments, carpets, flags or banners, flag bags, wall hangings, blankets, and textiles used during religious practice, and includes objects made from linen, wool, cotton, and silk.

*G. Leather, Papyrus, and Parchment*

1. Leather—This category includes bags, furniture parts, masks, shields, cases and containers for a variety of uses, sandals, clothing, and manuscript covers. There are examples of religious and/or rare books that were written on leather pages.

2. Papyrus—Documents made from papyrus and written upon. These are often rolled and/or fragmentary.

3. Parchment—Writing material made of animal skin and used to produce manuscripts, including religious, liturgical, and scientific works. These may be single leaves or bound as books or scrolls. These may also have illustrations or illuminated paintings with gold and other colors.

*H. Rock Art, Paintings, and Drawing*

1. Rock Art—Types include human-made markings on stone, cave walls, or rocks in open air, and may be carved or painted. The earliest known examples date from approximately 10,000 B.C.

2. Wall Paintings—This category includes paintings from buildings and tombs. Several methods were used, such as wet-fresco and dry-fresco, and the paintings may be applied to plaster, wood, or stone. Types include simple applied color, bands and borders, landscapes, scenes of people and/or animals in natural or built settings, and religious themes. Tomb paintings may depict gods, goddesses, or funerary scenes, and date primarily from the first millennium BC through the 6th century A.D.

3. Panel Painting (Icons)—An icon is a work of art for religious devotion, normally depicting saints, angels, or other religious figures. These are painted on a wooden panel, often for inclusion in a wooden screen (iconostasis), or else painted onto ceramic panels. May be partially covered with gold or silver, sometimes encrusted with precious or semi-precious stone.

*I. Mosaics*

Mosaics are a combination of small three-dimensional pieces of colored stone or glass (tesserae) to create motifs, such as geometric shapes, mythological scenes, floral or animal designs, natural motifs, such as landscapes, and depictions of daily chores. These were generally applied to walls, ceilings, or floors.

**II. Ethnological Material**

Ethnological material covered by the Agreement includes, but is not limited to, architectural elements from historic or religious structures, funerary objects, ritual and ceremonial objects, paintings, written records, textiles, and weapons and armor; all of which contribute to the knowledge of the origins, development, and history of the Albanian people. This includes objects from approximately A.D. 400, starting in the Byzantine period, through the Medieval and Ottoman periods, ending in A.D. 1913, with Albania's independence.

*A. Architectural Elements*

This category includes architectural elements and decoration from religious and historic buildings in all materials. These buildings have distinctive characteristics described below. Examples of architectural elements covered by the Agreement include, but are not limited to, the following objects:

1. Structural and Decorative Architectural Elements—This category includes material from religious or public buildings in stone, ceramic, plaster, wood, and other organic elements, which includes blocks; columns, capitals, bases, lintels, jambs, friezes, and pilasters; beams, panels, doors, door frames, and window fittings; altars and altar partitions, prayer niches (*mihrab*), circular marking slabs (*omphalion*), screens, iconostases, fountains, ceilings, and carved, molded, or painted brick and tile. Metal elements are primarily in copper, brass, lead, and alloys, and may include doors, door fixtures, lathes, finials, chandeliers, screens, and sheets to protect domes. Glass may be incorporated into either structural or decorative elements. This category also includes relief and inlay sculpture, including appliqués and plaques that may have been part of a building. May be plain, molded, carved, or inscribed. Decorative motifs may be incised or in high relief, and may include religious, floral, human, animal, or other motifs.

2. Mosaics—Wall or floor mosaics generally portray religious images and scenes of biblical events. Surrounding panels may contain animal, floral, or geometric designs. They are made from stone and glass cut into small pieces (tesserae) and laid into a plaster matrix.

*B. Funerary Objects*

This category includes objects related to funerary rites and burials in all materials. Examples of funerary objects covered by the Agreement include, but are not limited to, the following objects:

1. Sepulchers—Sepulchers are repositories for human or animal remains, in stone (usually marble or limestone), metal, and wood. Types of burial containers include sarcophagi, caskets, coffins, and chest urns. These may also have associated sculpture in relief or in the round. May be plain or

have figural, geometric, or floral motifs, either painted or carved in relief. May also contain human or animal remains.

2. Inscriptions, Memorial Stones, Epitaphs, and Tombstones—This category includes inscribed funerary objects, primarily slabs in marble and ceramic; most frequently engraved with Ottoman Turkish or Greek. These may also have associated sculpture in relief or in the round.

3. Funerary Offerings—This category includes objects in all materials; shrouds and body adornment, such as clothing, jewelry, and accessories; idols, figurines, vessels, beads, weapons, or other ritual or ceremonial offerings; and writing implements, books, and manuscripts.

*C. Ritual and Ceremonial Objects*

This category includes objects for use in religious services (Christian, Islamic, or other) or by the state (Byzantine Empire, Medieval period rulers, and Ottoman Empire). Examples of ritual and ceremonial objects covered by the Agreement include, but are not limited to, the following objects:

1. Religious Objects—This category includes objects in all materials, such as lamps, libation vessels, patens, pitchers, chalices, plates, censers, candelabra, crosses and cross pendants, pilgrim flasks, tabernacles, boxes and chests, carved diptychs, triptychs, plaques and appliqués, cast metal icons, liturgical spoons, ecclesiastic crowns, bells, ampoules, prayer beads, icons, amulets, *Bektashi* surrender stones, and *Qu'ran* study tablets. This type also includes reliquaries and reliquary containers, which may or may not include human remains. Objects are often engraved, inscribed, inlaid, or otherwise decorated with semi-precious or precious stones.

2. State Ceremonial Objects—This category includes objects in all materials. Examples include ceremonial garments, clothing emblematic of state or imperial position and accessories thereof (such as shoes, headdresses and hats, belts, and jewelry); objects of state office (such as scepters, staffs, insignia, relics, and monumental boxes, trays, and containers); flags, flagstaffs, and *alem* (finials); stamps, seals, and writing implements for official use by the state; tapestries, or other representations of the court; and musical instruments.

3. Furniture—This category includes objects primarily in stone or wood, including altars, tables, platforms, pulpits, fonts, screens, thrones, *minbar,* lecterns, desks, and other types of furniture used for religious or official state purpose.

4. Musical Instruments—This category includes instruments important for religious or state ceremonies, such as drums of various sizes in leather (*e.g., bendir* drums used in Sufi rituals, wedding processions, and *Mal'uf* performances), metal instruments, such as cymbals and trumpets, and wooden instruments.

*D. Paintings*

This category includes works of paint on plaster, wood, or ceramic, from religious or historic contexts. Paintings from these periods provide information on the social and religious history of the people of Albania that may be absent from written records. Examples of paintings include, but are not limited to:

1. Wall paintings—This category includes paintings on various types of plaster, which generally portray religious images and/or scenes of biblical events. Types may also include simple applied color, bands and borders, and animal, floral, and geometric motifs.

2. Panel Paintings (Icons)—An icon is a work of art for religious devotion, normally depicting saints, angels, or other religious figures. These are painted on a wooden panel, often for inclusion in a wooden screen (iconostasis), or else painted onto ceramic panels. May be partially covered with gold and/or silver, sometimes encrusted with precious or semi-precious stone.

3. Works on Leather and Paper—Paintings may be on leather, parchment, or paper. Images depicted may include, among other themes, courtly themes (*e.g.,* rulers, musicians, or riders on horses) and city views.

*E. Written Records*

This category includes written records of religious, ritual, ceremonial, political, or scientific importance, including, but not limited to, works on papyrus, vellum or parchment, paper, or leather. Papyrus documents are often rolled and/or fragmentary. Parchment and paper documents may be single leaves or bound as scrolls or books. They may have illustrations or illuminated paintings with gold or other colors, or be otherwise embellished with colorful floral or geometric motifs. There are also examples of Korans (*Qur'ans*) and other religious and/or rare books written on leather pages. This category also includes boxes for books or scrolls made of wood or other organic materials and book or manuscript covers made of leather, textile, or metal.

*F. Textiles*

1. Traditional Clothing—Traditional Albanian folk clothing including headdresses (*qeleshe, pils,* Albanian hat, *qylafë, kapica, langi, lëvere, kryqe*), pants and upper body covers (*fustanella, tirq, brekusha, xhubleta, mbështjellëse*), vests (*xhamadan*), belts (*brez*), socks (*çorape*), and shoes (*opinga*).

2. Religious Vestments and Textiles—In linen, silk, and wool. This category includes religious textiles and fragments from mosques, churches, shrines, tombs, and monuments, including garments, hangings, prayer rugs, and shrine covers, as well as robes, vestments and altar clothes that are often embroidered in silver and gold. Embroidered designs include religious motifs and floral and geometric designs.

*G. Weapons and Armor*

This category includes weapons and armor in all materials. This includes daggers, swords, saifs, scimitars, other blades, with or without sheaths, as well as spears, firearms, and cannons. These may be inlaid with gemstones, embellished with silver or gold, or engraved with floral or geometric motifs and inscriptions. Grips or hilts may be made of metal, wood, and/or semi-precious stones, such as agate, and bound with leather. Armor consists of small metal scales, originally sewn to a backing of cloth or leather, and augmented by helmets, body armor, shields, and horse armor.

**Inapplicability of Notice and Delayed Effective Date**

This amendment involves a foreign affairs function of the United States and is, therefore, being made without notice or public procedure under 5 U.S.C. 553(a)(1). For the same reason, a delayed effective date is not required under 5 U.S.C. 553(d)(3).

**Regulatory Flexibility Act**

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

**Executive Order 12866**

CBP has determined that this document is not a regulation or rule subject to the provisions of Executive Order 12866 because it pertains to a foreign affairs function of the United States, as described above, and therefore is specifically exempted by section 3(d)(2) of Executive Order 12866.

**Signing Authority**

This regulation is being issued in accordance with 19 CFR 0.1(a)(1) pertaining to the Secretary of the Treasury's authority (or that of his/her delegate) to approve regulations related to customs revenue functions.

Chris Magnus, the Commissioner of CBP, having reviewed and approved this document, has delegated the authority to electronically sign this document to Robert F. Altneu, who is the Director of the Regulations and Disclosure Law Division for CBP, for purposes of publication in the **Federal Register**.

**List of Subjects in 19 CFR Part 12**

Cultural property, Customs duties and inspection, Imports, Prohibited merchandise, Reporting and recordkeeping requirements.

**Amendment to CBP Regulations**

For the reasons set forth above, part 12 of title 19 of the Code of Federal Regulations (19 CFR part 12), is amended as set forth below:

## PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 1. The general authority citation for part 12 and the specific authority citation for § 12.104g continue to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

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■ 2. In § 12.104g, the table in paragraph (a) is amended by adding Albania in alphabetical order to read as follows:

**§ 12.104g Specific items or categories designated by agreements or emergency actions.**

(a) * * *

| State party | Cultural property | Decision No. |
|---|---|---|
| Albania | Archaeological material of Albania ranging in date from approximately 300,000 B.C. to A.D. 1750, and ethnological material of Albania ranging in date from approximately A.D. 400 to 1913. | CBP Dec. 22–06. |
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## DEPARTMENT OF HOMELAND SECURITY

## U.S. Customs and Border Protection

## DEPARTMENT OF THE TREASURY

## 19 CFR Part 12

**[CBP Dec. 22–05]**

**RIN 1515–AE71**

## Import Restrictions Imposed on Categories of Archaeological and Ethnological Material of Nigeria

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document amends the U.S. Customs and Border Protection (CBP) regulations to reflect the imposition of import restrictions on certain categories of archaeological and ethnological material from the Federal Republic of Nigeria (''Nigeria''). These restrictions are being imposed pursuant to an agreement between the United States and Nigeria that has been entered into under the authority of the Convention on Cultural Property Implementation Act. This document amends the CBP regulations by adding Nigeria to the list of countries which have a bilateral agreement with the United States that imposes cultural property import restrictions. This document also contains the Designated List that describes the types of archaeological and ethnological material to which the restrictions apply.

**DATES:** Effective on March 17, 2022.

**FOR FURTHER INFORMATION CONTACT:** For legal aspects, W. Richmond Beevers, Branch Chief, Cargo Security, Carriers and Restricted Merchandise Branch, Regulations and Rulings, Office of Trade, (202) 325–0084, *otrculturalproperty@cbp.dhs.gov*. For operational aspects, Julie L. Stoeber, Chief, 1USG Branch, Trade Policy and Programs, Office of Trade, (202) 945–7064, *1USGBranch@cbp.dhs.gov*.

**SUPPLEMENTARY INFORMATION:**

### Background

The Convention on Cultural Property Implementation Act, Public Law 97–446, 19 U.S.C. 2601 *et seq.* (''the Cultural Property Implementation Act''), implements the 1970 United Nations Educational, Scientific and Cultural Organization (''UNESCO'') Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (''the Convention'' (823 U.N.T.S. 231 (1972)). Pursuant to the Cultural Property Implementation Act, on January 20, 2022, the United States entered into a bilateral agreement with the Federal Republic of Nigeria (''Nigeria'') to impose import restrictions on certain archaeological and ethnological material from Nigeria. This rule announces that the United States is now imposing import restrictions on certain archaeological and ethnological material from Nigeria.

*Determinations*

Under 19 U.S.C. 2602(a)(1), the United States must make certain determinations before entering into an agreement to impose import restrictions under 19 U.S.C. 2602(a)(2). On March 9, 2021, the Acting Assistant Secretary for Educational and Cultural Affairs, United States Department of State, after consultation with and recommendation by the Cultural Property Advisory Committee, made the determinations required under the statute with respect to certain archaeological and ethnological material originating in Nigeria that is described in the Designated List set forth below in this document.

These determinations include the following: (1) That the cultural patrimony of Nigeria is in jeopardy from the pillage of certain types of archaeological material representing Nigeria's cultural heritage dating from approximately 1500 B.C. to A.D. 1770, and certain categories of ethnological material dating from approximately A.D. 200 to the early 20th century A.D. (19 U.S.C. 2606(a)(1)(A)); (2) that the Nigerian government has taken measures consistent with the Convention to protect its cultural patrimony (19 U.S.C. 2602(a)(1)(B)); (3) that import restrictions imposed by the United States would be of substantial benefit in deterring a serious situation of pillage and remedies less drastic are not available (19 U.S.C. 2602(a)(1)(C)); and (4) that the application of import restrictions as set forth in this final rule is consistent with the general interests of the international community in the interchange of cultural property among

nations for scientific, cultural, and educational purposes (19 U.S.C. 2602(a)(1)(D)). The Acting Assistant Secretary also found that the material described in the determinations meets the statutory definition of ''archaeological or ethnological material of the State Party'' (19 U.S.C. 2601(2)).

*The Agreement*

On January 20, 2022, the United States and Nigeria signed a bilateral agreement, ''Memorandum of Understanding between the United States of America and the Federal Republic of Nigeria Concerning the Imposition of Import Restrictions on Categories of Archaeological and Ethnological Material of Nigeria'' (''the Agreement''), pursuant to the provisions of 19 U.S.C. 2602(a)(2). The Agreement entered into force upon signature and enables the promulgation of import restrictions on categories of archaeological material, ranging in date from approximately 1500 B.C. to A.D. 1770, and certain categories of ethnological material, ranging in date from approximately A.D. 200 to the early 20th century A.D., representing Nigeria's cultural heritage. A list of the categories of archaeological and ethnological material subject to the import restrictions is set forth later in this document.

*Restrictions and Amendment to the Regulations*

In accordance with the Agreement, importation of material designated below is subject to the restrictions of 19 U.S.C. 2606 and § 12.104g(a) of title 19 of the Code of Federal Regulations (19 CFR 12.104g(a)) and will be restricted from entry into the United States unless the conditions set forth in 19 U.S.C. 2606 and § 12.104c of the CBP Regulations (19 CFR 12.104c) are met. CBP is amending § 12.104g(a) of the CBP Regulations (19 CFR 12.104g(a)) to indicate that these import restrictions have been imposed.

Import restrictions listed as 19 CFR 12.104g(a) are effective for no more than five years beginning on the date on which the Agreement enters into force with respect to the United States. This period may be extended for additional periods of not more than five years if it is determined that the factors which justified the Agreement still pertain and no cause for suspension of the Agreement exists. The import restrictions will expire on January 20, 2027, unless extended.

*Designated List of Archaeological and Ethnological Material of Nigeria*

The Agreement between the United States and Nigeria includes, but is not limited to, the categories of objects described in the Designated List set forth below. Importation of material on this list is restricted unless the material is accompanied by documentation certifying that the material left Nigeria legally and not in violation of the export laws of Nigeria.

The Designated List includes archaeological and ethnological material from Nigeria. The archaeological material in the Designated List includes, but is not limited to, objects made of ceramic/terracotta, stone, metal, and organic material ranging in date from approximately 1500 B.C. through A.D. 1770. The ethnological material in the Designated List includes, but is not limited to, objects used in or associated with religious activities, part of community or ancestral shrines, and/or royal or chiefly activities, including beads and beaded garments, figures, ivory and bone, leather and parchment, masks and headdresses, metals, stone, ceramic/terracotta, wood, paintings, and other ceremonial and ritual objects from the Edo (includes Benin), Ejagham, Hausa, Mumuye, Owo, Yoruba, and other cultural and ethnic groups, ranging in date from approximately A.D. 200 through the early 20th century A.D. Dates and dimensions are approximate.

**Categories of Archaeological and Ethnological Material**

I. Archaeological Material
- A. Ceramic/Terracotta/Fired Clay
- B. Stone
- C. Metal
- D. Organic Material

II. Ethnological Material
- A. Beads and Beaded Garments
- B. Figures
- C. Ivory and Bone
- D. Leather and Parchment
- E. Masks and Headdresses
- F. Brass and Bronze
- G. Iron
- H. Stone
- I. Ceramic/Terracotta
- J. Wood
- K. Paintings

*Approximate simplified chronology of well-known periods:*

(a) Iron Age period (500 B.C. through A.D. 1000), including Nok (1500 B.C. through 0 B.C.), Katsina (500 B.C. through A.D. 200), Sokoto (500 B.C. through A.D. 200), Calabar (500 B.C. through A.D. 1200), and Bakor (A.D. 200 through 500).

(b) Medieval to Precolonial period (A.D. 900 through 1900), including Igbo-Ukwu (c. A.D. 900), Ife (A.D. 1100 through 1500), Esie (A.D. 1200 through 1500), and Owo (c. A.D. 1400).

(c) Colonial period (A.D. 1900 to 1960).

**I. Archaeological Material**

Archaeological material covered by this Agreement is associated with cultural groups who occupied Northern and Southern Nigeria from the Early Nok period in the Late Stone Age (1500 B.C.) through the Medieval and Precolonial periods (A.D. 1770). Examples of archaeological material covered by the Agreement include objects from well-known culture areas/archaeological sites, including yet to-be-discovered types of archaeological material.

*A. Ceramic/Terracotta/Fired Clay*

1. Anthropomorphic Figures—Terracotta anthropomorphic figures include heads and full-length human shapes. Human figures may be natural or stylized in appearance. Anthropomorphic figures covered by the Agreement include, but are not limited to, figures from the following cultures:

a. Calabar Culture—Anthropomorphic figures from the Calabar culture were crafted from coiled clay with a coarse texture. Height varies, typically between 15 cm and 50 cm. Forms may be closed with a base, body, neck, and head. The body may resemble an elongated, globular vase with the head enclosing the rim of the vase. Horizontal bands may differentiate the base from the body, neck, and head. Bases are usually undecorated. Bodies are typically divided into vertical sections and decorated with raised patterns and shapes including basket weaves, cross hatching, incisions, herringbone, roped designs, zig zags, and others. Anthropomorphic faces are compressed, while the head/hairstyle decorations tend to be more elaborate, typically with coiled or braided designs and headgear, although some may be bald. It may be hard to distinguish male from female figures in Calabar anthropomorphic vessels.

b. Nok Culture—Anthropomorphic figures and heads from the Nok culture tend to be stylized and represent children and adults. Height varies widely from miniatures to life size. Postures vary with figures in half-kneeling, kneeling, sitting, or standing forms. Gestures include bent arms, crossed arms, holding an animal by the neck, or holding an object. Figures may have some clothing, such as belts/loincloths with creases and overlapping fabric that may be decorated with patterns and fringe; they may be

elaborately adorned with representations of roped strands of beads at the abdomen, chest, and/or feet. Faces may have dented or pierced ears, lips, nostrils, and pupils; eyes are triangular or D-shaped and are disproportionally large. Eyebrows are arched. Some Nok mouths have stylized teeth. Hairstyles can be elaborate with several buns. Foreheads may have incisions, likely representing scarification. Some Nok figures may have a diseased appearance represented by facial features, including paralysis or elephantiasis. Feet are bare. Fingernails and toenails may be realistic or represented with triangular cuts on the nail bed. Many Nok figures are found in disarticulated or in fragmentary forms.

c. Ife Culture—Anthropomorphic figures and heads from the Ife culture tend to be naturalistic and made of terracotta, typically 9 cm to 35 cm tall. Ife figures tend to be symmetrical and may be freestanding. Some Ife figures may have caps or crowns in multiple tiers. Ife facial characteristics include, but are not limited to, vertical striations on the face, overhanging corners of the upper and lower eyelid, impressed corners of the mouth, and grooves around the neck.

d. Owo Culture—Anthropomorphic figures and heads from the Owo culture tend to be naturalistic and made of terracotta. Owo figures may be adorned with caps or headdresses, armbands or bracelets, belts, and/or collars. Owo figures may have triangular fingernails and toenails. Owo figures may hold decapitated or whole animals, including cocks, elephants, lizards, rams, or other animals.

e. Sokoto Culture—Anthropomorphic figures from the Sokoto culture are stylized and tend to have elongated, cylindrical bodies with molded heads. Sokoto faces have U-shaped drooping eyelids with pierced eyes and incisions that outline the eye; nostrils may be pierced, and mouths may be slightly agape. Sokoto figures may have elaborate hairstyles with several buns and beards. Navels are prominent and herniated. Figures may have attached and bent arms, and may be holding objects such as adzes, staffs, or weapons. Figures may be wearing banded necklaces with pendants.

f. Katsina Culture—Anthropomorphic figures from the Katsina culture are stylized. Katsina figures are often attached to the top of a globular jar or bell-shaped urn. Katsina positions often have hands resting on knees. Heads tend to wear caps.

2. Zoomorphic Figures—Figures in the shape of animals made from terracotta/fired clay include freestanding whole figures and animal heads. Figures may be stylized or naturalized. Animals represented may include, but are not limited to, apes, chameleons, dogs, frogs, goats, leopards, mudfish, monkeys, owls, rams, and snakes. Some zoomorphic figures may be perched on top of bell-shaped urns. Eyes may be carved from incisions, and there may be pierced holes for the eyes or the ear cavity.

3. Vessels—Types, forms, and decoration of terracotta vessels vary among archaeological styles over time. Shapes include bowls, bowls with lids, jars, stands, and effigy vessels. Jars often have globular bases with everted or cylindrical rims. Jars may have elongated forms. Decorative styles on the exterior of jars and stands vary and may be high- or low-relief elements. Decorative elements on the exterior of jars and stands may include low-relief elements, such as cross hatches, incisions, stamps, braided roulette, or twisted roulette. High-relief elements may include naturalistic heads, stylized heads, manillas, mudfish, other aquatic animals, snakes, sacrificial offerings, stylized architectural elements, geometric shapes, and/or stylized plant or vegetal elements. Nok vessels may have multiple anthropomorphic forms added in high-relief to the exterior of the vessel. Nok vessels may also have stylized heads carved into the exterior of the vessel with many of the same attributes found in the figures, including, but not limited to, arched eyebrows and D-shaped eyes.

4. Headrests—Terracotta headrests may have a triangular or trapezoidal shape. Headrests vary in height but are typically 12 cm tall and 45 cm in length. Headrests are composed of a base, body, neck, and curved or slightly concave horizontal top. Bases and curved horizontal tops tend to be undecorated. Bodies of headrests are elaborately decorated with elements, such as cross hatches, incisions, and/or stamps. Negative areas may be cut from the body of the headrest leaving interlocked geometric designs, including, but not limited to, chevrons or cruciforms. Headrests from the Calabar culture are a good example of the style.

5. Stelae/Funerary Urns—This category includes stelae and urns from funerary/burial contexts from the Dakakari and Katsina cultures. Urns and stelae are normally 70 cm in height. Shapes are typically complex with a circular base with vertical pillars supporting a circular or disc-shaped top. Disc-shaped tops may be decorated with a geometric design, human or animal faces, or body parts. There may be surface decoration, including incisions, piercing, stamping, or others.

*B. Stone*

1. Monoliths—Monoliths (*e.g.,* Akwanshi, Cross River, Ejagham, Bakor, and Ikom) are typically carved from basalt, and range in height from 50 cm to 2 m. Monoliths vary and may be carved in either a column or boulder-like form. Monoliths are carved and can have both low- and high-relief elements. Most monoliths represent male figures, but there are also examples of female and animal figures. Some monoliths have well defined facial features with beards, headdresses, or hairstyles, and may have complex, linear patterns on the face and torso. The head and torso of the monolith are often differentiated with a V-shaped groove or ridge. The torso often has a protruding navel.

2. Figures—Stone Figures (*e.g.,* Esie soapstone) are usually carved from steatite or soapstone. Soapstone figures come from Yoruba villages, including Esie, Ijara, and Ofaur. Figures feature animals, children, and adult figures, often seated on a stool or kneeling on a circular base. Figures are typically 20 cm to 120 cm in height. Most soapstone figures have elaborate hairstyles, conical headdresses, or helmets. Headdresses and hats may be decorated with chevrons, leaves, rosettes, and/or tassels. Facial features are naturalistic with outlined eyes, flared nostrils, and an elongated bridge on the nose. There may be striations on the face, including three striations on the temple, vertical lines on the chin, or three lines on the forehead. Female figures have three or four marks on the nape of the neck. Figures are typically adorned with necklaces and bracelets. Female figures may be holding swords and males may have quivers with arrows.

3. Beads—Stone beads may be crafted from carnelian, chalcedony, or other crypto-crystalline silicates, jasper, or quartz. Bead forms may be cylindrical, approximately 2 cm in length. Beads may also be rod or ring-shaped.

4. Axes (*nyame akuma*)—Groundstone or polished axes (*nyame akuma*) have elongated forms, and, in their cross-section, are tear-drop shaped. Axes often measure 6 cm in length or less, but can measure up to 20 cm. Most groundstone axes are crafted from fine-grained volcanic or siliceous rock, sometimes with a banded pattern in the raw material.

*C. Metal*

1. Brass and Bronze—There are three types of alloys typically used in archaeological metal sculpture, vessels, and ornaments from Nigeria: (1) Copper

or zinc brass; (2) leaded bronze copper with tin and lead; and (3) bronze made from copper alloys, such as copper and tin, or copper and lead. Despite this variation, Nigerian sculpture is often referred to interchangeably as brass and bronze.

a. Anthropomorphic Figures—Examples of anthropomorphic brass and bronze figures include, but are not limited to, the following:

i. Ife Brass and Bronze Figures—These include life-sized heads (sometimes with necks), masks, and full-length figures. Ife brass and bronze figures may have naturalistic features. There may be vertical striations covering the face, and in some cases on the bottom lip. There may be horizontal lines around the circumference of the neck. There may be perforations along the hairline, jawline, around the mouth, under the ears, and on the neck. Ife brass and bronze figures may have caps, crowns, or headdresses.

ii. Bronze Figures from Lower Niger Region—Bronze figures from the Lower Niger region (*e.g.,* Tsoede and Jebba Island) are full-length figures that typically range from 40 cm to 120 cm. Lower Niger bronzes are less naturalistic and more stylized than Ife brasses and bronzes. Figures may depict hunters, priests, warriors, or other roles. Facial features include heavily outlined and wide bulging eyes, kidney shaped mouth, compact body, wide tubular legs, and flat feet set on a pedestalled base. Lower Niger figures may have elaborate caps, crowns, or headdresses. Headdress decorations may include beads, decorative disks, horns, or small anthropomorphic or zoomorphic figures. Some carry or hold shields or staffs, or have clasped hands. Figures are often adorned with necklaces and anklets. Some may be wearing full-body tunics or belted skirts/wrappers cinched at the waist. Some may be composite of a horse and rider.

b. Zoomorphic Figures—Igbo Ukwu zoomorphic brass and bronze figures include stylized animal figures that may represent whole animals or partial animal parts, typically the head or skull. Zoomorphic figures include birds, elephants, leopards, rams, snakes, and others. Zoomorphic figures are ornately and densely decorated with encrusted designs and patterns. Geometric decorative elements can include basketweave patterns, discs, granulation, raised knobs or loops, spirals, meshwork with interlocking chevrons, metal threads, and waves. Organic decorative elements can include images of beetles, birds, eggs, flies, grasshoppers, leopards, shells, snakes, and stylized plants and flowers. Trumpet-shaped decoration can surround animal skulls.

c. Vessels—Igbo-Ukwu vessels were cast in brass and bronze using the lost-wax method (*cire perdu*). Vessels come in many forms, including open and closed forms of bowls, cups, jars, stands, and composite shapes mirroring shells and calabashes. Vessel height typically varies between 12 cm to 35 cm. Vessel decoration can vary from organic to geometric shapes. Igbo-Ukwu vessels are elaborately and ornately decorated with encrusted designs and patterns. Geometric decorative elements can include basketweave patterns, discs, granulation, raised knobs or loops, spirals, meshwork with interlocking chevrons, metal threads, and waves. Organic decorative elements can include images of beetles, birds, flies, grasshoppers, leopards, shells, snakes, and stylized plants and flowers. Decorative elements can be in either high- or low-relief forms. Some vessels may have handles on one or two sides of the body or top. Blue, red, and yellow glass beads are sometimes attached to the exterior of vessels.

d. Ornaments—Examples of ornaments include, but are not limited to, the following:

i. Igbo-Ukwu Brass and Bronze Ornaments—These include, but are not limited to, altar stands, animals, bells, eggs, fly whisks, human figures, miniature heads, pendants, scabbards, shells, and staff toppers. Decorative forms may be a composite with multiple figures (for example, a horse and rider, snake and pangolin, snake and frog, or others). Ornament sizes vary, but they are typically between 6 cm to 50 cm in height. Ornaments tend to be ornately and densely decorated with encrusted designs. Decorative elements include, but are not limited, to basketweave patterns, discs granulation, incisions, interlocking geometric designs, raised knobs or loops, and spirals. Blue, red, and yellow glass beads are sometimes attached to the exterior of ornaments.

ii. Lower Niger Ornaments—These include brass and bronze bells. Ornament sizes vary, but they are typically between 10 cm to 20 cm in height. Bells have conical shapes. Bells may have either stylized human or animal faces with flared lips, protruding eyes, and striations on the forehead and/or near the mouth. There may be ears protruding from the conical body of the bell. There may be a loop on top of the bell that allowed bells to be fastened to other objects.

2. Iron—Iron objects include, but are not limited to, ceremonial swords, jewelry (*e.g.,* anklets, armlets, and bracelets), knives, projectiles, staffs, and other hand-held implements.

*D. Organic Material*

This category includes bone, ivory, leather, textiles, and wood from archaeological contexts, such as human remains, animal remains, basketry, burial shrouds, containers, garments, figurines, textiles, tools, and vessels.

**II. Ethnological Material**

Ethnological material covered by the Agreement includes, but is not limited to, objects that were used in religious activities, part of community or ancestral shrines, and/or used in royal or chiefly activities. Objects are associated with many cultures and civilizations ranging in date from approximately 200 A.D. through the early 20th century A.D. Nigeria's cultures, cultural complexes, and polities include groups, such as the Afo, Bassa-Nge, Benin, Bokyi, Chamba, Cross River Basin Peoples, Dakakari, Edo, Ekoi, Hausa, Ibibio, Idoma, Igala, Igbo, Ijaw, Ijo, Fulani, Jukun, Kanem-Borno, Mambila, Mama, Montol, Mumuye, Nupe, Ogoni, Okpoto, Sokoto, Tiv, Wamba, Verre, and Yoruba.

*A. Beads and Beaded Garments*

Beads and beaded garments include, but are not limited to, boots, caps, crowns, dance panels, diviner's bags, garments for altar figures, gowns, footrests, leggings, fly whisks, scepters, and sheaths for ceremonial swords and other hand-held royal or chiefly implements, such as staffs used in or associated with religious activities, community or ancestral shrines, and/or royal or chiefly activities.

*B. Figures*

Figures come in many forms and were crafted from different types of material, such as terracotta/fired clay, stone, and wood. Figures tend to depict humans, human heads, and animals, and may be naturalistic or stylized. Figures include, but are not limited to, figures made by Afo artists, Chamba figures, Ekpu figures, Ibeji figures, Igbo ancestor and shrine figures, Ijo figures, Jukun figures, Mbembe figures, Ogboni figures, Oron figures, Mumuye figures, Urhobo figures, Verre figures, Yoruba figures, ecclesiastical figures, and others used in or associated with religious activities, community or ancestral shrines, and/or royal or chiefly activities. Signs of wear depend on the intended use of the object and range from well-preserved surfaces to worn and/or encrusted surfaces.

*C. Ivory and Bone*

Ivory and bone objects come in many forms, including, but not limited to, altar pieces, boxes, bowls, bracelets, ceremonial swords, costume attachments, divination tappers, ecclesiastical objects, figures, gongs, horns/trumpets, masks, paddles, pendants, rattles, salt cellars, spoons, staffs, staff heads, vessels, and other objects. Ethnological objects made from ivory include Afro-Portuguese ivories, which are ornately carved and often in the form of salt cellars, trumpets, spoons, pendants, or vessels. Ivory and bone objects are typically associated with the Edo, Owo, and Yoruba cultures, and date approximately from the 15th through the 19th centuries A.D.

*D. Books and Manuscripts*

Secular and religious Islamic texts, manuscripts, and portions of manuscripts, including but not limited to, Qur'ans, commentaries, essays, letters, poetry, treatises, and other documents spanning the subjects of astronomy, chronicles, ethics, history, Islamic philosophy, law, literature, prophetic traditions, secret arts, Sufism, and related subjects. Books and manuscripts may be in sheets or in bound volumes, and may be decorated with colorful, geometric, or organic designs. Text is handwritten on paper and may be gathered into leather folios, and may be written in Arabic, Ajami, Hausa, or Fulfulde scripts.

*E. Masks and Headdresses*

Masks and headdresses were typically created in three forms: (1) Helmet-style; (2) facemasks; and (3) headcrests (worn on the top of the head). Masks and headdresses may show signs of use from being worn, used repeatedly, and fastened to the wearer. They may be crafted from brass/bronze, coconut shells, iron, ivory, leather, raffia, wood, vegetable fibers, or a combination of materials. They may be carved and ornamented with decorative and symbolic motifs. Beads, bells, and/or shells may be attached. They may be carved and decorated to represent human, animal, and composite forms (*e.g.,* horse and rider). Some masks, like those of the Yoruba and the Igbo region, may be painted with vibrant colors. Masks may also come in Janus style (double-sided) or plank forms. Masks may have been worn by men, women, and children. Masks may be encrusted with layers of clay, kaolin, ochre, soil, or sediment. Examples of masks include those used in or associated with religious activities and/or royal or chiefly activities, such as face masks from Bassa-Nge, Ibibio, and Yoruba, helmet masks from Ejagham, Igala, and Mambila, or crest masks or headdresses from Bokyi, Ejagham, Ekoi, Ibibio, Idoma, Igbo, Ijo, Mama, and Yoruba.

*F. Brass and Bronze*

There are three types of alloys typically used in ethnological metal sculpture from Nigeria: (1) Copper or zinc brass; (2) leaded bronze copper with tin and lead; and (3) bronze made from copper alloys, such as copper and tin or copper and lead. Despite this variation, Nigerian sculpture is often referred to interchangeably as brass and bronze. Benin Bronzes are the best-known examples. Examples of Benin Bronzes includes, but are not limited to, the following:

1. Anthropomorphic Figures—Benin Bronzes come in a variety of anthropomorphic forms, including free standing heads, heads on pedestalled bases, free standing full-length human figures, and full-length human figures on pedestalled bases. Head height varies, typically between 20 cm to 55 cm. Features may be both naturalized and stylized. Heads may have a wide and cylindrical shape, cheeks may be swollen, and eyes may be enlarged. Heads have representations of regalia including tight-fitting collars that do not cover the chin or beaded collars that cover the neck and chin reaching the lower lip. Heads may have caps, conical hats, crowns, elaborate hairstyles, or helmets. Beads may hang above the eyes. Wing-like feathers and/or horizontal bars may project from the side of headgear and crowns. Full-length Benin bronze figures vary in height, typically between 40 cm and 65 cm. Full-length figures can be free standing or on a pedestalled base. The position is typically asymmetrical as some figures hold side-blown trumpets, staffs, weapons, or other objects. Figures are often adorned with necklaces, bracelets, and caps, elaborate hairstyles, helmets, or other headgear. Male figures often wear skirts/wrappers tied around the waist. Some full-length figures have ''cat-whisker'' scarification protruding from the mouth. Some are composite figures, such as a full-length figure of a horse and rider.

2. Zoomorphic Figures—Zoomorphic Benin bronze figures include freestanding animals and animals on pedestalled bases, including, birds, fish, horses, leopards, rams, roosters, snakes, and others. They may be stylized and include both whole and partial animal figures. Figures tend to have decorated bodies with feathers, scales, or spots. Some figures may have once been part of decorative architectural elements, including turrets. Height varies, typically from 30 cm to 60 cm. Pedestalled bases may be decorated with braided geometric and organic designs.

3. Ornaments—Benin brass and bronze ornaments include, but are not limited to, altar ornaments/stands, anklets, bells, bracelets, discs, figures, finials, flasks, hip ornaments, horns/trumpets, lamps, masks, miniature crowns, pot stands, rings, stools, staffs, and staff toppers. Ornaments were cast using the lost-wax cast method and tend to be ornately decorated with both high- and low-relief elements. Decorative elements include, but are not limited to, basketweave patterns, chains, incisions, interlocking geometric designs, organic designs, raised knobs or loops, spirals, waves, and others. Decorative forms may include human heads and full-length figures. Some ornaments may incorporate animal designs into the body of the piece with birds, crocodiles, frogs, horses, mudfish, snakes, and other animal designs.

4. Plaques—Benin bronze plaques were cast using the lost-wax method. Plaques come in rectangular, pendant, and pectoral forms. Rectangular plaques tend to be slightly taller than wider, with height varying between 40 cm to 50 cm and width varying between 30 cm to 45 cm. Pendant and pectoral plaques tend to be semicircular. The dimensions of pendant or pectoral plaques vary, typically with a height and width varying between 15 cm to 40 cm. Plaques tend to be ornately decorated with both naturalistic and stylized elements. The backgrounds may have low-relief geometric and organic elements, including circles, dots, flowers, petals, quatrefoils, and other designs. High-relief decorative elements often include a prominent full-length human figure, often flanked by two or more figures that may be smaller in size. Human figures are often adorned in ceremonial dress including anklets, armor, bracelets, decorated skirts/wrappers and tunics, necklaces, and other objects. Crowns are common on the main figure and have many of the same decorative elements as the Benin bronze memorial heads, such as feathers and horizontal bars protruding from the temple. Some human figures may have facial hair. Smaller figures may carry shields, staffs, trumpets, and other weapons. Other high-relief decorative elements include birds, crocodiles, insects, fish, snakes, trees, and others.

5. Vessels—Benin brass and bronze vessels were cast in bronze using the lost-wax method. Vessels come in many forms, including open and closed forms of bowls, lidded bowls, cups, jars, jugs,

lidded jars, and stands. Sizes vary, typically between 7 cm and 40 cm. Vessels are typically elaborately decorated with high- and low-relief elements and with both naturalistic and stylized elements. The vessels' backgrounds may have low-relief geometric and organic elements, including arches, circles, dots, leaves, flowers, interlocking geometric designs, petals, quatrefoils, and other designs. High-relief elements on vessels include human and animal figures such as leopards, frogs, mudfish, snakes, snails, tortoises, and others.

*G. Iron*

This category includes iron objects, such as axes, ceremonial currency, ceremonial swords and knives, spears, staffs, swords, and other weapons used in or associated with religious activities, community or ancestral shrines, and/or royal or chiefly activities. Iron implements vary in size, typically between 30 cm and 110 cm in height. Ceremonial swords have fan-shaped blades. Blades may be curved or pointed. Axes and ceremonial currency may have simple or ornate curved blades that were not intended to be used, and may not have been created for a utilitarian purpose. Blades may have dulled edges, and forms are typically more delicate and ornate than utilitarian tools, projectiles, and weapons. While the blades are forged from iron, the hilt, pommel, and grip may be crafted from bone, brass, bronze, copper, ivory, or wood.

*H. Stone*

1. Monoliths—Monoliths (*e.g.,* Akwanshi, Cross River, Ejagham, Bakor, and Ikom) are typically carved from basalt, and range in height from 50 cm to 2 m. Monoliths vary and may be carved in either a column or boulder-like form. Monoliths are carved and can have both low- and high-relief elements. Most monoliths represent male figures, but there are also examples of female and animal forms. Some monoliths have well-defined facial features with beards, headdresses or hairstyles, and they may have complex, linear patterns on the face and torso. The head and torso of the monolith is often differentiated with a V-shaped groove or ridge. The torso often has a protruding navel.

2. Figures—Stone figures (*e.g.,* Esie soapstone) are usually carved from steatite or soapstone. Soapstone figures come from Yoruba villages, including Esie, Ijara, and Ofaur. Figures feature animals, children, and adult figures, often seated on a stool or kneeling on a circular base. Figures are typically 20 cm to 120 cm in height. Most soapstone figures have elaborate hairstyles, conical headdresses, or helmets. Headdresses and hats may be decorated with chevrons, leaves, rosettes, and/or tassels. Facial features are naturalistic with outlined eyes, flared nostrils, and an elongated bridge on the nose. There may be striations on the face, including on the temple, chin, and/or forehead. Female figures often have three or four marks on the nape of the neck. Figures are typically adorned with necklaces and bracelets. Female figures may be holding swords and males may have quivers with arrows and a helmet with a shape of a bird.

*I. Terracotta/Fired Clay*

This category includes ceramic or terracotta vessels, figures, and objects used in or associated with cemeteries, religious activities, community or ancestral shrines, and/or royal or chiefly activities in Dakakari, Edo, Yoruba, and other cultures.

1. Anthropomorphic Figures—Examples include anthropomorphic figures from the Edo cultures, which tend to have both naturalized and stylized characteristics. Height varies, typically between 9 cm and 25 cm. Terracotta ceremonial or commemorative heads share similar characteristics to the anthropomorphic bronze figures described in section I.F.1. of this Designated List. Heads may have a wide and cylindrical shape, cheeks may be swollen, and eyes may be enlarged. Heads include representations of regalia including tight-fitting collars that do not cover the chin to beaded collars that cover the neck and chin reaching the lower lip. Terracotta heads may have caps, conical hats, crowns, elaborate hairstyles, or helmets. Beads or incisions may hang above the eyes. Heads may have a hollow core.

2. Zoomorphic Figures—Examples include zoomorphic figures from the Edo cultures, which tend to have stylized characteristics. Height varies, typically between 9 cm and 25 cm. Edo zoomorphic figures tend to feature singular heads of animals such as leopards, rams, or other animals. Eyes and pupils tend to be incised. Heads may have a hollow core.

3. Funerary Stelae/Figures—Funerary stelae and figures from the Dakakari culture tend to be stylized and include anthropomorphic figures, zoomorphic figures, or composite figures, such as a horse and rider. Height varies, typically between 30 cm and 50 cm. Anthropomorphic and zoomorphic figures tend to be positioned on top of a bell-shaped or spherical base. Bodies tend to be cylindrical with truncated limbs. Eyes may be represented by linear slits that puncture the terracotta, while the nostrils and mouths may be punctured with more rounded holes. Animal figures tend to have elongated, quadruped limbs.

*J. Wood*

1. Architectural Elements—This category includes doors, door fixtures, houseposts, and veranda posts from religious buildings, including churches and shrines, and royal buildings, which were used in or associated with religious activities, community or ancestral shrines, and/or royal or chiefly activities. Architectural pieces may be ornately carved with high-relief decorations.

2. Ceremonial and Religious Wood—This category includes altar pieces, altar stands, ceremonial bowls, ceremonial boxes, divination trays, divination vessels, drums, gong rasps, masquerade ornaments, missal stands, offering bowls, prayer boards, Qur'an boxes, staffs, staff heads, stools, and other objects used in or associated with religious activities, community or ancestral shrines, and/or royal or chiefly activities.

*K. Rock Art*

Incised, engraved, pecked, or painted drawings on natural rock surfaces. Decoration includes human figures, animal figures (in particular, cattle, sheep, and short horned bulls), and geometric symbols.

**References**

*Dynasty and Divinity: Ife Art in Ancient Nigeria,* 2009, Henry John Drewel and Enid Schildkrout, Getty Foundation with the Museum for African Art, New York.

*Early Art and Architecture of Africa,* 2002, Peter Garlake, Oxford University Press, Oxford.

*From Shrines to Showcases: Masterpieces of Nigerian Art,* 2008, Ekpo Eyo, Ministry of Information and Communication, Abuja.

*Gelede: Art and Female Power Among the Yoruba,* 1983, Henry John Drewal and Margaret Thompson Drewal, Indiana University Press, Bloomington.

*Nok: African Sculpture in Archaeological Context,* 2013, Peter Brunig, Goethe-Universität and Africa Magna Verlag, Frankfurt.

*Sculptures: Africa, Asia, Oceania, Americas,* 2020, Reunion des Musees Nationaux: Musee de quai Branly, Paris.

*The Royal Arts of Africa: The Majesty of Form,* 1998, Suzanne Blier, Callman King; Prentiss Hall, London and New York.

*Treasures of Ancient Nigeria,* 1980, Ekpo Eyo and Frank Willett, Alfred Knopf with the Detroit Institute of Art, New York.

*Yoruba Beadwork: Artwork of Nigeria,* 1980, William Fagg, Rizzoli International Publications, New York.

**Inapplicability of Notice and Delayed Effective Date**

This amendment involves a foreign affairs function of the United States and is, therefore, being made without notice or public procedure under 5 U.S.C. 553(a)(1). For the same reason, a delayed effective date is not required under 5 U.S.C. 553(d)(3).

**Regulatory Flexibility Act**

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

**Executive Order 12866**

CBP has determined that this document is not a regulation or rule subject to the provisions of Executive Order 12866 because it pertains to a foreign affairs function of the United States, as described above, and therefore is specifically exempted by section 3(d)(2) of Executive Order 12866.

**Signing Authority**

This regulation is being issued in accordance with 19 CFR 0.1(a)(1) pertaining to the Secretary of the Treasury's authority (or that of his/her delegate) to approve regulations related to customs revenue functions.

Chris Magnus, the Commissioner of CBP, having reviewed and approved this document, has delegated the authority to electronically sign this document to Robert F. Altneu, who is the Director of the Regulations and Disclosure Law Division for CBP, for purposes of publication in the **Federal Register**.

**List of Subjects in 19 CFR Part 12**

Cultural property, Customs duties and inspection, Imports, Prohibited merchandise, and Reporting and recordkeeping requirements.

**Amendment to the CBP Regulations**

For the reasons set forth above, part 12 of title 19 of the Code of Federal Regulations (19 CFR part 12), is amended as set forth below:

## PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 1. The general authority citation for part 12 and the specific authority citation for § 12.104g continue to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

* * * * *

■ 2. In § 12.104g, the table in paragraph (a) is amended by adding an entry for ''Nigeria'' in alphabetical order to read as follows:

**§ 12.104g Specific items or categories designated by agreements or emergency actions.**

(a) * * *

| State party | Cultural property | Decision No. |
|---|---|---|
| * | * | * |
| Nigeria | Archaeological material of Nigeria ranging from approximately B.C. 1500 to A.D. 1770, and ethnological material of Nigeria ranging from approximately A.D. 200 to the early 20th century A.D. | CBP Dec. 22–05 |
| * | * | * |

* * * * *

**Robert F. Altneu,**

*Director, Regulations & Disclosure Law Division, Regulations & Rulings, Office of Trade U.S. Customs and Border Protection.*

Approved:

**Timothy E. Skud,**

*Deputy Assistant Secretary of the Treasury.*

[FR Doc. 2022–05681 Filed 3–16–22; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 100

**[Docket Number USCG–2021–0797]**

**RIN 1625–AA08**

## Special Local Regulation; Sail Grand Prix 2021 Race Event; San Francisco Bay, San Francisco, CA

**AGENCY:** Coast Guard, Department of Homeland Security (DHS).

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary special local regulation in the navigable waters of San Francisco Bay in San Francisco, CA, in support of the San Francisco Sail Grand Prix 2021 race periods on March 24, 2022, through March 27, 2022. This special local regulation is necessary to provide for the safety of life on these navigable waters and to ensure the safety of mariners transiting the area from the dangers associated with high-speed sailing activities associate with the Sail Grand Prix 2021 race event. This rulemaking would temporarily prohibit persons and vessels from entering into, transiting through, anchoring, blocking, or loitering within the event area adjacent to the city of San Francisco waterfront near the Golden Gate Bridge and Alcatraz Island, unless authorized by the Captain of the Port San Francisco or a designated representative.

**DATES:** This rule is effective from March 24, 2022, through March 27, 2022.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2021–0797 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Junior Grade William K. Harris, U.S. Coast Guard, Sector San Francisco, Waterways Management Division, at 415–399–7443, and *SFWaterways@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
COTP Captain of the Port
PATCOM Patrol Commander
U.S.C. United States Code

### II. Background Information and Regulatory History

On September 9, 2021, the Silverback Pacific Company notified the Coast Guard of an intention to conduct the ''Sail Grand Prix 2021'' event in the San Francisco Bay. Sail Grand Prix (SailGP) is a sailing league featuring world-class sailors racing 50-foot foiling catamarans.

The inaugural season started April 2021 in seven iconic cities throughout the world and is traveling to San Francisco Bay in March 2022. In response, on December 15, 2021, the Coast Guard published a notice of proposed rulemaking (NPRM) titled ''Special Local Regulation; Sail Grand Prix 2021 Race Event; San Francisco, CA'' (86 FR 71412). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this event. During the comment period that ended January 18, 2022, we received one comment.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because action is needed to protect personnel, vessels, and the marine environment from the potential hazards associated with Sail Grand Prix 2021 event beginning March 24, 2022.

## III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port (COTP) San Francisco has determined that these regulations are needed to keep persons and vessels away from the sailing race vessels, which exhibit unpredictable maneuverability, and have demonstrated likelihood during the simulation of racing scenarios for capsizing. This special local regulation will help prevent injuries and property damage caused upon impact by these fast-moving vessels. The provisions of this temporary special local regulation do not exempt racing vessels from any federal, state, or local laws or regulations, including Nautical Rules of the Road.

Per 33 CFR 100.35, the Coast Guard District Commander may promulgate certain special local regulations deemed necessary to ensure safety of life on the navigable waters immediately before, during, and immediately after an approved regatta. Pursuant to 33 CFR 1.05–1(i), the Commander of Coast Guard District 11 has delegated to the COTP San Francisco the responsibility of issuing such regulations.

## IV. Discussion of Comments, Changes, and the Rule

As noted above, we received one comment on our NPRM published December 15, 2021. The comment was positive in nature and supported the issuance of the special local regulation as proposed. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a special local regulation associated with the Sail Grand Prix 2021 race event which will be enforced from noon to 5:30 p.m. each day from March 24, 2022, through March 27, 2022. The areas regulated by this special local regulation will be east of the Golden Gate Bridge, south of Alcatraz Island, west of Treasure Island, and in the vicinity of the city of San Francisco waterfront. The Coast Guard will establish a primary race area, a spectator area, and a waterfront passage area. An image of these proposed regulated areas may be found in the docket. The special local regulation will cover all navigable waters of the San Francisco Bay, from surface to bottom, within the area formed by connecting the following latitude and longitude points in the following order: 37°48′24.3″ N, 122°27′53.5″ W; thence to 37°49′15.6″ N, 122°27′58.1″ W; thence to 37°49′28.9″ N, 122°25′52.1″ W; thence to 37°49′7.5″ N, 122°25′13″ W; thence to 37°48′42″ N, 122°25′13″ W; thence to 37°48′26.9″ N, 122°26′50.5″ W and thence along the shore to the point of beginning.

Located within this footprint, there will be four separate regulated areas: Zone ''A'', the Official Practice Box Area; Zone ''B'', the Official Race Box Area; Zone ''C'', the spectator Area; and Zone ''D'', the No Spectating or Loitering Area.

Zone ''A'', the Official Practice Box Area, will be marked by colored visual markers. The position of these markers will be specified via Local Notice to Mariners at least two weeks prior to the event and via Broadcast Notice to Mariners at least seven days prior to the event. Zone ''A'' will be used by the race and support vessels during the official practice periods on March 24, 2022, and March 25, 2022. Zone ''A'', the Official Practice Box Area, will be enforced during the official practice periods from noon to 5:30 p.m. on March 24, 2022, and from noon to 5:30 p.m. on March 25, 2022. Excluding the public from Zone ''A'' is necessary to provide protection from the operation of the high-speed sailing vessels within this area.

Zone ''B'', the Official Race Box Area, will be marked by 12 or more colored visual markers. The positions of these markers will be confirmed via Broadcast Notice to Mariners at least three days prior to the event. Only designated Sail Grand Prix 2021 race, support, and VIP vessels will be permitted to enter Zone ''B''. Zone ''B'', the Official Race Box Area, will be enforced during the official races from noon to 5:30 p.m. on March 26, 2022, and from noon to 5:30 p.m. on March 27, 2022. Because of the hazards posed by the sailing competition, excluding non-race vessel traffic from Zone ''B'' is necessary to provide protection from the operation of the high-speed sailing vessels within this area.

Zone ''C'', the Spectator Area, would be within the special local regulation area designated above and outside of Zone ''B'', the Official Race Box Area. Zone ''C'' will be defined by latitude and longitude points per Broadcast Notice to Mariners. Zone ''C'' will be further sub-divided into three additional sub-areas: Zone ''C1 East'', Zone ''C1 West'', and Zone ''C2''. Zone ''C1 East'' and Zone ''C1 West'' will be the general spectator areas that are open to all vessel spectators. Zone ''C2'' will be separately designated spectator area or areas, marked by approximately four or more colored buoys that will be managed by marine event sponsor officials. Vessels will be prohibited from anchoring within the confines of Zone ''C''.

Zone ''D'' will be the No Loitering or Anchoring Area. This zone will allow vessels to transit in and out of marinas, piers, and vessel launch areas throughout the duration of the Sail Grand Prix event. All vessels must maintain headway and may not loiter or anchor within the confines of Zone ''D''. Mariners can transit Zone ''D'' during the Sail Grand Prix 2021 event, decreasing the impact of the special local regulation to the San Francisco waterfront.

The duration of the establishment of this special local regulation is intended to ensure the safety of vessels in the navigable waters during the scheduled practice and race periods. This temporary special local regulation will temporarily restrict vessel traffic adjacent to the city of San Francisco waterfront in the vicinity of the Golden Gate Bridge and Alcatraz Island and prohibit vessels and persons not participating in the race event from entering the dedicated race area. The regulatory text appears at the end of this document.

## V. Regulatory Analyses

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

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and

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

This regulatory action determination is based on the size, location, and duration of the special local regulation. With this special local regulation, the Coast Guard intends to maintain commercial access to the ports through an alternate vessel traffic management scheme. The special local regulation is limited in duration, and is limited to a narrowly tailored geographic area with designated and adequate space for transiting vessels to pass when permitted by the COTP or a designated representative. In addition, although this rule restricts access to the waters encompassed by the special local regulation, the effect of this rule will not be significant because the local waterway users will be notified in advance via Broadcast Notice to Mariners to ensure the special local regulation will result in minimum impact. Therefore mariners will be able to plan ahead and transit outside of the periods of enforcement of the special local regulation, or alternatively, they will be able to transit the city of San Francisco Waterfront via Zone ''D'' with approval from the COTP or designated representative. The entities most likely to be affected are commercial vessels and pleasure craft engaged in recreational activities.

*B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect owners and operators of commercial vessels and pleasure craft engaged in recreational activities and sightseeing for a limited duration. This special local regulation will not have a significant economic impact on a substantial number of small entities for the reasons stated in Section V.A above. When the special local regulation is in effect, vessel traffic can pass safely around the regulated area. The maritime public would be advised in advance of this special local regulation via Broadcast Notice to Mariners.

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

*C. Collection of Information*

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

*D. Federalism and Indian Tribal Governments*

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

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

*E. Unfunded Mandates Reform Act*

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

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation that would create regulated areas of limited size and duration that includes defined regulated areas for vessel traffic to pass. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

*G. Protest Activities*

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

**List of Subjects in 33 CFR Part 100**

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

## PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

**Authority:** 46 U.S.C. 70041; 33 CFR 1.05–1.

■ 2. Add § 100.T11–084 to read as follows:

**§ 100.T11–084 Special Local Regulation; Sail Grand Prix 2021 Race Event, San Francisco, CA.**

(a) *Regulated areas.* The regulations in this section apply to all navigable waters of the San Francisco Bay, from surface to bottom, encompassed by a line connecting the following latitude and longitude points, beginning at 37°48′24.3″ N, 122°27′53.5″ W; thence to 37°49′15.6″ N, 122°27′58.1″ W; thence to 37°49′28.9″ N, 122°25′52.1″ W; thence to 37°49′7.5″ N, 122°25′13″ W; thence to 37°48′42″ N, 122°25′13″ W; thence to 37°48′26.9″ N, 122°26′50.5″ W and thence to the point of beginning.

(b) *Definitions.* As used in this section:

(1) *Designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer on a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the Captain of the Port San Francisco (COTP) in the enforcement of the special local regulation in this section.

(2) *Zone ''A''* means the Official Practice Box Area. This zone will encompass all navigable waters of the San Francisco Bay, from surface to bottom, within the area formed by connecting the following latitude and longitude points in the following order: 37°48′24.3″ N, 122°27′53.5″ W; thence to 37°49′15.6″ N, 122°27′58.1″ W; thence to 37°49′28.9″ N, 122°25′52.1″ W; thence to 37°49′7.5″ N, 122°25′13″ W; thence to 37°48′42″ N, 122°25′13″ W; thence to 37°48′26.9″ N, 122°26′50.5″ W and thence to the point of beginning.

(3) *Zone ''B''* means the Official Race Box Area, which will be marked by 12 or more colored visual markers within the special regulation area designated in paragraph (a) of this section. The position of these markers will be specified via Broadcast Notice to Mariner at least three days prior to the event.

(4) *Zone ''C''* means the Spectator Area, which is within the special local regulation area designated in paragraph (a) of this section and outside of Zone ''B,'' the Official Race Box Area. Zone ''C'' will be defined by latitude and longitude points per Broadcast Notice to Mariners. Zone ''C'' will be further divided into three additional sub-areas: Zone ''C1 East,'' Zone ''C1 West,'' and Zone ''C2.'' Zone ''C1 East'' and Zone ''C1 West'' will be the general spectator area or areas marked by approximately four or more colored buoys that will be managed by marine event sponsor officials. Vessels shall not anchor within the confines of Zone ''C.''

(5) *Zone ''D''* means the No Loitering and Anchoring Area. This zone will allow vessels to transit in and out of marinas, piers, and vessel launch areas throughout the duration of the Sail Grand Prix. All vessels shall maintain headway and shall not loiter or anchor within the confines of Zone ''D.'' Mariners can transit Zone ''D'' during the Sail Grand Prix 2021 event, decreasing the impact of the special local regulation to the San Francisco waterfront.

(c) *Special local regulation.* The regulations in paragraphs (c)(1) through (5) of this section apply between noon and 5:30 p.m. on the Sail Grand Prix 2021 official practice and race days.

(1) Only support and race vessels will be authorized by the COTP or designated representative to enter Zone ''B'' during the race event. Vessel operators desiring to enter or operate within Zone ''A'' or Zone ''B'' must contact the COTP or a designated representative to obtain permission to do so. Persons and vessels may request permission to transit Zone ''A'' on VHF–23A.

(2) Spectator vessels in Zone ''C'' must maneuver as directed by the COTP or designated representative by a succession of sharp, short signals by whistle or horn, the hailed vessel must come to an immediate stop and comply with the lawful direction issued. Failure to comply with a lawful direction may result in additional operating restrictions, citation for failure to comply, or both.

(3) Spectator vessels in Zone ''C'' must operate at safe speeds, which will create minimal wake.

(4) Vessels in Zone ''D'' shall maintain headway and shall not loiter or anchor within the confines of Zone ''D.'' Vessels in Zone ''D'' must maneuver as directed by the COTP or designated representative.

(5) Rafting and anchoring of vessels is prohibited within Zones ''A,'' ''B,'' ''C,'' and ''D.''

(d) *Enforcement periods.* This section will be enforced for the official practices and race events from noon to 5:30 p.m. each day from March 24, 2022, through March 27, 2022. At least 24 hours in advance of the official practice and race events commencing on March 24, 2022, the COTP will notify the maritime community of periods during which the zones in paragraphs (b)(2) through (5) of this section will be enforced via Broadcast Notice to Mariners and in writing via the Coast Guard Boating Public Safety Notice.

Dated: March 11, 2022.

**Taylor Q. Lam,**

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

[FR Doc. 2022–05621 Filed 3–16–22; 8:45 am]

BILLING CODE 9110–04–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[EPA–HQ–OPP–2020–0531; FRL–9608–01–OCSPP]**

## Zinc Stearate; Tolerance Exemption

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes an exemption from the requirement of a tolerance for residues of zinc stearate (CAS No. 557–05–1) when used as an inert ingredient (lubricant) in pesticide formulations at rates of no more than 6 percent by weight of the formulation in pre- and post-harvest applications to crops. Pyxis Regulatory Consulting, Inc., on behalf of UPL NA Inc., submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of zinc stearate (CAS No. 557–05–1) on food or feed commodities when used in accordance with this exemption.

**DATES:** This regulation is effective March 17, 2022. Objections and requests for hearings must be received on or before May 16, 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–2020–0531, 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. Can I file an objection or hearing request?*

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2020–0531 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 16, 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–2020–0531, 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 December 21, 2020 (85 FR 82998) (FRL–10016–93), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (PP IN–11376) filed by Pyxis Regulatory Consulting, Inc., on behalf of UPL NA Inc. The petition requested that 40 CFR 180.910 be amended by establishing an exemption from the requirement of a tolerance for residues of zinc stearate (CAS No. 557–05–1) when used as an inert ingredient (lubricant) in fumigant pesticide formulations at rates of no more than 6 percent by weight of the formulation when applied pre-and post-harvest to crops. That document included a summary of the petition prepared by the petitioner and solicited comments on the petitioner's request. The Agency did not receive any substantive public comments.

## 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 the 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 exemption is ''safe.'' Section 408(c)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that EPA has determined 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 it 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 an exemption 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 shown 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 and considered its validity, completeness and reliability and the relationship of this information 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. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure to zinc stearate, including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with zinc stearate 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 zinc stearate as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in this unit.

The acute toxicity of zinc stearate to mammals is low. The acute oral $LD_{50}$ (lethal dose) in rats is greater than 2,000 milligrams/kilogram (mg/kg). The acute dermal $LD_{50}$ in rabbits is also greater than 2,000 mg/kg, and the acute inhalation $LD_{50}$ in rats is greater than 200 mg/L. Zinc stearate is not an eye or a dermal irritant.

The repeated-dose toxicity for zinc stearate and the related compound calcium distearate in mammals is low. No adverse effects were observed in a 28-day rat study with zinc stearate, which also conducted a neurobehavioral evaluation. Also, no adverse effects were observed in a combined repeated dose with reproduction/developmental screening study in rats with calcium distearate.

No oral chronic or carcinogenicity studies are available for zinc stearate. However, there are no structural alerts for carcinogenicity for zinc stearate and there were no adverse effects observed in the available studies on related substances. There is also low concern for mutagenicity, based on negative results in an *in vitro* bacterial reverse mutation study on zinc stearate. No evidence of neurotoxicity or immunotoxicity was observed in the available studies.

*B. Toxicological Points of Departure/ Levels of Concern*

No toxicological endpoint of concern for zinc stearate were identified in the database.

*C. Exposure Assessment*

*1. Dietary exposure.* Although dietary exposure (food and drinking water) may occur from the proposed uses as well as existing pesticide inert uses (*e.g.,* flow control agent) and non-pesticide uses (*e.g.,* cosmetics, personal care, pharmaceuticals, plastics and coating additives) of zinc stearate, no endpoint of concern was identified. Therefore, an acute or chronic dietary exposure assessment is not necessary for zinc stearate.

*2. Residential exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure. Residential exposure to zinc stearate may occur from existing and proposed pesticide inert uses as well as from non-pesticide uses (cosmetics, personal care, pharmaceuticals, plastics and coating additives) that may be used in and around the home. However, based on the absence of a toxicological endpoint of concern, a quantitative assessment for residential exposure was not performed.

*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 or exemption, 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 database, zinc stearate and its metabolites are not expected to share a common mechanism of toxicity with other substances. For the purposes of this action, therefore, EPA has assumed that zinc stearate does not have a common mechanism of toxicity with other substances.

*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 low toxicity of zinc stearate in the available studies, EPA has concluded that there are no toxicological endpoints of concern for the U.S. population, including infants and children, and therefore conducted a qualitative assessment of zinc stearate. As part of its qualitative assessment, the Agency did not use safety factors for assessing risk, and no additional safety factor is needed for assessing risk to infants and children.

*E. Aggregate Risks and Determination of Safety*

Taking into consideration all available information on zinc stearate, EPA has determined that there is a reasonable certainty that no harm to the general population or any population subgroup, including infants and children, will result from aggregate exposure to zinc stearate residues. Therefore, the establishment of an exemption from the requirement of a tolerance under 40 CFR 180.910 for residues of zinc stearate when used as an inert ingredient (lubricant) in pesticide formulations at rates of no more than 6 percent by weight of the formulation in pre- and post-harvest applications to crops is safe under FFDCA section 408.

## VII. Other Considerations

*A. Analytical Enforcement Methodology*

An analytical method is not required for enforcement purposes since the Agency is not establishing a numerical tolerance for residues of zinc stearate in or on any food commodities. EPA is establishing a limitation on the amount of zinc stearate that may be used in pesticide formulations applied pre- or post-harvest. 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 pesticide formulation for food use that exceeds 6 percent zinc stearate by weight in the final pesticide formulation.

*B. International Residue Limits*

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4).

The Codex has not established a MRL for zinc stearate.

## VIII. Conclusion

Taking into consideration all available information on zinc stearate, EPA has determined that there is a reasonable certainty that no harm to the general population or any population subgroup,

including infants and children, will result from aggregate exposure to zinc stearate residues. Therefore, an exemption from the requirement of a tolerance is established under 40 CFR 180.910 for zinc stearate when used as an inert ingredient at no more than 6 percent by weight of the total pesticide formulation.

## IX. Statutory and Executive Order Reviews

This action establishes an exemption from the requirement of a tolerance 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).

## X. 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 9, 2022.

**Marietta Echeverria,**

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

Therefore, for the reasons stated in the preamble, the EPA amends 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 § 180.910, amend Table 1 to 180.910 by adding, in alphabetical order, an entry for ''Zinc stearate (CAS Reg No. 557–05–1)'' to reads as follows:

### § 180.910 Inert ingredients used pre- and post-harvest; exemptions from the requirement of a tolerance.

* * * * *

TABLE 1 TO 180.910

| Inert ingredients | Limits | Uses |
|---|---|---|
| * * * | * * | * * * |
| Zinc stearate (CAS Reg No. 557–05–1) | Not to exceed 6 percent by weight of fumigant pesticide formulation. | Lubricant. |
| * * * | * * | * * * |

[FR Doc. 2022–05661 Filed 3–16–22; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

**[EPA–HQ–OPP–2021–0551; FRL–9348–01–OCSPP]**

## Tetraacetylethylenediamine (TAED) and Its Metabolite Diacetylethylenediamine (DAED); Exemption From the Requirement of a Tolerance

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

**ACTION:** Final rule.

**SUMMARY:** This regulation amends an exemption from the requirement of a tolerance for residues of tetraacetylethylenediamine (TAED) and its metabolite diacetylethylenediamine (DAED) by expanding its use in or on all food commodities, when used as a fungicide and bactericide in accordance with label directions and good agricultural practices. The Lubrizol Corporation, 29400 Lakeland Blvd., Wickliffe, OH 44092, submitted a petition, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR 180.1327. 40 CFR 180.1327 currently provides for an exemption from the requirement of a tolerance for residues of the pesticide, tetraacetylethylenediamine (TAED), and its metabolite diacetylethylenediamine (DAED), in or on rice and strawberries, when used as a fungicide and bactericide in accordance with label directions and good agricultural practices. This regulation eliminates the need to establish a maximum permissible level for residues of tetraacetylethylenediamine (TAED) or its metabolite diacetylethylenediamine (DAED) when used in accordance with this exemption.

**DATES:** This regulation is effective March 17, 2022. Objections and requests for hearings must be received on or before May 16, 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–2021–0551, 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 closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

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

**SUPPLEMENTARY INFORMATION:**

### I. 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/title40.*

*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–2021–0551 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 16, 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–2021–0551, 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. Background and Statutory Findings

In the **Federal Register** of September 22, 2021 (86 FR 52624) (FRL–8792–03–OCSPP), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 9F8781) by The Lubrizol Corporation, 29400 Lakeland Blvd., Wickliffe, OH, 44092. The petition requested that 40 CFR 180.1327 be amended by amending the existing exemption from the requirement of a tolerance for residues of tetraacetylethylenediamine (TAED) and its metabolite diacetylethylenediamine (DAED) by expanding it to in or on all food commodities, when used as a fungicide and bactericide in accordance with label directions and good agricultural practices. That document referenced a

summary of the petition prepared by the petitioner, The Lubrizol Corporation, which is available in the docket, *https://www.regulations.gov.* There were no comments received in response to the notice of filing.

## III. 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 exemption 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. Pursuant to FFDCA section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in FFDCA section 408(b)(2)(C), which require 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. . . .'' Additionally, FFDCA section 408(b)(2)(D) requires that 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.''

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. 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 pesticide chemical residue, 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 TAED and DAED including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with TAED and DAED follows.

### *A. Toxicological Profile*

TAED is an analiphatic amide that is approved as a pesticide active ingredient for food and non-food uses. It is also is listed by the Food and Drug Administration (FDA) for use as a bleaching agent in the manufacture of food-contact paper and paperboard products (21 CFR 176.170).

TAED rapidly degrades to form diacetylethylenediamine (DAED), peroxyacetic acid (PAA), and hydrogen peroxide when exposed to water. DAED is considered to be of similar or less toxicity than TAED. Hydrogen peroxide and peroxyacetic acid are exempt from the requirement of a tolerance under 40 CFR 180.1197 and 180.1196(c), respectively. Food uses for TAED in or on rice and strawberries are supported by 40 CFR 180.1327, which currently provides for an exemption from the requirement of a tolerance for residues TAED and DAED in or on rice and strawberries, when used as a fungicide and bactericide in accordance with label directions and good agricultural practices. As a non-food pesticidal use, TAED is used on various non-bearing fruit trees, ornamentals and grasses. For all uses, dietary exposure to TAED is expected to be minimal due to TAED's physical and chemical properties and ready biodegradation in the environment.

With regard to the overall toxicological profile, TAED is of minimal toxicity. Based on acute studies, TAED is of low acute oral toxicity and acute inhalation toxicity (Toxicity Category IV), low acute dermal toxicity (Toxicity Category III) and is non-irritating to the skin and eye (Toxicity Category IV). The chemical is not a skin sensitizer. DAED is considered to be of similar or less toxicity than TAED. All data requirements were satisfied by guideline studies for subchronic toxicity (90-day oral, 90-day inhalation and 90-day dermal), developmental toxicity, reproductive toxicity and mutagenicity data requirements. There were no adverse subchronic effects for any oral or dermal routes of exposure. The active ingredient was determined to be non-mutagenic, and no adverse effects were identified relative to either developmental toxicity or reproductive toxicity. Based on this toxicological profile, EPA did not identify any toxicological endpoints of concern for TAED.

### *B. Toxicological Points of Departure/Levels of Concern*

No toxicological endpoint of concern has been identified for TAED or DAED.

### *C. Exposure Assessment*

1. *Dietary exposure from food, feed uses, and drinking water.* As part of its qualitative risk assessment for TAED, the Agency considered the potential for dietary exposure to residues of TAED and its degradate, DAED. EPA concludes that dietary (food and drinking water) exposures are likely to be negligible, due to the short half-life and biodegradable nature of TAED and DAED. Further, biodegradation of TAED and DAED yields the products water, nitrate, and ammonia, which are all found naturally in the environment and readily metabolized by microorganisms.

2. *From non-dietary exposure.* A revaluation of the risk of occupational and residential (non-dietary) exposure to TAED and DAED was not conducted at this time. Previous EPA risk assessments support the uses on currently approved TAED product labels.

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.'' EPA has not found that TAED or DAED share a common mechanism of toxicity with any other substances, and they do not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed TAED and DAED do not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *https://www.epa.gov/pesticides/cumulative.*

### *D. Safety Factor for Infants and Children*

FFDCA Section 408(b)(2)(C) provides that EPA shall retain an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure

unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor. An FQPA safety factor is not required at this time for TAED and its metabolite, DAED, because EPA has conducted a qualitative dietary assessment based on low toxicity and anticipated negligible exposure to the active ingredient.

*E. Aggregate Risk*

Based on the available data and information, the EPA has concluded that a qualitative aggregate risk assessment is appropriate to support the pesticidal use of TAED and its metabolite, DAED, and that risks of concern are not anticipated from aggregate exposure to the substance or its metabolite, DAED. This conclusion is based on the low toxicity of the active ingredient and expected rapid degradation of TAED and DAED in the environment.

A full explanation of the data upon which EPA relied and its risk assessment based on those data can be found within the July 22, 2021, document entitled ''Human Health Dietary Risk Assessment to Support a Tolerance Exemption Amendment for Warwick AG610 (EPA Reg. No. 59825–6), Containing 92% Tetraacetylethylenediamine as its Active Ingredient.'' This document, as well as other relevant information, is available in the docket for this action as described under **ADDRESSES**.

## IV. Determination of Safety for U.S. Population, Infants and Children

Based on the Agency's assessment, EPA concludes that there is reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of TAED.

## V. Other Considerations

*A. Analytical Enforcement Methodology*

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

*B. International Residue Limits*

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

The Codex has not established an MRL for tetraacetylethylenediamine (TAED) or its metabolite diacetylethylenediamine (DAED).

## VI. Conclusions

Therefore, EPA is amending the currently established exemption for residues of tetraacetylethylenediamine (TAED) and its metabolite diacetylethylenediamine (DAED) to include use in or on all food commodities—no longer limiting food use to strawberries and rice, when used as a fungicide and bactericide in accordance with label directions and good agricultural practices.

## VII. Statutory and Executive Order Reviews

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

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

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

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

## 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 10, 2022.

**Charles Smith,**

*Director, Biopesticides and Pollution Prevention 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. Revise § 180.1327 to read as follows:

**§ 180.1327 Tetraacetylethylenediamine (TAED) and its metabolite Diacetylethylenediamine (DAED); Exemption from the Requirement of a Tolerance.**

An exemption from the requirement of a tolerance is established for residues of the pesticide, tetraacetylethylenediamine (TAED), and its metabolite diacetylethylenediamine (DAED), in or on all food commodities, when used as a fungicide and bactericide in accordance with label directions and good agricultural practices.

[FR Doc. 2022–05530 Filed 3–16–22; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 45 CFR Part 102

**RIN 0991–AC33**

## Annual Civil Monetary Penalties Inflation Adjustment

**AGENCY:** Office of the Assistant Secretary for Financial Resources, Department of Health and Human Services (HHS).

**ACTION:** Final rule.

**SUMMARY:** The Department of Health and Human Services is updating its regulations to reflect required annual inflation-related increases to the civil monetary penalty amounts in its regulations, under the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015; adding references to new penalty authorities; and making technical changes to correct errors in the regulation.

**DATES:**

*Effective date:* This final rule is effective March 17, 2022.

*Applicability date:* The adjusted civil monetary penalty amounts apply to penalties assessed on March 17, 2022, r if the violation occurred on or after November 2, 2015.

**FOR FURTHER INFORMATION CONTACT:** Katrina Brisbon, Acting Deputy Assistant Secretary, Office of Acquisitions, Office of the Assistant Secretary for Financial Resources, Room 536–H, Hubert Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201; (202) 260–6677.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (section 701 of Pub. L. 114–74) (the ''2015 Act'') amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, 104 Stat. 890 (1990)), which is intended to improve the effectiveness of civil monetary penalties (CMPs) and to maintain the deterrent effect of such penalties, requires agencies to adjust the CMPs for inflation annually.

The Department of Health and Human Services (HHS) lists the CMP authorities and the amounts administered by all of its agencies in tabular form in 45 CFR 102.3, which was issued in an interim final rule published in the September 6, 2016, **Federal Register** (81 FR 61538). Annual adjustments were subsequently published on February 3, 2017 (82 FR 9175), October 11, 2018 (83 FR 51369), November 5, 2019 (84 FR 59549), January 17, 2020 (85 FR 2869), and November 15, 2021 (86 FR 62928).

### II. Calculation of Annual Inflation Adjustment

The annual inflation adjustment for each applicable CMP is determined using the percent increase in the Consumer Price Index for all Urban Consumers (CPI–U) for the month of October of the year in which the amount of each CMP was most recently established or modified. In the December 15, 2021, Office of Management and Budget (OMB) Memorandum for the Heads of Executive Agencies and Departments, M–22–07, ''Implementation of Penalty Inflation Adjustments for 2022, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015,'' OMB published the multiplier for the required annual adjustment. The cost-of-living adjustment multiplier for 2022, based on the CPI–U for the month of October 2021, not seasonally adjusted, is 1.06222. The multiplier is applied to each applicable penalty amount that was updated and published for fiscal year (FY) 2021 and is rounded to the nearest dollar.

### III. Other Revisions

In addition to the inflation adjustments for 2022, this final rule updates the table in 45 CFR 102.3 to add references to new, applicable civil money penalty authorities that were established or implemented since the publication of the November 15, 2021 update and that are being updated in this rule. The rule also corrects several technical errors to regulatory citations in the table and updates descriptions for clarification and accuracy. The following technical errors were identified and are corrected in the table at 45 CFR 102.3:

- The citation to, and description of, 42 U.S.C. 299c–3(d) are revised for accuracy.
- The regulatory reference of 42 CFR 1003.210(a)(5) implementing 42 U.S.C. 1395cc(g) which was inadvertently omitted from the regulation and is added.
- The description of the CMP at 42 U.S.C. 1320a–7a(o) is revised for accuracy.
- The regulatory reference to 45 CFR 155.206(i) [1] implementing 42 U.S.C. 18041(c)(2) [2] which was inadvertently omitted from the regulation is added. Additionally, the amount for this CMP was not included in the 2021 inflation adjustment rule. 86 FR 62928, 62943 (Nov. 15, 2021). Thus, we are updating the inflation amount at this time.
- The first description tied to 42 U.S.C. 1395mm(i)(6)(B)(i) is revised from ''is such plan'' to ''if such plan''.
- The regulatory reference to 85 FR 71142 (Nov. 6, 2020) implementing CARES Act, Pub. L. 116–136, section 3202(b)(2), is revised to read 45 CFR 182.70.

++ The 2022 adjusted amount is calculated by applying the 2021 multiplier to 1.06222 percent and this adjusted amount is reflected in the table of the regulation at 45 CFR 102.3.

[1] The Department recently proposed a technical correction to 45 CFR 155.206(i) to add language that would cross-reference to the authority to implement annual inflation-related increases to CMPs pursuant to the 2015 Act. See Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2023; Proposed Rule, 87 FR 584 at 640–641, 721 (Jan. 5, 2022). To date, no CMPs have been imposed under this authority, but any that are would reflect the current inflationary adjusted amount as required by the 2015 Act and would be calculated in accordance with applicable OMB guidance to all Executive Departments on the implementation of the 2015 Act.

[2] See, *e.g.,* the Patient Protection and Affordable Care Act; Exchange and Insurance Market Standards for 2015 and Beyond; Final Rule, 79 FR 30239 at 30262–30270 (May 27, 2014).

## IV. Statutory and Executive Order Reviews and Waiver of Proposed Rulemaking

The 2015 Act requires Federal agencies to publish annual penalty inflation adjustments notwithstanding section 553 of the Administrative Procedure Act (APA). Section 4(a) of the 2015 Act directs Federal agencies to publish annual adjustments no later than January 15th of each year thereafter. In accordance with section 553 of the APA, most rules are subject to notice and comment and are effective no earlier than 30 days after publication in the **Federal Register**. However, section 4(b)(2) of the 2015 Act provides that each agency shall make the annual inflation adjustments ''notwithstanding section 553'' of the APA. According to OMB's Memorandum M–21–10, the phrase ''notwithstanding section 553'' in section 4(b)(2) of the 2015 Act means that ''the public procedure the APA generally requires (that is, notice, an opportunity for comment, and a delay in effective date) is not required for agencies to issue regulations implementing the annual adjustment.''

Consistent with the language of the 2015 Act and OMB's implementation guidance, the inflation adjustments set out in this rule are not subject to notice and an opportunity for public comment and will be effective immediately upon publication. Additionally, HHS finds that notice and comment procedures would be impracticable and unnecessary under the APA for making the statutorily required inflation updates to newly established penalty amounts and for the ministerial and technical changes in this rule. In addition, HHS is waiving notice and comment for the non-substantive technical corrections set out in this final rule. HHS finds good cause for issuing these changes as a final rule without prior notice and comment because these changes only update the regulation to add the new CMP authorities that will be adjusted in accordance with the 2015 Act which were implemented since the last update.

Pursuant to OMB Memorandum M–21–10, HHS has determined that the annual inflation adjustment to the civil monetary penalties in its regulations does not trigger any requirements under procedural statutes and Executive Orders that govern rulemaking procedures.

## V. Effective and Applicability Dates

This rule is effective on the date specified in the **DATES** section of this final rule. The adjusted civil monetary penalty amounts apply to penalties assessed on or after date specified in the **DATES** section of this final rule, if the violation occurred on or after November 2, 2015. If the violation occurred before November 2, 2015, or a penalty was assessed before September 6, 2016, the pre-adjustment civil penalty amounts in effect before September 6, 2016, will apply.

## List of Subjects in 45 CFR Part 102

Administrative practice and procedure, Penalties.

Accordingly, the Department of Health and Human Services amends 45 CFR part 102 as follows:

## PART 102—ADJUSTMENT OF CIVIL MONETARY PENALTIES FOR INFLATION

■ 1. The authority citation for part 102 is revised to read as follows:

**Authority:** Pub. L. 101–410, Sec. 701 of Pub. L. 114–74, 31 U.S.C. 3801–3812.

■ 2. Amend § 102.3 by revising table 1 to read as follows:

### § 102.3 Penalty adjustment and table.

* * * * *

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## TABLE 1 TO §102.3 -- CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS

| U.S.C. Section(s) | CFR[1] | HHS Agency | Description[2] | Date of Last Penalty Figure or Adjustment[3] | 2021 Maximum adjusted penalty ($) | 2022 Maximum adjusted penalty ($)4 |
|---|---|---|---|---|---|---|
| 21 U.S.C.: | | | | | | |
| 333(b)(2)(A) | | FDA | Penalty for violations related to drug samples resulting in a conviction of any representative of manufacturer or distributor in any 10-year period | 2021 | 108,315 | 115,054 |
| 333(b)(2)(B) | | FDA | Penalty for violation related to drug samples resulting in a conviction of any representative of manufacturer or distributor after the second conviction in any 10-yr period | 2021 | 2,166,279 | 2,301,065 |
| 333(b)(3) | | FDA | Penalty for failure to make a report required by 21 U.S.C. 353(d)(3)(E) relating to drug samples | 2021 | 216,628 | 230,107 |
| 333(f)(1)(A) | | FDA | Penalty for any person who violates a requirement related to devices for each such violation | 2021 | 29,256 | 31,076 |
| | | FDA | Penalty for aggregate of all violations related to devices in a single proceeding | 2021 | 1,950,461 | 2,071,819 |
| 333(f)(2)(A) | | FDA | Penalty for any individual who introduces or delivers for introduction into interstate commerce food that is adulterated per 21 U.S.C. 342(a)(2)(B) or any individual who does not comply with a recall order under 21 U.S.C. 350l | 2021 | 82,245 | 87,362 |
| | | FDA | Penalty in the case of any other person (other than an individual) for such introduction or delivery of adulterated food | 2021 | 411,223 | 436,809 |
| | | FDA | Penalty for aggregate of all such violations related to adulterated food adjudicated in a single proceeding | 2021 | 822,445 | 873,618 |
| 333(f)(3)(A) | | FDA | Penalty for all violations adjudicated in a single proceeding for any person who violates 21 U.S.C. 331(jj) by failing to submit the certification required by 42 U.S.C. 282(j)(5)(B) or knowingly submitting a false certification; by failing to submit clinical trial information under 42 U.S.C. 282(j); or by submitting clinical trial information under 42 U.S.C. 282(j) that is false or misleading in any particular under 42 U.S.C. 282(j)(5)(D) | 2021 | 12,462 | 13,237 |
| 333(f)(3)(B) | | FDA | Penalty for each day any above violation is not corrected after a 30-day period following notification until the violation is corrected | 2021 | 12,462 | 13,237 |
| 333(f)(4)(A)(i) | | FDA | Penalty for any responsible person that violates a requirement of 21 U.S.C. 355(o) (post-marketing studies, clinical trials, labeling), 21 U.S.C. 355(p) (risk evaluation and mitigation (REMS)), or 21 U.S.C. 355-1 (REMS) | 2021 | 311,563 | 330,948 |
| | | FDA | Penalty for aggregate of all such above violations in a single proceeding | 2021 | 1,246,249 | 1,323,791 |

| | | | | | | |
|---|---|---|---|---|---|---|
| 333(f)(4)(A)(ii) | | FDA | Penalty for REMS violation that continues after written notice to the responsible person for the first 30-day period (or any portion thereof) the responsible person continues to be in violation | 2021 | 311,563 | 330,948 |
| | | FDA | Penalty for REMS violation that continues after written notice to responsible person doubles for every 30-day period thereafter the violation continues, but may not exceed penalty amount for any 30-day period | 2021 | 1,246,249 | 1,323,791 |
| | | FDA | Penalty for aggregate of all such above violations adjudicated in a single proceeding | 2021 | 12,462,494 | 13,237,910 |
| 333(f)(9)(A) | | FDA | Penalty for any person who violates a requirement which relates to tobacco products for each such violation | 2021 | 18,068 | 19,192 |
| | | FDA | Penalty for aggregate of all such violations of tobacco product requirement adjudicated in a single proceeding. | 2021 | 1,204,504 | 1,279,448 |
| 333(f)(9)(B)(i)(I) | | FDA | Penalty per violation related to violations of tobacco requirements | 2021 | 301,127 | 319,863 |
| | | FDA | Penalty for aggregate of all such violations of tobacco product requirements adjudicated in a single proceeding. | 2021 | 1,204,504 | 1,279,448 |
| 333(f)(9)(B)(i)(II) | | FDA | Penalty in the case of a violation of tobacco product requirements that continues after written notice to such person, for the first 30-day period (or any portion thereof) the person continues to be in violation | 2021 | 301,127 | 319,863 |
| | | FDA | Penalty for violation of tobacco product requirements that continues after written notice to such person shall double for every 30-day period thereafter the violation continues, but may not exceed penalty amount for any 30-day period. | 2021 | 1,204,504 | 1,279,448 |
| | | FDA | Penalty for aggregate of all such violations related to tobacco product requirements adjudicated in a single proceeding. | 2021 | 12,045,044 | 12,794,487 |
| 333(f)(9)(B)(ii)(I) | | FDA | Penalty for any person who either does not conduct post-market surveillance and studies to determine impact of a modified risk tobacco product for which the HHS Secretary has provided them an order to sell, or who does not submit a protocol to the HHS Secretary after being notified of a requirement to conduct post-market surveillance of such tobacco products | 2021 | 301,127 | 319,863 |
| | | FDA | Penalty for aggregate of for all such above violations adjudicated in a single proceeding. | 2021 | 1,204,504 | 1,279,448 |
| 333(f)(9)(B)(ii)(II) | | FDA | Penalty for violation of modified risk tobacco product post-market surveillance that continues after written notice to such person for the first 30-day period (or any portion thereof) that the person continues to be in violation | 2021 | 301,127 | 319,863 |
| | | FDA | Penalty for post-notice violation of modified risk tobacco product post-market surveillance shall double for every 30-day period thereafter that the tobacco product requirement violation continues for any 30-day period, but may not exceed penalty amount for any 30-day period. | 2021 | 1,204,504 | 1,279,448 |
| | | | Penalty for aggregate above tobacco product requirement violations adjudicated in a single proceeding. | 2021 | 12,045,044 | 12,794,487 |
| 333(g)(1) | | FDA | Penalty for any person who disseminates or causes another party to disseminate a direct-to-consumer advertisement that is false or misleading for the first such violation in any 3-year period | 2021 | 311,563 | 330,948 |
| | | | Penalty for each subsequent above violation in any 3-year period. | 2021 | 623,125 | 661,896 |
| 333 note | | FDA | Penalty to be applied for violations of 21 U.S.C. § 387f(d)(5) or of violations of restrictions on the sale or distribution of tobacco products promulgated under 21 U.S.C. 387f(d) (e.g., violations of regulations in 21 CFR part 1140) with respect to a retailer with an approved | 2021 | 301 | 320 |

| | | | | | | |
|---|---|---|---|---|---|---|
| | | | training program in the case of a second regulation violation within a 12-month period. | | | |
| | | FDA | Penalty in the case of a third violation of 21 U.S.C. § 387f(d)(5) or of the tobacco product regulations within a 24-month period. | 2021 | 601 | 638 |
| | | FDA | Penalty in the case of a fourth violation of 21 U.S.C. § 387f(d)(5) or of the tobacco product regulations within a 24-month period. | 2021 | 2,409 | 2,559 |
| | | FDA | Penalty in the case of a fifth violation of 21 U.S.C. § 387f(d)(5) or of the tobacco product regulations within a 36-month period. | 2021 | 6,022 | 6,397 |
| | | FDA | Penalty in the case of a sixth or subsequent violation of 21 U.S.C. § 387f(d)(5) or of the tobacco product regulations within a 48-month period as determined on a case-by-case basis. | 2021 | 12,045 | 12,794 |
| | | FDA | Penalty to be applied for violations of 21 U.S.C. § 387f(d)(5) or of violations of restrictions on the sale or distribution of tobacco products promulgated under 21 U.S.C. 387f(d) (e.g., violations of regulations in 21 CFR part 1140) with respect to a retailer that does not have an approved training program in the case of the first regulation violation. | 2021 | 301 | 320 |
| | | FDA | Penalty in the case of a second violation of 21 U.S.C. § 387f(d)(5) or of the tobacco product regulations within a 12-month period. | 2021 | 601 | 638 |
| | | FDA | Penalty in the case of a third violation of 21 U.S.C. § 387f(d)(5) or of the tobacco product regulations within a 24-month period. | 2021 | 1,205 | 1,280 |
| | | FDA | Penalty in the case of a fourth violation of 21 U.S.C. § 387f(d)(5) or of the tobacco product regulations within a 24-month period. | 2021 | 2,409 | 2,559 |
| | | FDA | Penalty in the case of a fifth violation of 21 U.S.C. § 387f(d)(5) or of the tobacco product regulations within a 36-month period. | 2021 | 6,022 | 6,397 |
| | | FDA | Penalty in the case of a sixth or subsequent violation of 21 U.S.C. § 387f(d)(5) or of the tobacco product regulations within a 48-month period as determined on a case-by-case basis. | 2021 | 12,045 | 12,794 |
| 335b(a) | | FDA | Penalty for each violation for any individual who made a false statement or misrepresentation of a material fact, bribed, destroyed, altered, removed, or secreted, or procured the destruction, alteration, removal, or secretion of, any material document, failed to disclose a material fact, obstructed an investigation, employed a consultant who was debarred, debarred individual provided consultant services | 2021 | 459,074 | 487,638 |
| | | FDA | Penalty in the case of any other person (other than an individual) per above violation. | 2021 | 1,836,294 | 1,950,548 |
| 360pp(b)(1) | | FDA | Penalty for any person who violates any such requirements for electronic products, with each unlawful act or omission constituting a separate violation | 2021 | 3,011 | 3,198 |
| | | FDA | Penalty imposed for any related series of violations of requirements relating to electronic products. | 2021 | 1,026,380 | 1,090,241 |
| 42 U.S.C. | | | | 2021 | | - |
| 262(d) | | FDA | Penalty per day for violation of order of recall of biological product presenting imminent or substantial hazard | 2021 | 236,071 | 250,759 |
| 263b(h)(3) | | FDA | Penalty for failure to obtain a mammography certificate as required | 2021 | 18,364 | 19,507 |
| 300aa-28(b)(1) | | FDA | Penalty per occurrence for any vaccine manufacturer that intentionally destroys, alters, falsifies, or conceals any record or report required | 2021 | 236,071 | 250,759 |

| | | | | | | |
|---|---|---|---|---|---|---|
| 256b(d)(1)(B)(vi) | | HRSA | Penalty for each instance of overcharging a 340B covered entity | 2021 | 5,953 | 6,323 |
| 299c-3(d) | | AHRQ | Penalty for using or disclosing identifiable information obtained in the course of activities undertaken pursuant to Title IX of the Public Health Service Act, for a purpose other than that for which the information was supplied, without consent to do so. | 2021 | 15,480 | 16,443 |
| 653(l)(2) | 45 CFR 303.21(f) | ACF | Penalty for Misuse of Information in the National Directory of New Hires | 2021 | 1,588 | 1,687 |
| 262a(i)(1) | 42 CFR 1003.910 | OIG | Penalty for each individual who violates safety and security procedures related to handling dangerous biological agents and toxins | 2021 | 359,053 | 381,393 |
| | | OIG | Penalty for any other person who violates safety and security procedures related to handling dangerous biological agents and toxins. | 2021 | 718,109 | 762,790 |
| 300jj-51 | | OIG | Penalty per violation for committing information blocking | 2021 | 1,094,805 | 1,162,924 |
| 1320a-7a(a) | 42 CFR 1003.210(a)(1) | OIG | Penalty for knowingly presenting or causing to be presented to an officer, employee, or agent of the United States a false claim | 2021 | 21,113 | 22,427 |
| | | OIG | Penalty for knowingly presenting or causing to be presented a request for payment which violates the terms of an assignment, agreement, or PPS agreement | 2021 | 21,113 | 22,427 |
| | 42 CFR 1003.210(a)(2) | OIG | Penalty for knowingly giving or causing to be presented to a participating provider or supplier false or misleading information that could reasonably be expected to influence a discharge decision. | 2021 | 31,670 | 33,641 |
| | 42 CFR 1003.210(a)(3) | OIG | Penalty for an excluded party retaining ownership or control interest in a participating entity. | 2021 | 21,113 | 22,427 |
| | 42 CFR 1003.1010 | OIG | Penalty for remuneration offered to induce program beneficiaries to use particular providers, practitioners, or suppliers. | 2021 | 21,113 | 22,427 |
| | 42 CFR 1003.210(a)(4) | OIG | Penalty for employing or contracting with an excluded individual. | 2021 | 21,113 | 22,427 |
| | 42 CFR 1003.310(a)(3) | OIG | Penalty for knowing and willful solicitation, receipt, offer, or payment of remuneration for referring an individual for a service or for purchasing, leasing, or ordering an item to be paid for by a Federal health care program. | 2021 | 105,563 | 112,131 |
| | 42 CFR 1003.210(a)(1) | OIG | Penalty for ordering or prescribing medical or other item or service during a period in which the person was excluded. | 2021 | 21,113 | 22,427 |
| | 42 CFR 1003.210(a)(6) | OIG | Penalty for knowingly making or causing to be made a false statement, omission or misrepresentation of a material fact in any application, bid, or contract to participate or enroll as a provider or supplier. | 2021 | 105,563 | 112,131 |
| | 42 CFR 1003.210(a)(8) | OIG | Penalty for knowing of an overpayment and failing to report and return. | 2021 | 21,113 | 22,427 |
| | 42 CFR 1003.210(a)(7) | OIG | Penalty for making or using a false record or statement that is material to a false or fraudulent claim. | 2021 | 59,527 | 63,231 |
| | 42 CFR 1003.210(a)(9) | OIG | Penalty for failure to grant timely access to HHS OIG for audits, investigations, evaluations, and other statutory functions of HHS OIG. | 2021 | 31,670 | 33,641 |
| 1320a-7a(b) | | OIG | Penalty for payments by a hospital or critical access hospital to induce a physician to reduce or limit services to individuals under direct care of physician or who are entitled to certain medical assistance benefits | 2021 | 5,278 | 5,606 |
| | | OIG | Penalty for physicians who knowingly receive payments from a hospital or critical access hospital to induce such physician to reduce or limit services to individuals under direct care of physician or who are entitled to certain medical assistance benefits. | 2021 | 5,278 | 5,606 |

| | | | | | | |
|---|---|---|---|---|---|---|
| | 42 CFR 1003.210(a)(10) | OIG | Penalty for a physician who executes a document that falsely certifies home health needs for Medicare beneficiaries. | 2021 | 10,556 | 11,213 |
| 1320a-7a(o) | | OIG | Penalty for knowingly presenting or causing to be presented a false or fraudulent specified claim under a grant, contract, or other agreement for which the Secretary provides funding. | 2021 | 10,296 | 10,937 |
| | | OIG | Penalty for knowingly making, using, or causing to be made or used any false statement, omission, or misrepresentation of a material fact in any application, proposal, bid, progress report, or other document required to directly or indirectly receive or retain funds provided pursuant to grant, contract, or other agreement. | 2021 | 51,483 | 54,686 |
| | | OIG | Penalty for Knowingly making, using, or causing to be made or used, a false record or statement material to a false or fraudulent specified claim under grant, contract, or other agreement. | 2021 | 51,483 | 54,686 |
| | | OIG | Penalty for knowingly making, using, or causing to be made or used, a false record or statement material to an obligation to pay or transmit funds or property with respect to grant, contract, or other agreement, or knowingly conceals or improperly avoids or decreases any such obligation. | 2021 | 53,772 each false record or statement, 10,754 per day | 53,772 each false record or statement, 10,754 per day |
| | | OIG | Penalty for failure to grant timely access, upon reasonable request, to the I.G. for purposes of audits, investigations, evaluations, or other statutory functions of I.G. in matters involving grants, contracts, or other agreements. | 2021 | 15,445 | 16,406 |
| 1320a-7e(b)(6)(A) | 42 CFR 1003.810 | OIG | Penalty for failure to report any final adverse action taken against a health care provider, supplier, or practitioner | 2021 | 40,282 | 42,788 |
| 1320b-10(b)(1) | 42 CFR 1003.610(a) | OIG | Penalty for the misuse of words, symbols, or emblems in communications in a manner in which a person could falsely construe that such item is approved, endorsed, or authorized by HHS | 2021 | 10,832 | 11,506 |
| 1320b-10(b)(2) | 42 CFR 1003.610(a) | OIG | Penalty for the misuse of words, symbols, or emblems in a broadcast or telecast in a manner in which a person could falsely construe that such item is approved, endorsed, or authorized by HHS | 2021 | 54,157 | 57,527 |
| 1395i-3(b)(3)(B)(ii)(1) | 42 CFR 1003.210(a)(11) | OIG | Penalty for certification of a false statement in assessment of functional capacity of a Skilled Nursing Facility resident assessment | 2021 | 2,259 | 2,400 |
| 1395i-3(b)(3)(B)(ii)(2) | 42 CFR 1003.210(a)(11) | OIG | Penalty for causing another to certify or make a false statement in assessment of functional capacity of a Skilled Nursing Facility resident assessment | 2021 | 11,292 | 11,995 |
| 1395i-3(g)(2)(A) | 42 CFR 1003.1310 | OIG | Penalty for any individual who notifies or causes to be notified a Skilled Nursing Facility of the time or date on which a survey is to be conducted | 2021 | 4,518 | 4,799 |
| 1395w-27(g)(2)(A) | 42 CFR 1003.410 | OIG | Penalty for a Medicare Advantage organization that substantially fails to provide medically necessary, required items and services | 2021 | 41,120 | 43,678 |
| | | OIG | Penalty for a Medicare Advantage organization that charges excessive premiums. | 2021 | 40,282 | 42,788 |
| | | OIG | Penalty for a Medicare Advantage organization that improperly expels or refuses to reenroll a beneficiary. | 2021 | 40,282 | 42,788 |
| | | OIG | Penalty for a Medicare Advantage organization that engages in practice that would reasonably be expected to have the effect of denying or discouraging enrollment. | 2021 | 161,130 | 171,156 |
| | | OIG | Penalty per individual who does not enroll as a result of a Medicare Advantage organization's practice that would reasonably be expected to have the effect of denying or discouraging enrollment. | 2021 | 24,169 | 25,673 |
| | | OIG | Penalty for a Medicare Advantage organization misrepresenting or falsifying information to Secretary. | 2021 | 161,130 | 171,156 |

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|---|---|---|---|---|---|---|
| | | OIG | Penalty for a Medicare Advantage organization misrepresenting or falsifying information to individual or other entity. | 2021 | 40,282 | 42,788 |
| | | OIG | Penalty for Medicare Advantage organization interfering with provider's advice to enrollee and non-MCO affiliated providers that balance bill enrollees. | 2021 | 40,282 | 42,788 |
| | | OIG | Penalty for a Medicare Advantage organization that employs or contracts with excluded individual or entity. | 2021 | 40,282 | 42,788 |
| | | OIG | Penalty for a Medicare Advantage organization enrolling an individual in without prior written consent. | 2021 | 40,282 | 42,788 |
| | | OIG | Penalty for a Medicare Advantage organization transferring an enrollee to another plan without consent or solely for the purpose of earning a commission. | 2021 | 40,282 | 42,788 |
| | | OIG | Penalty for a Medicare Advantage organization failing to comply with marketing restrictions or applicable implementing regulations or guidance. | 2021 | 40,282 | 42,788 |
| | | OIG | Penalty for a Medicare Advantage organization employing or contracting with an individual or entity who violates 1395w-27(g)(1)(A)-(J). | 2021 | 40,282 | 42,788 |
| 1395w-141(i)(3) | | OIG | Penalty for a prescription drug card sponsor that falsifies or misrepresents marketing materials, overcharges program enrollees, or misuse transitional assistance funds | 2021 | 14,074 | 14,950 |
| 1395cc(g) | 42 CFR 1003.210(a)(5) | OIG | Penalty for improper billing by Hospitals, Critical Access Hospitals, or Skilled Nursing Facilities | 2021 | 5,475 | 5,816 |
| 1395dd(d)(1) | 42 CFR 1003.510 | OIG | Penalty for a hospital with 100 beds or more or responsible physician dumping patients needing emergency medical care. | 2021 | 112,916 | 119,942 |
| | | | Penalty for a hospital with less than 100 beds dumping patients needing emergency medical care. | 2021 | 56,460 | 59,973 |
| 1395mm(i)(6)(B)(i) | 42 CFR 1003.410 | OIG | Penalty for a HMO or competitive medical plan if such plan substantially fails to provide medically necessary, required items or services | 2021 | 56,460 | 59,973 |
| | | OIG | Penalty for HMOs/competitive medical plans that charge premiums in excess of permitted amounts. | 2021 | 56,460 | 59,973 |
| | | OIG | Penalty for a HMO or competitive medical plan that expels or refuses to reenroll an individual per prescribed conditions. | 2021 | 56,460 | 59,973 |
| | | OIG | Penalty for a HMO or competitive medical plan that implements practices to discourage enrollment of individuals needing services in future. | 2021 | 225,834 | 239,885 |
| | | OIG | Penalty per individual not enrolled in a plan as a result of a HMO or competitive medical plan that implements practices to discourage enrollment of individuals needing services in the future. | 2021 | 32,495 | 34,517 |
| | | OIG | Penalty for a HMO or competitive medical plan that misrepresents or falsifies information to the Secretary. | 2021 | 225,834 | 239,885 |
| | | OIG | Penalty for a HMO or competitive medical plan that misrepresents or falsifies information to an individual or any other entity. | 2021 | 56,460 | 59,973 |
| | | OIG | Penalty for failure by HMO or competitive medical plan to assure prompt payment of Medicare risk sharing contracts or incentive plan provisions. | 2021 | 56,460 | 59,973 |
| | | OIG | Penalty for HMO that employs or contracts with excluded individual or entity. | 2021 | 51,827 | 55,052 |
| 1395nn(g)(3) | 42 CFR 1003.310 | OIG | Penalty for submitting or causing to be submitted claims in violation of the Stark Law's restrictions on physician self-referrals | 2021 | 26,125 | 27,750 |
| 1395nn(g)(4) | 42 CFR 1003.310 | OIG | Penalty for circumvention schemes in violation of the Stark Law's restrictions on physician self-referrals | 2021 | 174,172 | 185,009 |
| 1395ss(d)(1) | 42 CFR 1003.1110 | OIG | Penalty for a material misrepresentation regarding Medigap compliance policies | 2021 | 10,832 | 11,506 |

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|---|---|---|---|---|---|---|
| 1395ss(d)(2) | 42 CFR 1003.1110 | OIG | Penalty for selling Medigap policy under false pretense | 2021 | 10,832 | 11,506 |
| 1395ss(d)(3)(A)(ii) | 42 CFR 1003.1110 | OIG | Penalty for an issuer that sells health insurance policy that duplicates benefits | 2021 | 48,762 | 51,796 |
| | | OIG | Penalty for someone other than issuer that sells health insurance that duplicates benefits. | 2021 | 29,256 | 31,076 |
| 1395ss(d)(4)(A) | 42 CFR 1003.1110 | OIG | Penalty for using mail to sell a non-approved Medigap insurance policy | 2021 | 10,832 | 11,506 |
| 1396b(m)(5)(B)(i) | 42 CFR 1003.410 | OIG | Penalty for a Medicaid MCO that substantially fails to provide medically necessary, required items or services | 2021 | 54,157 | 57,527 |
| | | OIG | Penalty for a Medicaid MCO that charges excessive premiums. | 2021 | 54,157 | 57,527 |
| | | OIG | Penalty for a Medicaid MCO that improperly expels or refuses to reenroll a beneficiary. | 2021 | 216,628 | 230,107 |
| | | OIG | Penalty per individual who does not enroll as a result of a Medicaid MCO's practice that would reasonably be expected to have the effect of denying or discouraging enrollment. | 2021 | 32,495 | 34,517 |
| | | OIG | Penalty for a Medicaid MCO misrepresenting or falsifying information to the Secretary. | 2021 | 216,628 | 230,107 |
| | | OIG | Penalty for a Medicaid MCO misrepresenting or falsifying information to an individual or another entity. | 2021 | 54,157 | 57,527 |
| | | OIG | Penalty for a Medicaid MCO that fails to comply with contract requirements with respect to physician incentive plans. | 2021 | 48,762 | 51,796 |
| 1396r(b)(3)(B)(ii)(I) | 42 CFR 1003.210(a)(11) | OIG | Penalty for willfully and knowingly certifying a material and false statement in a Skilled Nursing Facility resident assessment | 2021 | 2,259 | 2,400 |
| 1396r(b)(3)(B)(ii)(II) | 42 CFR 1003.210(a)(11) | OIG | Penalty for willfully and knowingly causing another individual to certify a material and false statement in a Skilled Nursing Facility resident assessment | 2021 | 11,292 | 11,995 |
| 1396r(g)(2)(A)(i) | 42 CFR 1003.1310 | OIG | Penalty for notifying or causing to be notified a Skilled Nursing Facility of the time or date on which a survey is to be conducted | 2021 | 4,518 | 4,799 |
| 1396r-8(b)(3)(B) | 42 CFR 1003.1210 | OIG | Penalty for the knowing provision of false information or refusing to provide information about charges or prices of a covered outpatient drug | 2021 | 195,047 | 207,183 |
| 1396r-8(b)(3)(C)(i) | 42 CFR 1003.1210 | OIG | Penalty per day for failure to timely provide information by drug manufacturer with rebate agreement | 2021 | 19,505 | 20,719 |
| 1396r-8(b)(3)(C)(ii) | 42 CFR 1003.1210 | OIG | Penalty for knowing provision of false information by drug manufacturer with rebate agreement | 2021 | 195,047 | 207,183 |
| 1396t(i)(3)(A) | 42 CFR 1003.1310 | OIG | Penalty for notifying home and community-based providers or settings of survey | 2021 | 3,901 | 4,144 |
| 11131(c) | 42 CFR 1003.810 | OIG | Penalty for failing to report a medical malpractice claim to National Practitioner Data Bank | 2021 | 23,607 | 25,076 |
| 11137(b)(2) | 42 CFR 1003.810 | OIG | Penalty for breaching confidentiality of information reported to National Practitioner Data Bank | 2021 | 23,607 | 25,076 |
| 299b-22(f)(1) | 42 CFR 3.404 | OCR | Penalty for violation of confidentiality provision of the Patient Safety and Quality Improvement Act | 2021 | 13,072 | 13,885 |
| | 45 CFR 160.404(b)(1)(i), (ii) | OCR | Penalty for each pre-February 18, 2009 violation of the HIPAA administrative simplification provisions | 2021 | 164 | 174 |
| | | | Calendar Year Cap | 2021 | 41,120 | 43,678 |

| | | | | | | |
|---|---|---|---|---|---|---|
| 1320(d)-5(a) | 45 CFR 160.404 (b)(2)(i)(A), (B) | OCR | Penalty for each February 18, 2009 or later violation of a HIPAA administrative simplification provision in which it is established that the covered entity or business associate did not know and by exercising reasonable diligence, would not have known that the covered entity or business associate violated such a provision: | 2021 | | 0 |
| | | | Minimum | 2021 | 120 | 127 |
| | | | Maximum | 2021 | 60,226 | 63,973 |
| | | | Calendar Year Cap | 2021 | 1,806,757 | 1,919,173 |
| | 45 CFR 160.404 (b)(2)(ii)(A), (B) | OCR | Penalty for each February 18, 2009 or later violation of a HIPAA administrative simplification provision in which it is established that the violation was due to reasonable cause and not to willful neglect: | 2021 | | 0 |
| | | | Minimum | 2021 | 1,205 | 1,280 |
| | | | Maximum | 2021 | 60,226 | 63,973 |
| | | | Calendar Year Cap | 2021 | 1,806,757 | 1,919,173 |
| | 45 CFR 160.404 (b)(2)(iii)(A), (B) | OCR | Penalty for each February 18, 2009 or later violation of a HIPAA administrative simplification provision in which it is established that the violation was due to willful neglect and was corrected during the 30-day period beginning on the first date the covered entity or business associate knew, or, by exercising reasonable diligence, would have known that the violation occurred: | 2021 | | |
| | | | Minimum | 2021 | 12,045 | 12,794 |
| | | | Maximum | 2021 | 60,226 | 63,973 |
| | | | Calendar Year Cap | 2021 | 1,806,757 | 1,919,173 |
| | 45 CFR 160.404 (b)(2)(iv)(A), (B) | OCR | Penalty for each February 18, 2009 or later violation of a HIPAA administrative simplification provision in which it is established that the violation was due to willful neglect and was not corrected during the 30-day period beginning on the first date the covered entity or business associate knew, or by exercising reasonable diligence, would have known that the violation occurred: | 2021 | | |
| | | | Minimum | 2021 | 60,226 | 63,973 |
| | | | Maximum | 2021 | 1,806,757 | 1,919,173 |
| | | | Calendar Year Cap | 2021 | 1,806,757 | 1,919,173 |
| 42 U.S.C. 300gg-18, 42 U.S.C. 1302 | 45 CFR 180.90 | CMS | Penalty for a hospital's non-compliance with making public standard charges for hospital items and services | 2021 | 304 | 300 per day |
| | | | Per Day (Maximum) | 2021 | 304 | 5500 per day |
| CARES Act, P.L. 116–136, section 3202(b)(2) | 45 CFR 182.70 | CMS | Penalty for a provider's non-compliance with price transparency requirements regarding diagnostic tests for COVID–19 | 2021 | | - |
| | | | Per Day (Maximum) | 2021 | | $300 per day |

| | | | | | | |
|---|---|---|---|---|---|---|
| 263a(h)(2)(B) & 1395w-2(b)(2)(A)(ii) | 42 CFR 493.1834(d)(2)(i). | CMS | Penalty for a clinical laboratory's failure to meet participation and certification requirements and poses immediate jeopardy: | 2021 | | |
| | | | Minimum | 2021 | 6,607 | 7,018 |
| | | | Maximum | 2021 | 21,663 | 23,011 |
| | 42 CFR 493.1834(d)(2)(ii). | CMS | Penalty for a clinical laboratory's failure to meet participation and certification requirements and the failure does not pose immediate jeopardy: | 2021 | | |
| | | | Minimum | 2021 | 109 | 116 |
| | | | Maximum | 2021 | 6,498 | 6,902 |
| | 42 CFR 493.1834(d)(2)(iii) | CMS | Penalty for a clinical laboratory's failure to meet SARS-CoV-2 test reporting requirements: | 2021 | | |
| | | | First day of noncompliance | 2021 | | |
| | | | Each additional day of noncompliance | 2021 | | |
| 300gg-15(f) | 45 CFR 147.200 (e) | CMS | Failure to provide the Summary of Benefits and Coverage | 2021 | 1,190 | 1,264 |
| 300gg-18 | 45 CFR 158.606 | CMS | Penalty for violations of regulations related to the medical loss ratio reporting and rebating | 2021 | 119 | 126 |
| | 45 CFR 180.90 | CMS | Price against hospital identified by CMS as noncompliant according to §182.50 with respect to price transparency requirements regarding diagnostic tests for COVID-19. | 2021 | | |
| 42 USC 300gg-118 note, 300gg-134 | | CMS | Penalties for failure to comply with No Surprises Act requirements on providers, facilities, providers of air ambulance services. | 2021 | 10,000 | 10,622 |
| 1320a-7h(b)(1) | 42 CFR 402.105 (d)(5), 42 CFR 403.912 (a) & (c) | CMS | Penalty for manufacturer or group purchasing organization failing to report information required under 42 U.S.C. 1320a-7h(a), relating to physician ownership or investment interests: | 2021 | | |
| | | | Minimum | 2021 | 1,190 | 1,264 |
| | | | Maximum | 2021 | 11,905 | 12,646 |
| | | | Calendar Year Cap | 2021 | 178,581 | 189,692 |
| 1320a-7h(b)(2) | 42 CFR 402.105 (h), 42 CFR 403.912 (b) & (c) | CMS | Penalty for manufacturer or group purchasing organization knowingly failing to report information required under 42 U.S.C. 1320a-7h(a), relating to physician ownership or investment interests: | 2021 | | |
| | | | Minimum | 2021 | 11,905 | 12,646 |
| | | | Maximum | 2021 | 119,055 | 126,463 |
| | | | Calendar Year Cap | 2021 | 1,190,546 | 1,264,622 |
| | | CMS | Penalty for an administrator of a facility that fails to comply with notice requirements for the closure of a facility | 2021 | 119,055 | 126,463 |
| 1320a-7j(h)(3)(A) | 42 CFR 488.446 (a)(1), (2), & (3) | CMS | Minimum penalty for the first offense of an administrator who fails to provide notice of facility closure | 2021 | 595 | 632 |

| | | | | | | |
|---|---|---|---|---|---|---|
| | | | Minimum penalty for the second offense of an administrator who fails to provide notice of facility closure. | 2021 | 1,787 | 1,898 |
| | | | Minimum penalty for the third and subsequent offenses of an administrator who fails to provide notice of facility closure. | 2021 | 3,571 | 3,793 |
| 1320a-8(a)(1) | | CMS | Penalty for an entity knowingly making a false statement or representation of material fact in the determination of the amount of benefits or payments related to old-age, survivors, and disability insurance benefits, special benefits for certain World War II veterans, or supplemental security income for the aged, blind, and disabled | 2021 | 8,708 | 9,250 |
| | | | Penalty for violation of 42 U.S.C. 1320a-8(a)(1) if the violator is a person who receives a fee or other income for services performed in connection with determination of the benefit amount or the person is a physician or other health care provider who submits evidence in connection with such a determination. | 2021 | 8,212 | 8,723 |
| 1320a-8(a)(3) | | CMS | Penalty for a representative payee (under 42 U.S.C. 405(j), 1007, or 1383(a)(2)) converting any part of a received payment from the benefit programs described in the previous civil monetary penalty to a use other than for the benefit of the beneficiary | 2021 | 6,820 | 7,244 |
| 1320b-25(c)(1)(A) | | CMS | Penalty for failure of covered individuals to report to the Secretary and 1 or more law enforcement officials any reasonable suspicion of a crime against a resident, or individual receiving care, from a long-term care facility | 2021 | 238,110 | 252,925 |
| 1320b-25(c)(2)(A) | | CMS | Penalty for failure of covered individuals to report to the Secretary and 1 or more law enforcement officials any reasonable suspicion of a crime against a resident, or individual receiving care, from a long-term care facility if such failure exacerbates the harm to the victim of the crime or results in the harm to another individual | 2021 | 357,163 | 379,386 |
| 1320b-25(d)(2) | | CMS | Penalty for a long-term care facility that retaliates against any employee because of lawful acts done by the employee, or files a complaint or report with the State professional disciplinary agency against an employee or nurse for lawful acts done by the employee or nurse | 2021 | 238,110 | 252,925 |
| 1395b-7(b)(2)(B) | 42 CFR 402.105 (g) | CMS | Penalty for any person who knowingly and willfully fails to furnish a beneficiary with an itemized statement of items or services within 30 days of the beneficiary's request | 2021 | 161 | 171 |
| 1395i-3(h)(2)(B)(ii)(I) | 42 CFR 488.408 (d)(1)(iii) | CMS | Penalty per day for a Skilled Nursing Facility that has a Category 2 violation of certification requirements: | 2021 | | |
| | | | Minimum | 2021 | 113 | 120 |
| | | | Maximum | 2021 | 6,774 | 7,195 |
| | 42 CFR 488.408 (d)(1)(iv) | CMS | Penalty per instance of Category 2 noncompliance by a Skilled Nursing Facility: | 2021 | | |
| | | | Minimum | 2021 | 2,259 | 2,400 |
| | | | Maximum | 2021 | 22,584 | 23,989 |
| | 42 CFR 488.408 (e)(1)(iii) | CMS | Penalty per day for a Skilled Nursing Facility that has a Category 3 violation of certification requirements: | 2021 | | |
| | | | Minimum | 2021 | 6,888 | 7,317 |
| | | | Maximum | 2021 | 22,584 | 23,989 |
| | 42 CFR 488.408 | CMS | Penalty per instance of Category 3 noncompliance by a Skilled Nursing Facility: | 2021 | | |

| | | | | | | |
|---|---|---|---|---|---|---|
| | (e)(1)(iv) | | | | | |
| | | | Minimum | 2021 | 2,259 | 2,400 |
| | | | Maximum | 2021 | 22,584 | 23,989 |
| | 42 CFR 488.408 (e)(2)(ii) | CMS | Penalty per day and per instance for a Skilled Nursing Facility that has Category 3 noncompliance with Immediate Jeopardy: | 2021 | | |
| | | | Per Day (Minimum) | 2021 | 6,888 | 7,317 |
| | | | Per Day (Maximum) | 2021 | 22,584 | 23,989 |
| | | | Per Instance (Minimum) | 2021 | 2,259 | 2,400 |
| | | | Per Instance (Maximum) | 2021 | 22,584 | 23,989 |
| | 42 CFR 488.438 (a)(1)(i) | CMS | Penalty per day of a Skilled Nursing Facility that fails to meet certification requirements. These amounts represent the upper range per day: | 2021 | | |
| | | | Minimum | 2021 | 6,888 | 7,317 |
| | | | Maximum | 2021 | 22,584 | 23,989 |
| | 42 CFR 488.438 (a)(1)(ii) | CMS | Penalty per day of a Skilled Nursing Facility that fails to meet certification requirements. These amounts represent the lower range per day: | 2021 | | |
| | | | Minimum | 2021 | 113 | 120 |
| | | | Maximum | 2021 | 6,774 | 7,195 |
| | 42 CFR 488.438 (a)(2) | CMS | Penalty per instance of a Skilled Nursing Facility that fails to meet certification requirements: | 2021 | | |
| | | | Minimum | 2021 | 2,259 | 2,400 |
| | | | Maximum | 2021 | 22,584 | 23,989 |
| | 42 CFR 488.447 | CMS | Penalty imposed for failure to comply with infection control weekly reporting requirements at 42 CFR 483.80(g)(1) and (2) | 2021 | | |
| | | | First occurrence | 2021 | 1,012 | 1,075 |
| | | | Incremental increases for each subsequent occurrences | 2021 | 506 | 537 |
| 1395l(h)(5)(D) | 42 CFR 402.105 (d)(2)(i) | CMS | Penalty for knowingly, willfully, and repeatedly billing for a clinical diagnostic laboratory test other than on an assignment-related basis. (Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a-7a(a)) | 2021 | 16,449 | 17,472 |
| 1395l(i)(6) | | CMS | Penalty for knowingly and willfully presenting or causing to be presented a bill or request for payment for an intraocular lens inserted during or after cataract surgery for which the Medicare payment rate includes the cost of acquiring the class of lens involved | 2021 | 4,333 | 4,603 |
| 1395l(q)(2)(B)(i) | 42 CFR 402.105 (a) | CMS | Penalty for knowingly and willfully failing to provide information about a referring physician when seeking payment on an unassigned basis | 2021 | 4,146 | 4,404 |
| 1395m(a)(11)(A) | 42 CFR 402.1(c) (4), 402.105 (d)(2)(ii) | CMS | Penalty for any durable medical equipment supplier that knowingly and willfully charges for a covered service that is furnished on a rental basis after the rental payments may no longer be made. (Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a-7a(a)) | 2021 | 16,449 | 17,472 |
| 1395m(a)(18)(B) | 42 CFR 402.1(c) (5), 402.105 | CMS | Penalty for any nonparticipating durable medical equipment supplier that knowingly and willfully fails to make a refund to Medicare beneficiaries for a covered service for which payment is precluded due to an unsolicited telephone contact from the supplier. | 2021 | 16,449 | 17,472 |

| | | | | | | |
|---|---|---|---|---|---|---|
| | (d)(2)(iii) | | (Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a-7a(a)) | | | |
| 1395m(b)(5)(C) | 42 CFR 402.1(c)(6), 402.105(d)(2)(iv) | CMS | Penalty for any nonparticipating physician or supplier that knowingly and willfully charges a Medicare beneficiary more than the limiting charge for radiologist services. (Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a-7a(a)) | 2021 | 16,449 | 17,472 |
| 1395m(h)(3) | 42 CFR 402.1(c)(8), 402.105(d)(2)(vi) | CMS | Penalty for any supplier of prosthetic devices, orthotics, and prosthetics that knowing and willfully charges for a covered prosthetic device, orthotic, or prosthetic that is furnished on a rental basis after the rental payment may no longer be made. (Penalties are assessed in the same manner as 42 U.S.C. 1395m(a)(11)(A), that is in the same manner as 1395u(j)(2)(B), which is assessed according to 1320a-7a(a)) | 2021 | 16,449 | 17,472 |
| 1395m(j)(2)(A)(iii) | | CMS | Penalty for any supplier of durable medical equipment including a supplier of prosthetic devices, prosthetics, orthotics, or supplies that knowingly and willfully distributes a certificate of medical necessity in violation of Section 1834(j)(2)(A)(i) of the Act or fails to provide the information required under Section 1834(j)(2)(A)(ii) of the Act | 2021 | 1,742 | 1,850 |
| 1395m(j)(4) | 42 CFR 402.1(c)(10), 402.105(d)(2)(vii) | CMS | Penalty for any supplier of durable medical equipment, including a supplier of prosthetic devices, prosthetics, orthotics, or supplies that knowingly and willfully fails to make refunds in a timely manner to Medicare beneficiaries for series billed other than on as assignment-related basis under certain conditions. (Penalties are assessed in the same manner as 42 U.S.C. 1395m(j)(4) and 1395u(j)(2)(B), which is assessed according to 1320a-7a(a)) | 2021 | 16,449 | 17,472 |
| 1395m-1(a) | 42 C.F.R. § 414.504(e) | CMS | Penalty for an applicable entity that has failed to report or made a misrepresentation or omission in reporting applicable information with respect to a clinical diagnostic laboratory test. | 2021 | 10,967 | 11,649 |

| | | | | | | |
|---|---|---|---|---|---|---|
| | 42 CFR 402.1(c)(31), 402.105(d)(3) | CMS | Penalty for any person or entity who knowingly and willfully bills or collects for any outpatient therapy services or comprehensive outpatient rehabilitation services on other than an assignment-related basis. (Penalties are assessed in the same manner as 42 U.S.C. 1395m(k)(6) and 1395u(j)(2)(B), which is assessed according to 1320a-7a(a)) | 2021 | 16,449 | 17,472 |
| 1395m(l)(6) | 42 CFR 402.1(c)(32), 402.105(d)(4) | CMS | Penalty for any supplier of ambulance services who knowingly and willfully fills or collects for any services on other than an assignment-related basis. (Penalties are assessed in the same manner as 42 U.S.C. 1395u(b)(18)(B), which is assessed according to 1320a-7a(a)) | 2021 | 16,449 | 17,472 |
| 1395u(b)(18)(B) | 42 CFR 402.1(c)(11), 402.105(d)(2)(viii) | CMS | Penalty for any practitioner specified in Section 1842(b)(18)(C) of the Act or other person that knowingly and willfully bills or collects for any services by the practitioners on other than an assignment-related basis. (Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a-7a(a)) | 2021 | 16,449 | 17,472 |
| 1395u(j)(2)(B) | 42 CFR 402.1(c) | CMS | Penalty for any physician who charges more than 125% for a non-participating referral. (Penalties are assessed in the same manner as 42 U.S.C. 1320a-7a(a)) | 2021 | 16,449 | 17,472 |
| 1395u(k) | 42 CFR 402.1(c)(12), 402.105(d)(2)(ix) 1834A(a)(9) and 42 C.F.R. § 414.504 € | CMS | Penalty for any physician who knowingly and willfully presents or causes to be presented a claim for bill for an assistant at a cataract surgery performed on or after March 1, 1987, for which payment may not be made because of section 1862(a)(15). (Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a-7a(a)) | 2021 | 16,449 | 17,472 |
| 1395u(l)(3) | 42 CFR 402.1(c)(13), 402.105(d)(2)(x) | CMS | Penalty for any nonparticipating physician who does not accept payment on an assignment-related basis and who knowingly and willfully fails to refund on a timely basis any amounts collected for services that are not reasonable or medically necessary or are of poor quality under 1842(l)(1)(A). (Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a-7a(a)) | 2021 | 16,449 | 17,472 |
| 1395u(m)(3) | 42 CFR 402.1(c)(14), 402.105(d)(2)(xi) | CMS | Penalty for any nonparticipating physician charging more than $500 who does not accept payment for an elective surgical procedure on an assignment related basis and who knowingly and willfully fails to disclose the required information regarding charges and coinsurance amounts and fails to refund on a timely basis any amount collected for the procedure in excess of the charges recognized and approved by the Medicare program. (Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a-7a(a)) | 2021 | 16,449 | 17,472 |
| 1395u(n)(3) | 42 CFR 402.1(c)(15), 402.105(d)(2)(xii) | CMS | Penalty for any physician who knowingly, willfully, and repeatedly bills one or more beneficiaries for purchased diagnostic tests any amount other than the payment amount specified by the Act. (Penalties are assessed in the same manner as 42 U.S.C. | 2021 | 16,449 | 17,472 |

| | | | | | | |
|---|---|---|---|---|---|---|
| | | | 1395u(j)(2)(B), which is assessed according to 1320a-7a(a)) | | | |
| 1395u(o)(3)(B) | 42 CFR 414.707 (b) | CMS | Penalty for any practitioner specified in Section 1842(b)(18)(C) of the Act or other person that knowingly and willfully bills or collects for any services pertaining to drugs or biologics by the practitioners on other than an assignment-related basis. (Penalties are assessed in the same manner as 42 U.S.C. 1395u(b)(18)(B) and 1395u(j)(2)(B), which is assessed according to 1320a-7a(a)) | 2021 | 16,449 | 17,472 |
| 1395u(p)(3)(A) | | CMS | Penalty for any physician or practitioner who knowingly and willfully fails promptly to provide the appropriate diagnosis codes upon CMS or Medicare administrative contractor request for payment or bill not submitted on an assignment-related basis | 2021 | 4,333 | 4,603 |
| 1395w-3a(d)(4)(A) | 42 CFR 414.806 | CMS | Penalty for a pharmaceutical manufacturer's misrepresentation of average sales price of a drug, or biologic | 2021 | 14,074 | 14,950 |
| 1395w-4(g)(1)(B) | 42 CFR 402.1(c)(17), 402.105(d)(2)(xiii) | CMS | Penalty for any nonparticipating physician, supplier, or other person that furnishes physician services not on an assignment-related basis who either knowingly and willfully bills or collects in excess of the statutorily-defined limiting charge or fails to make a timely refund or adjustment. (Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a-7a(a)) | 2021 | 16,449 | 17,472 |
| 1395w-4(g)(3)(B) | 42 CFR 402.1(c)(18), 402.105(d)(2)(xiv) | CMS | Penalty for any person that knowingly and willfully bills for statutorily defined State-plan approved physicians' services on any other basis than an assignment-related basis for a Medicare/Medicaid dual eligible beneficiary. (Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a-7a(a)) | 2021 | 16,449 | 17,472 |
| 1395w-27(g)(3)(A); 1857(g)(3); 1860D-12(b)(3)(E) | 42 CFR 422.760 (b); 42 CFR 423.760 (b) | CMS | Penalty for each termination determination the Secretary makes that is the result of actions by a Medicare Advantage organization or Part D sponsor that has adversely affected (or has the substantial likelihood of adversely affecting) an individual covered under the organization's contract | 2021 | 40,282 | 42,788 |

| | | | | | | |
|---|---|---|---|---|---|---|
| 1395w-27(g)(3)(B); 1857(g)(3); 1860D-12(b)(3)(E) | | CMS | Penalty for each week beginning after the initiation of civil money penalty procedures by the Secretary because a Medicare Advantage organization or Part D sponsor has failed to carry out a contract, or has carried out a contract inconsistently with regulations | 2021 | 16,113 | 17,116 |
| 1395w-27(g)(3)(D); 1857(g)(3): 1860D-12(b)(3)(E) | | CMS | Penalty for a Medicare Advantage organization's or Part D sponsor's early termination of its contract | 2021 | 149,637 | 158,947 |
| 1395y(b)(3)(C) | 42 CFR 411.103 (b) | CMS | Penalty for an employer or other entity to offer any financial or other incentive for an individual entitled to benefits not to enroll under a group health plan or large group health plan which would be a primary plan | 2021 | 9,753 | 10,360 |
| 1395y(b)(5)(C)(ii) | 42 CFR 402.1(c)(20), 42 CFR 402.105 (b)(2) | CMS | Penalty for any non-governmental employer that, before October 1, 1998, willfully or repeatedly failed to provide timely and accurate information requested relating to an employee's group health insurance coverage | 2021 | 1,588 | 1,687 |
| 1395y(b)(6)(B) | 42 CFR 402.1(c)(21), 402.105 (a) | CMS | Penalty for any entity that knowingly, willfully, and repeatedly fails to complete a claim form relating to the availability of other health benefits in accordance with statute or provides inaccurate information relating to such on the claim form | 2021 | 3,484 | 3,701 |
| 1395y(b)(7)(B)(i) | | CMS | Penalty for any entity serving as insurer, third party administrator, or fiduciary for a group health plan that fails to provide information that identifies situations where the group health plan is or was a primary plan to Medicare to the HHS Secretary | 2021 | 1,247 | 1,325 |
| 1395y(b)(8)(E) | | CMS | Penalty for any non-group health plan that fails to identify claimants who are Medicare beneficiaries and provide information to the HHS Secretary to coordinate benefits and pursue any applicable recovery claim | 2021 | 1,247 | 1,325 |
| 1395nn(g)(5) | 42 CFR 411.361 | CMS | Penalty for any person that fails to report information required by HHS under Section 1877(f) concerning ownership, investment, and compensation arrangements | 2021 | 20,731 | 22,021 |
| 1395pp(h) | 42 CFR 402.1(c)(23), 402.105 (d)(2)(xv) | CMS | Penalty for any durable medical equipment supplier, including a supplier of prosthetic devices, prosthetics, orthotics, or supplies, that knowingly and willfully fails to make refunds in a timely manner to Medicare beneficiaries under certain conditions. (42 U.S.C. 1395(m)(18) sanctions apply here in the same manner, which is under 1395u(j)(2) and 1320a-7a(a)) | 2021 | 16,449 | 17,472 |
| 1395ss(a)(2) | 402.102 (f)(1) | CMS | Penalty for any person that issues a Medicare supplemental policy that has not been approved by the State regulatory program or does not meet Federal standards after a statutorily defined effective date | 2021 | 56,459 | 59,972 |
| 1395ss(d)(3)(A)(vi) (II) | 42 CFR 402.1(c)(25), 402.105 (e),402.105(f)(2) | CMS | Penalty for someone other than issuer that sells or issues a Medicare supplemental policy to beneficiary without a disclosure statement | 2021 | 29,256 | 31,076 |

| | | | | | | |
|---|---|---|---|---|---|---|
| | | CMS | Penalty for an issuer that sells or issues a Medicare supplemental policy without disclosure statement. | 2021 | 48,762 | 51,796 |
| 1395ss(d)(3)(B)(iv) | | CMS | Penalty for someone other than issuer that sells or issues a Medicare supplemental policy without acknowledgement form | 2021 | 29,256 | 31,076 |
| | | CMS | Penalty for issuer that sells or issues a Medicare supplemental policy without an acknowledgement form. | 2021 | 48,762 | 51,796 |
| 1395ss(p)(8) | 42 CFR 402.1(c)(25), 402.105(e) | CMS | Penalty for someone other than issuer that sells or issues Medicare supplemental polices after a given date that fail to conform to the NAIC or Federal standards established by statute | 2021 | 29,256 | 31,076 |
| | 42 CFR 402.1(c)(25), 405402.105(f)(2) | CMS | Penalty for an issuer that sells or issues Medicare supplemental polices after a given date that fail to conform to the NAIC or Federal standards established by statute | 2021 | 48,762 | 51,796 |
| 1395ss(p)(9)(C) | 42 CFR 402.1(c)(26), 402.105(e), 402.105(f)(3),(4) | CMS | Penalty for someone other than issuer that sells a Medicare supplemental policy and fails to make available for sale the core group of basic benefits when selling other Medicare supplemental policies with additional benefits or fails to provide the individual, before selling the policy, an outline of coverage describing benefits | 2021 | 29,256 | 31,076 |
| | 402.105(f)(3),(4) | CMS | Penalty for an issuer that sells a Medicare supplemental policy and fails to make available for sale the core group of basic benefits when selling other Medicare supplemental policies with additional benefits or fails to provide the individual, before selling the policy, an outline of coverage describing benefits | 2021 | 48,762 | 51,796 |
| 1395ss(q)(5)(C) | 402.105(f)(5) | CMS | Penalty for any person that fails to suspend the policy of a policyholder made eligible for medical assistance or automatically reinstates the policy of a policyholder who has lost eligibility for medical assistance, under certain circumstances | 2021 | 48,762 | 51,796 |
| 1395ss(r)(6)(A) | 402.105(f)(6) | CMS | Penalty for any person that fails to provide refunds or credits as required by section 1882(r)(1)(B) | 2021 | 48,762 | 51,796 |
| 1395ss(s)(4) | 42 CFR 402.1(c)(29), 402.105(c) | CMS | Penalty for any issuer of a Medicare supplemental policy that does not waive listed time periods if they were already satisfied under a proceeding Medicare supplemental policy, or denies a policy, or conditions the issuances or effectiveness of the policy, or discriminates in the pricing of the policy base on health status or other specified criteria | 2021 | 20,701 | 21,989 |
| 1395ss(t)(2) | 42 CFR 402.1(c)(30), 402.105(f)(7) | CMS | Penalty for any issuer of a Medicare supplemental policy that fails to fulfill listed responsibilities | 2021 | 48,762 | 51,796 |
| 1395ss(v)(4)(A) | | CMS | Penalty someone other than issuer who sells, issues, or renews a medigap Rx policy to an individual who is a Part D enrollee | 2021 | 21,112 | 22,426 |

| | | | | | | |
|---|---|---|---|---|---|---|
| | | CMS | Penalty for an issuer who sells, issues, or renews a Medigap Rx policy who is a Part D enrollee. | 2021 | 35,188 | 37,377 |
| 1395bbb(c)(1) | 42 CFR 488.725 (c) | CMS | Penalty for any individual who notifies or causes to be notified a home health agency of the time or date on which a survey of such agency is to be conducted | 2021 | 4,518 | 4,799 |
| 1395bbb(f)(2)(A)(i) | 42 CFR 488.845 (b)(2)(iii) 42 CFR 488.845 (b)(3)-(6); and 42 CFR 488.845 (d)(1)(ii) | CMS | Maximum daily penalty amount for each day a home health agency is not in compliance with statutory requirements | 2021 | 21,663 | 23,011 |
| | 42 CFR 488.845 (b)(3) | CMS | Penalty per day for home health agency's noncompliance (Upper Range): | 2021 | | |
| | | | Minimum | 2021 | 18,413 | 19,559 |
| | | | Maximum | 2021 | 21,663 | 23,011 |
| | 42 CFR 488.845 (b)(3)(i) | CMS | Penalty for a home health agency's deficiency or deficiencies that cause immediate jeopardy and result in actual harm | 2021 | 21,663 | 23,011 |
| | 42 CFR 488.845 (b)(3)(ii) | CMS | Penalty for a home health agency's deficiency or deficiencies that cause immediate jeopardy and result in potential for harm | 2021 | 19,496 | 20,709 |
| | 42 CFR 488.845 (b)(3)(iii) | CMS | Penalty for an isolated incident of noncompliance in violation of established HHA policy | 2021 | 18,413 | 19,559 |
| | 42 CFR 488.845 (b)(4) | CMS | Penalty for a repeat and/or condition-level deficiency that does not constitute immediate jeopardy, but is directly related to poor quality patient care outcomes (Lower Range): | 2021 | | |
| | | | Minimum | 2021 | 3,251 | 3,453 |
| | | | Maximum | 2021 | 18,413 | 19,559 |
| | 42 CFR 488.845 (b)(5) | CMS | Penalty for a repeat and/or condition-level deficiency that does not constitute immediate jeopardy and that is related predominately to structure or process-oriented conditions (Lower Range): | 2021 | | |
| | | | Minimum | 2021 | 1,084 | 1,151 |
| | | | Maximum | 2021 | 2,166 | 2,301 |
| | 42 CFR 488.845 (b)(6) | CMS | Penalty imposed for instance of noncompliance that may be assessed for one or more singular events of condition-level noncompliance that are identified and where the noncompliance was corrected during the onsite survey: | 2021 | | |
| | | | Penalty for each day of noncompliance (Minimum). | 2021 | 2,166 | 2,301 |
| | | | Penalty for each day of noncompliance (Maximum). | 2021 | 21,663 | 23,011 |
| | 42 CFR 488.845 (d)(1)(ii) | CMS | Penalty for each day of noncompliance (Maximum) | 2021 | 21,663 | 23,011 |

| | | | | | | |
|---|---|---|---|---|---|---|
| 1395eee(e)(6)(B); 1396u-4(e)(6)(B) | 42 CFR 460.46 | CMS | Penalty for PACE organization that discriminates in enrollment or disenrollment, or engages in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment, on the basis of health status or the need for services: | 2021 | 40,282 | 42,788 |
| | | CMS | For each individual not enrolled as a result of the PACE organization's discrimination in enrollment or disenrollment or practice that would deny or discourage enrollment. | 2021 | | |
| | | | Minimum | 2021 | 15,177 | 16,121 |
| | | | Maximum | 2021 | 101,182 | 107,478 |
| | | CMS | Penalty for a PACE organization that charges excessive premiums. | 2021 | 40,282 | 42,788 |
| | | CMS | Penalty for a PACE organization misrepresenting or falsifying information to CMS or the State. | 2021 | 161,130 | 171,156 |
| | | CMS | Penalty for any other violation specified in 42 C.F.R. 460.40. | 2021 | 40,282 | 42,788 |
| 1396r(h)(3)(C)(ii)(I) | 42 CFR 488.408 (d)(1)(iii) | CMS | Penalty per day for a nursing facility's failure to meet a Category 2 Certification: | 2021 | | |
| | | | Minimum | 2021 | 113 | 120 |
| | | | Maximum | 2021 | 6,774 | 7,195 |
| | 42 CFR 488.408 (d)(1)(iv) | CMS | Penalty per instance for a nursing facility's failure to meet Category 2 certification: | 2021 | | |
| | | | Minimum | 2021 | 2,259 | 2,400 |
| | | | Maximum | 2021 | 22,584 | 23,989 |
| | 42 CFR 488.408 (e)(1)(iii) | CMS | Penalty per day for a nursing facility's failure to meet Category 3 certification: | 2021 | | |
| | | | Minimum | 2021 | 6,888 | 7,317 |
| | | | Maximum | 2021 | 22,584 | 23,989 |
| | 42 CFR 488.408 (e)(1)(iv) | CMS | Penalty per instance for a nursing facility's failure to meet Category 3 certification: | 2021 | | |
| | | | Minimum | 2021 | 2,259 | 2,400 |
| | | | Maximum | 2021 | 22,584 | 23,989 |
| | 42 CFR 488.408 (e)(2)(ii) | CMS | Penalty per instance for a nursing facility's failure to meet Category 3 certification, which results in immediate jeopardy: | 2021 | | |
| | | | Minimum | 2021 | 2,259 | 2,400 |
| | | | Maximum | 2021 | 22,584 | 23,989 |
| | 42 CFR 488.438 (a)(1)(i) | CMS | Penalty per day for nursing facility's failure to meet certification (Upper Range): | 2021 | | |

| | | | | | | |
|---|---|---|---|---|---|---|
| | | | Minimum | 2021 | 6,888 | 7,317 |
| | | | Maximum | 2021 | 22,584 | 23,989 |
| | 42 CFR 488.438 (a)(1)(ii) | CMS | Penalty per day for nursing facility's failure to meet certification (Lower Range): | 2021 | | |
| | | | Minimum | 2021 | 113 | 120 |
| | | | Maximum | 2021 | 6,774 | 7,195 |
| | 42 CFR 488.438 (a)(2) | CMS | Penalty per instance for nursing facility's failure to meet certification: | 2021 | | |
| | | | Minimum | 2021 | 2,259 | 2,400 |
| | | | Maximum | 2021 | 22,584 | 23,989 |
| | 42 CFR 488.447 | CMS | Penalty imposed for failure to comply with infection control weekly reporting requirements at 42 CFR 483.80(g)(1) and (2) | 2021 | | |
| | | | First occurrence (Minimum) | 2021 | 1,012 | 1,075 |
| | | | Incremental increases for each subsequent occurrence | 2021 | 506 | 537 |
| 1396r(f)(2)(B)(iii)(I)(c) | 42 CFR 483.151 (b)(2)(iv) and (b)(3)(iii) | CMS | Grounds to prohibit approval of Nurse Aide Training Program—if assessed a penalty in 1819(h)(2)(B)(i) or 1919(h)(2)(A)(ii) of “not less than $5,000” [Not CMP authority, but a specific CMP amount (CMP at this level) that is the triggering condition for disapproval] | 2021 | 11,292 | 11,995 |
| 1396r(h)(3)(C)(ii)(I) | 42 CFR 483.151 (c)(2) | CMS | Grounds to waive disapproval of nurse aide training program—reference to disapproval based on imposition of CMP “not less than $5,000” [Not CMP authority but CMP imposition at this level determines eligibility to seek waiver of disapproval of nurse aide training program] | 2021 | 11,292 | 11,995 |
| 1396t(j)(2)(C) | | CMS | Penalty for each day of noncompliance for a home or community care provider that no longer meets the minimum requirements for home and community care: | 2021 | | |
| | | | Minimum | 2021 | 2 | 2 |
| | | | Maximum | 2021 | 19,505 | 20,719 |
| 1396u-2(e)(2)(A)(i) | 42 CFR 438.704 | CMS | Penalty for a Medicaid managed care organization that fails substantially to provide medically necessary items and services | 2021 | 40,282 | 42,788 |
| | | CMS | Penalty for Medicaid managed care organization that imposes premiums or charges on enrollees in excess of the premiums or charges permitted. | 2021 | 40,282 | 42,788 |

| | | | | | | |
|---|---|---|---|---|---|---|
| | | CMS | Penalty for a Medicaid managed care organization that misrepresents or falsifies information to another individual or entity. | 2021 | 40,282 | 42,788 |
| | | CMS | Penalty for a Medicaid managed care organization that fails to comply with the applicable statutory requirements for such organizations. | 2021 | 40,282 | 42,788 |
| 1396u-2(e)(2)(A)(ii) | 42 CFR 438.704 | CMS | Penalty for a Medicaid managed care organization that misrepresents or falsifies information to the HHS Secretary | 2021 | 161,130 | 171,156 |
| | | CMS | Penalty for Medicaid managed care organization that acts to discriminate among enrollees on the basis of their health status. | 2021 | 161,130 | 171,156 |
| 1396u-2(e)(2)(A)(iv) | 42 CFR 438.704 | CMS | Penalty for each individual that does not enroll as a result of a Medicaid managed care organization that acts to discriminate among enrollees on the basis of their health status | 2021 | 24,169 | 25,673 |
| 1396u(h)(2) | 42 CFR Part 441, Subpart I | CMS | Penalty for a provider not meeting one of the requirements relating to the protection of the health, safety, and welfare of individuals receiving community supported living arrangements services | 2021 | 22,584 | 23,989 |
| 1396w-2(c)(1) | | CMS | Penalty for disclosing information related to eligibility determinations for medical assistance programs | 2021 | 12,045 | 12,794 |
| 18041(c)(2) | 45 CFR 156.805 (c) | CMS | Failure to comply with ACA requirements related to risk adjustment, reinsurance, risk corridors, Exchanges (including QHP standards) and other ACA Subtitle D standards; Penalty for violations of rules or standards of behavior associated with issuer compliance with risk adjustment, reinsurance, risk corridors, Exchanges (including QHP standards) and other ACA Subtitle D standards. | 2021 | 164 | 174 |
| 18081(h)(1)(A)(i)(II) | 45 CFR 155.285 | CMS | Penalty for providing false information on Exchange application | 2021 | 29,764 | 31,616 |
| 18081(h)(1)(B) | 45 CFR 155.285 | CMS | Penalty for knowingly or willfully providing false information on Exchange application | 2021 | 297,636 | 316,155 |
| 18081(h)(2) | 45 CFR 155.260 | CMS | Penalty for knowingly or willfully disclosing protected information from Exchange | 2021 | | |
| | | CMS | Minimum | 2021 | 29,764 | 31,616 |
| | | CMS | Maximum | 2021 | 304 | 323 |
| 18041(c)(2) | 45 CFR 155.206 (i) | CMS | Penalties for violation of applicable Exchange standards by consumer assistance entities in Federally-facilitated Exchanges | 2021 | 36,500 | 38,771 |
| | | | Maximum (Per Day) | 2021 | 101 | 107 |
| 31 U.S.C. | | | | 2021 | 304 | 323 |

| | | | | | | |
|---|---|---|---|---|---|---|
| 1352 | 45 CFR 93.400(e) | HHS | Penalty for the first time an individual makes an expenditure prohibited by regulations regarding lobbying disclosure, absent aggravating circumstances | 2021 | 20,731 | 22,021 |
| | | | Penalty for second and subsequent offenses by individuals who make an expenditure prohibited by regulations regarding lobbying disclosure: | 2021 | | |
| | | | Minimum | 2021 | 20,731 | 22,021 |
| | | | Maximum | 2021 | 207,314 | 220,213 |
| | | HHS | Penalty for the first time an individual fails to file or amend a lobbying disclosure form, absent aggravating circumstances | 2021 | 20,731 | 22,021 |
| | | | Penalty for second and subsequent offenses by individuals who fail to file or amend a lobbying disclosure form, absent aggravating circumstances: | 2021 | | |
| | | | Minimum | 2021 | 20,731 | 22,021 |
| | | | Maximum | 2021 | 207,314 | 220,213 |
| | 45 CFR Part 93, Appendix A | HHS | Penalty for failure to provide certification regarding lobbying in the award documents for all sub-awards of all tiers: | 2021 | | |
| | | | Minimum | 2021 | 20,731 | 22,021 |
| | | | Maximum | 2021 | 207,314 | 220,213 |
| | | HHS | Penalty for failure to provide statement regarding lobbying for loan guarantee and loan insurance transactions: | 2021 | | |
| | | | Minimum | 2021 | 20,731 | 22,021 |
| | | | Maximum | 2021 | 207,314 | 220,213 |
| 3801-3812 | 45 CFR 79.3(a)(1)(iv) | HHS | Penalty against any individual who—with knowledge or reason to know—makes, presents or submits a false, fictitious or fraudulent claim to the Department | 2021 | 10,833 | 11,507 |
| | 45 CFR 79.3(b)(1)(ii) | HHS | Penalty against any individual who—with knowledge or reason to know—makes, presents or submits a false, fictitious or fraudulent claim to the Department | 2021 | 10,833 | 11,507 |

[1] Some HHS components have not promulgated regulations regarding their civil monetary penalty-specific statutory authorities.

[2] The description is not intended to be a comprehensive explanation of the underlying violation; the statute and corresponding regulation, if applicable, should be consulted.

[3] Statutory or Inflation Act Adjustment.

[4] OMB Memorandum M-16-06, Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, published February 24, 2016, guided agencies on initial "catch-up" adjustment requirements, and M-17-11, Implementation of the 2017 annual adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, published December 16, 2016; M-18-03, Implementation of Penalty Inflation Adjustments for 2018 pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, published December 15, 2017; M-19-04, Implementation of Penalty Inflation Adjustments for 2019 pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, published December 14, 2018; M-20-05, Implementation of Penalty Inflation Adjustments for 2020 pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, published December 16, 2019; M-21-10, Implementation of Penalty Inflation Adjustments for 2021 pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, published December 23, 2020; M-22-07, Implementation of Penalty Inflation Adjustments for 2022, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, published December 15, 2021, guided agencies on annual adjustment requirements.

[5] OMB Circular A-136, Financial Reporting Requirements, Section II.4.9, directs that agencies must make annual inflation adjustments to civil monetary penalties and report on the adjustments in the Agency Financial Report (AFR) or Performance and Accountability Report (PAR).

[6] Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, § 701(b)(1)(A) (codified as amended at 28 U.S.C. § 2461 note).

[7] Annual inflation adjustments are based on the percent change between each published October's CPI-U. In this case, October 2021 CPI-U (276.589) / October 2020 CPI-U (260.388) = 1.06222.

**Xavier Becerra,**

*Secretary, Department of Health and Human Services.*

[FR Doc. 2022–05648 Filed 3–16–22; 8:45 am]

**BILLING CODE 4150–24–C**

## FEDERAL MARITIME COMMISSION

## 46 CFR Part 525

**[Docket No. 21–06]**

**RIN 3072–AC87**

## Marine Terminal Operator Schedules

**AGENCY:** Federal Maritime Commission.

**ACTION:** Final rule.

**SUMMARY:** This final rule adopts without substantive change the proposed rule. The Federal Maritime Commission (FMC or Commission) seeks to update outdated references to Commission offices, modernize references to technology, and clarify existing requirements associated with the filing of marine terminal operator (MTO) schedules.

**DATES:** This final rule is effective: April 18, 2022.

**FOR FURTHER INFORMATION CONTACT:** For technical questions, contact Kristen Monaco, Director, Bureau of Trade Analysis, Federal Maritime Commission, 800 North Capitol Street NW, Washington, DC 20573–0001. *Phone:* (202) 523–5796. *Email: tradeanalysis@fmc.gov.* For legal questions, contact Steven Andersen, General Counsel, Federal Maritime Commission, 800 North Capitol Street NW, Washington, DC 20573–0001. *Phone:* (202) 523–5738. *Email: GeneralCounsel@fmc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

Pursuant to 46 U.S.C. 40501(f), MTOs may make public a schedule of rates, regulations, and practice. Additionally, Congress directs the Commission to prescribe the form and manner in which MTO schedules shall be published. 46 U.S.C. 40501(g)(3). The Commission's regulations regarding MTO schedules are outlined in 46 CFR part 525. Consistent with the language in 46 U.S.C. 40501(f), part 525 states that an MTO, at its discretion, may make available to the public a schedule of its rates, regulations, and practices. Part 525 also discusses the requirements when an MTO decides to make terminal schedules available to the public.

### II. Summary of Proposed Changes

In Fiscal Year 2021, the Commission reviewed its regulations regarding MTO schedules found in 46 CFR part 525. On September 22, 2021, the Commission issued a notice of proposed rulemaking that proposed several changes to part 525 that are neither substantive nor policy related. 86 FR 52627. The proposed revisions updated references to a Commission bureau and deleted references to outdated technology. Additionally, the FMC clarified definitions or revised them to be consistent with other parts of the Commission's regulations. The Commission requested comments on these proposed amendments.

### III. Summary of Comments

One shipper filed comments in this docket. However, these comments, which relate to per diem charges, detention and demurrage fees, and dual transaction requirements at specific terminals, do not address the proposed revisions to part 525. The commenter neither expressed support nor opposition to the proposed part 525 revisions. Because the issues raised by the commenter are outside the scope of the proposed amendments and the rulemaking, the FMC is not making changes to the final rule based on these comments. The FMC now adopts all of the proposed amendments without substantive change in this final rule.

### IV. Final Rule

The proposed rule contained revisions that were not policy related and the Commission's intent was limited to modernizing outdated requirements, clarifying existing requirements and definitions, and making the existing requirements and definitions consistent with other parts of the Commission's regulations. For the reasons stated in the NPRM and described below, the Commission is adopting the revisions in the proposed rule with non-substantive changes.

*1. Section 525.1.*

The proposed rule revises references to the Shipping Act of 1984 (the Act) to remove specific cites to the Ocean Shipping Reform Act of 1998 and the Coast Guard Authorization Act of 1998 because several other laws also amend the Shipping Act of 1984. *See* An Act to Complete the Codification of Title 46, United States Code, ''Shipping,'' as Positive Law, Public Law 109–304, 120 Stat. 1485 (2006); Frank LoBiondo Coast Guard Authorization Act of 2018, Public Law 115–282, 132 Stat. 4192 (2018). These revisions affect section 525.1(a) and (c)(1). The proposed rule added clarifying language to the definition of ''bulk cargo'' to explain that bulk ''containerized cargo tendered by the shipper'' is subject to mark and count and is, therefore, subject to the requirements of this part. The proposed rule amended the definition of ''forest products'' to correct a typographical error.

In addition, the proposed rule revised the definition of ''marine terminal operator'' to mean ''a person engaged in the United States in the business of providing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier[.]'' This language is consistent with the statutory definition of an MTO. See 46 U.S.C. 40102(15). The proposed rule also added language to clarify that shippers or consignees who exclusively provide their own marine terminal facilities in connection with providing marine terminal services are not MTOs.

The proposed rule amended the definition of ''terminal facilities'' by adding ''docks, berths, piers, [and] aprons'' to the list of structures comprising a terminal unit. In addition, the proposed language replaces the term ''water carriers'' with ''ocean common carriers.'' As a result of these revisions, the definition of ''terminal facilities'' is consistent with the definition of ''marine terminal facilities'' in 46 CFR part 535.

The proposed rule also introduced a definition for the ''United States'' that is consistent with the definition found in 46 U.S.C. 114. To accommodate the new paragraph, the proposed rule renumbered paragraphs 525.1(c)(21) to (23) to be paragraphs 525.1(c)(22) to (24). Additionally, the proposed rule revised the definition of an MTO to delete ''or a commonwealth, territory, or possession thereof,'' because those entities are now included in the definition of ''United States.''

The comments received do not address these proposed revisions.

The final rule adopts the revisions described above without change.

*A. Section 525.2*

The proposed rule did not propose revisions to section 525.2. The comments do not address section 525.2. Thus, the final rule does not revise section 525.2.

*B. Section 525.3*

With respect to section 525.3, Availability of marine terminal operator schedules, the proposed rule removed outdated and unnecessary language relating to accessing electronically published MTO schedules. The proposed rule deleted the terms ''personal computer (PC),'' ''dial-up connection,'' ''the internet,'' ''Web browser,'' ''Telnet session,'' ''modem,''

and any further definition or technical requirements relating to these terms. The proposed language also amended the term ''URL'' to mean ''uniform resource locator.'' The proposed rule deleted current paragraphs 525.3(c) and (e) regarding dial-up connection requirements and Commission access as the technologies referenced in those paragraphs are obsolete.

With the deletion of specific paragraphs as discussed above, the proposed rule renumbered the remaining paragraphs. With respect to current paragraph 525.3(f), the proposed rule replaces references to the ''Bureau of Tariffs, Certification and Licensing,'' which no longer exists, with the ''Bureau of Trade Analysis'' (BTA). In addition, the proposed rule also replaced ''name and telephone number of firm's representative'' with simply ''contact information for its representative.'' The proposed rule also clarifies that BTA has authority to accept submitted Form FMC–1 filings and revisions, and that the filings are pending until accepted.

With respect to current paragraph 525.3(g), the proposed rule clarified that an MTO may make available to the public its schedules and that any such schedule made available to the public is enforceable by an appropriate court as an implied contract without proof of actual knowledge of its provisions. This language is consistent with 46 U.S.C. 40501(f).

*D. Section 525.4*

The proposed rule did not propose revisions to section 525.4. The comments do not address section 525.4. Thus, the final rule does not revise section 525.4.

## V. Regulatory Notices and Analysis

*Congressional Review Act*

The rule is not a ''major rule'' as defined by the Congressional Review Act, codified at 5 U.S.C. 801 *et seq.* The rule will not result in: (1) An annual effect on the economy of $100,000,000 or more; (2) a major increase in costs or prices; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies. 5 U.S.C. 804(2).

*Regulatory Flexibility Act*

The Regulatory Flexibility Act, 5 U.S.C. 601–612, provides that whenever an agency promulgates a final rule after being required to publish a notice of proposed rulemaking under the Administrative Procedure Act (APA), 5 U.S.C. 553, the agency must prepare and make available for public comment a final regulatory flexibility analysis describing the impact of the rule on small entities, unless the head of the agency certifies that the rulemaking will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 604, 605. Accordingly, the Chairman of the Federal Maritime Commission certifies that the final rule will not have a significant impact on a substantial number of small entities. The regulated business entities that would be impacted by the rule are marine terminal operators. The Commission has determined that marine terminal operators generally do not qualify as small entities under the guidelines of the Small Business Administration (SBA). *See FMC Policy and Procedures Regarding Proper Consideration of Small Entities in Rulemakings* (Feb. 7, 2003), available at *https://www.fmc.gov/wp-content/uploads/2018/10/SBREFA_Guidelines_2003.pdf.*

*National Environmental Policy Act*

Upon completion of an environmental assessment, it was determined that the proposed rule will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.,* and that preparation of an environmental impact statement is not required. This FONSI will become final within 10 days of publication of this notice in the **Federal Register** unless a petition for review is filed by any of the methods described in the **ADDRESSES** section of the document. The FONSI and environmental assessment are available for inspection at the Commission's Electronic Reading Room at: *https://www2.fmc.gov/readingroom/proceeding/21-06/.*

*Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA) requires an agency to seek and receive approval from the Office of Management and Budget (OMB) before collecting information from the public. 44 U.S.C. 3507. The agency must submit collections of information in proposed rules to OMB in conjunction with the publication of the notice of proposed rulemaking. 5 CFR 1320.11.

The information collection requirements in Part 525, Marine Terminal Operator Schedules, are currently authorized under OMB Control Number 3072–0061. In compliance with the PRA, the Commission submitted the proposed revised information collections to the Office of Management and Budget. Notice of the revised information collections was published in the **Federal Register** and public comments were invited. *See* 86 FR 52627 (September 22, 2021). Comments received regarding the proposed changes are discussed above. No comments specifically addressed the information collected pursuant to part 525 and no changes were made in the final rule due to public comments.

The final rule updates a reference to a Commission bureau and deletes references to outdated technology. In addition, the final rule clarifies definitions as necessary or revises them to be consistent with other parts of the Commission's regulations. The final rule does not substantively impact the information collected pursuant to part 525.

*Executive Order 12988 (Civil Justice Reform)*

This rule meets the applicable standards in E.O. 12988 titled, ''Civil Justice Reform,'' to minimize litigation, eliminate ambiguity, and reduce burden. Section 3(b) of E.O. 12988 requires agencies to make every reasonable effort to ensure that each new regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly 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. This document is consistent with that requirement.

*Regulation Identifier Number*

The Commission assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda). The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda, at *http://www.reginfo.gov/public/do/eAgendaMain.*

**List of Subjects in 46 CFR Part 525**

Marine Terminal Operator Schedules.

For the reasons set forth above, the Federal Maritime Commission is amending 46 CFR part 525 as follows:

## PART 525—MARINE TERMINAL OPERATOR SCHEDULES

■ 1. The authority citation for part 525 continues to read as follows:

**Authority:** 46 U.S.C. 40102, 40501, 41101–41106.

■ 2. Amend § 525.1 by:
■ a. Revising paragraphs (a) and (c)(1), (2), (7), (8), (13), (18), and (19);
■ b. Redesignating paragraphs (c)(21) through (23) as paragraphs (c)(22) through (24); and
■ c. Adding a new paragraph (c)(21).

The revisions and addition read as follows:

### § 525.1 Purpose and scope.

(a) *Purpose.* This part implements the Shipping Act of 1984, as amended (46 U.S.C. 40101–41309). The requirements of this part are necessary to enable the Commission to meet its responsibilities with regard to identifying and preventing unreasonable preference or prejudice and unjust discrimination pursuant to section 10 of the Act (46 U.S.C. 41101–41106).

* * * * *

(c) * * *

(1) *Act* means the Shipping Act of 1984, as amended.

(2) *Bulk cargo* means cargo that is loaded and carried in bulk without mark or count, in a loose unpackaged form, having homogenous characteristics. Bulk containerized cargo tendered by the shipper is subject to mark and count and is, therefore, subject to the requirements of this part.

* * * * *

(7) *Expiration date* means the last day after which the entire schedule or a single element of the schedule, is no longer in effect.

(8) *Forest products* means forest products including, but not limited to, lumber in bundles, rough timber, ties, poles, piling, laminated beams, bundled siding, bundled plywood, bundled core stock or veneers, bundled particle or fiber boards, bundled hardwood, wood pulp in rolls, wood pulp in unitized bales, paper and paper board in rolls or in pallet or skid-sized sheets, liquid or granular by-products derived from pulping and papermaking, and engineered wood products.

* * * * *

(13) *Marine terminal operator* means a person engaged in the United States in the business of providing wharfage, dock, warehouse or other terminal facilities in connection with a common carrier, or in connection with a common carrier and a water carrier subject to Subchapter II of Chapter 135 of Title 49, United States Code. A marine terminal operator includes, but is not limited to, terminals owned or operated by states and their political subdivisions; railroads who perform port terminal services not covered by their line haul rates; common carriers who perform port terminal services; and warehousemen who operate port terminal facilities. For the purposes of this part, marine terminal operator includes conferences of marine terminal operators. This term does not include shippers or consignees who exclusively provide their own marine terminal facilities in connection with tendering or receiving proprietary cargo from a common carrier or water carrier.

* * * * *

(18) *Terminal facilities* means one or more structures comprising a terminal unit, which include, but are not limited to docks, berths, piers, aprons, wharves, warehouses, covered and/or open storage spaces, cold storage plants, cranes, grain elevators and/or bulk cargo loading and/or unloading structures, landings, and receiving stations, used for the transmission, care and convenience of cargo and/or passengers in the interchange of same between land and ocean common carriers or between two ocean common carriers.

* * * * *

(21) *United States* means the States of the United States, the District of Columbia, Guam, Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands, and any other territory or possession of the United States.

* * * * *

■ 3. Amend § 525.3 by revising paragraphs (b) through (e) to read as follows:

### § 525.3 Availability of marine terminal operator schedules.

* * * * *

(b) *Access to electronically published schedules.* Marine terminal operators shall provide access to their terminal schedules via the internet.

(c) *Internet connection.* (1) The internet connection requires that systems provide a uniform resource locator (URL) internet address (*e.g., http://www.tariffsrus.com* or *http://1.2.3.4*).

(2) Marine terminal operators shall ensure that their internet service providers provide static internet addresses.

(d) *Notification.* Each marine terminal operator shall notify the Commission's Bureau of Trade Analysis (BTA), prior to the commencement of marine terminal operations, of its organization name, home office address, contact information for its representative, the location of its terminal schedule(s), and the publisher, if any, used to maintain its terminal schedule, by electronically submitting Form FMC–1 via the Commission's website at *www.fmc.gov.* Any changes to the above information shall be immediately transmitted to BTA within 30 calendar days. BTA has the authority to accept submitted Form FMC–1 filings and revisions. Form FMC–1 filings are pending until accepted. The Commission will publish, on its website, the location of any terminal schedule made available to the public.

(e) *Form and manner.* A marine terminal operator may make available to the public a schedule of rates, regulations, and practices, including limitations of liability for cargo loss or damage, pertaining to receiving, delivering, handling, or storing property at its marine terminal. Any such schedule made available to the public is enforceable by an appropriate court as an implied contract without proof of actual knowledge of its provisions. Each terminal schedule made available by a marine terminal operator shall contain an individual identification number, effective date, expiration date, if any, and the terminal schedule in full text and/or data format showing the relevant rates, charges, and regulations relating to or connected with the receiving, handling, storing, and/or delivering of property at its terminal facilities.

* * * * *

By the Commission.

**William Cody,**

*Secretary.*

[FR Doc. 2022–05512 Filed 3–16–22; 8:45 am]

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## FEDERAL MARITIME COMMISSION

## 46 CFR Part 540

**[Docket No. 20–15]**

**RIN 3072–AC82**

## Passenger Vessel Financial Responsibility

**AGENCY:** Federal Maritime Commission

**ACTION:** Final rule.

**SUMMARY:** The Federal Maritime Commission (Commission) is issuing this final rule to adopt regulatory changes to its passenger vessel operator financial responsibility requirements. The Commission is defining when nonperformance of transportation has occurred and establishing uniform

procedures regarding how and when passengers may make claims for refunds under a passenger vessel operator's financial responsibility instrument when nonperformance occurs. This rulemaking resulted from recommendations in an Interim Report issued by the Fact Finding Officer in Commission Fact Finding Investigation No. 30: COVID–19 Impact on Cruise Industry. In the August 25, 2021, Notice of proposed rulemaking, the Commission proposed to modify regulations to revise the definition of Unearned Passenger Revenue, adopt a definition of nonperformance of transportation, and detail the process for obtaining refunds under the PVOs' financial responsibility instruments filed with the Commission. Based on the comments received on the proposed rule, this final rule also clarifies that passengers must wait until the PVO refund period has ended as outlined in the PVO's claims procedure before making a claim against the financial instrument, or the claim has been denied by the PVO. Also, this final rule confirms that claims may be resolved between the passenger and the PVO as an alternative form of compensation. Finally, it creates a small business accommodation by delaying implementation of the new unearned passenger revenue definition by two years for small entities.

**DATES:**

*Effective date:* This rule is effective April 18, 2022.

*Compliance date:* For businesses that meet the criteria in the revised 46 CFR 540.2(i), the compliance date is March 17, 2024.

**ADDRESSES:** *Docket:* To view background documents or comments received, go to the Commission's Electronic Reading Room at: *https://www2.fmc.gov/readingroom/proceeding/20-15/.*

**FOR FURTHER INFORMATION CONTACT:** William Cody, Secretary, Phone: 202–523–5725, Email: *secretary@fmc.gov.*

**SUPPLEMENTARY INFORMATION:**

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## I. Introduction

The Federal Maritime Commission has broad authority pursuant to 46 U.S.C. Ch. 44101 *et seq.* to establish rules pertaining to PVOs' financial responsibility instruments filed with the Commission. Fact Finding 30 was initiated on April 30, 2020, to investigate the impact of COVID–19 and identify commercial solutions to COVID–19 related issues that interfered with the operation of the cruise industry. Fact Finding 30: Covid–19 Impact on Cruise Industry, *Interim Report: Refund Policy* (July 27, 2020). This rulemaking was based on recommendations in an Interim Report issued by the Fact Finding Officer. The Commission has carefully considered all the comments it has received in an Advance Notice of Proposed Rulemaking (ANPRM), 85 FR 65020 (October 29, 2020) and a Notice of Proposed Rulemaking (NPRM), 86 FR 47441 (August 25, 2021), prior to issuing this Final Rule (FR). The NPRM contains a detailed background of this rule. See 86 FR at 47442.

## II. Regulatory History: ANPRM and NPRM Summary

On October 29, 2020, the Commission issued an Advance Notice of Proposed Rulemaking (ANPRM) to obtain comments on potential regulatory changes recommended in the Fact Finding 30 Interim Report on PVO refund policies. The proposed changes were intended to provide a clear and consistent policy toward passenger vessel ticket refunds in the case of nonperformance by the vessel operator. Specifically, the Commission recommended modifying regulations in 46 CFR part 540 to: (1) Adopt a definition of nonperformance of transportation, and (2) detail the process for obtaining refunds under the PVOs' financial responsibility instruments filed with the Commission. Subsequent to the ANPRM, the Commission received 4 sets of comments; these were from Cruise Lines International Association (CLIA); Passenger Vessel Association (PVA); The Surety & Fidelity Association of America (SFAA); and Kacie Didier. The Commission took these comments into consideration in developing recommendations which were included in the Notice of Proposed Rulemaking (NPRM).

The Commission considered the comments it received in response to the ANPRM and adjusted the proposed regulations published on August 25, 2021. In response to the NPRM, the Commission received 82 comments from interested parties. Of the comments received, six recommended changes to the proposed regulatory text and are discussed below. The 76 remaining comments detailed individual disputes between passengers and passenger vessel owners or operators but do not directly request changes to the proposed regulatory text. The Commission appreciates the examples provided and encourages passengers that have commented to utilize the tools the Commission provides in this final rule. The six comments recommending changes to the proposed rule text were filed by Alaskan Dream Cruises (ADC), CLIA, PVA, Roanoke, SFAA, and Fredric Lazarus. These comments are addressed in the discussion below.

## III. Discussion of Changes and Public Comments

The Commission's current regulations provide that ''[n]o person in the United States may arrange, offer, advertise or provide passage on a vessel unless a Certificate (Performance) has been issued to or covers such person.'' 46 CFR 540.3. Such persons must apply for a Certificate pursuant to Section 540.4, and, per Section 540.5, provide financial responsibility ''in an amount determined by the Commission to be no less than 110 percent of the unearned passenger revenue of the [PVO] applicant'' for the two immediately preceding fiscal years that reflect the greatest amount of unearned passenger revenue. The amount of required financial responsibility, however, is currently capped at $32 million. 46 CFR 540.9(j). This Final Rule will revise the current regulations to include the following: (1) Implementation of the process for obtaining refunds from PVO financial responsibility instruments for nonperformance of transportation, (2) addition of the definition of nonperformance and reporting requirement for instances of nonperformance of transportation, (3) revision of the definition of unearned passenger revenue, (4) publishing information on how to obtain refunds, (5) acknowledgement of mutually-agreed settlements, and (6) accommodation for PVOs that fall into the small business category.

The sample surety bond, guaranty, and escrow agreement that are set forth

in the Commission's regulations are also amended. They are included in the Appendix to this final rule.

*A. Substantive Changes to the Proposed Rule*

1. Process for Obtaining Refunds From PVO Financial Instruments for Nonperformance of Transportation

The Commission's regulations do not currently prescribe how long passengers have after nonperformance to seek a refund from a PVO's financial responsibility instrument. The Fact Finding 30 Interim Report recommended that the Commission specify that a PVO may set a reasonable deadline for passenger refund requests, but the deadline may not be less than six months after the scheduled voyage. Fact Finding 30 Interim Report at 12. The Commission proposed: (1) The passenger makes a request for a refund from the Principal in accordance with the ticket contract. If the ticket contract refund procedure provides less than 180 days to submit a claim, the financial responsibility instrument will be available after written notification to the Principal and (2) If the passenger is unable to resolve the claim within 180 days after nonperformance, as defined in 46 CFR 540.2, the passenger may submit a claim against the financial responsibility instrument per the instructions on the Commission website. The claim may include a copy of the boarding pass, proof and amount of payment, cancellation notice, and dated proof of the properly filed claim against the Principal. All documentation submitted must clearly display the vessel and voyage with the scheduled and actual date of sailing. At the discretion of the financial instrument provider, a judgment may be required prior to resolving the claim; and (3) valid claims must be paid within 90 days of submission of the claim to the financial instrument provider.

In its submitted comments, CLIA requested that the Commission change the proposed text of 46 CFR 540.9(f)(1) and (2) to read: (1) The passenger must make a written request for a refund from the PVO in accordance with the respective PVO's claims procedures; (2) In the event the passenger is unable to resolve the claim within 180 days, or such shorter refund notice period for which the PVOs claims procedure provides, after nonperformance of transportation occurs or if the claim is denied by the PVO, the passenger may submit a claim against the financial instrument as per instructions on the Commission website. The Commission has considered the proposed changes submitted by CLIA and has adopted the proposed changes with some modification. These changes will clarify that passengers must wait until (1) the PVO refund period has ended as outlined in the PVOs claims procedure before making a claim against the financial instrument, or (2) the claim has been denied by the PVO. With this minor change, the Commission adopts CLIA's recommendation.

CLIA also proposed to revise numbered paragraphs (1) and (2) of the Commission's proposed forms FMC–132(A), FMC–133(A) and ''Appendix A of Escrow Agreement,'' changing the language to similarly match what they proposed for 46 CFR 540.9(f)(1) and (2). The Commission concurs and makes the corresponding changes to the forms.

2. Definition of Nonperformance

Congress requires that PVOs file with the Commission evidence of financial responsibility to indemnify passengers for nonperformance of transportation. 46 U.S.C. 44102. The Commission's regulations in 46 CFR 540 do not expressly define what constitutes nonperformance of transportation, but the substantive provisions and required financial responsibility instrument terms indicate that it means a PVO's failure to provide transportation or other accommodations and services subject to part 540, subpart A,[1] in accordance with the terms of the ticket contract between the PVO and passenger. *See* 46 CFR 540.1(a).

As discussed in the ANPRM and NPRM, the Commission sought comment on adopting a definition of nonperformance of transportation. In the ANPRM, the Commission include the following draft definition:

*Nonperformance of transportation* means (1) Canceling a voyage; or (2) delaying the boarding of passengers by more than twenty-four (24) hours if the passenger elects not to embark on the substitute or delayed voyage.

After considering the comments received in the ANPRM to this definition, which are discussed in the NPRM, the Commission revised the proposed definition of nonperformance of transportation as follows:

*Nonperformance of transportation* means cancelling or delaying a voyage by three (3) or more calendar days, if the passenger elects not to embark on the delayed voyage or a substitute voyage offered by the passenger vessel operator.

The Commission also proposed revising the language of the forms for financial responsibility instruments (surety bonds, guaranties, and escrow agreements) to reflect coverage in situations that meet the added definition.[2]

PVA concurs with the Commission's change to the definition in the proposed rule from delaying the boarding of passengers by more than 24 hours to delaying the voyage by three or more calendar days because it does not believe that a 24-hour delay in sailing should constitute nonperformance of transportation. It states that the proposed rule embraces a more reasonable standard: a delay in sailing by three (3) or more calendar days, if the passenger elects not to embark on the delayed voyage or a substitute voyage.

The PVA also agrees with the change in the proposed rule excluding from the definition of ''nonperformance of transportation'' a scenario in which a passenger voluntarily cancels a booking at any time in advance of the scheduled sailing. It states that if the PVO's vessel in fact sails, there is no ''nonperformance of transportation.'' PVA believes that the proposed definition of ''nonperformance'' satisfactorily addresses this potential problem.

The Alaska Catamaran, LLC dba Alaskan Dream Cruises (ADC) also concurs with revised definition of nonperformance of transportation in the proposed rule because it does not believe that a 24-hour delay in sailing should constitute nonperformance of transportation. The ADC concurs with the updated definition in the proposed rule of ''a delay in sailing by three (3) or more calendar days, if the passenger elects not to embark on the delayed voyage or a substitute voyage.'' ADC encourages the Commission to resist suggestion to compress this standard.

The Commission took into consideration the comments of the various interested parties, and adopts a new definition of nonperformance of transportation in 46 CFR 540.2.

The adoption of the definition of nonperformance of transportation led the Commission to require PVOs to report nonperformance of transportation events to the Commission semi-

[1] The scope of the transportation, accommodations, and services covered is described in the definition of ''unearned passenger revenue'' in § 540.2 and includes water transportation and all other accommodations, services, and facilities relating thereto, but excludes air transportation, hotel accommodations, or tour excursions. 46 CFR 540.2(i).

[2] These forms include Form FMC–132A, Passenger Vessel Surety Bond (Performance); Form FMC–133A, Guaranty in Respect of Liability for Nonperformance, Section 3 of the Act; and Appendix A, Example of Escrow Agreement for Use Under 46 CFR 540.5(b)). There is no required or optional form for insurance, which must meet the requirement in § 540.5(a).

annually. This reporting is necessary in order for the Commission to be responsive to the public and to provide adequate monitoring and statistical information on occurrences of nonperformance. Nonperformance of transportation events occurring between January 1 and June 30 would be reported no later than July 20 of the same calendar year, and events occurring between July 1 and December 31 would be reported no later than January 31 of the following calendar year.

Also, this final rule requires all certified PVOs to report to the Commission, as part of their semi-annual statement, instances of nonperformance of transportation. The Commission will use the information to analyze any PVO's nonperformance and monitor the rule's impact on PVOs and consumers.

3. Definition of Unearned Passenger Revenue

Commission regulations currently state that the PVO financial responsibility instruments must provide coverage for ''unearned passenger revenue,'' (UPR) which is defined in 46 CFR 540.2(i) as passenger revenue received for water transportation and all other accommodations, services, and facilities relating thereto not yet performed and includes port fees and taxes paid, but excludes such items as airfare, hotel accommodations, and tour excursions. In the NPRM, the Commission proposed redefining unearned passenger revenue as passenger revenue received for water transportation and all other accommodations, services, and facilities that have not been performed by the PVO. Passenger revenue includes port fees, taxes, and all ancillary fees remitted to the PVO by the passenger. The Commission received comments from CLIA, PVA, The Roanoke Insurance Group Inc. (Roanoke) and ADC stating their concerns with revising the definition of unearned passenger revenue.

CLIA proposes that the Commission's proposed definitions of unearned passenger revenue, at 46 CFR 540.2(i), be revised by adding the words, ''. . . excluding any non-refundable amounts advanced by the PVO on behalf of the passenger to unaffiliated providers of goods and services, such as payments for non-refundable airline tickets provided to the passenger.'' CLIA believes the definition should exclude from ancillary fees any non-refundable payments by the PVO, which CLIA says is acting in good faith as the agent for passengers. With respect to non-refundable airfares, CLIA maintains under most airlines' policies the passenger may be able to apply a non-refundable airfare for a different travel date for the passenger's benefit for up to a year after the original scheduled flight date. CLIA further claims that while the PVO cannot legally recoup the airfare payment for the passenger, the passenger may use the ticket.

The PVA continues to urge the Commission not to amend the definition of UPR. PVA believes that broadening the definition will cause the UPR of a PVO to go up and thereby increase how much financial responsibility must be demonstrated but that it will have no consequence for a PVO that can currently take advantage of the regulatory ''cap'' for financial responsibility (now at $32 million). PVA asserts that for smaller PVOs for which the ''cap'' does not come into play, it will increase their costs for obtaining instruments attesting to their financial responsibility. More specifically, PVA states, this change will increase the costs of the five PVOs that operate ''small ship'' U.S.-flagged overnight cruise vessels.

The PVA further states that travel providers that offer land-based package trips with advance collection of fees for airfare, hotel accommodations, and third-party tours will not be subject to this requirement and the land-based travel companies often compete directly with ''small ship'' U.S-flagged PVOs in Alaska and elsewhere. PVA claims that in the rare instances of ''nonperformance of transportation,'' the passengers are not without remedies—the PVO is likely to provide voluntary refunds (or if the customer agrees, credits for future travel) or the customer can obtain reimbursement from a credit card company.

Roanoke believes that the expanded definition of UPR may likely cause surety companies to be more reluctant to provide larger bonds to PVOs or make them available on pricing and/or collateral terms more expensive than they would be for a smaller bond amount. The revision will cause the calculation of UPR to be a higher amount than it would be under the current rule. This higher amount means that bond, if not already at the cap, would be for a larger amount. The financial structure of the PVO, however, would remain unchanged or could be more leveraged.

Roanoke further states that the financial structure and business nature of the cruise industry requires large dollar fixed assets, large dollar capitalization (often debt many times greater than equity), and meaningful current liabilities (unearned passenger revenue) since cruises are often booked over a year in advance. This high leverage business model makes bonding expensive or difficult to obtain unless adequate collateral security is posted with the surety. In Roanoke's experience, increasing to larger bond amounts would typically mean the surety would require a higher amount of collateral and charge a higher premium than is required by smaller bond amounts under the current rule.

ADC is a member of PVA, and a portion of their submitted comments echoed exactly the comments submitted by PVA and discussed above. ADC believes that broadening the definition will cause the UPR to go up and thereby increase how much financial responsibility must be demonstrated. ADC believes this will have no consequence for a PVO that can take advantage of the regulatory ''cap'' for financial responsibility (now at $32 million). The ADC asserts that for smaller PVOs, the cap does not come into play, and it will increase their costs for obtaining instruments attesting to financial responsibility, at a time when they are receiving great pressure from their bonding company to reduce their bond exposure through all steps necessary.

The ADC further claims that travel providers that offer land-based package trips with advance collection of fees for airfare, hotel accommodations, and third-party tours will not be subject to this requirement; these land-based travel companies often compete directly with ''small ship'' U.S.-flagged PVOs. According to ADC, in the rare instances of ''nonperformance of transportation,'' the passengers are not without remedies as demonstrated by ADC work during 2020 when they either refunded passengers or the passengers volunteered to move their travel to a future year.

In addition, ADC stated that it is under contract with their credit card processor to hold funds received to use in the event the company is unable to refund passengers. During the COVID–19 pandemic, their credit card company increased ADC's cash on deposit from $300,000 to $2 million. ADC believes that the UPR definition in the proposed rule would significantly damage the company's ability to meet its financial obligations.

The Commission adopts the definition of unearned passenger revenue as passenger revenue received for water transportation and all other accommodations, services and facilities that have not been performed by the PVO. Passenger revenue will include

port fees, taxes and all ancillary fees submitted to the PVO by the passenger. The Commission, therefore, continues to believe that to provide better protection to passengers, and because PVOs have the existing relationship with the providers of ancillary services, the PVOs should be responsible for refunding all monies collected by the PVOs for all services not yet performed.

4. Publishing Information on How To Obtain Refunds

The Commission received one comment in reference to publishing information on how to obtain refunds. The PVA commented that it agrees with the Commission's suggestion of developing a template to place on its website with instructions for how a passenger might file a claim asserting ''nonperformance of transportation.''

In this final rule, the Commission is revising part 540.9 to include a new paragraph (f) describing the process a passenger can use to obtain a refund in the event of nonperformance. Also, a new paragraph (i) will require PVOs to provide clear instructions on their websites for how passengers may obtain refunds in the event of nonperformance. The Commission believes that asking PVOs to provide this type of information on their websites will provide passengers with clear and concise instructions to follow when requesting refunds for nonperformance of transportation.

The Commission will also include the PVOs' active web page address to the Commission's own website. Additionally, Form FMC–131 ''Application for Certificate of Financial Responsibility'' will be updated to provide a required field for PVOs to provide the web page address of their refund instructions for nonperformance of transportation.

5. Mutually-Agreed Settlements

Mutually-agreed settlements were not specifically discussed in the NPRM. However, CLIA requested as part of their comments that the Commission add a new paragraph reading, ''Nothing in this rule shall be interpreted to preclude the passenger and the PVO from entering into an alternative form of compensation in full satisfaction of a required refund, such as a future cruise credit.'' The Commission agrees with CLIA that the added paragraph makes it clear that claims may be resolved between the passenger and the PVO as an alternative form of compensation. The Commission's proposed definition of nonperformance does not preclude alternative forms of compensation, such as a future cruise credit. Thus, the Commission adopts CLIA's suggestion.

6. Small Business Accommodations

The Regulatory Flexibility Act analysis below suggests that the rule may have a substantial economic impact on small PVOs. The Commission has elected to delay the implementation of this rule with respect to small entities. This accommodation for small businesses will be discussed in depth in Section V, Regulatory Analyses.

*B. Other Comments*

1. Passenger Declaration With Refund Application

CLIA recommends that passengers applying for refunds sign and submit with the application a declaration that they have not received compensation from an alternative party. CLIA believes that the following statement should be included, ''Under penalty of perjury, that the passenger, to the best of his/her/their knowledge, is due the refund sought and has not recovered and will not recover any portion of the refund sought from the cruise line or any other source, such as cancellation insurance or a credit card refund, and the passenger has not accepted an alternative form of compensation from the PVO, such as a future cruise credit, in full satisfaction of the refund.'' The Commission understands CLIA's concerns for possible duplicative refund claims by passengers. The Commission, however, does not regulate financial instrument providers. Financial instrument providers may follow their own claim procedure, and it is up to them whether to require the suggested declaration from passengers submitting claims.

2. Legal Authority

PVA restated that it does not believe the Commission has legal authority to issue a rule on nonperformance of transportation and refund policy. PVA claims that 46 U.S.C. 44102 does not grant legal authority to the Commission to address the matter of what constitutes nonperformance. PVA further asserts the Commission lacks the legal authority to issue a rule mandating when and how passenger refunds are payable in the event of nonperformance of transportation.

The statute requires PVOs to file with the Commission evidence of financial responsibility to indemnify passengers for nonperformance of transportation. 46 U.S.C. 44102. The statute states that satisfactory evidence includes the information the Commission considers necessary and must be filed in the forms required by the Commission's regulation. 46 U.S.C. 44102 (a)–(b). Further, the Commission has broad authority to ''prescribe regulations to carry out its duties and powers.'' 46 U.S.C. 46105(a).

To satisfy the statutory mandate of protecting passengers from nonperformance of transportation, the Commission believes that it must clarify what constitutes nonperformance and what is UPR. Without clear definitions of those terms, the cruise industry and passengers may continue to experience confusion as to when and how to indemnify passengers for nonperformance under the submitted financial responsibility instruments. This final rule does not regulate PVOs' own practice or policy of indemnifying passengers for nonperformance. Rather, the Commission clarifies when and how nonperformance may be covered under the financial responsibility instruments that must be submitted to the Commission by PVOs. The Commission has the statutory authority to implement these changes.

3. Sureties' Discretion To Require a Final Court Judgment

SFAA recommends that the Commission add to the rule the surety's authority to require a ''final court judgment'' prior to paying a claim. SFAA recommends that the provision providing that authority be included in the new proposed bond form. It recommends that Commission add that authority to the Commission's regulations to make clear that only judgments finally adjudicated by a court are acceptable.

The Commission does not adopt SFAA's recommendation. The Commission believes that it is better to allow the sureties establish their own claim procedures satisfying their obligation under the surety bonds submitted to the Commission.

4. Passengers' Own Cancellation

The Commission received a comment from Mr. Fredric Lazarus who stated that refunds should take place when (a) the passenger cancels a booking after the declaration by the Secretary of Health and Human Services of a nationwide Public Health Emergency and (b) the scheduled sailing is ultimately delayed or cancelled by the passenger vessel operator (PVO).

Presently, PVOs are required to file with the Commission evidence of financial responsibility to indemnify passengers for nonperformance of transportation. 46 U.S.C. 44102. The adopted definition of nonperformance also provides that it means cancellation

or significant delay of voyages by PVOs. Passengers' own cancellation does not constitute a nonperformance by PVOs that should be covered by the PVOs financial responsibility instruments for nonperformance.

## IV. Rulemaking Analyses

### *Regulatory Flexibility Act*

### *Final Regulatory Flexibility Analysis*

Under the Regulatory Flexibility Act (RFA), whenever an agency promulgates a final rule after being required to publish a proposed rulemaking under the Administrative Procedure Act (5 U.S.C. 553), the agency must prepare and make available a Final Regulatory Flexibility Analysis (FRFA) describing the impact of the rule on small entities, unless the head of the agency certifies that the rulemaking will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 604–605. Below is the FRFA for this final rule.

### *Need for and Objectives of the Passenger Vessel Financial Responsibility Regulation*

This rulemaking stems from the Commission's *Fact Finding Investigation No. 30: COVID–19 Impact on Cruise Industry* on PVO refund policies. Fact Finding 30's Interim Report concluded that clearer guidance is needed to determine whether a passenger is entitled to obtain a refund if a PVO cancels a voyage, makes a significant schedule change, or significantly delays a voyage. As part of the report, the Fact-Finding Officer recommended making regulatory changes with respect to the definition of nonperformance and to make clear how passengers may obtain refunds under the PVOs' financial responsibility instruments filed with the Commission.

This final rule establishes when passengers are entitled to a refund for nonperformance of transportation. First, the rule establishes a timeline for when a refund request can occur and requires PVOs to provide clear and precise instructions on how passengers may request refunds in the event of nonperformance. Second, it clarifies that nothing in the rulemaking precludes the passenger and PVO from entering into a mutually agreed settlement such as a future cruise credit. Third, it creates a small business accommodation by delaying implementation of the new UPR definition by two years for small entities. Fourth, it adds a definition of nonperformance which entitles passengers to a refund of their prepaid fares when voyages are canceled or delayed for three or more calendar days and the passenger does not opt to accept an alternative voyage. Finally, it changes the definition of UPR to include ancillary fees such as airfare, hotel accommodations, and tour excursions if the PVO offers and collects monies from the passenger for such services.

### *Significant Comments in Response to the IRFA*

The Commission discussed comments received in response to the NPRM in Section IV above. Two commenters touched on issues related to the Initial Regulatory Flexibility Analysis (IRFA), and the commenters either are or represent small PVOs. The PVA believes that small PVOs may be disproportionately impacted by the regulation based on the regulation's broadening definition of UPR. PVA argues that by including ancillary fees for services collected by the PVO in the definition of UPR, UPR will increase. PVA states that large PVOs will not have to demonstrate any additional financial responsibility because of the cap on coverage demonstrating financial responsibility for UPR. The cap is currently set at $32 million and many large PVOs likely exceed the cap while small PVOs likely do not. PVA contends that UPR should not include ancillary fees collected by PVOs and expresses concerns companies offering financial instruments may leave the market because of the regulation. The SFAA also expressed concerns that some of the proposed changes in the regulation may reduce the number of surety companies offering financial responsibility instruments to PVOs. ADC expressed similar concerns regarding UPR. ADC believes the increased costs of instruments to demonstrate financial responsibility for UPR could be as high as $1–$1.5 million for the small family-owned business. Both PVA and ADC asked for the rule to not be adopted.

As part of the IRFA, the Commission considered alternatives for small entities including exemption from the rule, delayed compliance with the rule, and an alternative definition of nonperformance. The Commission ultimately decided the best way to balance the need for consumer protections while minimizing the impact on small entities was to delay the new definition of UPR for small entities. Therefore, the new definition of UPR created by this rulemaking will apply to small entities two years after the effective date of the regulation for all other PVOs. During this two-year period, the existing definition of UPR prior to this proposed rulemaking will remain in effect for small entities. The Commission believes the delay will lessen potentially disproportionate impacts of the regulation on small PVOs.

The Commission defines and identifies small entities according to the Small Business Administration (SBA) regulations in 13 CFR 121.201. PVOs typically fall under the classification of the North American Industry Classification System (NAICS) code 483112, Deep Sea Passenger Transportation, and under this classification, businesses with a total number of 1,500 employees or less qualify as small. PVOs operating exclusively on coastal, the Great Lakes, and inland waterways fall under NAISC codes 483114 and 483212 and qualify as small if they have a total number of 500 employees or less. Although there may be PVOs that report employees of less than 1,500, lines that are subsidiaries of much larger companies would not qualify as small entities for the purpose of receiving regulatory relief under the RFA. See 13 CFR 121.106(b).

As noted above, small PVOs expressed concerns about the regulation increasing the costs of financial responsibility instruments to demonstrate financial responsibility for nonperformance. Part of the concern is the uncertainty around how financial responsibility products will be priced given the expanded definition of UPR and new definition of nonperformance. A two-year delay of the new definition of UPR for small PVOs will allow the market for financial responsibility instruments to adjust. Providers of such financial responsibility instruments can analyze how the new definitions of UPR and nonperformance will impact large PVOs and better price such products for small PVOs after the delay. Large PVOs are likely better able to absorb potential costs of the regulation due to larger volume of sales, likely higher cash reserves, and the monetary cap on the amount of financial responsibility for nonperformance. The two-year delay will also allow small PVOs the chance to have two full seasons of operation to adjust to the coming regulatory changes. Small PVOs will have the opportunity to evaluate their business practices for potential changes that may make it less costly to comply with the regulation's requirements and learn from changes already implemented by large PVOs.

### *Description and Estimate of the Number of Small Entities Effected*

As part of the IRFA, the Commission estimated the number of small entities, small PVOs, to which the proposed rule would apply. The same methodology from the IRFA was used for the FRFA.

The Commission does not believe market conditions have changed to impact the number of small PVOs nor has the regulation changed enough between the IRFA and the FRFA that additional small PVOs would be impacted.

The SBA has established regulations to determine whether businesses qualify as small entities. 13 CFR part 121. The regulations use the NAICS with codes and descriptions to classify businesses and measure their size by either annual receipts (gross annual revenue) or number of employees. *See* 13 CFR subpart A—Size Eligibility Provisions and Standards (January 1, 2020). The calculation of total annual receipts or number of employees for the purpose of determining the size of a business includes those of the business itself plus those of its domestic and foreign affiliates. *See* 13 CFR 121.104 and 121.106.

The final rule modifies the regulations in 46 CFR part 540 governing evidence of PVOs financial responsibility for nonperformance of transportation. The regulated businesses that the rule applies to are PVOs. At present, there are a total of 43 PVOs with certificates of financial responsibility for nonperformance issued by the Commission. Pursuant to the SBA regulations in 13 CFR 121.201, PVOs fall under the classification of NAICS codes 483112, 483114, and 483212. For Deep Sea Passenger Transportation, businesses with a total number of 1,500 employees or less qualify as small. For coastal, the Great Lakes, and inland waters passenger transportation, businesses with a total of 500 employees or less qualify as small. Accordingly, the Commission estimates that 14 out of the 43 PVOs (or 33 percent) qualify as small businesses under the size standard of the SBA. While there may be PVOs that report employees of less than 1,500 or 500 depending on where the PVO operates, lines that are subsidiaries of much larger companies would not qualify as small entities for the purpose of receiving regulatory relief under the RFA. *See* 13 CFR 121.106(b).

*Projected Reporting, Recordkeeping, and Other Compliance Requirements*

Cost to Government

The Commission estimates the total annual cost of this final rule to the Federal government to be $145,356, offset by the collection of $64,482 in filing fees, for a net annual cost of $80,874.

Recordkeeping and Filing Costs to PVOs

The final rule would require that PVOs submit additional semi-annual reports on their instances of nonperformance. The estimated annual cost of the additional reports would be $41,670.

Other Costs to PVOs

As part of the IRFA, the Commission discussed the types of costs likely to be incurred by PVOs and the challenges associated with accurately quantifying these costs. The Commission sought comments on additional data and methods that could help quantify compliance costs. ADC was the only commenter who responded with an estimate of compliance cost and believes the increased costs of instruments to demonstrate financial responsibility for nonperformance could be as high as $1–$1.5 million for their small family-owned business.

In the IRFA, the Commission discussed what it believes to be the current costs to demonstrate financial responsibility for nonperformance. Based on interviews with PVOs as part of the investigation in Fact Finding No. 30 and its additional research, the Commission estimates the cost of premiums for nonperformance coverage to range from $75,000 for the smallest of PVOs to around $600,000 for the largest. The total cost of current nonperformance coverage for all PVOs is estimated to be around $9,830,000. The Commission believes the regulation may increase the cost of nonperformance coverage to PVOs by 25 percent due to the change in the definition of nonperformance and UPR. The Commission estimates the percentage increase in premiums based on discussions it had with members of the financial services industry. Assuming a 25 percent increase, nonperformance coverage would increase by $2,457,500 to a total of $12,287,500. Breaking down the costs increases by size of PVOs, the total increase for small PVOs would be $425,000 for a total cost of $2,125,000 and for large PVOs would be $2,032,500 for a total cost of $10,162,500.

Figure 1. Estimated Costs of Financial Responsibility Instruments for Nonperformance

| | Current estimated cost of Financial Responsibility Instruments for Nonperformance | New estimated cost of Financial Responsibility Instruments for Nonperformance |
|---|---|---|
| Small PVOs | $1,700,000 | $2,125,000 |
| Large PVOs | $8,130,000 | $10,162,500 |
| Total | $9,830,000 | $12,287,500 |

Determining exactly how much premiums will rise as a result of this regulation is difficult. Several factors impact the cost of premiums such as the incidence rate of nonperformance, how many customers would choose refunds over future cruise credits, and the total amount of ancillary fees collected by PVOs under the new definition of UPR. While the Commission was able to find data on rates of nonperformance, it was not able to find the other types of data necessary to fully quantify the costs of the regulation on PVOs. To minimize potential impacts to small PVOs, the Commission decided to delay compliance with the regulation for small PVOs. Based on the delay, the increase in the cost of premiums for small PVOs may be less than the initially estimated 25 percent increase.

*Steps To Minimize Significant Economic Impacts on Small Entities*

As part of complying with the RFA, the Commission estimated the number of small entities that would be impacted by this rulemaking. The Commission was not able to ascertain that the proposed rule would not have a significant economic impact on a substantial number of small entities and thus provided an IRFA in the NPRM. As part of the IRFA, the Commission considered three alternatives for small entities including exemption from the regulation, delayed compliance with the regulation, and a separate definition of nonperformance with a longer time period. The Commission decided that the best way to minimize the economic impacts on small entities while maintaining consumer protections would be to delay for two years the new definition of UPR in the rulemaking for small entities. Small entities will have two additional years before they have to comply with the new definition of UPR during which time they will have the opportunity to better understand and adjust to how the new definition will impact their businesses. The Commission believes the delay will lessen potential impacts stemming from the regulation on small entities.

National Environmental Policy Act

The Commission's regulations categorically exclude certain actions rulemakings from any requirement to prepare an environmental assessment or an environmental impact statement because they do not increase or decrease air, water or noise pollution or the use of fossil fuels, recyclables, or energy. 46 CFR 504.4. The final rule discusses amendments to Commission's program for certifying the financial responsibility of PVOs. This rulemaking thus falls within the categorical exclusion for ''[c]ertification of financial responsibility of passenger vessels'' under 46 CFR 504.4(a)(2). Therefore, no environmental assessment or environmental impact statement is required.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA) requires an agency to seek and receive approval from the Office of Management and Budget (OMB) before collecting information from the public. 44 U.S.C. 3507. The agency must submit collections of information in proposed rules to OMB in conjunction with the publication of the notice of proposed rulemaking. 5 CFR 1320.11.

The information collection requirements in part 540 are currently authorized under OMB Control Number 3072–0012. In compliance with the PRA, the Commission submitted the proposed revised information collection to the Office of Management and Budget. Notice of the revised information collections was published in the **Federal Register** and public comments were invited. *See* 86 FR 47441 (Aug. 25, 2021).

No comments specifically addressed the revised information collection in part 540.

Executive Order 12988 (Civil Justice Reform)

The Commission will ensure that any proposed or final rule issued in this proceeding meets the applicable standards in E.O. 12988 titled, ''Civil Justice Reform,'' to minimize litigation, eliminate ambiguity, and reduce burden.

Regulation Identifier Number

The Commission assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda). The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda, available at *http://www.reginfo.gov/public/do/eAgendaMain.*

**List of Subjects in 46 CFR Part 540**

Insurance, Maritime carriers, Penalties, Reporting and recordkeeping requirements, Surety bonds.

For the reasons stated in the preamble, the Federal Maritime Commission amends 46 CFR part 540 as follows:

## PART 540—PASSENGER FINANCIAL RESPONSIBILITY

■ 1. The authority citation for part 540 continues to read as follows:

**Authority:** 5 U.S.C. 552, 553; 31 U.S.C. 9701; 46 U.S.C. 305, 44101–44106.

■ 2. Amend § 540.2 by:
■ a. Revising paragraph (i); and
■ b. Adding Paragraph (m).

The revision and addition read as follows:

### § 540.2 Definitions.

* * * * *

(i) *Unearned Passenger Revenue* means: (1) Passenger revenue received for water transportation and all other accommodations, services, and facilities that have not been performed by the PVO. Passenger revenue includes port fees, taxes, and all ancillary fees remitted to the PVO by the passenger;

(2) From March 17, 2022 through March 17, 2024, for small businesses that operate in deep sea waters and have 1,500 or fewer employees or operate exclusively in coastal, Great Lakes, and inland water ways and have 500 or fewer employees, *Unearned Passenger Revenue* means passenger revenue received for water transportation and all other accommodations, services, and facilities relating thereto not yet performed; this includes port fees and taxes paid, but excludes such items as airfare, hotel accommodations, and tour excursions.

* * * * *

(m) *Nonperformance of transportation* means cancelling or delaying a voyage by three (3) or more calendar days, if the passenger elects not to embark on the delayed voyage or a substitute voyage offered by the passenger vessel operator.

■ 3. Amend § 540.9 by
■ a. Adding paragraph (f);
■ b. Revising paragraph (h); and
■ c. Adding paragraph (i).

The additions and revision read as follows:

### § 540.9 Miscellaneous.

* * * * *

(f) *Process for obtaining refunds from the financial instrument in the event of nonperformance.* (1) The passenger must make a written request for a refund from the PVO in accordance with the respective PVO's claims procedure.

(2) In the event the passenger is unable to resolve the claim within 180 days, or such shorter claim resolution period for which the PVO's claims procedure provides, after nonperformance of transportation occurs or if the claim is denied by the PVO, the passenger may submit a claim against the financial instrument as per instructions on the Commission website. The claim may include a copy of the boarding pass, proof and amount of payment, the cancellation or delay notice, and dated proof of properly filed claim against the PVO or written notification as required in paragraph (f)(1) of this section. All documentation must clearly display the vessel and voyage with the scheduled and actual date of sailing.

(3) Nothing in this rule shall be interpreted to preclude the consumer and the PVO from entering into an alternative form of compensation in full

satisfaction of a required refund, such as a future cruise credit.

* * * * *

(h) Every person who has been issued a Certificate (Performance) must submit to the Commission a semi-annual statement of any changes with respect to the information contained in the application or documents submitted in support thereof or a statement that no changes have occurred. Negative statements are required to indicate no change. These statements must cover the 6-month period of January through June and July through December and include a statement of the highest unearned passenger vessel revenue accrued for each month in the 6-month reporting period as well as any instances of nonperformance of transportation. Such statements will be due within 30 days after the close of every such 6-month period. The reports required by this paragraph shall be submitted to the Bureau of Certification and Licensing at its office in Washington, DC by certified mail, courier service, or electronic submission.

(i) *Information on How to Obtain Refunds.* (1) PVOs shall provide on their websites clear instructions on how passengers may obtain refunds in the event of nonperformance of transportation; and

(2) PVOs shall submit an active web page address with their refund instructions for nonperformance of transportation to the Commission for publication on the Commission's website.

(3) Form FMC–131 ''Application for Certificate of Financial Responsibility'' will include a required field for PVOs to provide the web page address of their refund instructions for nonperformance of transportation.

* * * * *

■ 4. Revise Form FMC–132A to Subpart A of Part 540 to read as follows:

**Form FMC–132A to Subpart A of Part 540**

FORM FMC–132A

FEDERAL MARITIME COMMISSION

*Passenger Vessel Surety Bond (Performance)*

Surety Co. Bond No. _____

FMC Certificate No. _____

Know all persons by these presents, that we _____ (Name of applicant), of (City), _____ (State and country), as Principal (hereinafter called Principal), and _____ (Name of surety), a company created and existing under the laws of _____ (State and country) and authorized to do business in the United States as Surety (hereinafter called Surety) are held and firmly bound unto the United States of America in the penal sum of _____, for which payment, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents. Whereas the Principal intends to become a holder of a Certificate (Performance) pursuant to the provisions of 46 CFR part 540, subpart A, and has elected to file with the Federal Maritime Commission (Commission) such a bond to insure financial responsibility and the supplying transportation and other services subject to 46 CFR part 540, subpart A.

Whereas this bond is written to assure compliance by the Principal as an authorized holder of a Certificate (Performance) pursuant to subpart A of part 540 of title 46, Code of Federal Regulations, and shall inure to the benefit of any and all passengers to whom the Principal may be held legally liable for any of the damages herein described. Now, therefore, the condition of this obligation is such that if the Principal shall pay or cause to be paid to passengers any sum or sums for which the Principal may be held legally liable by reason of the Principal's failure faithfully to provide such transportation and other accommodations and services 46 CFR 540, Subpart A made by the Principal and the passenger while this bond is in effect for the supplying of transportation and other services pursuant to and in accordance with the provisions of subpart A of part 540 of title 46, Code of Federal Regulations, then this obligation shall be void, otherwise, to remain in full force and effect. Whereas this bond is written to assure compliance by the Principal as an authorized holder of a Certificate (Performance) pursuant to 46 CFR part 540, subpart A, and shall inure to the benefit of any and all passengers to whom the Principal may be held legally liable for any of the damages herein described. Now, Therefore, the condition of this obligation is that the penalty amount of this bond shall be available to pay damages made pursuant to passenger claims, if:

(1) The passenger makes a request for refund from the Principal in accordance with the ticket contract.

(2) In the event the passenger is unable to resolve the claim within 180 days, or such shorter claim resolution period for which the PVO's claims procedure provides, after nonperformance of transportation occurs or if the claim is denied by the PVO, the passenger may submit a claim against the bond as per instructions on the Commission's website. The claim may include a copy of the boarding pass, proof and amount of payment, cancellation notice, and dated proof of properly filed claim against the Principal. All documentation must clearly display the vessel and voyage with scheduled and actual date of sailing. And, Surety reserves the discretion to require a judgement prior to resolving the claim.

(3) Valid claims must be paid within 90 days of submission to the Surety.

The liability of the Surety with respect to any passenger shall not exceed the passage price paid by or on behalf of such passenger. The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penalty of the bond, but in no event shall the Surety's obligation hereunder exceed the amount of said penalty. The Surety agrees to furnish written notice to the Federal Maritime Commission forthwith of all suits filed, judgments rendered, and payments made by said Surety under this bond.

This bond is effective the ____ day of _____, 20 __, 12:01 a.m., standard time at the address of the Principal as stated herein and shall continue in force until terminated as hereinafter provided. The Principal or the Surety may at any time terminate this bond by written notice sent by certified mail, courier service, or other electronic means such as email and fax to the other and to the Federal Maritime Commission at its office in Washington, DC, such termination to become effective thirty (30) days after actual receipt of said notice by the Commission, except that no such termination shall become effective while a voyage is in progress. The Surety shall not be liable hereunder for any refunds due under ticket contracts made by the Principal for the supplying of transportation and other services after the termination of this bond as herein provided, but such termination shall not affect the liability of the Surety hereunder for refunds arising from ticket contracts made by the Principal for the supplying of transportation and other services prior to the date such termination becomes effective.

The underwriting Surety will promptly notify the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC 20573, of any claim(s) or disbursements against this bond.

In witness whereof, the said Principal and Surety have executed this instrument on ____ day of _____, 20 __.

Principal

Name _____

By _____

(Signature and title)

Witness _____

SURETY

[SEAL]

Name _____

By _____

(Signature and title)

Witness _____

Only corporations or associations of individual insurers may qualify to act as surety, and they must establish to the satisfaction of the Federal Maritime Commission legal authority to assume the obligations of surety and financial ability to discharge them.

■ 5. Revise Form FMC–133A to Subpart A of Part 540 to read as follows:

**Form FMC–133A to Subpart A of Part 540**

FORM FMC–133A

FEDERAL MARITIME COMMISSION

*Guaranty in Respect of Liability for Nonperformance*

Guaranty No. _____

FMC Certificate No. _____

1. Whereas _____ (Name of applicant) (Hereinafter referred to as the ''Applicant'') is the Owner or Charterer of the passenger Vessel(s) specified in the annexed Schedule (''the Vessels'''), which are or may become engaged in voyages to or from United States ports, and the Applicant desires to establish its financial responsibility in accordance with 46 CFR part 540, subpart A, provided that the Federal Maritime Commission (''FMC'') shall have accepted, as sufficient for that purpose, the Applicant's application, supported by this Guaranty, and provided that FMC shall issue to the Applicant a Certificate (Performance) (''Certificate''), the undersigned Guarantor hereby guarantees to discharge the Applicant's legal liability to indemnify the passengers of the Vessels for nonperformance of transportation within the meaning of 46 CFR part 540.2, in the event that:

(1) The passenger makes a request for refund from the Principal in accordance with the ticket contract.

(2) In the event the passenger is unable to resolve the claim within 180 days, or such shorter claim resolution period for which the PVO's claims procedure provides, after nonperformance of transportation occurs or if the claim is denied by the PVO, the passenger may submit a claim against the Guaranty as per instructions on the Commission website. The claim may include a copy of the boarding pass, proof and amount of payment, cancellation notice, and dated proof of properly filed claim against the Principal. All documentation must clearly display the vessel and voyage with scheduled and actual date of sailing. And, Guarantor reserves the discretion to require a judgement prior to resolving the claim.

(3) Valid claims must be paid within 90 days of submission to the Guarantor.

2. The Guarantor's liability under this Guaranty in respect to any passenger shall not exceed the amount paid by such passenger; and the aggregate amount of the Guarantor's liability under this Guaranty shall not exceed _____ $.

3. The Guarantor's liability under this Guaranty shall attach only in respect of events giving rise to a cause of action against the Applicant, in respect of any of the Vessels, for nonperformance of transportation within the meaning of 46 CFR 540.2, occurring after the Certificate has been granted to the Applicant, and before the expiration date of this Guaranty, which shall be the earlier of the following dates:

(a) The date whereon the Certificate is withdrawn, or for any reason becomes invalid or ineffective; or

(b) The date 30 days after the date of receipt by FMC of notice in writing delivered by certified mail, courier service or other electronic means such as email and fax, that the Guarantor has elected to terminate this Guaranty except that: (i) If, on the date which would otherwise have been the expiration date under the foregoing provisions (a) or (b) of this Clause 3, any of the Vessels is on a voyage whereon passengers have been embarked at a United States port, then the expiration date of this Guaranty shall, in respect of such Vessel, be postponed to the date on which the last passenger on such voyage shall have finally disembarked; and (ii) Such termination shall not affect the liability of the Guarantor for refunds arising from ticket contracts made by the Applicant for the supplying of transportation and other services prior to the date such termination becomes effective.

4. If, during the currency of this Guaranty, the Applicant requests that a vessel owned or operated by the Applicant, and not specified in the annexed Schedule, should become subject to this Guaranty, and if the Guarantor accedes to such request and so notifies FMC in writing or other electronic means such as email and fax, then, provided that within 30 days of receipt of such notice, FMC shall have granted a Certificate, such Vessel shall thereupon be deemed to be one of the Vessels included in the said Schedule and subject to this Guaranty.

5. The Guarantor hereby designates _____, with offices at _____, as the Guarantor's legal agent for service of process for the purposes of the Rules of the Federal Maritime Commission, in accordance with 46 CFR part 540, subpart A

_____

(Place and Date of Execution)

_____

(Type Name of Guarantor)

_____

(Type Address of Guarantor)

_____

By

_____

(Signature and Title)

Schedule of Vessels Referred to in Clause 1

Vessels Added to This Schedule in Accordance With Clause 4

■ 6. Revise Appendix A to Subpart A of Part 540 to read as follows:

**Appendix A to Subpart A of Part 540—Example of Escrow Agreement for Use Under 46 CFR 540.5(b)**

ESCROW AGREEMENT

THIS ESCROW AGREEMENT, ____ made as of this ____day of (month & year), by and between (Customer), a corporation/company having a place of business at (''Customer'') __ _____a and (Banking Institution name & address) a banking corporation, having a place of business at (''Escrow Agent'').

Witnesseth:

WHEREAS, Customer wishes to establish an escrow account in order to provide for the indemnification of passengers in the event of non-performance of water transportation to which such passengers would be entitled, and to establish Customer's financial responsibility therefore; and

WHEREAS, Escrow Agent wishes to act as Escrow Agent of the escrow account established hereunder;

NOW, THEREFORE, in consideration of the premises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Customer has established on (month, & year) (the ''Commencement Date'') an escrow account with the Escrow Agent which escrow account shall hereafter be governed by the terms of this Agreement (the ''Escrow Account''). Escrow Agent shall maintain the Escrow Account in its name, in its capacity as Escrow Agent.

2. Customer will determine, as of the date prior to the Commencement Date, the amount of unearned passenger revenue, including

any funds to be transferred from any predecessor Escrow Agent. Escrow Agent shall have no duty to calculate the amount of unearned passenger revenue. Unearned Passenger Revenues are defined as that passenger revenue received for water transportation and all other accommodations, services and facilities relating thereto not yet performed. 46 CFR 540.2(i).

3. Customer will deposit on the Commencement Date into the Escrow Account cash in an amount equal to the amount of Unearned Passenger Revenue determined under Paragraph 2 above plus a cash amount (''the Fixed Amount'') equal to (10 percent of the Customer's highest Unearned Passenger Revenue for the prior two fiscal years. For periods on or after (year of agreement (2009)), the Fixed Amount shall be determined by the Commission on an annual basis, in accordance with 46 CFR part 540.

4. Customer acknowledges and agrees that until such time as a cruise has been completed and Customer has taken the actions described herein, Customer shall not be entitled, nor shall it have any interest in any funds deposited with Escrow Agent to the extent such funds represent Unearned Passenger Revenue.

5. Customer may, at any time, deposit additional funds consisting exclusively of Unearned Passenger Revenue and the Fixed Amount, into the Escrow Account and Escrow Agent shall accept all such funds for deposit and shall manage all such funds pursuant to the terms of this Agreement.

6. After the establishment of the Escrow Account, as provided in Paragraph 1, Customer shall on a weekly basis on each (identify day of week), or if Customer or Escrow Agent is not open for business on (identify day of week) then on the next business day that Customer and Escrow Agent are open for business recompute the amount of Unearned Passenger Revenue as of the close of business on the preceding business day (hereinafter referred to as the ''Determination Date'') and deliver a Recomputation Certificate to Escrow Agent on such date. In each such weekly recomputation, Customer shall calculate the amount by which Unearned Passenger Revenue has decreased due to (i) the cancellation of reservations and the corresponding refund of monies from Customer to the persons or entities canceling such reservations; (ii) the amount which Customer has earned as revenue as a result of any cancellation fee charged upon the cancellation of any reservations; (iii) the amount which Customer has earned due to the completion of cruises; and (iv) the amount by which Unearned Passenger Revenue has increased due to receipts from passengers for future water transportation and all other accommodations, services and facilities relating thereto and not yet performed.

The amount of Unearned Passenger Revenue as recomputed shall be compared with the amount of Unearned Passenger Revenue for the immediately preceding period to determine whether there has been a net increase or decrease in Unearned Passenger Revenue. If the balance of the Escrow Account as of the Determination Date exceeds the sum of the amount of Unearned Passenger Revenue, as recomputed, plus the Fixed Amount then applicable, then Escrow Agent shall make any excess funds in the Escrow Account available to Customer. If the balance in the Escrow Account as of the Determination Date is less than the sum of the amount of Unearned Passenger Revenue, as recomputed, plus an amount equal to the Fixed Amount, Customer shall deposit an amount equal to such deficiency with the Escrow Agent. Such deposit shall be made in immediately available funds via wire transfer or by direct transfer from the Customer's U.S. Bank checking account before the close of business on the next business day following the day on which the Recomputation Certificate is received by Escrow Agent. The Escrow Agent shall promptly notify the Commission within two business days any time a deposit required by a Recomputation Certificate delivered to the Escrow Agent is not timely made.

7. Customer shall furnish a Recomputation Certificate, in substantially the form attached hereto as Annex 1, to the Federal Maritime Commission (the ''Commission'') and to the Escrow Agent setting forth the weekly recomputation of Unearned Passenger Revenue required by the terms of Paragraph 6 above. Customer shall mail or fax to the Commission and deliver to the Escrow Agent the required Recomputation Certificate before the close of business on the business day on which Customer recomputes the amount of Unearned Passenger Revenue. Notwithstanding any other provision herein to the contrary, Escrow Agent shall not make any funds available to Customer out of the Escrow Account because of a decrease in the amount of Unearned Passenger Revenue or otherwise, until such time as Escrow Agent receives the above described Recomputation Certificate from Customer, which Recomputation Certificate shall include the Customer's verification certification in the form attached hereto as Annex 1. The copies of each Recomputation Certificate to be furnished to the Commission shall be mailed to the Commission at the address provided in Paragraph 25 herein. If copies are not mailed to the Commission, faxed or emailed copies shall be treated with the same legal effect as if an original signature was furnished. No repayment of the Fixed Amount may be made except upon approval of the Commission.

Within fifteen (15) days after the end of each calendar month, Escrow Agent shall provide to Customer and to the Commission at the addresses provided in Paragraph 25 below, a comprehensive statement of the Escrow Account. Such statement shall provide a list of assets in the Escrow Account, the balance thereof as of the beginning and end of the month together with the original cost and current market value thereof, and shall detail all transactions that took place with respect to the assets and investments in the Escrow Account during the preceding month.

8. At the end of each quarter of Customer's fiscal year, Customer shall cause the independent auditors then acting for it to conduct an examination in accordance with generally accepted auditing standards with respect to the weekly Recomputation Certificates furnished by Customer of the Unearned Passenger Revenues and the amounts to be deposited in the Escrow Account and to express their opinion within forty-five (45) days after the end of such quarter as to whether the calculations at the end of each fiscal quarter are in accordance with the provisions of Paragraph 6 of this Agreement. The determination of Unearned Passenger Revenue of such independent auditors shall have control over any computation of Unearned Passenger Revenue by Customer in the event of any difference between such determinations. To the extent that the actual amount of the Escrow Account is less than the amount determined by such independent auditors to be required to be on deposit in the Escrow Account, Customer shall immediately deposit an amount of cash into the Escrow Account sufficient to cause the balance of the Escrow Account to equal the amount determined to be so required. Such deposit shall be completed no later than the business day after receipt by the Escrow Agent of the auditor's opinion containing the amount of such deficiency.

The opinion of such independent auditors shall be furnished by such auditors directly to Customer, to the Commission and to the Escrow Agent at their addresses contained in this Agreement. In the event that a required deposit to the Escrow Agent is not made within one Business Day after receipt of an auditor's report or a Recomputation Certificate, Escrow Agent shall send notification to the Commission within the next two Business Days.

9. Escrow Agent shall invest the funds in the Escrow Account in Qualified Investments as directed by Customer in its sole and absolute discretion. ''Qualified Investments'' means, to the extent permitted by applicable law:

(a) Government obligations or obligations of any agency or instrumentality of the United States of America;

(b) Commercial paper issued by a United States company rated in the two highest numerical ''A'' categories (without regard to further gradation or refinement of such rating category) by Standard & Poor's Corporation, or in the two highest numerical ''Prime'' categories (without regard to further gradation or refinement of such rating) by Moody's Investor Services, Inc.;

(c) Certificates of deposit and money market accounts issued by any United States bank, savings institution or trust company, including the Escrow Agent, and time deposits of any bank, savings institution or trust company, including the Escrow Agent, which are fully insured by the Federal Deposit Insurance Corporation;

(d) Corporate bonds or obligations which are rated by Standard & Poor's Corporation or Moody's Investors Service, Inc. in one of their three highest rating categories (without regard to any gradation or refinement of such rating category by a numerical or other modifier); and

(e) Money market funds registered under the Federal Investment Company Act of 1940, as amended, and whose shares are registered under the Securities Act of 1933,

as amended, and whose shares are rated ''AAA'', ''AA + '' or ''AA'' by Standard & Poor's Corporation.

10. All interest and other profits earned on the amounts placed in the Escrow Account shall be credited to Escrow Account.

11. This Agreement has been entered into by the parties hereto, and the Escrow Account has been established hereunder by Customer, to establish the financial responsibility of Customer as the owner, operator or charterer of the passenger vessel(s) (see Exhibit A), in accordance with 46 CFR part 540, subpart A. The Escrow Account shall be held by Escrow Agent in accordance with the terms hereof, to be utilized to discharge Customer's legal liability to indemnify the passengers of the named vessel(s) for non-performance of transportation within the meaning of 46 CFR 540.2(m). The Escrow Agent shall make indemnification payments pursuant to written instructions from Customer, on which the Escrow Agent may rely, or in the event that:

(1) The passenger makes a request for refund from the Principal in accordance with the ticket contract.

(2) In the event the passenger is unable to resolve the claim within 180 days, or such shorter claim resolution period for which the PVO's claims procedure provides, after nonperformance of transportation occurs or if the claim is denied by the PVO, the passenger may submit a claim against the Escrow Account as per instructions on the Commission website. The claim may include a copy of the boarding pass, proof and amount of payment, cancellation notice, and dated proof of properly filed claim against the Principal. All documentation must clearly display the vessel and voyage with scheduled and actual date of sailing. And, The Escrow Agent shall make indemnification payments pursuant to written instructions from Customer, on which the Escrow Agent may rely, or in the event that such legal liability has not been discharged by Customer within twenty-one (21) days after any such passenger has obtained a final judgment (after appeal, if any) against Customer from a United States Federal or State Court of competent jurisdiction the Escrow Agent is authorized to pay funds out of the Escrow Account, after such twenty-one day period, in accordance with and pursuant to the terms of an appropriate order of a court of competent jurisdiction on receipt of a certified copy of such order.

(3) Valid claims must be paid within 90 days of submission to the Escrow Agent.

As further security for Customer's obligation to provide water transportation to passengers holding tickets for transportation on the passenger vessel(s) (see Exhibit A) Customer will pledge to each passenger who has made full or partial payment for future passage on the named vessel(s) an interest in the Escrow Account equal to such payment. Escrow Agent is hereby notified of and acknowledges such pledges. Customers' instructions to Escrow Agent to release funds from the Escrow Account as described in this Agreement shall constitute a certification by Customer of the release of pledge with respect to such funds due to completed, canceled or terminated cruises. Furthermore, Escrow Agent agrees to hold funds in the Escrow Account until directed by Customer or a court order to release such funds as described in this Agreement. Escrow Agent shall accept instructions only from Customer, acting on its own behalf or as agent for its passengers, and shall not have any obligations at any time to act pursuant to instructions of Customer's passengers or any other third parties except as expressly described herein. Escrow Agent hereby waives any right of offset to which it is or may become entitled with regard to the funds on deposit in the Escrow Account which constitute Unearned Passenger Revenue.

12. Customer agrees to provide to the Escrow Agent all information necessary to facilitate the administration of this Agreement and the Escrow Agent may rely upon any information so provided.

13. Customer hereby warrants and represents that it is a corporation in good standing in its State of organization and that is qualified to do business in the State. Customer further warrants and represents that (i) it possesses full power and authority to enter into this Agreement and fulfill its obligations hereunder and (ii) that the execution, delivery and performance of this Agreement have been authorized and approved by all required corporate actions.

14. Escrow Agent hereby warrants and represents that it is a national banking association in good standing. Escrow Agent further warrants and represents that (i) it has full power and authority to enter into this Agreement and fulfill its obligations hereunder and (ii) that the execution, delivery and performance of this Agreement have been authorized and approved by all required corporate actions.

15. This Agreement shall have a term of one (1) year and shall be automatically renewed for successive one (1) year terms unless notice of intent not to renew is delivered to the other party to this Agreement and to the Commission at least 90 days prior to the expiration of the current term of this Agreement. Notice shall be given by certified mail to the parties at the addresses provided in Paragraph 25 below. Notice shall be given by certified mail to the Commission at the address specified in this Agreement.

16. (a) Customer hereby agrees to indemnify and hold harmless Escrow Agent against any and all claims, losses, damages, liabilities, cost and expenses, including litigation, arising hereunder, which might be imposed or incurred on Escrow Agent for any acts or omissions of the Escrow Agent or Customer, not caused by the negligence or willful misconduct of the Escrow Agent. The indemnification set forth herein shall survive the resignation or removal of the Escrow Agent and the termination of this agreement.

(b) In the event of any disagreement between parties which result in adverse claims with respect to funds on deposit with Escrow Agent or the threat thereof, Escrow Agent may refuse to comply with any demands on it with respect thereto as long as such disagreement shall continue and in so refusing, Escrow Agent need not make any payment and Escrow Agent shall not be or become liable in any way to Customer or any third party (whether for direct, incidental, consequential damages or otherwise) for its failure or refusal to comply with such demands and it shall be entitled to continue so to refrain from acting and so refuse to act until such conflicting or adverse demands shall finally terminate by mutual written agreement acceptable to Escrow Agent or by a final, non-appealable order of a court of competent jurisdiction.

17. Escrow Agent shall be entitled to such compensation for its services hereunder as may be agreed upon from time to time by Escrow Agent and Customer and which shall initially be set forth in a separate letter agreement between Escrow Agent and Customer. This Agreement shall not become effective until such letter agreement has been executed by both parties hereto and confirmed in writing to the Commission.

18. Customer may terminate this Agreement and engage a successor escrow agent, after giving at least 90 days written termination notice to Escrow Agent prior to terminating Escrow Agent if such successor agent is a commercial bank whose passbook accounts are insured by the Federal Deposit Insurance Corporation and such successor agrees to the terms of this agreement, or if there is a new agreement then such termination shall not be effective until the new agreement is approved in writing by the Commission. Upon giving the written notice to Customer and the Commission, Escrow Agent may terminate any and all duties and obligations imposed on Escrow Agent by this Agreement effective as of the date specified in such notice, which date shall be at least 90 days after the date such notice is given. All escrowed funds as of the termination date specified in the notice shall be turned over to the successor escrow agent, or if no successor escrow agent has been named within 90 days after the giving of such notice, then all such escrowed funds for sailing scheduled to commence after the specified termination date shall be returned to the person who paid such passage fares upon written approval of the Commission. In the event of any such termination where the Escrow Agent shall be returning payments to the passengers, then Escrow Agent shall request from Customer a list of passenger names, addresses, deposit/fare amounts and other information needed to make refunds. On receipt of such list, Escrow Agent shall return all passage fares held in the Escrow Account as of the date of termination specified in the notice to the passengers, excepting only amounts Customer is entitled to receive pursuant to the terms of this Agreement for cruises completed through the termination date specified in the notice, and all interest which shall be paid to Customer.

In the event of termination of this Agreement and if alternative evidence of financial responsibility has been accepted by the Commission and written evidence satisfactory to Escrow Agent of the Commission's acceptance is presented to Escrow Agent, then Escrow Agent shall release to Customer all passage fares held in the Escrow Account as of the date of termination specified in the notice. In the event of any such termination where written

evidence satisfactory to Escrow Agent of the Commission's acceptance has not been presented to Escrow Agent, then Escrow Agent shall request from Customer a list of passenger names, addresses, deposit/fare amounts and other information needed to make refunds. On receipt of such list, Escrow Agent shall return all passage fares held in the Escrow Account as of the date of termination specified in the notice to the passengers, excepting only amounts Customer is entitled to receive pursuant to the terms of this Agreement for cruises completed through the termination date specified in the notice, and all interest which shall be paid to Customer. Upon termination, Customer shall pay all costs and fees previously earned or incurred by Escrow Agent through the termination date.

19. Neither Customer nor Escrow Agent shall have the right to sell, pledge, hypothecate, assign, transfer or encumber funds or assets in the Escrow Account except in accordance with the terms of this Agreement.

20. This Agreement is for the benefit of the parties hereto and, accordingly, each and every provision hereof shall be enforceable by any or each or both of them. Additionally, this Agreement shall be enforceable by the Commission. However, this Agreement shall not be enforceable by any other party, person or entity whatsoever.

21. (a) No amendments, modifications or other change in the terms of this Agreement shall be effective for any purpose whatsoever unless agreed upon in writing by Escrow Agent and Customer and approved in writing by the Commission.

(b) No party hereto may assign its rights or obligations hereunder without the prior written consent of the other, and unless approved in writing by the Commission. The merger of Customer with another entity or the transfer of a controlling interest in the stock of Customer shall constitute an assignment hereunder for which prior written approval of the Commission is required, which approval shall not be unreasonably withheld.

22. The foregoing provisions shall be binding upon undersigned, their assigns, successors and personal representative.

23. The Commission shall have the right to inspect the books and records of the Escrow Agent and those of Customer as related to the Escrow Account. In addition, the Commission shall have the right to seek copies of annual audited financial statements and other financial related information.

24. All investments, securities and assets maintained under the Escrow Agreement will be physically located in the United States.

25. Notices relating to this Agreement shall be sent to Customer at (address) and to Escrow Agent at (address) or to such other address as any party hereto may hereafter designate in writing. Any communication sent to the Commission or its successor organization shall be sent to the following address: Bureau of Certification and Licensing, Federal Maritime Commission, 800 North Capitol NW, Washington, DC 20573–0001.

26. This agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which when taken together shall constitute one and the same instrument.

27. This Agreement is made and delivered in, and shall be construed in accordance with the laws of the State of _____without regard to the choice of law rules.

IN WITNESS WHEREOF, the undersigned have each caused this Agreement to be executed on their behalf as of the date first above written.

By: _____

Title: _____

By: _____

Title: _____

EXHIBIT A

ESCROW AGREEMENT, dated _____by and between (Customer) and (Escrow Agent).

*Passenger Vessels Owned or Chartered*

ANNEX 1

RECOMPUTATION CERTIFICATE

To: Federal Maritime Commission
And To: (''Bank'')

The undersigned, the Controller of _____hereby furnishes this Recomputation Certificate pursuant to the terms of the Escrow Agreement dated , between the Customer and (''Bank''). Terms herein shall have the same definitions as those in such Escrow Agreement and Federal Maritime Commission regulations.

I. Unearned Passenger Revenue as of (''Date'') was: $ _____

a. Additions to unearned Passenger Revenue since such date were:

1. Passenger Receipts: $ _____
2. Other (Specify) $ _____
3. Total Additions: $ _____

b. Reductions in Unearned Passenger Revenue since such date were:

1. Completed Cruises: $ _____
2. Refunds and Cancellations: $ _____
3. Other (Specify) $ _____
4. Total Reductions: $ _____

II. Unearned Passenger Revenue as of the date of this Recomputation Certificate is: $ _____

a. Excess Escrow Amount $ _____

III. Plus the Required Fixed Amount: $ _____

IV. Total Required in Escrow: $ _____

V. Current Balance in Escrow Account: $ _____

VI. Amount to be Deposited in Escrow Account: $ _____

VII. Amount of Escrow Account available to Operator: $ _____

VIII. I declare under penalty of perjury that the above information is true and correct.

Dated: _____

(Signature) _____

Name: _____

Title: _____

(Signature) _____

Name: _____

Title: _____

By the Commission.

**William Cody,**

*Secretary.*

[FR Doc. 2022–05568 Filed 3–16–22; 8:45 am]

BILLING CODE 6730–02–P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### 49 CFR Part 214

**[Docket No. FRA–2019–0074]**

**RIN 2130–AC78**

## Railroad Workplace Safety

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** FRA is revising its regulations governing railroad workplace safety to: Allow for the use of alternative cybersecurity standards for electronic display systems used to view track authority information for roadway worker safety, and exempt certain remotely operated roadway maintenance machines from existing heating, ventilation, and air conditioning (HVAC) requirements for enclosed cabs.

**DATES:** This final rule is effective March 17, 2022.

**FOR FURTHER INFORMATION CONTACT:** Lance Hawks, Track Specialist, Office of Railroad Safety, Federal Railroad Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, telephone: 678–633–7400, email: *Lance.Hawks@dot.gov;* or Sam Gilbert, Attorney Adviser, Office of Chief Counsel, Federal Railroad Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, telephone: 202–493–0270, email: *Samuel.Gilbert@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Executive Summary

To ensure that regulations remain current and effective for their intended purpose, agencies periodically review and propose amendments to their regulations. Within this context, FRA reviewed its 49 CFR part 214–Railroad Workplace Safety regulations. As a result of this review, on December 11, 2020, FRA published a notice of proposed rulemaking (NPRM) proposing two amendments to subparts C and D of part 214 addressing Roadway Worker Protection and On-Track Roadway Maintenance Machines and Hi-Rail Vehicles, respectively. 85 FR 79973.

First, FRA proposed to revise § 214.322 (*Exclusive track occupancy, electronic display*) to allow the use of alternative cybersecurity standards for electronic display systems used to view track authority information. Second, FRA proposed to revise § 214.505 (*Required environmental control and protection systems for new on-track roadway maintenance machines with enclosed cabs*) to exempt certain remotely operated maintenance machines from existing HVAC requirements.

FRA believes these provisions provide flexibility to allow for the incorporation of new and future technological advances that may further improve safety. FRA received two comments, both supporting the NPRM's proposals. Accordingly, in this final rule, FRA is adopting the NPRM's proposed amendments to part 214 as proposed.[1] Given that this final rule will relieve current regulatory restrictions, in accordance with 5 U.S.C. 553(d)(1), it is effective upon its publication in the **Federal Register**.

FRA estimates that railroads would experience approximately $5,900 in paperwork reduction benefits over the ten-year period of this analysis. The present value (PV)[2] of these paperwork reduction benefits, when discounted at 3- and 7-percent, is approximately $5,000 and $4,100, respectively. The annualized paperwork reduction benefits are estimated to be approximately $590 at both discount rates. The table below presents the estimated 10-year total paperwork reduction benefits associated with the final rule.

TABLE I–1—TOTAL 10-YEAR PAPERWORK REDUCTION BENEFITS

[2020 Dollars]

| | Present value 3% | Present value 7% | Annualized 3% | Annualized 7% |
|---|---|---|---|---|
| Total Paperwork Reduction Benefits | $5,207 | $4,272 | $610 | $608 |

Because this final rule provides railroads the flexibility to utilize alternative cybersecurity standards for electronic display systems at their discretion, and codifies an existing waiver, FRA concludes that there are no associated costs.

## II. Discussion of Comments

As noted above, FRA received two comments in response to the NPRM, both supportive of the NPRM's proposals.

The Association of American Railroads and the American Short Line and Regional Railroad Association jointly filed a comment concurring with both NPRM proposals. Regarding FRA's proposal to revise § 214.322, the joint comment stated: ''Standards incorporated by reference pose challenges both for railroads and regulators alike as they often quickly become outdated. FRA's approach [in the NPRM] does not substantively change the electronic authentication technology that can be used by railroads and avoids the need for unnecessary waivers from obsolete standards.''

The second comment, from a member of the public, expressed support for the NPRM's proposals, noting that the proposals would allow for the utilization of new technology and improve safety.

## III. Background and Overview of the Final Rule

### *Exclusive Track Occupancy Track Authority Electronic Display Systems*

As explained in the NPRM, when a roadway worker or work group establishes exclusive track occupancy working limits, and an electronic display device is used to view track authority information for that worker or work group, § 214.322(h) requires the device to provide ''Level 3 assurance'' as defined by the security standards of the National Institute of Standards and Technology (NIST) Special Publication 800–63–2, Electronic Authentication Guideline, ''Computer Security,'' August 2013 (2013 Standard). ''Level 3 assurance'' means the display devices must provide multi-factor remote network authentication (for example, a password or a biometric factor, such as a fingerprint, used in combination with a software or hardware token).

As also noted in the NPRM, since adoption of § 214.322(h), NIST has updated its computer security standards several times. *See* 85 FR 79975 (identifying updates to the 2013 Standard). Further, FRA recognizes that as cybersecurity standards continue to change over time, other standards may also provide multi-factor authentication. Accordingly, FRA proposed to provide additional flexibility for meeting the electronic authentication requirements of § 214.322(h) by adding a new paragraph (i) to the section. As proposed and adopted in this final rule, new paragraph (i) provides that paragraph (h)'s requirements may be satisfied so long as an electronic display system uses multi-factor authentication.

### *Remotely Operated Machine Waiver Incorporation*

As discussed in detail in the NPRM, FRA may waive compliance with its regulations if the waiver is ''in the public interest and consistent with railroad safety.'' 49 U.S.C. 20103(d); *see also* 49 CFR 1.89(a). As also noted in the NPRM, activity under a waiver of regulatory compliance may generate sufficient data and experience to support an expansion of its scope, applicability, and duration.

As also explained in the NPRM, in 2008, FRA granted a waiver from the environmental control requirements of § 214.505(a) (such as heating, air conditioning, and ventilation systems) to Harsco Track Technologies, a railroad equipment manufacturer for a newly developed roadway maintenance machine (RMM) designed to function without a dedicated operator located on the machine. *See* FRA–2008–0070 (available at *www.regulations.gov*). Railroads have safely operated equipment subject to this waiver since 2008 and the waiver has been continually renewed. Accordingly, in this final rule, FRA is adopting the NPRM's proposal to incorporate the provisions of this waiver into regulation in new paragraph (i) of § 214.505.

[1] The final rule adopts the amendments exactly as proposed in the NPRM, with the single exception of the term ''drone'' being replaced with the phrase ''remotely operated'' in the amendment to § 214.505, for increased clarity, as explained below.

[2] The present value of costs and paperwork reduction benefits flows are calculated in this analysis (over a 10-year period) to provide a way of converting future amounts into equivalent dollars today. The formula used to calculate these flows is: $1/(1+r)-t$, where ''r'' is the discount rate, and ''t'' is the year. Discount rates of 3 and 7 percent are used in this analysis.

## IV. Section-by-Section Analysis

*Section 214.322 Exclusive Track Occupancy, Electronic Display*

As discussed above and in more detail in the NPRM, this final rule adds a new paragraph (i) to § 214.322. New paragraph (i) allows the use of alternative electronic security standards that provide multi-factor authentication, other than the currently required 2013 NIST Standard. With this flexibility to use alternative standards, FRA expects industry may be able to use new methods of electronic authentication that are more secure than those described by the 2013 Standard; more secure authentication methods in turn would make it more difficult for any malicious actors to access track authority information, and thus more difficult to interfere with roadway work. FRA therefore believes this amendment in particular could lead to increased safety for roadway workers.

Because FRA is adopting the proposed amendment to § 214.322 exactly as proposed in the NPRM, FRA refers readers to the section-by-section discussion in the NPRM for a more detailed discussion of this revision.

*Section 214.505 Required Environmental Control and Protection Systems for New On-Track Roadway Maintenance Machines With Enclosed Cabs*

As discussed above and in more detail in the NPRM, this final rule adds a new paragraph (i) to § 214.505. New paragraph (i) exempts certain remotely operated RMMs from existing HVAC requirements.

The substance of the amendment adopted in the final rule is the same as that proposed in the NPRM; however, FRA has decided to use the term ''remotely operated'' instead of ''drone'' when describing the RMMs at issue, to avoid confusion with the usage of the term ''drone'' in other contexts. Because FRA is otherwise adopting the proposed amendment to § 214.505 exactly as proposed in the NPRM, FRA refers readers to the section-by-section discussion in the NPRM for a more detailed discussion of this revision.

## V. Regulatory Impact and Notices

*Executive Order 12866*

FRA has analyzed this final rule in accordance with Section 3(f) of Executive Order 12866, ''Regulatory Planning and Review'' and determined that it is not a significant rule.

FRA is revising its regulations governing the minimum safety requirements for railroad workplace safety. These changes amend part 214 to permit the use of alternative security standards for electronic display systems used to view track authority information in § 214.322, and, consistent with an existing waiver, exempt certain remotely operated RMMs from environmental control requirements in § 214.505(a), which include heating, air conditioning, and ventilation systems.

Costs

*Electronic Display Systems*

Section 214.322(h) requires that electronic display systems used to view track authority information meet the security standards defined by NIST Special Publication 800–63–2, Electronic Authentication Guideline, ''Computer Security,'' August 2013. FRA is allowing electronic display systems subject to § 214.322 to use alternative standards for electronic authentication, provided those systems require stringent identity proofing through multi-factor authentication. FRA expects no additional costs for this requirement as it is simply adding flexibility.

*HVAC Waiver Incorporation*

As discussed above, in 2008, FRA approved Harsco's waiver petition for a five-year period with conditions and has since continually renewed the waiver. FRA expects no additional costs for this requirement because FRA is codifying a long-standing waiver.

Benefits

The final rule will be beneficial for regulated entities seeking to use electronic display systems that meet alternative cybersecurity standards for electronic authentication and provide a comparable or better level of identity proofing and digital authentication as that required by the 2013 NIST Standard. The final rule will also reduce the paperwork burden on regulated entities by providing relief from submitting waivers to FRA for the use of certain roadway maintenance machines.

FRA has estimated that paperwork reduction benefits of this final rule will result due to waiver codification, as the final rule will reduce the need for industry to submit waivers. These estimates assume that, without the final regulation, Harsco Track Technologies will continue submitting a petition to extend the waiver every five years. The last renewal was approved in 2018. To date, Harsco has been the sole entity requesting this waiver from FRA, and FRA does not expect any other entities to apply for similar waivers over the period of analysis.

FRA assumes that the cost for Harsco to prepare and submit each waiver would be approximately the same as it is for FRA to process it. To calculate the paperwork reduction benefits associated with this waiver, FRA estimated the labor hours required for FRA to review and approve each waiver. Table V–1 below displays the breakdown of the waiver review and submission cost for each waiver.

TABLE V–1—WAIVER SUBMISSION COSTS

| Title | Pay grade | Wage rate | Burdened wage rate (wages × 1.75) | Hours | Total wages |
|---|---|---|---|---|---|
| FRA Field Inspector | GS–12 | $46.88 | $82.04 | 8 | $656.32 |
| Administrative Assistant (Field Office) | GS–12 | 46.88 | 82.04 | 4 | 328.16 |
| Administrative Assistant (DC) | GS–9 | 32.33 | 56.58 | 4 | 226.32 |
| Motive Power and Equipment Specialist (DC) | GS–14 | 65.88 | 115.29 | 16 | 1,844.64 |
| Total FRA Labor Cost per Renewal Waiver | | | | | 3,055.44 |

For purposes of estimating waiver costs for this analysis, FRA estimates the associated renewals that would occur over the next 10 years. Table V–2 shows the total paperwork reduction benefits for regulated entities to review and submit waivers to FRA.

TABLE V–2—WAIVER SUBMISSIONS PAPERWORK REDUCTION BENEFITS

[2020]

| Analysis year | Number of waivers | Paperwork reduction benefits (undiscounted) | Paperwork reduction benefits (discounted 3%) | Paperwork reduction benefits (discounted 7%) |
|---|---|---|---|---|
| 1 | | | | |
| 2 | | | | |
| 3 | 1 | 3,055 | 2,796 | 2,494 |
| 4 | | | | |
| 5 | | | | |
| 6 | | | | |
| 7 | | | | |
| 8 | 1 | 3,055 | 2,412 | 1,778 |
| 9 | | | | |
| 10 | | | | |
| Total | | 6,110 | 5,207 | 4,272 |

Alternatives

The final rule provides relief to regulated entities by allowing the use of alternative standards for electronic display systems to comply with § 214.322(h) and by not having to submit waivers to FRA. An alternative to the final rule would be to maintain the status quo.

If FRA does not modify § 214.322, entities will continue to use the 2013 NIST Standard as the standard for securing and transmitting data for electronic display systems. Although this standard is safe, FRA recognizes that updated standards after the 2013 NIST Standard could allow the industry to adopt newly developed technologies and methods of data transmission that are still compliant with § 214.322(h) while providing comparable, or better, levels of security.

FRA views the remotely operated RMMs subject to the existing waiver as an example of using emerging modern technology to make railroad roadway maintenance safer and more efficient. FRA has verified that waivers allowing remotely operated RMMs do not negatively impact safety because FRA has not seen an adverse impact to safety while railroads have been operating under this waiver. Therefore, issuing this final rule removes unnecessary paperwork burdens arising from avoiding petitioning for and processing waivers.

Results

FRA has estimated the paperwork reduction benefits of this final rule and displayed them in the table below.

TABLE V–3—TOTAL 10-YEAR PAPERWORK REDUCTION BENEFITS

[2020 Dollars]

| | Present value 3% | Present value 7% | Annualized 3% | Annualized 7% |
|---|---|---|---|---|
| Total Paperwork Reduction Benefits | $5,207 | $4,272 | $610 | $608 |

As noted in the table above, FRA estimates the total paperwork reduction benefits for this final rule to be approximately $5,000 (PV, 3-percent) and $4,100 (PV, 7-percent). The annualized paperwork reduction benefits are estimated to be approximately $590 (PV, 3-percent) and $590 (PV, 7-percent).

*Regulatory Flexibility Act*

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act requires the agency to ''prepare and make available for public comment an initial regulatory flexibility analysis'' which will ''describe the impact of the proposed rule on small entities.'' 5 U.S.C. 603(a). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. FRA certified this rule in the proposed stage. FRA requested comments regarding the certification and received no comments.

This final rule directly affects all railroads, of which there are approximately 746 on the general system, and FRA estimates that approximately 93 percent of these railroads are small entities. Therefore, FRA has determined that this final rule will have an impact on a substantial number of small entities.

However, FRA has determined that the impact on entities affected by the final rule will not be significant. The effect of the final rule will be to allow railroads the flexibility to choose the optimal electronic display equipment currently in the market, with the required level of security, without having to notify or seek approval from FRA. Further, equipment manufacturers will no longer need to seek FRA approval to forego HVAC systems on a remotely operated piece of equipment, consistent with the established safety of a longstanding waiver. FRA expects the impact of the final rule will be a reduction in the paperwork burden for railroads and manufacturers, as well as future benefits from allowing continually advancing security standards to be incorporated without a regulatory change. FRA asserts that the economic impact of the reduction in paperwork, if any, will be minimal and entirely beneficial to small railroads. Accordingly, the FRA Administrator hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

*Paperwork Reduction Act*

FRA is submitting the information collection requirements in this final rule to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.* The sections that

contain the final and current information collection requirements and the estimated time to fulfill each requirement are as follows:

| CFR section subject | Respondent universe | Total annual responses | Average time per response | Total annual burden hours | Total annual dollar cost equivalent [3] |
|---|---|---|---|---|---|
| Form FRA F 6180.119—Part 214 Railroad Workplace Safety Violation Report. | 350 Safety Inspectors | 129 forms | 4 hours | 516 | 29,412 |
| 214.307—Railroad on-track safety programs—RR programs that comply with this part + copies at system/division headquarters. | 746 railroads | 276 programs + 325 copies. | 2 hours + 2 minutes. | 563 | 42,788 |
| —RR notification to FRA not less than one month before on-track safety program takes effect. | 746 railroads | 276 notices | 20 minutes | 92 | 6,992 |
| —RR amended on-track safety programs after FRA disapproval. | 746 railroads | 1 program | 4 hours | 4 | 304 |
| —RR written response in support of disapproved program. | 746 railroads | 1 written response. | 20 hours | 20 | 1,520 |
| 214.309—RR publication of bulletins/notices reflecting changes in on-track safety manual. | 60 railroads | 100 bulletins/notices. | 60 minutes | 100 | 7,600 |
| 214.311—RR written procedure to achieve prompt and equitable resolution of good faith employee challenges. | 19 railroads | 5 developed procedures. | 2 hours | 10 | 760 |
| 214.317—On-track safety procedures, generally, for snow removal, weed spray equipment, tunnel niche or clearing by. | 19 railroads | 5 operating procedures. | 2 hours | 10 | 760 |
| 214.318—Procedures established by railroads for workers to perform duties incidental to those of inspecting, testing, servicing, or repairing rolling equipment. | 746 railroads | 19 rules/procedures. | 2 hours | 38 | 2,888 |
| 214.320—Roadway maintenance machines movement over signalized non-controlled track—RR request to FRA for equivalent level of protection to that provided by limiting all train and locomotive movements to restricted speed. | 746 railroads | 5 requests | 4 hours | 20 | 1,520 |
| 214.322—Exclusive track occupancy, electronic display—Written authorities/printed authority copy if electronic display fails or malfunctions. | 3 Class I Railroads | 1,000 written authorities. | 10 minutes | 167 | 9,519 |
| 214.329—Train approach warning | 746 railroads | 26,250 designations. | 30 seconds | 219 | 16,644 |
| – Written designation of watchmen/lookouts | | | | | |
| 214.336—Procedures for adjacent track movements over 25 mph: notifications/watchmen/lookout warnings. | 100 railroads | 10,000 notices | 5 seconds | 14 | 798 |
| —Procedures for adjacent track movements 25 mph or less: notifications/watchmen/lookout warnings. | 100 railroads | 3,000 notices | 5 seconds | 4 | 228 |
| 214.339—Audible warning from trains: written procedures that prescribe effective requirements for audible warning by horn and/or bells for trains. | 19 railroads | 19 written procedures. | 4 hours | 76 | 5,776 |
| 214.343/345/347/349/351/353/355—Annual training for all roadway workers (RWs)—Records of training. | 50,000 roadway workers | 50,000 records | 2 minutes | 1,667 | 126,692 |
| 214.503—Notifications for non-compliant roadway maintenance machines or unsafe condition. | 50,000 roadway workers | 125 notices | 10 minutes | 21 | 1,197 |
| —Resolution procedures | 19 railroads/contractors | 5 procedures | 2 hours | 10 | 760 |
| 214.505 Required environmental control and protection systems for new on-track roadway maintenance machines with enclosed cabs. | 746/200 railroads/contractors | 500 lists | 1 hour | 500 | 38,000 |
| —Designations/additions to list | 692/200 railroads/contractors | 150 additions/designations. | 5 minutes | 13 | 988 |
| —Stenciling or marking of remotely operated roadway maintenance machine (Revised requirement). | 30 remotely operated machines | 10 stencils/displays. | 5 minutes | 1 | 57 |
| 214.507—A-Built Light Weight on new roadway maintenance machines. | 692/200 railroads/contractors | 1,000 stickers/stencils. | 5 minutes | 83 | 4,731 |
| 214.511—Required audible warning devices for new on-track roadway maintenance machines. | 692/200 railroads/contractors | 3,700 identified mechanisms. | 5 minutes | 308 | 17,556 |
| 214.515—Overhead covers for existing on-track roadway maintenance machines. | 692/200 railroads/contractors | 500 + 500 requests + responses. | 10 + 20 minutes | 250 | 17,423 |
| 214.517—Retrofitting of existing on-track roadway maintenance machines manufactured on or after Jan. 1, 1991. | 692/200 railroads/contractors | 500 stencils/displays. | 5 minutes | 42 | 2,394 |
| 214.523—Hi-rail vehicles | 692/200 railroads/contractors | 5,000 records | 5 minutes | 417 | 23,769 |
| —Non-complying conditions | 692/200 railroads/contractors | 500 tags + 500 reports. | 10 minutes + 15 minutes. | 208 | 11,856 |
| 214.527—Inspection for compliance—Repair schedules. | 692/200 railroads/contractors | 550 tags + 550 reports. | 5 minutes + 15 minutes. | 183 | 10,431 |
| 214.533—Schedule of repairs—Subject to availability of parts. | 692/200 railroads/contractors | 250 records | 15 minutes | 63 | 4,788 |
| Totals | 746 railroads | 105,751 responses. | N/A | 5,619 | 388,151 |

[3] Throughout the tables in this document, the dollar equivalent cost is derived from the Surface Transportation Board's Full Year Wage A&B data series using the appropriate employee group hourly wage rate that includes 75 percent overhead charges.

All estimates include the time for reviewing instructions, searching existing data sources, gathering or maintaining the needed data, and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: Whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Ms. Hodan Wells, Information Collection Clearance Officer, at 202–493–0440. Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Ms. Wells at the following address: *Hodan.Wells@.gov.*

*Federalism Implications*

Executive Order 13132, ''Federalism'' (64 FR 43255, Aug. 10, 1999), requires FRA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, agencies may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the agency consults with State and local government officials early in the process of developing the regulation.

This final rule has been analyzed consistent with the principles and criteria in Executive Order 13132. This final rule will not have a substantial effect on the States or their political subdivisions; it would not impose any substantial direct compliance costs; and it would not affect the relationships between the Federal Government and the States or their political subdivisions, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

However, this final rule could have preemptive effect under certain provisions of the Federal railroad safety statutes, specifically the former Federal Railroad Safety Act of 1970 (former FRSA), repealed and re-codified at 49 U.S.C. 20106, and the former Locomotive Boiler Inspection Act (LIA) at 45 U.S.C. 22–34, repealed and re-codified at 49 U.S.C. 20701–03. The former FRSA provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the ''local safety or security hazard'' exception to Section 20106. Moreover, the U.S. Supreme Court has held the former LIA preempts the field concerning locomotive safety. *See Napier* v. *Atl. Coast Line R.R.,* 272 U.S. 605 (1926), *and Kurns* v. *R.R. Friction Prods. Corp.,* 565 U.S. 625 (2012). Therefore, it is possible States would be preempted from addressing the subjects covered by the final rule (security standards for electronic display systems used to display track authority information and HVAC systems on remotely operated machines).

*Environmental Impact*

FRA has evaluated this final rule consistent with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.,* the Council of Environmental Quality's NEPA implementing regulations at 40 CFR parts 1500–1508, and FRA's NEPA implementing regulations at 23 CFR part 771, and determined that it is categorically excluded from environmental review and does not require the preparation of an environmental assessment (EA) or environmental impact statement (EIS). Categorical exclusions (CEs) are actions identified in an agency's NEPA implementing regulations that do not normally have a significant impact on the environment and, therefore, do not require either an EA or EIS. *See* 40 CFR 1508.4. Specifically, FRA has determined that this final rule is categorically excluded from detailed environmental review pursuant to 23 CFR 771.116(c)(15), ''[p]romulgation of rules, the issuance of policy statements, the waiver or modification of existing regulatory requirements, or discretionary approvals that do not result in significantly increased emissions of air or water pollutants or noise.''

This final rule does not directly or indirectly impact any environmental resources and will not result in significantly increased emissions of air or water pollutants or noise. In analyzing the applicability of a CE, FRA must also consider whether unusual circumstances are present that would warrant a more detailed environmental review. *See* 23 CFR 771.116(b). FRA has concluded that no such unusual circumstances exist with respect to this final regulation and it meets the requirements for categorical exclusion under 23 CFR 771.116(c)(15).

Pursuant to Section 106 of the National Historic Preservation Act and its implementing regulations, FRA has determined this undertaking has no potential to effect historic properties. *See* 16 U.S.C. 470. FRA has also determined that this rulemaking does not approve a project resulting in use of a resource protected by Section 4(f). *See* Department of Transportation Act of 1966, as amended (Pub. L. 89–670, 80 Stat. 931); 49 U.S.C. 303.

*Unfunded Mandates Reform Act of 1995*

Under Section 201 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531, each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act, 2 U.S.C. 1532, further requires that before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement detailing the effect on State, local, and tribal governments and the private sector. The final rule will not result in the expenditure, in the aggregate, of $100,000,000 or more in any one year (adjusted annually for inflation), and thus preparation of such a statement is not required.

**List of Subjects in 49 CFR Part 214**

Occupational safety and health, Railroad safety.

**The Rule**

For the reasons discussed in the preamble, FRA amends part 214 of chapter II, subtitle B of title 49, Code of Federal Regulations, as follows:

## PART 214—RAILROAD WORKPLACE SAFETY

■ 1. The authority citation for part 214 continues to read as follows:

**Authority:** 49 U.S.C. 20102–20103, 20107, 21301–21302, 21304, 28 U.S.C. 2461, note; and 49 CFR 1.89.

■ 2. Amend § 214.322 by adding paragraph (i) to read as follows:

**§ 214.322 Exclusive track occupancy, electronic display.**

* * * * *

(i) For purposes of complying with paragraph (h) of this section, electronic display systems may use multi-factor authentication for digital authentication of the subject.

■ 3. Amend § 214.505 by revising the introductory text of paragraph (a) and adding paragraph (i) to read as follows:

**§ 214.505 Required environmental control and protection systems for new on-track roadway maintenance machines with enclosed cabs.**

(a) With the exception of machines subject to paragraph (i) of this section, the following new on-track roadway maintenance machines shall be equipped with operative heating systems, operative air conditioning systems, and operative positive pressurized ventilation systems:

* * * * *

(i) Paragraph (a) of this section is not applicable to machines that are incapable of performing work functions other than by remote operation and are equipped with no operating controls (*i.e.,* remotely operated roadway maintenance machines) if the following conditions are met.

(1) If a remotely operated roadway maintenance machine is operated from the cab of a separate machine, that separate machine must comply with paragraph (a) of this section.

(2) If a remotely operated roadway maintenance machine is operated outside of the main cab of the separate machine in a manner that will expose the operator to air contaminants, as outlined in 29 CFR 1910.1000, the employee shall be protected in compliance with 29 CFR 1910.134.

(3) No person is permitted on the remotely operated roadway maintenance machine while the equipment is operating.

(4) Each remotely operated roadway maintenance machine must be clearly identified by stenciling, marking, or other written notice in a conspicuous location on the machine indicating the potential hazards of the machine being operated from a distance or that the machine may move automatically.

Issued in Washington, DC.

**Amitabha Bose,**

*Administrator.*

[FR Doc. 2022–05625 Filed 3–16–22; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**[Docket No. FWS–R3–ES–2022–0006; FXES11130300000–223–FF03E00000]**

**1018–BE37**

## Endangered and Threatened Wildlife and Plants; Technical Corrections for Four Midwest Mussel Species

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Direct final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce the revised taxonomy of four species of mussels under the Endangered Species Act of 1973, as amended (Act). We are revising the List of Endangered and Threatened Wildlife and related regulations under the Act to reflect the scientifically accepted taxonomy and nomenclature of these species.

**DATES:** This rule is effective June 15, 2022 without further action, unless significant adverse comment is received by April 18, 2022. If significant adverse comment is received, we will publish a timely withdrawal of the rule for the appropriate species in the **Federal Register**.

**ADDRESSES:** You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Search box, enter FWS–R3–ES–2022–0006, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment.''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R3–ES–2022–0006, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

See Public Comments under **SUPPLEMENTARY INFORMATION**, below, for more information about submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Laura Ragan, Midwest Regional Recovery Coordinator, U.S. Fish and Wildlife Service, Midwest Regional Office, 5600 American Boulevard West, Suite 990, Bloomington, MN 55437; telephone 612–713–5157; email *Laura_Ragan@fws.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

**SUPPLEMENTARY INFORMATION:**

**Purpose of Direct Final Rule and Final Action**

The purpose of this direct final rule is to notify the public that we are revising: (1) The List of Endangered and Threatened Wildlife in title 50 of the Code of Federal Regulations (CFR) at § 17.11(h) (50 CFR 17.11(h)) to reflect the scientifically accepted taxonomy and nomenclature of four freshwater mussel species listed under section 4 of the Act (16 U.S.C. 1531 *et seq.*). These changes reflect the most recently accepted common and scientific names in accordance with 50 CFR 17.11(b) and (c). We are also updating the nomenclature for one of the species at 50 CFR 17.85.

We are publishing this rule without a prior proposal because this is a noncontroversial action that is in the best interest of the public and should be undertaken in as timely a manner as possible. This rule will be effective, as published in this document, on the effective date specified in **DATES**, unless we receive significant adverse comments by the comment due date specified in **DATES**. Significant adverse comments are comments that provide strong justification as to why our rule should not be adopted or why it should be changed.

If we receive significant adverse comments regarding the taxonomic changes for any of these species, we will publish a document in the **Federal Register** withdrawing this rule for the appropriate species before the effective date, and, if appropriate, we will

publish a proposed rule to initiate promulgation of those changes to 50 CFR 17.11(h).

**Public Comments**

You may submit your comments and materials regarding this direct final rule by one of the methods listed in **ADDRESSES**. Please include sufficient information with your comment that allows us to verify any scientific or commercial information you include.

We will post all comments on *https://www.regulations.gov.* This generally means that we will post any personal information you provide us. Before including your address, phone number, email address, or other personal 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.

Comments and materials we receive, as well as supporting documentation we used in preparing this direct final rule, will be available for public inspection on the internet at *https://www.regulations.gov* or by appointment, during normal business hours at the U.S. Fish and Wildlife Service location listed above in **FOR FURTHER INFORMATION CONTACT**. Please note that comments posted to *https://www.regulations.gov* are not immediately viewable. When you submit a comment, the system receives it immediately. However, the comment will not be publicly viewable until we post it, which might not occur until several days after submission. Information regarding this rule is available in alternative formats upon request (see **FOR FURTHER INFORMATION CONTACT**).

**Background**

Sections 17.11(c) and 17.12(b) of title 50 of the CFR direct us to use the most recently accepted scientific name of any species that we have determined to be an endangered or threatened species. Using the best available scientific information, this direct final rule documents taxonomic changes of the scientific names to four entries under ''Clams'' on the current List of Endangered and Threatened Wildlife (''List''; 50 CFR 17.11(h)). This rule also makes slight modifications to two common names, and those changes have the result of changing the placement of these species on the List. The basis for these taxonomic changes is supported by published studies in peer-reviewed journals. Accordingly, we revise the common and scientific names of these species under section 4 of the Act (16 U.S.C. 1531 *et seq.*) as follows:

| Species name as currently listed | | Corrected name for addition to the list | |
|---|---|---|---|
| Common name | Scientific name | Common name | Scientific name |
| Pearlymussel, Curtis | *Epioblasma florentina curtisii* | Pearlymussel, Curtis | *Epioblasma curtisii.* |
| Purple cat's paw (pearlymussel) | *Epioblasma obliquata obliquata* | Pearlymussel, purple cat's paw | *Epioblasma obliquata.* |
| Catspaw, white (pearlymussel) | *Epioblasma obliquata perobliqua* | Pearlymussel, white cat's paw | *Epioblasma perobliqua.* |
| Riffleshell, northern | *Epioblasma torulosa rangiana* | Riffleshell, northern | *Epioblasma rangiana.* |

**Taxonomic Classification**

*Epioblasma Curtisii*

The scientific name change of *Epioblasma curtisii* (Curtis pearlymussel) from *Epioblasma florentina curtisii* is supported by phylogenetic analyses, its distinctive shell morphology, and distinct geographical range. These findings support the elevation of *curtisii* from subspecies to species (Williams et al. 2017, p. 48). To the extent practicable, the Service relies on the Integrated Taxonomic Information System (ITIS) to determine a species' scientific name. ITIS incorporates the naming principles established by the International Code of Zoological Nomenclature, produced by the International Commission on Zoological Nomenclature, an organization that provides and regulates a uniform system of zoological nomenclature. While ITIS is a reliable database source of taxonomic information, in this instance ITIS is incomplete. The junior synonym, *Epioblasma florentina curtisii,* is considered to be invalid in ITIS. Upon review of ITIS's underlying data, we consider the information that displays the scientific name for Curtis pearlymussel to be incomplete as no valid name is provided for the species. The Service finds that the Curtis pearlymussel should be recognized as *Epioblasma curtisii* and is a valid listable entity. This species will continue to be listed as endangered, and no other aspect of the entry for this species in 50 CFR 17.11(h) will change as a result of this rule.

*Epioblasma Obliquata*

The scientific name change of *Epioblasma obliquata* (purple cat's paw pearlymussel) from *Epioblasma obliquata obliquata* is supported by phylogenetic analyses, its distinctive shell morphology, and distinct geographical range. These findings support the elevation of *obliquata* from subspecies to species (Williams et al. 2017, p. 48). In ITIS, *Epioblasma obliquata* is the accepted scientific name of purple cat's paw pearlymussel. ITIS includes an additional common name for *Epioblasma obliquata,* catspaw, which is recognized by species experts as an alternate common name. This species will continue to be listed as endangered, and no other aspect of the entry for this species in 50 CFR 17.11(h) will change as a result of this rule.

In addition to the listing of purple cat's paw pearlymussel in § 17.11(h), this species is also included in a rule that sets forth provisions for a nonessential experimental population of 17 mollusks in the Tennessee River at § 17.85. Therefore, we are also revising 50 CFR 17.85(a) to change the species' name in those regulations.

*Epioblasma Perobliqua*

The scientific name change of *Epioblasma perobliqua* (white cat's paw pearlymussel) from *Epioblasma obliquata perobliqua* is supported by phylogenetic analyses, its distinctive shell morphology, and distinct geographical range. These findings support the elevation of *perobliqua* from subspecies to species (Williams et al. 2017, p. 48). While the Service often relies on ITIS as a reliable database source of taxonomic information, in this instance ITIS is incomplete. The junior synonym, *Epioblasma obliquata perobliqua,* is considered to be invalid in ITIS. Upon review of ITIS's underlying data, we consider the information that displays the scientific name for white cat's paw pearlymussel to be incomplete as no valid name is provided for the species. ITIS includes an additional common name for white

cat's paw pearlymussel, white catspaw, which is recognized by species experts as an alternate common name. The Service finds that the white cat's paw pearlymussel should be recognized as *Epioblasma perobliqua* and is a valid listable entity. This species will continue to be listed as endangered, and no other aspect of the entry for this species in 50 CFR 17.11(h) will change as a result of this rule.

*Epioblasma Rangiana*

The scientific name change of *Epioblasma rangiana* (northern riffleshell) from *Epioblasma torulosa rangiana* is supported by phylogenetic analyses and the lack of intergradation between *E. t. torulosa* and *E. t. rangiana.* These findings support the elevation of *rangiana* from subspecies to species (Cummings and Berlocher 1990, p. 92; Williams et al. 2017, p. 48). *Epioblasma rangiana* is the accepted scientific name of northern riffleshell in ITIS. This species will continue to be listed as endangered, and no other aspect of the entry for this species in 50 CFR 17.11(h) will change as a result of this rule.

**References Cited**

A complete list of the referenced materials is available at *https://www.regulations.gov* at Docket No. FWS–R3–ES–2022–0006 or upon request from the U.S. Fish and Wildlife Service (see **FOR FURTHER INFORMATION CONTACT**).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Regulation Promulgation**

For the reasons given in the preamble, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

## PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

**Authority:** 16. U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11, in paragraph (h), the List of Endangered and Threatened Wildlife, under Clams, by:

■ a. Removing both entries for ''Purple cat's paw (pearlymussel)'' and the entry for ''Catspaw, white (pearlymussel)'';

■ b. Revising the entry for ''Pearlymussel, Curtis'';

■ c. Adding in alphabetic order two entries for ''Pearlymussel, purple cat's paw'' and an entry for ''Pearlymussel, white cat's paw''; and

■ d. Revising the entry for ''Riffleshell, northern''.

The revisions and additions read as follows:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Common name | Scientific name | Where listed | Status | Listing citations and applicable rules |
|---|---|---|---|---|
| * * * | * | * | * | * * |
| CLAMS | | | | |
| * * * | * | * | * | * * |
| Pearlymussel, Curtis | *Epioblasma curtisii* | Wherever found | E | 41 FR 24062, 6/14/1976. |
| * * * | * | * | * | * * |
| Pearlymussel, purple cat's paw | *Epioblasma obliquata* | Wherever found, except where listed as an experimental population. | E | 55 FR 28209, 7/10/1990. |
| Pearlymussel, purple cat's paw | *Epioblasma obliquata* | U.S.A. (AL—specified portions of the Tennessee River; see § 17.85(a)(1)). | XN | 66 FR 32250, 6/14/2001; 50 CFR 17.85(a).[10j] |
| * * * | * | * | * | * * |
| Pearlymussel, white cat's paw | *Epioblasma perobliqua* | Wherever found | E | 41 FR 24062, 6/14/1976. |
| * * * | * | * | * | * * |
| Riffleshell, northern | *Epioblasma rangiana* | Wherever found | E | 58 FR 5638, 1/22/1993. |
| * * * | * | * | * | * * |

■ 3. In § 17.85, in paragraph (a) introductory text, amend the table by removing the entry for ''catspaw (purple cat's paw pearlymussel)'' and adding in its place an entry for ''purple cat's paw pearlymussel'' to read as follows:

**§ 17.85 Special rules—invertebrates.**

(a) * * *

| Common name | Scientific name |
|---|---|
| * * * * * | * * |
| purple cat's paw pearlymussel | *Epioblasma obliquata.* |
| * * * * * | * * |

* * * * *

**Martha Williams,**

*Director, U.S. Fish and Wildlife Service.*

[FR Doc. 2022–05526 Filed 3–16–22; 8:45 am]

**BILLING CODE 4333–15–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 648

**[Docket No. 220311–0070; RTID 0648–XX075]**

## Fisheries of the Northeastern United States; Northeast Skate Complex; 2022 and 2023 Specifications

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues final Northeast skate specifications for the 2022 fishing year, and projects specifications for fishing year 2023, as recommended by the New England Fishery Management Council. This action is necessary to establish annual allowable harvest levels for the skate fishery that prevent overfishing while enabling optimum yield, using the best scientific information available.

**DATES:** Effective on May 1, 2022.

**ADDRESSES:** The New England Fishery Management Council prepared a Supplemental Information Report (SIR) for these specifications that describes the action and any changes from the original environmental assessment (EA) and analyses for this 2022–2023 specifications action. Copies of the SIR, original EA, and other supporting documents for this action, are available upon request from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. These documents are also accessible via the internet at *https://www.nefmc.org/management-plans/skates.*

**FOR FURTHER INFORMATION CONTACT:** Cynthia Ferrio, Fishery Policy Analyst, (978) 281–9180.

**SUPPLEMENTARY INFORMATION:**

### Background

The New England Fishery Management Council manages a complex of seven skate species (barndoor, clearnose, little, rosette, smooth, thorny, and winter skate) in the New England and Mid-Atlantic regions under the Northeast Skate Complex Fishery Management Plan (FMP). Skates are harvested and managed in two different fishery sectors, one for food (the wing fishery) and one for bait used in other fisheries (the bait fishery). The FMP requires the review and specification of an acceptable biological catch (ABC), annual catch limit (ACL), annual catch target (ACT), fishery-level total allowable landings (TAL) limit, separate TALs for the wing and bait fisheries, and other management measures, as needed, for up to two fishing years at a time. This action implements skate specifications for the 2022 fishing year, and projects specifications for 2023, as recommended by the Council.

The proposed rule for this action published in the **Federal Register** on January 18, 2022 (87 FR 2587), and comments were accepted through February 17, 2022. NMFS did not receive any comments from the public during this period. Additional background information regarding the development of these specifications was provided in the proposed rule and is not repeated here.

### Specifications

This action implements the Council's recommended 2022 and projected 2023 skate catch specifications (Table 1), as outlined in the proposed rule. These specifications increase the ABC by 14 percent and annual quotas for both the wing and bait fisheries by 18 percent in fishing year 2022. Specifications for fishing year 2023 are projected to be unchanged from 2022.

TABLE 1—SUMMARY OF FINAL 2022 AND PROJECTED 2023 SKATE FISHERY SPECIFICATIONS

| | Metric tons | Million lb |
|---|---|---|
| ABC = ACL | 37,236 | 82.091 |
| ACT | 33,513 | 73.883 |
| Overall Fishery TAL | 21,142 | 46.610 |
| Wing TAL (66.5% of Overall TAL) | 14,059 | 30.995 |
| Wing Season 1 TAL (57% of Wing TAL) | 8,014 | 17.668 |
| Wing Season 2 TAL | 6,045 | 13.327 |
| Bait TAL (33.5% of Overall TAL) | 7,082 | 15.613 |
| Bait Season 1 TAL (30.8% of Bait TAL) | 2,181 | 4.808 |
| Bait Season 2 TAL (37.1% of Bait TAL) | 2,627 | 5.792 |
| Bait Season 3 TAL | 2,274 | 5.013 |

All other fishery management measures, such as trip limits, remain unchanged under this action. The Council will review the projected specifications for fishing year 2023 in light of any new information to determine if any changes need to be made prior to their implementation. NMFS will publish a notice prior to the 2023 fishing year to confirm these limits as projected or propose any necessary changes.

### Comments and Responses

The public comment period for the proposed rule ended on February 17, 2022. NMFS received no comments from the public during this period.

### Changes From the Proposed Rule

There are no changes from the proposed rule.

### Classification

The NMFS Administrator, Greater Atlantic Region, has determined that these specifications are necessary for the conservation and management of the Northeast skate fishery, and that it is consistent with the Northeast Skate Complex FMP, other provisions of the Magnuson-Stevens Act, and other applicable laws.

This final rule is exempt from review under Executive Order 12866 because the action contains no implementing regulations.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here.

No comments were received regarding this certification, and the initial certification remains unchanged. As a result, a final regulatory flexibility analysis was not required and none was prepared.

This final rule does not duplicate, conflict, or overlap with any existing Federal rules.

This action contains no information collection requirements under the Paperwork Reduction Act of 1995.

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

Dated: March 11, 2022.

**Samuel D. Rauch, III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

[FR Doc. 2022–05649 Filed 3–16–22; 8:45 am]

BILLING CODE 3510–22–P

# Proposed Rules

Federal Register
Vol. 87, No. 52
Thursday, March 17, 2022

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

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 300

**[REG–114209–21]**

**RIN 1545–BQ17**

### User Fees Relating to Enrolled Agents and Enrolled Retirement Plan Agents; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to a notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains corrections to a notice of proposed rulemaking and notice of public hearing (REG–114209–21) that was published in the **Federal Register** on Tuesday, March 1, 2022. The notice of proposed rulemaking contains proposed amendments to the regulations relating to user fees for enrolled agents and enrolled retirement plan agents.

**DATES:** Written or electronic comments as well as requests to speak and outlines of topics to be discussed at the public hearing must be received by May 2, 2022. The public hearing is being held by teleconference on May 11, 2022 at 10 a.m. EST.

**ADDRESSES:** Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–114209–21). Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The IRS expects to have limited personnel available to process comments that are submitted on paper or through the mail. Any comments submitted on paper will be considered to the extent practicable. The IRS will publish any comments submitted electronically, and to the extent practicable comments submitted on paper, to the public docket. Send submissions to: CC:PA:LPD:PR (REG–114209–21), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. For those requesting to speak during the hearing, send an outline of topic submissions electronically via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–114209–21). Individuals who want to testify (by telephone) at the public hearing must send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–114209–21 and the word TESTIFY. For example, the subject line may say: Request to TESTIFY at Hearing for REG–114209–21. The email should include a copy of the speaker's public comments and outline of topics. Individuals who want to attend (by telephone) the public hearing must also send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–114209–21 and the word ATTEND. For example, the subject line may say: Request to ATTEND Hearing for REG–114209–21. To request special assistance during the telephonic hearing, contact the Publications and Regulations Branch of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to *publichearings@irs.gov* (preferred) or by telephone at (202) 317–5177 (not a toll-free number).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Mark Shurtliff at (202) 317–6845; concerning cost methodology, Michael A. Weber at (202) 803–9738; concerning submission of comments, the public hearing, and the access code to attend the hearing by telephone, Regina Johnson at (202) 317–5177 (not toll-free numbers) or *publichearings@IRS.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Background

The proposed regulations that are the subject of this correction are under section 9701 of Title 31 of the United States Code.

#### Need for Correction

As published, the notice of proposed rulemaking and notice of public hearing (REG–114209–21) contains errors regarding certain dates that need to be corrected.

#### Correction of Publication

Accordingly, the notice of proposed rulemaking and notice of public hearing (REG–114209–21), that are the subject of FR Doc 2022–04303, published on March 1, 2022 (87 FR 11366), are corrected to read as follows:

On page 11367, in the first column, under the caption **DATES**, the first and second sentences are corrected to read ''Electronic or written comments must be received by May 2, 2022. The public hearing is being held by teleconference on May 11, 2022 at 10 a.m. EST.''

**Oluwafunmilayo A. Taylor,**

*Branch Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).*

[FR Doc. 2022–05577 Filed 3–16–22; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF EDUCATION

### 34 CFR Chapter III

**[Docket ID ED–2022–OSERS–0038]**

### Proposed Priority and Requirements—Technical Assistance on State Data Collection—The Rhonda Weiss National Technical Assistance Center To Improve State Capacity To Collect, Report, Analyze, and Use Accurate IDEA Data in Accessible Formats

**AGENCY:** Office of Special Education and Rehabilitative Services, Department of Education.

**ACTION:** Proposed priority and requirements.

**SUMMARY:** The Department of Education (Department) proposes a priority and requirements for the Rhonda Weiss National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Data in Accessible Formats (Accessible Data Center) under the Technical Assistance on State Data Collection program, Assistance Listing Number 84.373Q. The Department may use this priority and these requirements for competitions in fiscal year (FY) 2022 and thereafter. We take this action to address an identified need for national technical assistance (TA) to improve the capacity of States to meet the data

collection requirements under Part B and Part C of the Individuals with Disabilities Education Act (IDEA). This Accessible Data Center would support States in collecting, reporting, and determining how to best analyze and use their data in formats that provide equitable access and visualizations to persons with disabilities, particularly those with blindness, visual impairments, motor impairments, and intellectual disabilities. The Accessible Data Center would customize its TA to meet each State's specific needs.

**DATES:** We must receive your comments on or before May 31, 2022.

**ADDRESSES:** Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by email or those submitted after the comment period. Please submit your comments only one time, in order to ensure that we do not receive duplicate copies. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''Help.''
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about the proposed priority and requirements, address them to Richelle Davis, U.S. Department of Education, 400 Maryland Avenue SW, Room 5025A, Potomac Center Plaza, Washington, DC 20202–5108.

*Privacy Note:* The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

**FOR FURTHER INFORMATION CONTACT:** Richelle Davis, U.S. Department of Education, 400 Maryland Avenue SW, Room 5025A, Potomac Center Plaza, Washington, DC 20202–5108. Telephone: (202) 245–7401. Email: *Richelle.Davis@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:**

*Invitation to Comment:* We invite you to submit comments regarding the proposed priority and requirements. To ensure that your comments have maximum effect in developing the final priority and requirements, we urge you to clearly identify the specific section of the proposed priority or requirement that each comment addresses.

We are particularly interested in comments about whether the proposed priority or any of the proposed requirements would be challenging for new applicants to meet and, if so, how the proposed priority or requirements could be revised to address potential challenges.

*Directed Questions:*

1. What are the common challenges or barriers experienced by parents of children with disabilities and other stakeholders with disabilities, particularly those with blindness, visual impairments, motor impairments, and intellectual disabilities, when accessing, exploring, or engaging with IDEA data and other educational data on government websites?

2. What accessibility features and interactive elements of a data reporting system are necessary to allow parents of children with disabilities and other stakeholders with disabilities, particularly those with blindness, visual impairments, motor impairments, and intellectual disabilities, to access and use data to answer their essential questions?

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 to reduce any regulatory burden that might result from the proposed priority and requirements. Please let us know how we could further reduce potential costs or increase potential benefits, while preserving effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about the proposed priority and requirements by accessing *Regulations.gov*. You also may inspect the comments in person. To arrange in-person inspection, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

*Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record:* On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed priority and requirements. To schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

*Purpose of Program:* The purpose of the Technical Assistance on State Data Collection program is to improve the capacity of States to meet IDEA data collection and reporting requirements. Funding for the program is authorized under section 611(c)(1) of IDEA. This section gives the Secretary authority to reserve not more than ½ of 1 percent of the amounts appropriated under Part B for each fiscal year to provide TA activities authorized under section 616(i) of IDEA, to improve the capacity of States to meet the data collection and reporting requirements under Parts B and C of IDEA. The maximum amount the Secretary may reserve under this set-aside for any fiscal year is $25,000,000, cumulatively adjusted by the rate of inflation. For FY 2022, the inflation adjusted amount is $37,300,000. Section 616(i) of IDEA requires the Secretary to review the data collection and analysis capacity of States to ensure that data and information determined necessary for implementation of section 616 of IDEA are collected, analyzed, and accurately reported to the Secretary. It also requires the Secretary to provide TA, where needed, to improve the capacity of States to meet the IDEA Part B and Part C data collection requirements, which include the data collection and reporting requirements in sections 616 and 618 of IDEA. In addition, the Consolidated Appropriations Act, 2021, Public Law 116–260, gives the Secretary authority to use funds reserved under section 611(c) of IDEA to provide TA to States to improve their capacity to administer and carry out other services and activities to improve data collection, coordination, quality, and use under Parts B and C of IDEA.

*Program Authority:* 20 U.S.C. 1411(c), 1416(i), 1418(c), 1442; and the Consolidated Appropriations Act, 2021, Public Law 116–260, 134 Stat. 1182, 1601.

*Note:* Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

*Applicable Program Regulations:* 34 CFR 300.702.

*Proposed Priority:*

This notice contains one proposed priority.

*The Rhonda Weiss*[1] *National Technical Assistance Center to Improve*

[1] The Center is named in remembrance of Rhonda Weiss, who was a senior attorney with the U.S. Department of Education, a staunch advocate for

Continued

*State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Data in Accessible Formats.*

*Background:*

According to the U.S. Census Bureau's 2019 American Community Survey, 12.7 percent of the U.S. Population experiences disability (more than 1 in 8 people). Approximately 2.3 percent, or over 7.4 million, U.S. citizens have a visual disability and 5.2 percent, or close to 16 million U.S. citizens have a cognitive disability. Disability impacts people of all ages, races, ethnicities, geographies, and socio-economic groups.

The purpose of the Accessible Data Center is to improve State capacity to accurately collect, report, analyze, and use the IDEA Part B and Part C data reported under IDEA sections 616 and 618 in accessible formats for persons with disabilities, particularly those with blindness, visual impairments, motor impairments, and intellectual disabilities.

Under the authority of IDEA sections 616 and 618, States are required to collect and analyze data on infants, toddlers, and children with disabilities and report on the data to the Department and the public. Section 504 of the Rehabilitation Act of 1973, as amended (Rehabilitation Act), requires States to publish data in a manner that provides the same access and usability to persons with and without disabilities. Currently, States struggle to report data in accessible formats that also are dynamic and usable by data consumers with limited statistical knowledge. To meet the demands of both statutes, States generally rely on static data portrayals rather than dynamic visualizations. The lack of available software to develop accessible, dynamic and manipulatable data products creates inequitable access for persons with disabilities, particularly those with blindness, visual impairments, motor impairments, and intellectual disabilities.

The Accessible Data Center would increase the capacity of States to collect, report, analyze, and use the IDEA Part B and Part C data reported under IDEA sections 616 and 618 in accessible formats in two ways: (1) By developing an openly licensed software program that allows States to report and publish data products that are accessible, usable, and manipulatable by persons with disabilities, particularly those with blindness, visual impairments, motor impairments, and intellectual disabilities, as well as by those persons without disabilities, and (2) by providing TA on accessible data reporting and publication. By developing an accessible and usable data reporting platform and supporting States as they revise their data collection tools and publish accessible data, both internal and external users will be better positioned to analyze and use the data. Hazen et al. (2017) note that both data analysis and data use by both internal and external users can be integrated into the data quality process and used as a tool for improving data quality. By increasing the capacity of States to report their data in formats that are both accessible and useable, this Center will aid in the improvement of data quality across the States and ensure equitable access to IDEA data for all stakeholders.

Federal agencies have increasingly used open licensing to expand the impact and reach of materials developed with Federal funds, enable innovative use of those materials, and ensure that those materials and resources are available to the public (U.S Department of State, 2017). Open licensing gives permission to the public to use materials created under the terms of the license and attribute to the creator under copyright law. Pfenninger et al. (2017) noted that the benefit of open licensing allows for the burden of the work to be shared and used more broadly, avoids unnecessary duplication, supports learning to solutions more quickly, and supports learning from one another to get to solutions more quickly, and allows for research to be seen and used. Additionally, open licensing helps to improve educational research opportunities and systems, given the rapid pace of technological change and ongoing advances.

Data visualizations can be difficult to access for persons with disabilities. This difficulty is not limited to persons who are blind and/or visually impaired, but also impacts those with cognitive and learning disabilities, and those with visual or motor disabilities who do not access their computers with a mouse or touchscreen. These barriers have been amplified by the growing interest in, and use of, infographics and interactive data displays and dashboards on websites and in social media. In addition to difficulty with use, persons with disabilities are often excluded as potential authors and designers of data visualizations due to the inaccessibility of the computer-based tools used to create and publish data displays. Despite legislation, including sections 504 and 508 of the Rehabilitation Act, and Title III of the Americans with Disabilities Act, potential data authors and consumers with disabilities continue to be excluded from the data sharing necessary for equal access and participation in civic conversations, education, advocacy, and employment.

To extend the benefits and opportunities of data visualization equitably and inclusively to all people, new tools must be developed that prioritize access and usability for everyone. Developers and designers should engage with people with disabilities (including developers and designers with disabilities) to identify and integrate accessibility solutions. Accessibly designed software and data visualizations will increase access for those who have traditionally been excluded and increase opportunities for all consumers and authors to interact with data in new and preferred ways. Following the principles of universal design, everyone benefits when we expand the ability of people with disabilities to use and access information, products, programs, and spaces with greater convenience and enjoyment.

In addition to equitable access and data availability, data reporters face a growing problem of how to meaningfully publish large datasets. Consumers need easy tools for conducting simple analyses, comparing variables, and searching for data-based answers to unique and changing questions. Interactive data visualizations increase confidence in data reliability and provide stakeholders with opportunities to look at data in new ways.

Modern, web-based data visualizations include the ability to select, link, filter, and reorganize data, as well as the delivery of 3–D/multidimensional data representations that can be accessed from multiple perspectives (Cota et al., 2017). Challenges to producing interactive data visualizations include managing visual noise, fitting large amounts of data onto limited screen sizes, and satisfying the high-performance computation requirements behind dynamic visualizations (Hajirahimova & Ismayilova, 2018). Innovative data interactivity and manipulation solutions can also solve accessibility challenges. Accessibility solutions for static images (which usually involve written descriptions embedded in alt-tags in computer code) should become standard practice, while simultaneously being

disability rights, and a champion for ensuring equity and accessibility for persons with disabilities. For more information on Rhonda and her work to ensure equity and accessibility for persons with disabilities please see: *https://www.washingtonpost.com/dc-md-va/2021/12/13/blind-government-lawyer-disabilities-rights/.*

reimagined to accommodate responsive and animated representations of data.

*Proposed Priority:*

Under this proposed priority, the Department provides funding for a cooperative agreement to establish and operate the Rhonda Weiss National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Data in Accessible Formats (Accessible Data Center).

The Accessible Data Center will provide TA to help States better meet current and future IDEA Part B and Part C data collection and reporting requirements, improve data quality, and analyze and use the data reported so that they are in accessible formats. The Accessible Data Center's work will comply with the privacy and confidentiality protections in the Family Educational Rights and Privacy Act (FERPA) and IDEA and will not provide the Department with access to child-level data. The Accessible Data Center must achieve at a minimum, the following expected outcomes:

(a) Improved accessibility of the IDEA Part B and Part C data reported and published under IDEA sections 616 and 618;

(b) Increased capacity of States to collect, report, analyze, and use high-quality IDEA Part B and Part C data in accessible formats;

(c) Development of an open license, accessible software program, for the publication of dynamic data products (consistent with the open licensing requirement in 2 CFR 3474.20); and

(d) Development and documentation of a knowledge base related to the accessible reporting and dynamic presentation of data.

In addition, the Accessible Data Center must provide a range of targeted and general TA products and services for improving States' capacity to accurately collect, report, analyze, and use IDEA section 616 and section 618 data in accessible formats for persons with disabilities, particularly those with blindness, visual impairments, motor impairments, and intellectual disabilities. Such TA must include, at a minimum—

(a) Working with the Department to develop open-source electronic tools to assist States in reporting their IDEA data in accessible formats that allow for dynamic visualizations that can be manipulated for persons with and without disabilities. The tools must utilize accessibility best practices, exceed all Federal accessibility requirements, and be designed to accommodate continued enhancements to meet States' changing needs and updates in accessibility best practice;

(b) Developing a plan to maintain appropriate functionality of the open-source electronic tools described in paragraph (a) as changes are made to data collections, reporting requirements, accessibility best practices, and accessibility requirements;

(c) Developing universal TA products, including a user manual and instructions, and conducting training with State staff on use of the open-source electronic tools; and

(d) Developing white papers and presentations that include tools and solutions to challenges in the collection, reporting, analysis, and use of IDEA data in accessible formats.

In addition to these programmatic requirements, to be considered for funding under this priority, applicants must meet the application and administrative requirements in this priority, which are:

(a) Demonstrate, in the narrative section of the application under ''Significance of the Project,'' how the proposed project will—

(1) Address State challenges in collecting, analyzing, reporting, and using the IDEA Part B and Part C data reported under IDEA sections 616 and 618 in formats that are both accessible to persons with visual impairments and/or other disabilities, and also dynamic, to promote enhanced data use that will improve data quality and identify programmatic strengths and areas for improvement. To meet this requirement the applicant must—

(i) Demonstrate knowledge of IDEA data collections, including data required under IDEA sections 616 and 618;

(ii) Demonstrate knowledge of accessible reporting and dynamic visualization, and document areas for further knowledge development;

(iii) Present information about the difficulties State educational agencies (SEAs), State lead agencies (LAs), local educational agencies (LEAs), early intervention service (EIS) providers, and schools have encountered in meeting the requirements of section 504 of the Rehabilitation Act when reporting IDEA data;

(iv) Present information about the difficulties SEAs, State LAs, LEAs, EIS providers, and schools have in developing dynamic data visualizations for public use; and

(2) Improve outcomes in collecting, analyzing, reporting, and using the IDEA Part B and Part C data in formats that are accessible to persons with visual impairments and/or other disabilities.

(b) Demonstrate, in the narrative section of the application under ''Quality of project services,'' how the proposed project will—

(1) Ensure equal access and treatment for members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. To meet this requirement, the applicant must describe how it will—

(i) Identify the needs of the intended recipients and end users for TA and information; and

(ii) Ensure that products and services meet the needs of the intended TA recipients and end users;

(2) Achieve its goals, objectives, and intended outcomes. To meet this requirement, the applicant must provide—

(i) Measurable intended project outcomes; and

(ii) In Appendix A, the logic model [2] by which the proposed project will achieve its intended outcomes that depicts, at a minimum, the goals, activities, outputs, and intended outcomes of the proposed project;

(3) Use a conceptual framework (and provide a copy in Appendix A) to develop project plans and activities, describing any underlying concepts, assumptions, expectations, beliefs, or theories, as well as the presumed relationships or linkages among these variables, and any empirical support for this framework;

*Note:* The following websites provide more information on logic models and conceptual frameworks: *https://osepideasthatwork.org/sites/default/files/2021-12/ConceptualFramework_Updated.pdf* and *www.osepideasthatwork.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework.*

(4) Be based on current research and use evidence-based practices (EBPs).[3] To meet this requirement, the applicant must describe—

(i) The current research on the capacity of SEAs, State LAs, LEAs, and EIS providers to report and use data, specifically section 616 and section 618

[2] Logic model (34 CFR 77.1) (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

[3] For purposes of these requirements,''evidence-based practices'' (EBPs) means, at a minimum, demonstrating a rationale (as defined in 34 CFR 77.1) based on high-quality research findings or positive evaluation that such activity, strategy, or intervention is likely to improve student outcomes or other relevant outcomes.

data in a manner that allows persons with vision and/or other disabilities, as well as those without, to access and dynamically manipulate data, as both a means of improving data quality and identifying strengths and areas for improvement;

(ii) How it will analyze and incorporate the views of end users regarding the accessibility of tools currently available for data collection, reporting, analysis, and use. Specifically, how it will assess the overall accessibility, data manipulability, and the accessibility of dynamic data visualizations for persons with and without disabilities; and

(iii) How the proposed project will incorporate current research, EBPs, and the needs of end users in the development and delivery of its products and services;

(5) How it will develop products and provide services that are of high quality and sufficient intensity and duration to achieve the intended outcomes of the proposed project. To address this requirement, the applicant must describe—

(i) How it proposes to identify or develop the knowledge base on the capacity needs of SEAs, State LAs, LEAs, and EIS programs to meet IDEA data collection and reporting requirements, data analysis, and use of the IDEA Part B and Part C data reported under IDEA sections 616 and 618 in a manner that allows individuals with vision and/or other disabilities, as well as those without, to access and dynamically manipulate data;

(ii) Its proposed approach to universal, general TA,[4] which must identify the intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(iii) Its proposed approach to targeted, specialized TA,[5] which must identify—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach; and

(B) Its proposed approach to measure the readiness of potential TA recipients to work with the project, assessing, at a minimum, their current infrastructure, available resources, and ability to build capacity at the local level; and

(iv) Its proposed approach to intensive, sustained TA,[6] which must identify—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(B) Its proposed approach to measure the readiness of SEA, State LAs, LEA, and EIS program/provider personnel to work with the project, including their commitment to the initiative, alignment of the initiative to their needs, current infrastructure, available resources, and ability to build capacity at the SEA, State LA, LEA, and EIS program/provider levels;

(C) Its proposed plan for assisting SEAs and State LAs (and LEAs, in conjunction with SEAs and EIS programs/providers, in conjunction with State LAs) to build or enhance training systems to meet IDEA Part B and Part C data collection and reporting requirements in a manner that allows individuals with vision and/or other disabilities, as well as those without, to access and dynamically manipulate data. This includes professional development based on adult learning principles and coaching;

(D) Its proposed plan for working with appropriate levels of the education system (*e.g.,* SEAs, State LAs, regional TA providers, LEAs, EIS providers, schools, and families) to ensure there is communication between each level and there are systems in place to support the capacity needs of SEAs, State LAs, LEAs, and EIS providers to meet IDEA data collection and reporting requirements, as well as support data analysis, and the use of IDEA Part B and Part C data in a manner that allows individuals with vision and/or other disabilities, as well as those without, to access and dynamically manipulate data; and

(E) Its proposed plan for collaborating and coordinating with Department-funded projects, including those providing data-related support to States, where appropriate, to align complementary work and jointly develop and implement products and services to meet the purposes of this priority. Such Department-funded projects include the IDEA Data Center (IDC), the Center for IDEA Early Childhood Data Systems (DaSy), the Center for IDEA Fiscal Reporting (CIFR), the Center for the Integration of IDEA Data (CIID), EdFacts, and the research and development investments of the Institute of Education Sciences/National Center for Education Statistics; and

(6) Its proposed plan to develop products and implement services that maximize efficiency. To address this requirement, the applicant must describe—

(i) How the proposed project will use technology to achieve the intended project outcomes;

(ii) With whom the proposed project will collaborate and the intended outcomes of this collaboration; and

(iii) How the proposed project will use non-project resources to achieve the intended project outcomes.

(c) In the narrative section of the application under ''Quality of the project evaluation,'' include an evaluation plan for the project developed in consultation with and implemented by a third-party evaluator.[7] The evaluation plan must—

(1) Articulate formative and summative evaluation questions, including important process and outcome evaluation questions. These questions should be related to the project's proposed logic model required in paragraph (b)(2)(ii) of these requirements;

(2) Describe how progress in and fidelity of implementation, as well as project outcomes, will be measured to answer the evaluation questions. Specify the measures and associated instruments or sources for data appropriate to the evaluation questions. Include information regarding reliability and validity of measures where appropriate;

(3) Describe strategies for analyzing data and how data collected as part of

[4] ''Universal, general TA'' means TA and information provided to independent users through their own initiative, resulting in minimal interaction with Accessible Data Center staff and including one-time, invited or offered conference presentations by Accessible Data Center staff. This category of TA also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the Accessible Data Center's website by independent users. Brief communications by Accessible Data Center staff with recipients, either by telephone or email, are also considered universal, general TA.

[5] ''Targeted, specialized TA'' means TA services based on needs common to multiple recipients and not extensively individualized. A relationship is established between the TA recipient and one or more Accessible Data Center staff. This category of TA includes one-time, labor-intensive events, such as facilitating strategic planning or hosting regional or national conferences. It can also include episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized TA.

[6] ''Intensive, sustained TA'' means TA services often provided on-site and requiring a stable, ongoing relationship between Accessible Data Center staff and the TA recipient. ''TA services'' are defined as negotiated series of activities designed to reach a valued outcome. This category of TA should result in changes to policy, program, practice, or operations that support increased recipient capacity or improved outcomes at one or more systems levels.

[7] A ''third-party'' evaluator is an independent and impartial program evaluator who is contracted by the grantee to conduct an objective evaluation of the project. This evaluator must not have participated in the development or implementation of any project activities, except for the evaluation activities, or have any financial interest in the outcome of the evaluation.

this plan will be used to inform and improve service delivery over the course of the project and to refine the proposed logic model and evaluation plan, including subsequent data collection;

(4) Provide a timeline for conducting the evaluation and include staff assignments for completing the plan. The timeline must indicate that the data will be available annually for the annual performance report and at the end of Year 2 for the review process; and

(5) Dedicate sufficient funds in each budget year to cover the costs of developing or refining the evaluation plan in consultation with a third-party evaluator, as well as the costs associated with the implementation of the evaluation plan by the third-party evaluator.

(d) Demonstrate, in the narrative section of the application under ''Adequacy of resources,'' how—

(1) The proposed project will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve the project's intended outcomes;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities; and

(4) The proposed costs are reasonable in relation to the anticipated results and benefits, and funds will be spent in a way that increases their efficiency and cost-effectiveness, including by reducing waste or achieving better outcomes.

(e) Demonstrate, in the narrative section of the application under ''Quality of the management plan,'' how—

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) Key project personnel and any consultants and subcontractors will be allocated and how these allocations are appropriate and adequate to achieve the project's intended outcomes;

(3) The proposed management plan will ensure that the products and services provided are of high quality, relevant, and useful to recipients; and

(4) The proposed project will benefit from a diversity of perspectives, including those of families, educators, TA providers, researchers, and policy makers, among others, in its development and operation.

(f) Address the following application requirements:

(1) Include, in Appendix A, personnel-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative;

(2) Include, in the budget, attendance at the following:

(i) A one- and one-half day kick-off meeting in Washington, DC, or virtually, after receipt of the award, and an annual planning meeting in Washington, DC, or virtually, with the OSEP project officer and other relevant staff during each subsequent year of the project period.

*Note:* Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative;

(ii) A two- and one-half day project directors' conference in Washington, DC, or virtually, during each year of the project period; and

(iii) Three annual two-day trips, or virtually, to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP;

(3) Include, in the budget, a line item for an annual set-aside of 5 percent of the grant amount to support emerging needs that are consistent with the proposed project's intended outcomes, as those needs are identified in consultation with, and approved by, the OSEP project officer. With approval from the OSEP project officer, the project must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period;

(4) Maintain a high-quality website, with an easy-to-navigate design, that meets government or industry-recognized standards for accessibility; and

(5) Include, in Appendix A, an assurance to assist OSEP with the transfer of pertinent resources and products and to maintain the continuity of services to States during the transition to this new award period and at the end of this award period, as appropriate.

*References:*

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Hazen, B.T., Weigel, F.K., Ezell, J.D., Boehmke, B.C., & Bradley, R.V. (2017). Toward understanding outcomes associated with data quality improvement. *International Journal of Production Economics, 193,* 737–747.

Pfenninger, S., DeCarolis, J., Hirth, L. Quoilin, S., & Staffell, I. (2017). The importance of open data and software: Is energy research lagging behind? *Energy Policy, 101,* 211–215. *https://doi.org/10.1016/j.enpol.2016.11.046.*

U.S. Department of State. (2017). *Federal Open Licensing Playbook. https://eca.state.gov/files/bureau/open_licensing_playbook_final.pdf.*

*Types of Priorities:*

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

*Absolute priority:* Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

*Competitive preference priority:* Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

*Invitational priority:* Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

**Final Priority and Requirements**

We will announce the final priority and requirements in a document in the **Federal Register**. We will determine the final priority and requirements after considering responses to this document and other information available to the Department. This document does not preclude us from proposing additional priorities or requirements subject to meeting applicable rulemaking requirements.

*Note:* This document does *not* solicit applications. In any year in which we choose to use this proposed priority and one or more of these requirements, we

invite applications through a notice in the **Federal Register**.

**Executive Orders 12866 and 13563**

*Regulatory Impact Analysis*

Under Executive Order 12866, the Office of Management and Budget (OMB) determines whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and review by OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

OMB has determined that this proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We also have reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing the proposed priority and requirements only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563. In summary, the potential costs associated with this priority would be minimal, while the potential benefits are significant. The Department believes that this regulatory action does not impose significant costs on eligible entities. Participation in this program is voluntary, and the costs imposed on applicants by this regulatory action will be limited to paperwork burden related to preparing an application. The potential benefits of implementing the program would outweigh the costs incurred by applicants, and the costs of carrying out activities associated with the application will be paid for with program funds. For these reasons, we have determined that the costs of implementation will not be excessively burdensome for eligible applicants, including small entities.

We have also determined that this regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

In addition, we have considered the potential benefits of this regulatory action and have noted these benefits in the background section of this document.

**Paperwork Reduction Act of 1995**

The proposed priority contains information collection requirements that are approved by OMB under OMB control number 1820–0028; the proposed priority does not affect the currently approved data collection.

**Clarity of the Regulatory Actions**

Executive Order 12866 and the Presidential memorandum ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make the proposed priority easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulatory actions clearly stated?
- Do the proposed regulatory actions contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulatory actions (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulatory actions be easier to understand if we divided them into more (but shorter) sections?
- Could the description of the proposed regulatory actions in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulatory actions easier to understand? If so, how?
- What else could we do to make the proposed regulatory actions easier to understand?

To send any comments about how the Department could make these proposed regulatory actions easier to understand, see the instructions in the **ADDRESSES** section.

*Regulatory Flexibility Act Certification:* The Secretary certifies that this proposed regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration (SBA) Size Standards define ''small entities'' as for-profit or nonprofit institutions with total annual revenue below $7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or

special districts), with a population of less than 50,000.

The small entities that this proposed regulatory action would affect are LEAs, including charter schools that operate as LEAs under State law; institutions of higher education; other public agencies; private nonprofit organizations; freely associated States and outlying areas; Indian Tribes or Tribal organizations; and for-profit organizations. We believe that the costs imposed on an applicant by the proposed priority would be limited to paperwork burden related to preparing an application and that the benefits of the proposed priority would outweigh any costs incurred by the applicant.

Participation in the Technical Assistance on State Data Collection program is voluntary. For this reason, the proposed priority would impose no burden on small entities unless they applied for funding under the program. We expect that in determining whether to apply for Technical Assistance on State Data Collection program funds, an eligible entity would evaluate the requirements of preparing an application and any associated costs and weigh them against the benefits likely to be achieved by receiving a Technical Assistance on State Data Collection program grant. An eligible entity probably would apply only if it determines that the likely benefits exceed the costs of preparing an application.

We believe that the proposed priority would not impose any additional burden on a small entity applying for a grant than the entity would face in the absence of the proposed action. That is, the length of the applications those entities would submit in the absence of the proposed regulatory action and the time needed to prepare an application would likely be the same.

This proposed regulatory action would not have a significant economic impact on a small entity once it receives a grant because it would be able to meet the costs of compliance using the funds provided under this program. We invite comments from eligible small entities as to whether they believe this proposed regulatory action would have a significant economic impact on them and, if so, request evidence to support that belief.

*Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

*Accessible Format:* On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document 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 Adobe 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.

**Katherine Neas,**

*Deputy Assistant Secretary, delegated the authority to perform the functions and duties of the Assistant Secretary for the Office of Special Education and Rehabilitative Services.*

[FR Doc. 2022–05716 Filed 3–15–22; 11:15 am]

BILLING CODE 4000–01–P

**DEPARTMENT OF AGRICULTURE**

**Forest Service**

**36 CFR Part 242**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 100**

**[Docket No. FWS–R7–SM–2021–0039; FXFR13350700640–223–FF07J00000]**

**RIN 1018–BF19**

## Subsistence Management Regulations for Public Lands in Alaska—2023–24 and 2024–25 Subsistence Taking of Fish and Shellfish Regulations

**AGENCIES:** Forest Service, Agriculture; Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would establish regulations for fish and shellfish seasons, harvest limits, methods, and means related to taking of fish and shellfish for subsistence uses during the 2023–2024 and 2024–2025 regulatory years. The Federal Subsistence Board (Board) is on a schedule of completing the process of revising subsistence taking of fish and shellfish regulations in odd-numbered years and subsistence taking of wildlife regulations in even-numbered years; public proposal and review processes take place during the preceding year. The Board also addresses customary and traditional use determinations during the applicable cycle; in addition, during the rulemaking cycle for the fish and shellfish regulations, the Board will accept proposals for nonrural determinations. When final, the resulting rulemaking will replace the existing subsistence fish and shellfish taking regulations. This proposed rule could also amend the general regulations on subsistence taking of fish and wildlife.

**DATES:**

*Public meetings:* The Federal Subsistence Regional Advisory Councils will hold public meetings to receive comments and make proposals to change this proposed rule February 8 through March 24, 2022, and will hold another round of public meetings to discuss and receive comments on the proposals, and make recommendations on the proposals to the Federal Subsistence Board, on several dates between September 20 and November 2, 2022. The Board will discuss and evaluate proposed regulatory changes during a public meeting in Anchorage,

AK, in January 2023. See **SUPPLEMENTARY INFORMATION** for specific information on dates and locations of the public meetings.

*Public comments:* Comments and proposals to change this proposed rule must be received or postmarked by May 16, 2022.

**ADDRESSES:**

*Public meetings:* The Federal Subsistence Board and the Federal Subsistence Regional Advisory Councils' public meetings are held at various locations in Alaska. See **SUPPLEMENTARY INFORMATION** for specific information on dates and locations of the public meetings.

*Public comments:* You may submit comments by one of the following methods:

• *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Search box, enter Docket number FWS–R7–SM–2021–0039. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment.''

• *By hard copy:* Submit by U.S. mail or hand delivery: Public Comments Processing, Attn: FWS–R7–SM–2021–0039; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: PRB (JAO/3W); Falls Church, VA 22041–3803. If in-person meetings are held, you may also deliver a hard copy to the Designated Federal Official attending any of the Federal Subsistence Regional Advisory Council public meetings. See **SUPPLEMENTARY INFORMATION** for additional information on locations of the public meetings.

We will post all comments on *https://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Review Process section below for more information).

**FOR FURTHER INFORMATION CONTACT:**

Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Sue Detwiler, Office of Subsistence Management; (907) 786–3888 or *subsistence@fws.gov.* For questions specific to National Forest System lands, contact Gregory Risdahl, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region; (907) 302–7354 or *gregory.risdahl@usda.gov.*

**SUPPLEMENTARY INFORMATION:**

## Background

Under Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126), the Secretary of the Interior and the Secretary of Agriculture (hereafter referred to as ''the Secretaries'') jointly implement the Federal Subsistence Management Program (hereafter referred to as ''the Program''). The Program provides a preference for take of fish and wildlife resources for subsistence uses on Federal public lands and waters in Alaska. Only Alaska residents of areas identified as rural are eligible to participate in the Program. The Secretaries published temporary regulations to carry out the Program in the **Federal Register** on June 29, 1990 (55 FR 27114), and final regulations on May 29, 1992 (57 FR 22940). Program officials have subsequently amended these regulations a number of times.

Because the Program is a joint effort between the Departments of the Interior and Agriculture, these regulations are located in two titles of the Code of Federal Regulations (CFR): The Agriculture regulations are at title 36, ''Parks, Forests, and Public Property,'' and the Interior regulations are at title 50, ''Wildlife and Fisheries,'' at 36 CFR 242.1–28 and 50 CFR 100.1–28, respectively. Consequently, to indicate that identical changes are proposed for regulations in both titles 36 and 50, in this document we will present references to specific sections of the CFR as shown in the following example: § ____.24.

The Program regulations contain subparts as follows: Subpart A, General Provisions; Subpart B, Program Structure; Subpart C, Board Determinations; and Subpart D, Subsistence Taking of Fish and Wildlife. Consistent with subpart B of these regulations, the Secretaries established a Federal Subsistence Board to administer the Program. The Board comprises:

• A Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture;

• The Alaska Regional Director, U.S. Fish and Wildlife Service;

• The Alaska Regional Director, National Park Service;

• The Alaska State Director, Bureau of Land Management;

• The Alaska Regional Director, Bureau of Indian Affairs;

• The Alaska Regional Forester, U.S. Forest Service; and

• Two public members appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture.

Through the Board, these agencies and public members participate in the development of regulations for subparts C and D. Subpart C sets forth important Board determinations regarding program eligibility, *i.e.,* which areas of Alaska are considered rural and which species are harvested in those areas as part of a ''customary and traditional use'' for subsistence purposes. Subpart D sets forth specific harvest seasons and limits.

In administering the Program, the Secretaries divided Alaska into 10 subsistence resource regions, each of which is represented by a Regional Advisory Council. The Regional Advisory Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Federal public lands in Alaska. The Regional Advisory Council members represent varied geographical, cultural, and user interests within each region.

## Public Review Process—Comments, Proposals, and Public Meetings

The Federal Subsistence Regional Advisory Councils will have a substantial role in reviewing this proposed rule and making recommendations for the final rule. The Federal Subsistence Board, through the Federal Subsistence Regional Advisory Councils, will hold public meetings via teleconference on this proposed rule on the following dates:

Region 1—Southeast Regional Council—March 22, 2022
Region 2—Southcentral Regional Council—February 10, 2022
Region 3—Kodiak/Aleutians Regional Council—February 22, 2022
Region 4—Bristol Bay Regional Council—February 8, 2022
Region 5—Yukon–Kuskokwim Delta Regional Council—March 1, 2022
Region 6—Western Interior Regional Council—February 16, 2022
Region 7—Seward Peninsula Regional Council—March 3, 2022
Region 8—Northwest Arctic Regional Council—February 14, 2022
Region 9—Eastern Interior Regional Council—March 8, 2022
Region 10—North Slope Regional Council—March 8, 2022

Teleconferences are being held in lieu of in-person meetings due to public health and safety restrictions that are in effect. A public notice of specific dates, times, call-in number(s), and how to participate and provide public testimony will be published in local and statewide newspapers prior to each meeting.

During April 2022, the written proposals to change the regulations at subpart D, take of fish and shellfish, and subpart C, customary and traditional use and nonrural determinations, will be

compiled and distributed for public review. Written public comments will be accepted on the distributed proposals during a second 30-day public comment period, which will be announced in statewide newspaper and radio ads and posted to the program web page and social media. The Board, through the Regional Advisory Councils, will hold a second series of public meetings in September through November 2022, to receive comments on specific proposals and to develop recommendations to the Board on the following dates:

Region 1—Southeast Regional Council—October 25, 2022
Region 2—Southcentral Regional Council—October 13, 2022
Region 3—Kodiak/Aleutians Regional Council—September 20, 2022
Region 4—Bristol Bay Regional Council—November 1, 2022
Region 5—Yukon–Kuskokwim Delta Regional Council—October 27, 2022
Region 6—Western Interior Regional Council—October 19, 2022
Region 7—Seward Peninsula Regional Council—October 4, 2022
Region 8—Northwest Arctic Regional Council—October 31, 2022
Region 9—Eastern Interior Regional Council—October 5, 2022
Region 10—North Slope Regional Council—October 13, 2022

Teleconferences will substitute for in-person meetings based on current public health and safety restrictions in effect. A public notice of specific dates, times, call-in number(s), and how to participate and provide public testimony will be published in local and statewide newspapers prior to each meeting. The amount of work on each Regional Advisory Council's agenda determines the length of each Regional Advisory Council meeting, but typically the meetings are scheduled to last 2 days. Occasionally a Council will lack information necessary during a scheduled meeting to make a recommendation to the Board or to provide comments on other matters affecting subsistence in the region. If this situation occurs, the Council may announce on the record a later teleconference to address the specific issue when the requested information or data is available; it is noted that any follow up teleconference would be an exception and must be approved, in advance, by the Assistant Regional Director for the Office of Subsistence Management. These teleconferences are open to the public, along with opportunities for public comment; the date and time will be announced during the scheduled meeting and that same information will be announced through news releases and local radio, television, and social media ads.

The Board will discuss and evaluate proposed changes to the subsistence management regulations during a public meeting scheduled to be held in Anchorage, Alaska, in January 2023. The Federal Subsistence Regional Advisory Council Chairs, or their designated representatives, will present their respective Councils' recommendations at the Board meeting. Additional oral testimony may be provided on specific proposals before the Board at that time. At that public meeting, the Board will deliberate and take final action on proposals received that request changes to this proposed rule.

Proposals to the Board to modify the general fish and wildlife regulations, fish and shellfish harvest regulations, and customary and traditional use determinations must include the following information:

a. Name, address, and telephone number of the requestor;

b. Each section and/or paragraph designation in this proposed rule for which changes are suggested, if applicable;

c. A description of the regulatory change(s) desired;

d. A statement explaining why each change is necessary;

e. Proposed wording changes; and

f. Any additional information that you believe will help the Board in evaluating the proposed change.

Proposals to the Board to modify the nonrural determinations must include the following information:

a. Full name and mailing address of the proponent;

b. A statement describing the proposed nonrural determination action requested;

c. A detailed description of the community or area under consideration, including any current boundaries, borders, or distinguishing landmarks, so as to identify which Alaska residents would be affected by the change in nonrural status;

d. Rationale and supporting evidence (law, policy, factors, or guidance) for the Board to consider in determining the nonrural status of a community or area;

e. A detailed statement of the facts that illustrate that the community or area is nonrural or rural using the rationale and supporting evidence stated above; and

f. Any additional information supporting the proposed change.

The Board immediately rejects proposals that fail to include the above information, or proposals that are beyond the scope of authorities in §§ ____.23 and ____.24, subpart C (the regulations governing nonrural determinations and customary and traditional use), and §§ ____.25, ____.27, and ____.28 of subpart D (the general and specific regulations governing the subsistence take of fish and shellfish). If a proposal needs clarification, prior to being distributed for public review, the proponent may be contacted, and the proposal could be revised based on their input. Once a proposal is distributed for public review, no additional changes may be made as part of the original submission. During the January 2023 meeting, the Board may defer review and action on some proposals to allow time for cooperative planning efforts, or to acquire additional needed information. The Board may elect to defer taking action on any given proposal if the workload of staff, Regional Advisory Councils, or the Board becomes excessive. These deferrals may be based on recommendations by the affected Regional Advisory Council(s) or staff members, or on the basis of the Board's intention to do least harm to the subsistence user and the resource involved. A proponent of a proposal may withdraw the proposal provided it has not been considered, and a recommendation has not been made, by a Regional Advisory Council. The Board may consider and act on alternatives that address the intent of a proposal while differing in approach.

You may submit written comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. If you submit a comment via *https://www.regulations.gov,* your entire comment, including any personal identifying information, will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *https://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *https://www.regulations.gov* at Docket No. FWS–R7–SM–2021–0039, or by appointment, provided no public health or safety restrictions are in effect, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays, at: USFWS, Office of Subsistence Management, 1011 East Tudor Road, Anchorage, AK 99503.

*Reasonable Accommodations*

The Federal Subsistence Board is committed to providing access to these meetings for all participants. Please direct all requests for sign language interpreting services, closed captioning, or other accommodation needs to Robbin La Vine, 907–786–3888, *subsistence@fws.gov,* or 800–877–8339 (TTY), 7 business days prior to the meeting you would like to attend.

*Tribal Consultation and Comment*

As expressed in Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments,'' the Federal officials that have been delegated authority by the Secretaries are committed to honoring the unique government-to-government political relationship that exists between the Federal Government and Federally Recognized Indian Tribes (Tribes) as listed in 82 FR 4915 (January 17, 2017). Consultation with Alaska Native corporations is based on Public Law 108–199, div. H, Sec. 161, Jan. 23, 2004, 118 Stat. 452, as amended by Public Law 108–447, div. H, title V, Sec. 518, Dec. 8, 2004, 118 Stat. 3267, which provides that: ''The Director of the Office of Management and Budget and all Federal agencies shall hereafter consult with Alaska Native corporations on the same basis as Indian tribes under Executive Order No. 13175.''

The Alaska National Interest Lands Conservation Act does not provide specific rights to Tribes for the subsistence taking of wildlife, fish, and shellfish. However, because Tribal members are affected by subsistence fishing, hunting, and trapping regulations, the Secretaries, through the Board, will provide Federally recognized Tribes and Alaska Native corporations an opportunity to consult on this proposed rule.

The Board will engage in outreach efforts for this proposed rule, including a notification letter, to ensure that Tribes and Alaska Native corporations are advised of the mechanisms by which they can participate. The Board provides a variety of opportunities for consultation: Proposing changes to the existing rule; commenting on proposed changes to the existing rule; engaging in dialogue at the Regional Council meetings; engaging in dialogue at the Board's meetings; and providing input in person, by mail, email, or phone at any time during the rulemaking process. The Board will commit to efficiently and adequately providing an opportunity to Tribes and Alaska Native corporations for consultation in regard to subsistence rulemaking.

The Board will consider Tribes' and Alaska Native corporations' information, input, and recommendations, and address their concerns as much as practicable.

**Developing the 2023–24 and 2024–25 Fish and Shellfish Seasons and Harvest Limit Proposed Regulations**

In titles 36 and 50 of the CFR, the subparts C and D regulations are subject to periodic review and revision. The Board currently completes the process of revising subsistence take of fish and shellfish regulations in odd-numbered years and wildlife regulations in even-numbered years; public proposal and review processes take place during the preceding year. The Board also addresses customary and traditional use determinations during the applicable cycle. Nonrural determinations are taken up during fish and shellfish cycles.

Based on a revised Board policy, the Board will start reviewing closures to the take of fish/shellfish and wildlife during each applicable cycle. The following table lists the current closures being reviewed for this cycle. In reviewing a closure, the Board may maintain, modify, or rescind the closure. If a closure is rescinded, the regulations will revert to the existing regulations in place prior to the closure, or if no regulations were in place, any changes or the establishment of seasons, methods and means, and harvest limits must go through the full public review process. The public is encouraged to comment on these closures, and anyone recommending that a closure be rescinded should submit a proposal to establish regulations for the area that was closed.

TABLE 1—FISH AND SHELLFISH CLOSURES TO BE REVIEWED BY THE FEDERAL SUBSISTENCE BOARD FOR THE 2023–2024 AND 2024–2025 REGULATORY YEARS

| Fishery management area | Closure area |
|---|---|
| Yukon/Northern Area | Kanuti River (all fish). |
| Yukon/Northern Area | Bonanza Creek (all fish). |
| Yukon/Northern Area | Jim River, including Prospect and Douglas Creeks (all fish). |
| Yukon/Northern Area | Delta River (all fish). |
| Yukon/Northern Area | Nome Creek in Beaver Creek Drainage (Grayling). |
| Aleutians Area | Unalaska Lake (Salmon)—The waters of Unalaska Lake, its tributaries and outlet streams. |
| Aleutians Area | Summers and Morris Lakes (Salmon)—The waters of Summers and Morris Lakes and their tributaries and outlet streams. |
| Aleutian Area | Unalaska Bay Freshwater Streams (Salmon/Anadromous Fish)—All streams supporting anadromous fish runs that flow into Unalaska Bay south of a line from the northern tip of Cape Cheerful to the northern tip of Kalekta Point. |
| Aleutians Area | Mclees Lake (Salmon)—Waters of McLees Lake and its tributaries and outlet streams. |
| Aleutian Area | Adak and Kagalaska Freshwaters (Salmon)—All freshwater on Adak and Kagalaska Islands in the Adak District. |
| Alaska Peninsula Area | Russel Creek and Nurse Lagoon (Salmon)—Waters of Russel Creek and Nurse Lagoon and within 500 yards outside of the mouth of Nurse Lagoon. |
| Kodiak Area | Womens Bay (Salmon)—All waters inside a line from the tip of the Nyman Peninsula (57°43.23′ N lat. 152°31.51′ W long.), to the northeastern tip of Mary's Island (57°42.40′ N lat., 152°32.00′ W long.), to the southeastern shore of Womens Bay at 57°41.95′ N lat., 152°31.50′ W long. |
| Kodiak Area | Russel Creek and Nurse Lagoon (Salmon)—Waters of Russel Creek and Nurse Lagoon and within 500 yards outside of the mouth of Nurse Lagoon. |
| Kodiak Area | Buskin River Marine Waters (Salmon)—All waters inside of a line running from a marker on the bluff north of the mouth of the Buskin River at approximately 57°45.80′ N latitude, 152°28.38′ W longitude, to a point offshore at 57°45.35′ N latitude, 152°28.15′ W longitude, to a marker located onshore south of the river mouth at approximately 57°45.15′ N latitude, 152°28.65′ W longitude. |
| Kodiak Area | Selief Bay Creek—All waters (Salmon): Fishing within 100 yards of the terminus of Selief Bay Creek. |

TABLE 1—FISH AND SHELLFISH CLOSURES TO BE REVIEWED BY THE FEDERAL SUBSISTENCE BOARD FOR THE 2023–2024 AND 2024–2025 REGULATORY YEARS—Continued

| Fishery management area | Closure area |
|---|---|
| Kodiak Area | Afognak Bay (Salmon)—All waters north and west of a line from the tip of Last Point to the tip of River Mouth Point. |
| Kodiak Area | Afognak Island Freshwaters (Salmon)—All freshwater systems of Afognak Island. |
| Kodiak Area | Little Kitoi Creek (Salmon)—All waters 500 yards seaward of the mouth. |
| Kodiak Area | The waters of the Pacific Ocean enclosed by the boundaries of Womens Bay, Gibson Cove (King Crab), and an area defined by a line ½ mile on either side of the mouth of the Karluk River, and extending seaward 3,000 feet, and all waters within 1,500 feet seaward of the shoreline of Afognak Island. |
| Southeastern Alaska Area | Taku River (Salmon). |
| Southeastern Alaska Area | Neva Lake, Neva Creek, and South Creek (Sockeye Salmon). |

The current subsistence program regulations form the starting point for consideration during each new rulemaking cycle. Consequently, in this rulemaking action pertaining to fish and shellfish, the Board will consider proposals to revise the regulations in any of the following sections of titles 36 and 50 of the CFR:

- § ____.23: rural determinations;
- § ____.24: customary and traditional use determinations;
- § ____.25: general provisions governing the subsistence take of wildlife, fish, and shellfish;
- § ____.27: specific provisions governing the subsistence take of fish; and
- § ____.28: specific provisions governing the subsistence take of shellfish.

As such, the text of the proposed 2023–25 subparts C and D subsistence regulations in titles 36 and 50 is the combined text of previously issued rules that revised these sections of the regulations. The following **Federal Register** citations show when these CFR sections were last revised. Therefore, the regulations established by these three final rules constitute the text of this proposed rule:

The text of the proposed amendments to 36 CFR 242.23 and 242.27 and 50 CFR 100.23 and 100.27 is the final rule for the 2021–2023 regulatory period for fish (86 FR 17713; April 6, 2021).

The text of the proposed amendments to 36 CFR 242.24 and 50 CFR 100.24 is the final rule for the 2019–2021 regulatory period for fish (85 FR 74796; November 23, 2020).

The text of the proposed amendments to 36 CFR 242.25 and 50 CFR 100.25 is the final rule for the 2018–20 regulatory period for wildlife (83 FR 50758; October 9, 2018).

The text of the proposed amendments to 36 CFR 242.28 and 50 CFR 100.28 is the final rule for the 2011–13 regulatory period for fish and shellfish (76 FR 12564; March 8, 2011).

These regulations will remain in effect until subsequent Board action changes elements as a result of the public review process outlined above in this document and a final rule is published.

## Compliance With Statutory and Regulatory Authorities

### *National Environmental Policy Act*

A Draft Environmental Impact Statement that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. The Final Environmental Impact Statement (FEIS) was published on February 28, 1992. The Record of Decision (ROD) on Subsistence Management for Federal Public Lands in Alaska was signed April 6, 1992. The selected alternative in the FEIS (Alternative IV) defined the administrative framework of an annual regulatory cycle for subsistence regulations.

A 1997 environmental assessment dealt with the expansion of Federal jurisdiction over fisheries and is available at the office listed under **FOR FURTHER INFORMATION CONTACT**. The Secretary of the Interior, with concurrence of the Secretary of Agriculture, determined that expansion of Federal jurisdiction does not constitute a major Federal action significantly affecting the human environment and, therefore, signed a Finding of No Significant Impact.

### *Section 810 of ANILCA*

An ANILCA section 810 analysis was completed as part of the FEIS process on the Federal Subsistence Management Program. The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. The final section 810 analysis determination appeared in the April 6, 1992, ROD and concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting subsistence regulations, may have some local impacts on subsistence uses, but will not likely restrict subsistence uses significantly.

During the subsequent environmental assessment process for extending fisheries jurisdiction, an evaluation of the effects of the subsistence program regulations was conducted in accordance with section 810. This evaluation also supported the Secretaries' determination that the regulations will not reach the ''may significantly restrict'' threshold that would require notice and hearings under ANILCA section 810(a).

### *Paperwork Reduction Act of 1995 (PRA)*

This proposed rule does not contain any new collections of information that require Office of Management and Budget (OMB) approval under the PRA (44 U.S.C. 3501 *et seq.*). OMB has reviewed and approved the collections of information associated with the subsistence regulations at 36 CFR part 242 and 50 CFR part 100, and assigned OMB Control Number 1018–0075, with an expiration date of January 31, 2024. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

### *Regulatory Planning and Review (Executive Order 12866)*

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

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative,

and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. In general, the resources to be harvested under this proposed rule are already being harvested and consumed by the local harvester and do not result in an additional dollar benefit to the economy. However, we estimate that two million pounds of meat are harvested by subsistence users annually and, if given an estimated dollar value of $3.00 per pound, this amount would equate to about $6 million in food value statewide. Based upon the amounts and values cited above, the Departments certify that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

*Small Business Regulatory Enforcement Fairness Act*

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this proposed rule is not a major rule. It will not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

*Executive Order 12630*

Title VIII of ANILCA requires the Secretaries to administer a subsistence priority on Federal public lands and waters. The scope of this program is limited by definition to certain public lands. Likewise, these proposed regulations have no potential takings of private property implications as defined by Executive Order 12630.

*Unfunded Mandates Reform Act*

The Secretaries have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this proposed rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies and there is no cost imposed on any State or local entities or Tribal governments.

*Executive Order 12988*

The Secretaries have determined that these regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

*Executive Order 13132*

In accordance with Executive Order 13132, the proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands unless it meets certain requirements.

*Executive Order 13175*

Title VIII of ANILCA does not provide specific rights to Tribes for the subsistence taking of wildlife, fish, and shellfish. However, as described above under *Tribal Consultation and Comment,* the Secretaries, through the Board, will provide federally recognized Tribes and Alaska Native corporations a variety of opportunities for consultation: Commenting on proposed changes to the existing rule; engaging in dialogue at the Regional Council meetings; engaging in dialogue at the Board's meetings; and providing input in person, by mail, email, or phone at any time during the rulemaking process.

*Executive Order 13211*

This Executive Order requires agencies to prepare statements of energy effects when undertaking certain actions. However, this proposed rule is not a significant regulatory action under E.O. 13211, affecting energy supply, distribution, or use, and no statement of energy effects is required.

**Drafting Information**

- Theo Matuskowitz drafted this proposed rule under the guidance of Sue Detwiler of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional assistance was provided by:
- Chris McKee, Alaska State Office, Bureau of Land Management;
- Dr. Kim Jochum, Alaska Regional Office, National Park Service;
- Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs;
- Jill Klein, Alaska Regional Office, U.S. Fish and Wildlife Service; and
- Gregory Risdahl, Alaska Regional Office, USDA—Forest Service.

**List of Subjects**

*36 CFR Part 242*

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

*50 CFR Part 100*

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

**Proposed Regulation Promulgation**

For the reasons set out in the preamble, the Federal Subsistence Board proposes to amend 36 CFR part 242 and 50 CFR part 100 for the 2023–24 and 2024–25 regulatory years.

The text of the proposed amendments to 36 CFR 242.23 and 242.27 and 50 CFR 100.23 and 100.27 matches the amendatory instructions in 86 FR 17713; April 6, 2021 (which is the final rule for the 2021–2023 regulatory period for fish).

The text of the proposed amendments to 36 CFR 242.24 and 50 CFR 100.24 matches the amendatory instructions in 85 FR 74796; November 23, 2020 (which is the final rule for the 2019–2021 regulatory period for fish).

The text of the proposed amendments to 36 CFR 242.25 and 50 CFR 100.25 matches the amendatory instructions in 83 FR 50758; October 9, 2018 (which is the final rule for the 2018–20 regulatory period for wildlife).

The text of the proposed amendments to 36 CFR 242.28 and 50 CFR 100.28 matches the amendatory instructions in 76 FR 12564; March 8, 2011 (which is the final rule for the 2011–13 regulatory period for fish and shellfish).

**Sue Detwiler,**

*Assistant Regional Director, U.S. Fish and Wildlife Service.*

**Gregory Risdahl,**

*Subsistence Program Leader, USDA—Forest Service.*

[FR Doc. 2022–05616 Filed 3–16–22; 8:45 am]

**BILLING CODE 4333–15–P; 3411–15–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA–R03–OAR–2022–0165; FRL–9635–01–R3]**

## Approval and Promulgation of Air Quality Plans; Pennsylvania; Reasonably Available Control Technology (RACT) Determinations for Case-by-Case Sources Under the 1997 and/or 2008 8-Hour Ozone National Ambient Air Quality Standards

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve multiple state implementation plan (SIP) revisions submitted by the Commonwealth of Pennsylvania. These revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for eight major sources of volatile organic compounds (VOC) and/or nitrogen oxides ($NO_X$) pursuant to the Commonwealth of Pennsylvania's conditionally approved RACT regulations. In this rulemaking action, EPA is proposing to approve source-specific RACT determinations (case-by-case or alternative $NO_X$ emission limits) for sources at eight major $NO_X$ and VOC emitting facilities submitted by PADEP. These RACT evaluations were submitted to meet RACT requirements for the 1997 and/or 2008 8-hour ozone national ambient air quality standards (NAAQS). This action is being taken under the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before April 18, 2022.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R03–OAR–2022–0165 at *https://www.regulations.gov,* or via email to *opila.marycate@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Riley Burger, Permits Branch (3AD10), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2217. Mr. Burger can also be reached via electronic mail at *burger.riley@epa.gov.*

**SUPPLEMENTARY INFORMATION:** On May 7, 2020, PADEP submitted revisions to its SIP to address source-specific $NO_X$ and/or VOC RACT for sources at numerous major $NO_X$ and VOC emitting facilities located in the Commonwealth. Later supplemental submissions were provided on February 9, 2021, July 20, 2021, and January 28, 2022. These SIP revisions are intended to address the $NO_X$ and/or VOC RACT requirements under sections 182 and 184 of the CAA for the 1997 and/or 2008 8-hour ozone NAAQS.[1] Table 1 of this document lists the SIP submittal date(s) and the eight facilities included in PADEP's submittals that EPA is proposing approval of in this rulemaking action. EPA views each facility as a separable SIP revision and may take separate final action on one or more facilities. One facility is located in Allegheny County and was submitted by PADEP on behalf of the Allegheny County Health Department (ACHD).

For additional background information on Pennsylvania's ''presumptive'' RACT II SIP see 84 FR 20274 (May 9, 2019) and on Pennsylvania's source-specific (case-by-case or alternative $NO_X$ emission limits) RACT determinations see the appropriate technical support document (TSD) which is available online at *https://www.regulations.gov,* Docket No. EPA–R03–OAR–2022–0165.

TABLE 1—PADEP SIP SUBMITTALS FOR MAJOR $NO_X$ AND/OR VOC SOURCES IN PENNSYLVANIA SUBJECT TO SOURCE-SPECIFIC RACT UNDER THE 1997 AND/OR 2008 8-HOUR OZONE STANDARD

| SIP submittal date | Major source (county) |
|---|---|
| 5/7/2020 | ArcelorMittal Plate LLC Coatesville (Chester). |
| 5/7/2020 | ArcelorMittal Plate LLC Monessen Coke Plant (Westmoreland). |
| 5/7/2020 and 1/28/2022 | Boyertown Foundry Company (Berks). |
| 5/7/2020 | Proctor & Gamble Paper Products Company Mehoopany (Wyoming). |
| 5/7/2020 and 1/28/2022 | Texas Eastern Transmission LP Lilly Station (Cambria). |
| 5/7/2020, 2/9/2021, and 7/20/2021 | ATI Flat Rolled Products Holdings, LLC (Allegheny). |
| 2/9/2021 | Grove US LLC Shady Grove Plant (Franklin). |
| 2/9/2021 | INDSPEC Chemical Corporation Petrolia (Butler). |

[1] The subject RACT evaluation for ATI Flat Rolled Products Holdings, LLC was submitted to meet the RACT requirements for only the 2008 8-hour ozone NAAQS because a RACT evaluation had previously been approved under the 1997 8-hour standard for that facility. See 78 FR 34584 (June 10, 2013). The RACT evaluations submitted by PADEP for the other seven major $NO_X$ and VOC emitting facilities in this rulemaking are to meet the requirements for both the 1997 and 2008 8-hour ozone NAAQS.

## I. Background

### *A. 1997 and 2008 8-Hour Ozone NAAQS*

Ground level ozone is not emitted directly into the air but is created by chemical reactions between $NO_X$ and VOC in the presence of sunlight. Emissions from industrial facilities, electric utilities, motor vehicle exhaust, gasoline vapors, and chemical solvents are some of the major sources of $NO_X$ and VOC. Breathing ozone can trigger a variety of health problems, particularly for children, the elderly, and people of all ages who have lung diseases such as asthma. Ground level ozone can also have harmful effects on sensitive vegetation and ecosystems.

On July 18, 1997, EPA promulgated a standard for ground level ozone based on 8-hour average concentrations. 62 FR 38856. The 8-hour averaging period replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm. EPA has designated two moderate nonattainment areas in Pennsylvania under the 1997 8-hour ozone NAAQS, namely Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE (the Philadelphia Area) and Pittsburgh-Beaver Valley (the Pittsburgh Area). See 40 CFR 81.339.

On March 12, 2008, EPA strengthened the 8-hour ozone standards, by revising its level to 0.075 ppm averaged over an 8-hour period (2008 8-hour ozone NAAQS). On May 21, 2012, EPA designated five marginal nonattainment areas in Pennsylvania for the 2008 8-hour ozone NAAQS: Allentown-Bethlehem-Easton, Lancaster, Reading, the Philadelphia Area, and the Pittsburgh Area. 77 FR 30088; see also 40 CFR 81.339.

On March 6, 2015, EPA announced its revocation of the 1997 8-hour ozone NAAQS for all purposes and for all areas in the country, effective on April 6, 2015. 80 FR 12264. EPA has determined that certain nonattainment planning requirements continue to be in effect under the revoked standard for nonattainment areas under the 1997 8-hour ozone NAAQS, including RACT.

### *B. RACT Requirements for Ozone*

The CAA regulates emissions of $NO_X$ and VOC to prevent photochemical reactions that result in ozone formation. RACT is an important strategy for reducing $NO_X$ and VOC emissions from major stationary sources within areas not meeting the ozone NAAQS.

Areas designated nonattainment for the ozone NAAQS are subject to the general nonattainment planning requirements of CAA section 172. Section 172(c)(1) of the CAA provides that SIPs for nonattainment areas must include reasonably available control measures (RACM) for demonstrating attainment of all NAAQS, including emissions reductions from existing sources through the adoption of RACT. Further, section 182(b)(2) of the CAA sets forth additional RACT requirements for ozone nonattainment areas classified as moderate or higher. Section 182(b)(2) of the CAA sets forth requirements regarding RACT for the ozone NAAQS for VOC sources. Section 182(f) subjects major stationary sources of $NO_X$ to the same RACT requirements applicable to major stationary sources of VOC.[2]

Section 184(b)(1)(B) of the CAA applies the RACT requirements in section 182(b)(2) to nonattainment areas classified as marginal and to attainment areas located within ozone transport regions established pursuant to section 184 of the CAA. Section 184(a) of the CAA established by law the current Ozone Transport Region (OTR) comprised of 12 eastern states, including Pennsylvania. This requirement is referred to as OTR RACT. As noted previously, a ''major source'' is defined based on the source's potential to emit (PTE) of $NO_X$, VOC, or both pollutants, and the applicable thresholds differ based on the classification of the nonattainment area in which the source is located. See sections 182(c)–(f) and 302 of the CAA.

Since the 1970's, EPA has consistently defined ''RACT'' as the lowest emission limit that a particular source is capable of meeting by the application of the control technology that is reasonably available considering technological and economic feasibility.[3]

EPA has provided more substantive RACT requirements through implementation rules for each ozone NAAQS as well as through guidance. In 2004 and 2005, EPA promulgated an implementation rule for the 1997 8-hour ozone NAAQS in two phases (''Phase 1 of the 1997 Ozone Implementation Rule'' and ''Phase 2 of the 1997 Ozone Implementation Rule''). 69 FR 23951 (April 30, 2004) and 70 FR 71612 (November 29, 2005), respectively. Particularly, the Phase 2 Ozone Implementation Rule addressed RACT statutory requirements under the 1997 8-hour ozone NAAQS. See 70 FR 71652 (November 29, 2005).

On March 6, 2015, EPA issued its final rule for implementing the 2008 8-hour ozone NAAQS (''the 2008 Ozone SIP Requirements Rule''). 80 FR 12264. At the same time, EPA revoked the 1997 8-hour ozone NAAQS, effective on April 6, 2015.[4] The 2008 Ozone SIP Requirements Rule provided comprehensive requirements to transition from the revoked 1997 8-hour ozone NAAQS to the 2008 8-hour ozone NAAQS, as codified in 40 CFR part 51, subpart AA, following revocation. Consistent with previous policy, EPA determined that areas designated nonattainment for both the 1997 and 2008 8-hour ozone NAAQS at the time of revocation, must retain implementation of certain nonattainment area requirements (*i.e.,* anti-backsliding requirements) for the 1997 8-hour ozone NAAQS as specified under section 182 of the CAA, including RACT. See 40 CFR 51.1100(o). An area remains subject to the anti-backsliding requirements for a revoked NAAQS until EPA approves a redesignation to attainment for the area for the 2008 8-hour ozone NAAQS. There are no effects on applicable requirements for areas within the OTR, as a result of the revocation of the 1997 8-hour ozone NAAQS. Thus, Pennsylvania, as a state within the OTR, remains subject to RACT requirements for both the 1997 8-hour ozone NAAQS and the 2008 8-hour ozone NAAQS.

In addressing RACT, the 2008 Ozone SIP Requirements Rule is consistent with existing policy and Phase 2 of the 1997 Ozone Implementation Rule. In the 2008 Ozone SIP Requirements Rule, EPA requires RACT measures to be implemented by January 1, 2017 for areas classified as moderate nonattainment or above and all areas of the OTR. EPA also provided in the 2008 Ozone SIP Requirements Rule that RACT SIPs must contain adopted RACT regulations, certifications where appropriate that existing provisions are RACT, and/or negative declarations stating that there are no sources in the nonattainment area covered by a

[2] A ''major source'' is defined based on the source's potential to emit (PTE) of $NO_X$ or VOC, and the applicable thresholds for RACT differs based on the classification of the nonattainment area in which the source is located. See sections 182(c)–(f) and 302 of the CAA.

[3] See December 9, 1976 memorandum from Roger Strelow, Assistant Administrator for Air and Waste Management, to Regional Administrators, ''Guidance for Determining Acceptability of SIP Regulations in Non-Attainment Areas,'' and 44 FR 53762 (September 17, 1979).

[4] On February 16, 2018, the United States Court of Appeals for the District of Columbia Circuit (D.C. Cir. Court) issued an opinion on the 2008 Ozone SIP Requirements Rule. *South Coast Air Quality Mgmt. Dist.* v. *EPA,* 882 F.3d 1138 (D.C. Cir. 2018). The D.C. Cir. Court found certain parts reasonable and denied the petition for appeal on those. In particular, the D.C. Cir. Court upheld the use of $NO_X$ averaging to meet RACT requirements for 2008 8-hour ozone NAAQS. However, the Court also found certain other provisions unreasonable. The D.C. Cir. Court vacated the provisions it found unreasonable.

specific control technique guidelines (CTG) source category. In the preamble to the 2008 Ozone SIP Requirements Rule, EPA clarified that states must provide notice and opportunity for public comment on their RACT SIP submissions, even when submitting a certification that the existing provisions remain RACT or a negative declaration. States must submit appropriate supporting information for their RACT submissions, in accordance with the Phase 2 of the 1997 Ozone Implementation Rule. Adequate documentation must support that states have considered control technology that is economically and technologically feasible in determining RACT, based on information that is current as of the time of development of the RACT SIP.

In addition, in the 2008 Ozone SIP Requirements Rule, EPA clarified that states can use weighted average $NO_X$ emissions rates from sources in the nonattainment area for meeting the major $NO_X$ RACT requirement under the CAA, as consistent with existing policy.[5] EPA also recognized that states may conclude in some cases that sources already addressed by RACT determinations for the 1979 1-hour and/or 1997 8-hour ozone NAAQS may not need to implement additional controls to meet the 2008 8-hour ozone NAAQS RACT requirement. See 80 FR 12278 and 12279 (March 6, 2015).

### *C. Applicability of RACT Requirements in Pennsylvania*

As indicated earlier, RACT requirements apply to any ozone nonattainment areas classified as moderate or higher (serious, severe or extreme) under CAA sections 182(b)(2) and 182(f). Pennsylvania has outstanding ozone RACT requirements for both the 1997 and 2008 8-hour ozone NAAQS. The entire Commonwealth of Pennsylvania is part of the OTR established under section 184 of the CAA and thus is subject statewide to the RACT requirements of CAA sections 182(b)(2) and 182(f), pursuant to section 184(b).

At the time of revocation of the 1997 8-hour ozone NAAQS (effective April 6, 2015), only two moderate nonattainment areas remained in the Commonwealth of Pennsylvania for this standard, the Philadelphia and the Pittsburgh Areas. As required under EPA's anti-backsliding provisions, these two moderate nonattainment areas continue to be subject to RACT under the 1997 8-hour ozone NAAQS. Given its location in the OTR, the remainder of the Commonwealth is also treated as moderate nonattainment area under the 1997 8-hour ozone NAAQS for any planning requirements under the revoked standard, including RACT. The OTR RACT requirement is also in effect under the 2008 8-hour ozone NAAQS throughout the Commonwealth, since EPA did not designate any nonattainment areas above marginal for this standard in Pennsylvania. Thus, in practice, the same RACT requirements continue to be applicable in Pennsylvania for both the 1997 and 2008 8-hour ozone NAAQS. RACT must be evaluated and satisfied as separate requirements under each applicable standard.

RACT applies to major sources of $NO_X$ and VOC under each ozone NAAQS or any VOC sources subject to CTG RACT. Which $NO_X$ and VOC sources in Pennsylvania are considered ''major'' and are therefore subject to RACT is dependent on the location of each source within the Commonwealth. Sources located in nonattainment areas would be subject to the ''major source'' definitions established under the CAA based on the area's current classification(s). In the case of Pennsylvania, sources located outside of moderate or above ozone nonattainment areas, as part of the OTR, shall be treated as if these areas were moderate.

In Pennsylvania, the SIP program is implemented primarily by the PADEP, but also by local air agencies in Philadelphia County (the City of Philadelphia's Air Management Services [AMS]) and Allegheny County, (the Allegheny County Health Department [ACHD]). These agencies have implemented numerous RACT regulations and source-specific measures in Pennsylvania to meet the applicable ozone RACT requirements. Historically, statewide RACT controls have been promulgated by PADEP in Pennsylvania Code Title 25—Environmental Resources, Part I—Department of Environmental Protection, Subpart C—Protection of Natural Resources, Article III—Air Resources, (25 Pa. Code) Chapter 129. AMS and ACHD have incorporated by reference Pennsylvania regulations but have also promulgated regulations adopting RACT controls for their own jurisdictions. In addition, AMS and ACHD have submitted, through PADEP, separate source-specific RACT determinations as SIP revisions for sources within their respective jurisdictions, which have been approved by EPA. See 40 CFR 52.2020(d)(1).

States were required to make RACT SIP submissions for the 1997 8-hour ozone NAAQS by September 15, 2006. PADEP submitted a SIP revision on September 25, 2006, certifying that a number of previously approved VOC RACT rules continued to satisfy RACT under the 1997 8-hour ozone NAAQS for the remainder of Pennsylvania.[6] PADEP has met its obligations under the 1997 8-hour ozone NAAQS for its CTG and non-CTG VOC sources. See 82 FR 31464 (July 7, 2017). RACT control measures addressing all applicable CAA RACT requirements under the 1997 8-hour ozone NAAQS have been implemented and fully approved in the jurisdictions of ACHD and AMS. See 78 FR 34584 (June 10, 2013) and 81 FR 69687 (October 7, 2016), respectively.

For the 2008 8-hour ozone NAAQS, states were required to submit RACT SIP revisions by July 20, 2014. On May 16, 2016, PADEP submitted a SIP revision addressing RACT for both the 1997 and 2008 8-hour ozone NAAQS in Pennsylvania. Specifically, the May 16, 2016 SIP submittal intended to satisfy sections 182(b)(2)(C), 182(f), and 184 of the CAA for both the 1997 and 2008 8-hour ozone NAAQS for Pennsylvania's major $NO_X$ and VOC non-CTG sources, except ethylene production plants, surface active agents manufacturing, and mobile equipment repair and refinishing.[7]

### *D. EPA's Conditional Approval for Pennsylvania's RACT Requirements Under the 1997 and 2008 8-Hour Ozone NAAQS*

On May 16, 2016, PADEP submitted a SIP revision addressing RACT for both the 1997 and 2008 8-hour ozone NAAQS in Pennsylvania. PADEP's May 16, 2016 SIP revision intended to address certain outstanding VOC CTG RACT and major $NO_X$ RACT requirements under the CAA for both standards. The SIP revision requested approval of Pennsylvania's 25 Pa. Code 129.96–100, *Additional RACT Requirements for Major Sources of* $NO_X$

[5] EPA's $NO_X$ RACT guidance ''Nitrogen Oxides Supplement to the General Preamble'' (57 FR 55620; November 25, 1992) encouraged states to develop RACT programs that are based on ''area wide average emission rates.'' Additional guidance on area-wide RACT provisions is provided by EPA's January 2001 economic incentive program guidance titled ''Improving Air Quality with Economic Incentive Programs,'' available at *https://www.epa.gov/sites/production/files/2015-07/documents/eipfin.pdf.* In addition, as mentioned previously, the D.C. Cir. Court upheld the use of $NO_X$ averaging to meet RACT requirements for 2008 8-hour ozone NAAQS. *South Coast Air Quality Mgmt. Dist.* v. *EPA,* 882 F.3d 1138 (D.C. Cir. 2018).

[6] The September 15, 2006 SIP submittal initially included Pennsylvania's certification of $NO_X$ RACT regulations; however, $NO_X$ RACT portions were withdrawn by PADEP on June 27, 2016.

[7] EPA's conditional approval of PADEP's May 16, 2016 SIP revision covered relevant sources located in both Philadelphia and Allegheny County, Pennsylvania.

*and VOCs* (the ''presumptive'' RACT II rule). Prior to the adoption of the RACT II rule, Pennsylvania relied on the $NO_X$ and VOC control measures in 25 Pa. Code 129.92–95, *Stationary Sources of $NO_X$ and VOCs,* (the RACT I rule) to meet RACT for major sources of VOC and $NO_X$. The requirements of the RACT I rule remain in effect and continue to be implemented as RACT.[8] On September 26, 2017, PADEP submitted a supplemental SIP revision which committed to address various deficiencies identified by EPA in PADEP's May 16, 2016 ''presumptive'' RACT II rule SIP revision.

On May 9, 2019, EPA conditionally approved the RACT II rule based on PADEP's September 26, 2017 commitment letter.[9] See 84 FR 20274. In EPA's final conditional approval, EPA noted that PADEP would be required to submit, for EPA's approval, SIP revisions to address any facility-wide or system-wide $NO_X$ emissions averaging plan approved under 25 Pa. Code 129.98 and any case-by-case RACT determinations under 25 Pa. Code 129.99. PADEP committed to submitting these additional SIP revisions within 12 months of EPA's final conditional approval, specifically May 9, 2020.

Therefore, as authorized in CAA section 110(k)(3) and (k)(4), Pennsylvania was required to submit the following as source-specific SIP revisions, by May 9, 2020, for EPA's approval as a condition of approval of 25 Pa. Code 128 and 129 in the May 16, 2016 SIP revision: (1) All facility-wide or system-wide $NO_X$ emissions averaging plans approved by PADEP under 25 Pa. Code 129.98 including, but not limited to, any terms and conditions that ensure the enforceability of the averaging plan as a practical matter (*i.e.,* any monitoring, reporting, recordkeeping, or testing requirements); and (2) all source-specific RACT determinations approved by PADEP under 25 Pa. Code 129.99, including any alternative compliance schedules approved under 25 Pa. Code 129.97(k) and 129.99(i); the case-by-case RACT determinations submitted to EPA for approval into the SIP should include any terms and conditions that ensure the enforceability of the case-by-case or source-specific RACT emission limitation as a practical matter (*i.e.,* any monitoring, reporting, recordkeeping, or testing requirements). See 84 FR 20274 (May 9, 2019). Through multiple submissions between 2017 and 2020, PADEP has submitted to EPA for approval various SIP submissions to implement its RACT II case-by-case determinations and averaging plans. PADEP has subsequently supplemented several of the initial SIP submissions. This proposed rulemaking is based on EPA's review of several of these SIP revisions.

## II. Summary of SIP Revisions

In order to satisfy a requirement from EPA's May 9, 2019 conditional approval, PADEP has submitted to EPA, SIP revisions addressing source-specific RACT requirements for major sources in Pennsylvania subject to 25 Pa. Code 129.98 or 129.99. Among the submitted SIP revisions were case-by-case RACT determinations for sources in Allegheny County, which PADEP submitted on behalf of ACHD. As noted in Table 1 of this document PADEP submitted to EPA SIP revisions pertaining to source-specific $NO_X$ and/or VOC RACT determinations for sources located at numerous major $NO_X$ and VOC emitting facilities located in the Commonwealth as conducted by PADEP or ACHD. PADEP provided documentation in its SIP revisions to support those source-specific RACT determinations for affected emission units at each major $NO_X$ and VOC emitting facilities subject to 25 Pa. Code 129.98 or 129.99.

In the Pennsylvania RACT SIP revisions, PADEP and ACHD included a case-by-case RACT determination for the existing emissions units at each of these major sources of $NO_X$ and/or VOC that required a source-specific RACT determination pursuant to 25 Pa. Code 129.99. In PADEP's and ACHD's RACT determinations an evaluation was completed to determine if previously SIP-approved, case-by-case RACT requirements (herein referred to as RACT I) were more stringent and required to be retained in the sources Title V air quality permit and subsequently, the Federally-approved SIP, or if the new case-by-case RACT requirements are more stringent and supersede the previous Federally-approved provisions.

EPA, in this action, is taking action on sources at eight major $NO_X$ and/or VOC emitting facilities in Pennsylvania, subject to Pennsylvania's source-specific RACT requirements, as summarized in Table 2 in this document.

TABLE 2—EIGHT MAJOR $NO_X$ AND/OR VOC SOURCES IN PENNSYLVANIA SUBJECT TO SOURCE-SPECIFIC RACT II UNDER THE 1997 AND/OR 2008 8-HOUR OZONE NAAQS

| Major source (county) | 1-Hour ozone RACT source? (RACT I) | Major source pollutant ($NO_X$ and/or VOC) | RACT II permit (effective date) |
|---|---|---|---|
| ArcelorMittal Plate LLC Coatesville (Chester) | Yes | $NO_X$ and VOC | 15–00010 (3/18/2020). |
| ArcelorMittal Plate LLC Monessen Coke Plant (Westmoreland). | Yes | $NO_X$ and VOC | 65–00853 (4/22/2020). |
| Boyertown Foundry Company (Berks) | Yes | VOC | 06–05063 (8/1/2020). |
| Proctor & Gamble Paper Products Company Mehoopany (Wyoming). | Yes | $NO_X$ and VOC | 66–00001 (7/12/2021). |
| Texas Eastern Transmission LP Lilly Station (Cambria) | Yes | $NO_X$ and VOC | 11–00258 (12/10/2021). |
| ATI Flat Rolled Products Holdings, LLC (Allegheny) | Yes | $NO_X$ and VOC | 0059–I009 (12/3/2020), 0059–I009d (4/21/2021) |
| Grove US LLC Shady Grove Plant (Franklin) | Yes | VOC | 28–05004 (1/1/2021). |
| INDSPEC Chemical Corporation Petrolia (Butler) | Yes | $NO_X$ and VOC | 10–00021 (12/17/2020). |

[8] These requirements were initially approved as RACT for Pennsylvania under the 1979 1-hour ozone NAAQS. The RACT I Rule was approved by EPA into the SIP on March 23, 1998. 63 FR 13789.

[9] On August 27, 2020, the Third Circuit Court of Appeals issued a decision vacating EPA's approval of three provisions of Pennsylvania's presumptive RACT II rule applicable to certain coal-fired power plants. *Sierra Club* v. *EPA,* 972 F.3d 290 (3d Cir. 2020). None of the sources in this proposed rulemaking are subject to the three presumptive RACT II provisions at issue in that *Sierra Club* decision.

The case-by-case RACT determinations conducted by PADEP and ACHD consist of an evaluation of all reasonably available controls at the time of evaluation for each affected emissions unit, resulting in a determination of what specific emission limit or control measures satisfy RACT for that particular unit. The adoption of new or additional controls or the revisions to existing controls as RACT were specified as requirements in new or revised Federally enforceable permits (hereafter RACT II permits) issued by PADEP or ACHD to the source. Similarly, the adoption of an alternative $NO_X$ emission limit through a $NO_X$ emission averaging plan was specified in a RACT II permit. The RACT II permits, which revise or adopt additional source-specific controls, have been submitted as part of the Pennsylvania RACT SIP revisions for EPA's approval in the Pennsylvania SIP under 40 CFR 52.2020(d)(1). The RACT II permits submitted by PADEP, and PADEP on behalf of ACHD, are listed in the last column of Table 2 of this document, along with the permit effective date, and are part of the docket for this rulemaking, which is available online at *https://www.regulations.gov,* Docket No. EPA–R03–OAR–2022–0165.[10] EPA is proposing to incorporate by reference in the Pennsylvania SIP, via the RACT II permits, source-specific RACT determinations under the 1997 and/or 2008 8-hour ozone NAAQS for certain sources at major $NO_X$ and VOC emitting facilities.[11]

## III. EPA's Evaluation of SIP Revisions

After thorough review and evaluation of the information provided by PADEP, and PADEP on behalf of ACHD, for sources at eight major $NO_X$ and/or VOC emitting facilities in Pennsylvania included in its SIP revision submittal, EPA finds that PADEP's case-by-case RACT determinations and conclusions provided are reasonable and appropriately considered technically and economically feasible controls, while setting lowest achievable limits. EPA finds that the proposed source-specific RACT controls for the sources subject to this rulemaking action adequately meet the CAA RACT requirements for the 1997 and/or 2008 8-hour ozone NAAQS for the subject sources of $NO_X$ and/or VOC in Pennsylvania, as they are not covered by or cannot meet Pennsylvania's presumptive RACT regulation.

EPA also finds that all the proposed revisions to previously SIP approved RACT requirements, under the 1979 1-hour ozone standard (RACT I), as discussed in PADEP's SIP revisions, will result in equivalent or additional reductions of $NO_X$ and/or VOC emissions and should not interfere with any applicable requirement concerning attainment of the NAAQS, reasonable further progress or other applicable CAA requirement under section 110(l) of the CAA.

EPA's complete analysis of PADEP's source-specific RACT SIP revisions is included in the TSD available in the docket for this rulemaking action and available online at *https://www.regulations.gov,* Docket number EPA–R03–OAR–2022–0165.

## IV. Proposed Action

Based on EPA's review, EPA is proposing to approve the Pennsylvania SIP revisions for source-specific RACT determinations for individual sources at eight major $NO_X$ and/or VOC emitting facilities listed in Table 2 of this document and incorporate by reference in the Pennsylvania SIP, via the RACT II permits, source-specific RACT determinations under the 1997 and/or 2008 8-hour ozone NAAQS for those sources. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action. As EPA views each facility as a separable SIP revision, should EPA receive comment on one facility but not others, EPA may take separate, final action on the remaining facilities.

## V. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference source-specific RACT determinations via the RACT II permits as described in Sections II and III—Summary of SIP Revisions and EPA's Evaluation of SIP Revisions in this document. EPA has made, and will continue to make, these materials generally available through *https://www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

## VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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 CAA. 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 proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- 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, this proposed rulemaking, addressing the $NO_X$ and VOC RACT source-specific requirements for individual sources at eight facilities in Pennsylvania for the 1997 and/or 2008 8-hour ozone NAAQS, does not have tribal implications as specified by Executive Order 13175 (65

[10] The RACT II permits included in the docket for this rulemaking are redacted versions of the facility's Federally enforceable permits. They reflect the specific RACT requirements being approved into the Pennsylvania SIP via this rulemaking.

[11] While the prior SIP-approved RACT I permit will remain part of the SIP, this RACT II rule will incorporate by reference the RACT II requirements through the RACT II permit and clarify the ongoing applicability of specific conditions in the RACT I permit.

FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 8, 2022.

**Diana Esher,**

*Acting Regional Administrator, Region III.*

[FR Doc. 2022–05403 Filed 3–16–22; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R03–OAR–2017–0615; FRL–9607–01–R3]**

## Air Plan Partial Approval and Partial Disapproval; Pennsylvania; Attainment Plan for the Indiana, Pennsylvania Nonattainment Area for the 2010 Sulfur Dioxide Primary National Ambient Air Quality Standard

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to revise its prior action that fully approved a state implementation plan (SIP) revision submitted by the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection (PADEP), to EPA on October 11, 2017, and supplemented on February 5, 2020. The SIP revision provided a plan for attainment of the 2010 sulfur dioxide ($SO_2$) primary national ambient air quality standard (NAAQS) in the Indiana, Pennsylvania $SO_2$ nonattainment area (hereafter referred to as the ''Indiana, PA NAA'' or ''Indiana Area''). The attainment plan submission included a base year emissions inventory, an analysis of the reasonably available control technology (RACT) and reasonably available control measure (RACM) requirements, enforceable emission limitations and control measures, a reasonable further progress (RFP) plan, a modeling demonstration of $SO_2$ attainment, and contingency measures for the Indiana Area. EPA is proposing to revise its prior action to partially approve and partially disapprove the SIP. This action is being taken under the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before April 18, 2022.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R03–OAR–2017–0615 at *https://www.regulations.gov,* or via email to *gordon.mike@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

**FOR FURTHER INFORMATION CONTACT:** Megan Goold, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2027. Ms. Goold can also be reached via electronic mail at *goold.megan@epa.gov.*

**SUPPLEMENTARY INFORMATION:** On October 11, 2017 and February 5, 2020, PADEP submitted a revision to its SIP for the purpose of providing for attainment of the 2010 $SO_2$ primary NAAQS in the Indiana, PA NAA.

### I. Background

On June 2, 2010, the EPA Administrator signed a final rule establishing a new primary $SO_2$ NAAQS as a 1-hour standard of 75 parts per billion (ppb), based on a 3-year average of the annual 99th percentile of daily maximum 1-hour average concentrations. See 75 FR 35520 (June 22, 2010), codified at 40 CFR 50.17. This action also provided for revoking the 1971 primary, annual and 24-hour standards, subject to certain conditions.[1] EPA established the NAAQS based on significant evidence and numerous health studies demonstrating that serious health effects are associated with short-term exposures to $SO_2$ emissions ranging from five minutes to 24 hours, with an array of adverse respiratory effects including narrowing of the airways which can cause difficulty breathing (bronchoconstriction) and increased asthma symptoms. For more information regarding the health impacts of $SO_2$, please refer to the June 22, 2010, final rule. See 75 FR 35520. Following promulgation of a new or revised NAAQS, EPA is required by the CAA to designate areas throughout the United States as attaining or not attaining the NAAQS; this designation process is described in section 107(d)(1)–(2) of the CAA. On August 5, 2013, EPA promulgated initial air quality designations for 29 areas for the 2010 $SO_2$ NAAQS (78 FR 47191), which became effective on October 4, 2013, based on violating air quality monitoring data for calendar years 2009–2011, where there was sufficient monitored data to support a nonattainment designation.

Effective on October 4, 2013, the Indiana Area (which encompasses Indiana County, and Plumcreek Township, South Bend Township and Eldertown Borough of Armstrong County) was designated as nonattainment for the 2010 $SO_2$ NAAQS for an area that encompasses the primary $SO_2$ emitting sources: The Keystone, Conemaugh, Homer City, and Seward Electric Generating Units (EGUs). The October 4, 2013, final designation triggered a requirement for Pennsylvania to submit by April 4, 2015, a SIP revision with an attainment plan for how the Indiana Area would attain the 2010 $SO_2$ NAAQS as expeditiously as practicable, but no later than October 4, 2018, in accordance with CAA sections 110(a), 172(c) and 191–192.

For a number of areas, including the Indiana Area, EPA published a document on March 18, 2016, effective April 18, 2016, that Pennsylvania and other pertinent states had failed to

[1] EPA's June 22, 2010 final action revoked the two 1971 primary 24-hour standard of 140 ppb and the annual standard of 30 ppb because they were determined not to add additional public health protection given a 1-hour standard at 75 ppb. *See* 75 FR 35520. However, the secondary 3-hour $SO_2$ standard was retained. The 24-hour and annual standards became revoked for certain of those areas 1 year after the effective date of when the EPA designated them for the 2010 1-hour $SO_2$ NAAQS. *See* 40 CFR 50.4(e).

submit the required $SO_2$ attainment plan by this submittal deadline. See 81 FR 14736. This finding initiated a deadline under CAA section 179(a) for the potential imposition of new source review and highway funding sanctions. However, pursuant to Pennsylvania's submittal of October 11, 2017, and EPA's subsequent completeness letter to Pennsylvania dated October 13, 2017, finding the submittal complete and noting the stopping of the sanctions' deadline, these sanctions under section 179(a) will not be imposed. Additionally, under CAA section 110(c), the March 18, 2016, finding triggered a requirement that EPA promulgate a Federal implementation plan (FIP) within two years of the effective date of the finding unless, by that time, the state has made the necessary complete submittal and EPA has approved the submittal as meeting applicable requirements. EPA took final action approving this attainment plan on October 19, 2020 (85 FR 66240), which removed the FIP obligation.

On December 18, 2020, the Sierra Club, Clean Air Council, and PennFuture filed a petition for judicial review with the U.S. Court of Appeals for the Third Circuit, challenging that final approval.[2] On April 5, 2021, EPA filed a motion for voluntary remand without vacatur of its approval of the Indiana, PA $SO_2$ attainment plan. In its motion, EPA explained that as part of its plan Pennsylvania relied on a particular type of computer modeling (*i.e.,* mathematical programs that project the impact of certain emissions limits on air quality). EPA had not previously approved use of this type of modeling in the context of $SO_2$ attainment for the purpose of demonstrating that certain source emission limits with averaging times greater than one hour included in the plan would demonstrate attainment with the 2010 $SO_2$ NAAQS. EPA further explained that a remand will allow EPA to revisit whether the specific modeling that Pennsylvania used to demonstrate that longer-term emission limits showed attainment was appropriate and will also allow EPA to further assess whether additional analyses are necessary to find that Pennsylvania has complied with the requirements of the CAA. Lastly, EPA explained that a remand will allow EPA to seek public comment on any new analyses and take other actions as appropriate.

In a short order without any commentary, on August 17, 2021, the U.S. Court of Appeals for the Third Circuit granted EPA's request for remand without vacatur of the final approval of Pennsylvania's $SO_2$ attainment plan for the Indiana, PA NAA, and required that EPA take final action in response to the remand no later than one year from the date of the court's order (*i.e.,* by August 17, 2022). This action proposes EPA's response to the court's order.

After reconsideration, for reasons described in the following sections, EPA is proposing that it was incorrect to fully approve the Indiana, PA $SO_2$ attainment plan, and is proposing to revise its action to disapprove portions of the Indiana, PA $SO_2$ attainment plan while leaving certain other portions approved and while retaining incorporated emissions limits and control measures in the plan for limited SIP strengthening purposes. If EPA finalizes the partial disapproval proposed here, that action would initiate a sanctions clock under section 179, providing for emission offset sanctions for new sources if EPA has not fully approved a revised plan within 18 months after final partial disapproval, and providing for highway funding sanctions if EPA has not fully approved a revised plan within 6 months thereafter. The sanctions clock can be stopped only if the conditions of EPA's regulations at 40 CFR 52.31 are met. A final partial disapproval would also initiate an obligation for EPA to promulgate a FIP within 24 months unless Pennsylvania has submitted, and EPA has fully approved, a plan addressing these attainment planning requirements.

Attainment plans for $SO_2$ must meet the applicable requirements of the CAA, and specifically CAA sections 110, 172, 191, and 192. The required components of an $SO_2$ attainment plan submittal are listed in section 172(c) of Title 1, part D of the CAA. EPA's regulations governing $SO_2$ nonattainment SIPs are set forth at 40 CFR part 51, with specific procedural requirements and control strategy requirements residing at subparts F and G, respectively. Soon after Congress enacted the 1990 Amendments to the CAA, EPA issued comprehensive guidance on SIPs, in a document entitled the ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' published at 57 FR 13498 (April 16, 1992) (General Preamble). Among other things, the General Preamble addressed $SO_2$ SIPs and fundamental principles for SIP control strategies. Id. at 13545–49, 13567–68.

On April 23, 2014, EPA issued guidance (hereafter ''2014 $SO_2$ Nonattainment Guidance'') for how state submissions could address the statutory requirements for $SO_2$ attainment plans.[3] In this guidance, EPA described the statutory requirements for an attainment plan, which include: (1) An accurate base year emissions inventory of current emissions for all sources of $SO_2$ within the nonattainment area (172(c)(3)); (2) an attainment demonstration that includes a modeling analysis showing that the enforceable emissions limitations and other control measures taken by the state will provide for expeditious attainment of the NAAQS (172(c) and (c)(6)); (3) demonstration of RFP (172(c)(2)); (4) implementation of RACM, including RACT (172(c)(1)); new source review (NSR) requirements (172(c)(5)); and (5) adequate contingency measures for the affected area (172(c)(9)). A synopsis of these requirements is provided in the notice of proposed rulemaking on the Illinois $SO_2$ nonattainment plans, published on October 5, 2017, at 82 FR 46434.

In order for the EPA to fully approve a SIP as meeting the requirements of CAA sections 110, 172 and 191–192 and EPA's regulations at 40 CFR part 51, the SIP for the affected area must demonstrate to EPA's satisfaction that each of the aforementioned requirements have been met. Under CAA sections 110(l) and 193, EPA may not approve a SIP that would interfere with any applicable requirement concerning NAAQS attainment and RFP, or any other applicable requirement, and no requirement in effect (or required to be adopted by an order, settlement, agreement, or plan in effect before November 15, 1990) in any area which is a nonattainment area for any air pollutant, may be modified in any manner unless it ensures equivalent or greater emission reductions of such air pollutant.

CAA section 172(c)(1) directs states with areas designated as nonattainment to demonstrate that the submitted plan provides for attainment of the NAAQS. The provisions in 40 CFR part 51, subpart G, further delineate the control strategy requirements that SIPs must meet, and EPA has long required that all SIPs and control strategies reflect four fundamental principles of quantification, enforceability, replicability, and accountability (57 FR 13567–68). $SO_2$ attainment plans must consist of two components: (1) Emission limits and other control measures that assure implementation of permanent, enforceable, and necessary emission controls, and (2) a modeling analysis

[2] *Sierra Club, et al.* v. *EPA,* Case No. 20–3568 (3rd Cir.).

[3] *See* ''Guidance for 1-Hour $SO_2$ Nonattainment Area SIP Submissions'' (April 23, 2014), available at *https://www.epa.gov/sites/production/files/2016-06/documents/20140423guidance_nonattainment_sip.pdf.*

meeting the requirements of 40 CFR part 51, appendix W, which demonstrates that these emission limits and control measures provide for timely attainment of the primary $SO_2$ NAAQS as expeditiously as practicable, but by no later than the attainment date for the affected area. In all cases, the emission limits and control measures must be accompanied by appropriate methods and conditions to determine compliance with the respective emission limits and control measures and must be quantifiable (a specific amount of emission reduction can be ascribed to the measures), fully enforceable (specifying clear, unambiguous and measurable requirements for which compliance can be practicably determined), replicable (the procedures for determining compliance are sufficiently specific and non-subjective so that two independent entities applying the procedures would obtain the same result), and accountable (source specific limits must be permanent and must reflect the assumptions used in the SIP demonstrations).

EPA's 2014 $SO_2$ Nonattainment Guidance recommends that the emission limits established for the attainment demonstration be expressed as short-term average limits (*e.g.,* addressing emissions averaged over one or three hours), but also describes the option to utilize emission limits with longer averaging times of up to 30 days so long as the state meets various suggested criteria. See 2014 $SO_2$ Nonattainment Guidance, pp. 22 to 39. The guidance recommends that—should states and sources utilize longer averaging times—the longer-term average limit should be set at an adjusted level that reflects a stringency comparable to the 1-hour average limit at the critical emission value (CEV) shown to provide for attainment that the plan otherwise would have set.

The 2014 $SO_2$ Nonattainment Guidance provides an extensive discussion of EPA's rationale for concluding that appropriately set, comparably stringent limitations based on averaging times as long as 30 days can be found to provide for attainment of the 2010 $SO_2$ NAAQS. In evaluating this option, EPA considered the nature of the standard, conducted detailed analyses of the impact of 30-day average limits on the prospects for attaining the standard, and carefully reviewed how best to achieve an appropriate balance among the various factors that warrant consideration in judging whether a state's plan provides for attainment. Id. at pp. 22–39, and Appendices B, C, and D.

As specified in 40 CFR 50.17(b), the 1-hour primary $SO_2$ NAAQS is met at an ambient air quality monitoring site when the 3-year average of the annual 99th percentile of daily maximum 1-hour average concentrations is less than or equal to 75 ppb. In a year with 365 days of valid monitoring data, the 99th percentile would be the fourth highest daily maximum 1-hour value. The 2010 $SO_2$ NAAQS, including this form of determining compliance with the standard, was upheld by the U.S. Court of Appeals for the District of Columbia Circuit in *Nat'l Envt'l Dev. Ass'n's Clean Air Project* v. *EPA,* 686 F.3d 803 (D.C. Cir. 2012). Because the standard has this form, a single exceedance does not create a violation of the standard. Instead, at issue is whether a source operating in compliance with a properly set longer term average could cause exceedances, and if so, the resulting frequency and magnitude of such exceedances, and in particular, whether EPA can have reasonable confidence that a properly set longer term average limit will provide that the average fourth highest daily maximum value will be at or below 75 ppb. A synopsis of how EPA evaluates whether such plans ''provide for attainment,'' based on modeling of projected allowable emissions and in light of the NAAQS' form for determining attainment at monitoring sites, follows.

For $SO_2$ attainment plans based on 1-hour emission limits, the standard approach is to conduct modeling using fixed 1-hour emission rates. The maximum modeled emission rate that results in attainment is labeled the ''CEV.'' The modeling process for identifying this CEV inherently considers the numerous variables that affect ambient concentrations of $SO_2$, such as meteorological data, background concentrations, and topography. In the standard approach, the state would then provide for attainment by setting a continuously applicable 1-hour emission limit for each stationary $SO_2$ source at this CEV.

EPA recognizes that some sources have highly variable emissions, for example due to variations in fuel sulfur content and operating rate, that can make it extremely difficult, even with a well-designed control strategy, to ensure in practice that emissions for any given hour do not exceed the CEV. EPA also acknowledges the concern that longer-term emission limits can allow short periods with emissions above the CEV, which, if coincident with meteorological conditions conducive to high $SO_2$ concentrations, could in turn create the possibility of a NAAQS exceedance occurring on a day when an exceedance would not have occurred if emissions were continuously controlled at the level corresponding to the CEV. However, for several reasons, EPA believes that the approach recommended in its guidance document suitably addresses this concern. First, from a practical perspective, EPA expects the actual emission profile of a source subject to an appropriately set longer-term average limit to be similar to the emission profile of a source subject to an analogous 1-hour average limit. EPA expects this similarity because it has recommended that the longer-term average limit be set at a level that is comparably stringent to the otherwise applicable 1-hour limit (reflecting a downward adjustment from the CEV) and that takes the source's emissions profile (and inherent level of emissions variability) into account. As a result, EPA expects either form of emission limit to yield comparable air quality.

Second, from a more theoretical perspective, EPA has compared the likely air quality with a source having maximum allowable emissions under an appropriately set longer term limit, as compared to the likely air quality with the source having maximum allowable emissions under the comparable 1-hour limit. In this comparison, in the 1-hour average limit scenario, the source is presumed at all times to emit at the CEV, and in the longer-term average limit scenario, the source is presumed occasionally to emit more than the CEV, but on average, and presumably at most times, to emit well below the CEV. In an ''average year,''[4] compliance with the 1-hour limit is expected to result in three exceedance days (*i.e.,* three days with hourly values above 75 ppb) and a fourth day with a maximum hourly value at 75 ppb. By comparison, with the source complying with a longer-term limit, it is possible that additional exceedances would occur that would not occur in the 1-hour limit scenario (if emissions exceed the CEV at times when meteorology is conducive to poor air quality). However, this comparison must also factor in the likelihood that exceedances that would be expected in the 1-hour limit scenario would not occur in the longer-term limit scenario. This result arises because the longer-term limit requires lower emissions

[4] An ''average year'' is used to mean a year with average air quality. While 40 CFR part 50, appendix T, provides for averaging three years of 99th percentile daily maximum hourly values (*e.g.,* the fourth highest maximum daily hourly concentration in a year with 365 days with valid data), this discussion and an example below uses a single ''average year'' in order to simplify the illustration of relevant principles.

most of the time (because the limit is set below the CEV), so a source complying with an appropriately set longer-term limit is likely to have lower emissions at critical times than would be the case if the source were emitting as allowed with a 1-hour limit.

To illustrate this point, EPA conducted a statistical analysis using a range of scenarios using actual plant data. The analysis is described in Appendix B of EPA's 2014 $SO_2$ Nonattainment Guidance. Based on the analysis described in the 2014 $SO_2$ Nonattainment Guidance, EPA expects that an emission profile with maximum allowable emissions under an appropriately set, comparably stringent 30-day average limit is likely to have the net effect of having a *lower* number of exceedances and better air quality than an emission profile with maximum allowable emissions under a 1-hour emission limit at the CEV. This result provides a compelling policy rationale for allowing the use of a longer averaging period, in appropriate circumstances where the facts indicate this result can be expected to occur.

The 2014 $SO_2$ Nonattainment Guidance offers specific recommendations for determining an appropriate longer-term average limit. The recommended method starts with determination of the 1-hour emission limit that would provide for attainment (*i.e.,* the CEV), and applies an adjustment factor to determine the (lower) level of the longer-term average emission limit that would be estimated to have a stringency comparable to the otherwise necessary 1-hour emission limit. This method uses a database of continuous emission data reflecting the type of control that the source will be using to comply with the SIP emission limits, which (if compliance requires new controls) may require use of an emission database from another source. The recommended method involves using these data to compute a complete set of emission averages, computed according to the averaging time and averaging procedures of the prospective emission limitation (*i.e.,* using 1-hour historical emission values from the emissions database to calculate 30-day average emission values). In this recommended method, the ratio of the 99th percentile among these long-term averages to the 99th percentile of the 1-hour values represents an adjustment factor that may be multiplied by the candidate 1-hour emission limit (CEV) to determine a longer term average emission limit that may be considered comparably stringent.[5]

The 2014 $SO_2$ Nonattainment Guidance also addresses a variety of related topics, including the potential utility of setting supplemental emission limits, such as mass-based limits, to reduce the likelihood and/or magnitude of elevated emission levels that might occur under the longer-term emission rate limit.

Preferred air quality models for use in regulatory applications are described in Appendix A of the EPA's ''Guideline on Air Quality Models (40 CFR part 51, appendix W).'' [6] In 2005, the EPA promulgated the American Meteorological Society/Environmental Protection Agency Regulatory Model (AERMOD) as the Agency's preferred near-field dispersion modeling for a wide range of regulatory applications addressing stationary sources (for example, in estimating $SO_2$ concentrations) in all types of terrain based on extensive developmental and performance evaluation. Supplemental guidance on modeling for purposes of demonstrating attainment of the $SO_2$ standard is provided in Appendix A to the 2014 $SO_2$ Nonattainment Guidance. Appendix A provides extensive guidance on the modeling domain, the source inputs, assorted types of meteorological data, and background concentrations. Consistency with the recommendations in this guidance is generally necessary for the attainment demonstration to offer adequately reliable assurance that the plan provides for attainment.

As stated previously, attainment demonstrations for the 2010 1-hour primary $SO_2$ NAAQS must demonstrate future attainment and maintenance of the NAAQS in the entire area designated as nonattainment (*i.e.,* not just at the violating monitor) by using air quality dispersion modeling (see appendix W to 40 CFR part 51) to show that the mix of sources and enforceable control measures and emission rates in an identified area will not lead to a violation of the $SO_2$ NAAQS. For a short-term (*i.e.,* 1-hour) standard, EPA believes that dispersion modeling, using allowable emissions and addressing stationary sources in the affected area (and in some cases those sources located outside the nonattainment area which may affect attainment in the area) is technically appropriate, efficient and effective in demonstrating attainment in nonattainment areas because it takes into consideration combinations of meteorological and emission source operating conditions that may contribute to peak ground-level concentrations of $SO_2$.

The meteorological data used in the analysis should generally be processed with the most recent version of AERMET, the Meteorological data preprocessor for AERMOD. Estimated concentrations should include ambient background concentrations, should follow the form of the standard, and should be calculated as described in section 2.6.1.2 of the August 23, 2010 clarification memo on ''Applicability of Appendix W Modeling Guidance for the 1-hr $SO_2$ National Ambient Air Quality Standard'' (U.S. EPA, 2010) and EPA's March 11, 2011 clarification memo, ''Additional Clarification Regarding Application of Appendix W Modeling Guidance for the 1-hour $NO_2$ National Ambient Air Quality Standard.''

## II. Summary of Pennsylvania's SIP Revision and EPA Analysis

In accordance with section 172(c) of the CAA, the Pennsylvania attainment plan for the Indiana Area includes: (1) An emissions inventory for $SO_2$ for the plan's base year (2011); and (2) an attainment demonstration. The attainment demonstration includes the following: (1) Analyses that locate, identify, and quantify sources of emissions contributing to violations of the 2010 $SO_2$ NAAQS; (2) a determination that the control strategy for the primary $SO_2$ sources within the nonattainment areas constitutes RACM/RACT; (3) a dispersion modeling analysis of an emissions control strategy for the primary $SO_2$ sources (Keystone, Conemaugh, Homer City, and Seward) purporting to show attainment of the $SO_2$ NAAQS by the October 4, 2018, attainment date; (4) requirements for RFP toward attaining the $SO_2$ NAAQS in the Area; (5) contingency measures; (6) the assertion that Pennsylvania's existing SIP-approved NSR program meets the applicable requirements for $SO_2$; and (7) the request that emission limitations and compliance parameters for Keystone, Conemaugh, Homer City, and Seward be incorporated into the SIP.

On July 13, 2018 (83 FR 32606), EPA published a notice of proposed rulemaking (NPRM) in which EPA proposed full approval of Pennsylvania's Indiana, PA $SO_2$ attainment plan and $SO_2$ emission limits and associated compliance parameters for the Keystone, Homer City, Conemaugh and Seward sources. During

[5] For example, if the CEV is 1000 pounds of $SO_2$ per hour, and a suitable adjustment factor is determined to be 70 percent, the recommended longer term average limit would be 700 pounds per hour.

[6] EPA published revisions to the ''Guideline on Air Quality Models'' on January 17, 2017.

the public comment period, the Sierra Club (in conjunction with the National Parks Conservation Association, PennFuture, Earthjustice, and Clean Air Council) submitted a modeling analysis which showed that the emission limits in the attainment plan did not assure attainment because one modeled receptor within the nonattainment area had a modeled design value that was above the $SO_2$ NAAQS. Sierra Club's modeling also showed violations of the $SO_2$ NAAQS outside of the nonattainment area. In response to this comment, on February 5, 2020, PADEP submitted supplemental information in support of the attainment plan. The February 5, 2020 submittal included: (1) A supplemental air dispersion modeling report; (2) supplemental air dispersion modeling data; (3) a supplemental air dispersion modeling protocol; (4) a meteorological monitoring plan; (5) meteorological monitoring data; (6) meteorological monitoring quality assurance, quality control, and audit reports; (7) Clean Air Markets Division (CAMD) emissions data for 2010–2018; and (8) Continuous Emissions Monitoring (CEM) data for 2010 through the third quarter of 2019. The supplemental air dispersion modeling used a more refined model receptor grid than that in the original submittal, meteorological data collected near the controlling modeled source (Seward), and more recent (2016–18) background concentrations from the South Fayette $SO_2$ monitor (the monitor used to determine background concentrations in the original modeling analysis). The supplemental modeling did not address the violations occurring outside the nonattainment area that Sierra Club's modeling identified. In order to allow for public comment on this supplemental information and modeling, on March 9, 2020 (85 FR 13602), EPA published a notice of data availability (NODA) for the February 5, 2020, submittal. During that public comment period, Sierra Club submitted new comments raising issues with the supplemental modeling.

On October 19, 2020 (85 FR 66240), EPA finalized full approval of the Pennsylvania $SO_2$ attainment plan for the Indiana, PA NAA (hereafter referred to as the ''October 2020 final rule action'' or the ''October 2020 final action''). On December 18, 2020, the Sierra Club, Clean Air Council, and PennFuture filed a petition for judicial review with the U.S. Court of Appeals for the Third Circuit, challenging that final approval.[7] As mentioned earlier, on August 17, 2021, the U.S. Court of Appeals for the Third Circuit granted EPA's request for remand without vacatur of the final approval of Pennsylvania's $SO_2$ attainment plan for the Indiana, PA NAA. The court ordered EPA to take final action to respond to the remand no later than August 17, 2022. EPA has reconsidered that final action and is proposing to revise its prior full approval to a partial approval and partial disapproval based on the analysis and explanation below. EPA now proposes to determine that it was in error to fully approve the Indiana, PA $SO_2$ attainment plan, and is in the same manner as the prior full approval revising its prior action. See, CAA section 110(k)(6). EPA is proposing to retain the approval of the emissions inventory and nonattainment New Source Review (NNSR) program requirements, and is proposing disapproval of the attainment demonstration, RACM/RACT requirements, RFP requirements and contingency measures.

*A. Emissions Inventory Requirements*

States are required under section 172(c)(3) of the CAA to develop comprehensive, accurate and current emissions inventories of all sources of the relevant pollutant or pollutants in the nonattainment area. These inventories provide detailed accounting of all emissions and emissions sources of the pollutant or precursors. In addition, inventories are used in air quality modeling to demonstrate that attainment of the NAAQS is as expeditious as practicable. The $SO_2$ Nonattainment Guidance provides that the emissions inventory should be consistent with the Air Emissions Reporting Requirements (AERR) at Subpart A to 40 CFR part 51.[8]

For the base year inventory of actual emissions, a ''comprehensive, accurate and current'' inventory can be represented by a year that contributed to the three-year design value used for the original nonattainment designation. The 2014 $SO_2$ Nonattainment Guidance notes that the base year inventory should include all sources of $SO_2$ in the nonattainment area as well as any sources located outside the nonattainment area which may affect attainment in the area. Pennsylvania appropriately elected to use 2011 as the base year because the designation of nonattainment was based on data from 2009–2011. Actual emissions from all the sources of $SO_2$ in the Indiana Area were reviewed and compiled for the base year emissions inventory requirement. The primary $SO_2$-emitting point sources located within the Indiana Area are Keystone, Conemaugh, Homer City, and Seward, all coal-fired power plants. Keystone and Conemaugh each have two pulverized coal-fired (PC) boilers; Homer City has three coal-fired boilers; and Seward has two circulating fluidized bed (CFB) waste coal-fired boilers. More information about the emissions inventory for the Indiana Area (and analysis of the inventory) can be found in Pennsylvania's October 11, 2017, submittal as well as EPA's emissions inventory technical support document (TSD), which can be found under Docket ID No. EPA–R03–OAR–2017–0615 and online at *www.regulations.gov.*

Table 1 in this document shows the level of emissions, expressed in tons per year (tpy), in the Indiana Area for the 2011 base year by emissions source category. The point source category includes all sources within the Area.

TABLE 1—2011 BASE YEAR $SO_2$ EMISSIONS INVENTORY FOR THE INDIANA AREA

| Emission source category | $SO_2$ emissions (tpy) |
|---|---|
| Point | 144,269.017 |
| Area | 555.610 |
| Non-road | 1.025 |
| On-road | 7.730 |
| Total | 144,833.382 |

EPA has evaluated Pennsylvania's 2011 base year emissions inventory for the Indiana Area and has made the preliminary determination that this inventory was developed in a manner consistent with EPA's guidance and that EPA appropriately approved this element of the attainment plan in its prior action. Therefore, pursuant to section 172(c)(3), EPA is not proposing to change its approval of Pennsylvania's 2011 base year emissions inventory for the Indiana Area to a disapproval, as it meets CAA requirements. Instead, EPA is proposing that the plan retain its approval with respect to the base year emissions inventory element.

*B. New Source Review*[9]

Section 172(c)(5) of the CAA requires that an attainment plan require permits

[7] *Sierra Club, et al.* v. *EPA,* Case No. 20–3568 (3rd Cir.).

[8] The AERR at subpart A to 40 CFR part 51 cover overarching federal reporting requirements for the states to submit emissions inventories for criteria pollutants to EPA's Emissions Inventory System. EPA uses these submittals, along with other data sources, to build the National Emissions Inventory.

[9] The CAA NSR program is composed of three separate programs: Prevention of significant deterioration (PSD), NNSR, and Minor NSR. PSD is established in part C of title I of the CAA and

for the construction and operation of new or modified major stationary sources in a nonattainment area. Pennsylvania has a fully implemented Nonattainment New Source Review (NNSR) program for criteria pollutants in 25 Pennsylvania Code Chapter 127, Subchapter E, which was approved into the Pennsylvania SIP on December 9, 1997 (62 FR 64722). On May 14, 2012 (77 FR 28261), EPA approved a SIP revision pertaining to the pre-construction permitting requirements of Pennsylvania's NNSR program to update the regulations to meet EPA's 2002 NSR reform regulations. EPA then approved an update to Pennsylvania's NNSR regulations on July 13, 2012 (77 FR 41276), and on June 11, 2021 (86 FR 25951). These rules provide for appropriate NSR as required by CAA sections 172(c)(5) and 173 and 40 CFR 51.165 for $SO_2$ sources undergoing construction or major modification in the Indiana Area without need for modification of the approved rules. Therefore, in its prior approval action, EPA concluded that the Pennsylvania SIP meets the requirements of section 172(c)(5) for the Indiana Area. EPA continues to believe that the Pennsylvania SIP meets this requirement and is not proposing to change its action to disapproval for the NNSR element. Instead, EPA is proposing that the plan retain its approval with respect to the NNSR element.

*C. Attainment Demonstration*

The $SO_2$ attainment demonstration provides air quality dispersion modeling analyses intended to demonstrate that control strategies chosen to reduce $SO_2$ source emissions will bring the area into attainment by the statutory attainment date of October 4, 2018. The modeling analyses are used to assess the control strategy for a nonattainment area and establish emission limits that will provide for attainment. The analyses require five years of meteorological data to simulate the dispersion of pollutant plumes from multiple point, area, or volume sources across the averaging times of interest.[10] The modeling demonstration typically also relies on maximum allowable emissions from sources in the nonattainment area. Modeling analyses that provide for attainment under all scenarios of operation for each source must, therefore, consider the worst-case scenario of both the representative meteorology (*e.g.,* predominant wind directions, stagnation, etc.) and the maximum allowable emissions. In this way, the attainment demonstration shows that the emissions limits in the SIP provide for attainment under all worst-case meteorological and emissions scenarios that are permissible under the limits.

In its October 11, 2017, and February 5, 2020, submissions, PADEP provided multiple modeling analyses as their attainment demonstration. In order to better explain our review of each analysis, EPA has categorized them—first to address Pennsylvania's request to use an alternative model option (AERMOIST) in the attainment plan, and then to address the modeling used to develop emission limits for the four main sources of $SO_2$ emissions. This is the same approach EPA used to review the modeling analyses for the October 2020 final rule action that fully approved the plan.

In relation to the alternative model request, PADEP provided: (1) An analysis using the default option in EPA's preferred dispersion modeling system, AERMOD; and (2) an analysis utilizing AERMOD but including a procedure called AERMOIST, an alternative model option which accounts for additional plume rise associated with the latent heat release of condensation due to moisture in a stack's plume. AERMOIST is currently not approved by EPA for regulatory use.

On July 13, 2018, EPA rejected PADEP's request to use AERMOIST in its attainment demonstration. 83 FR 32606. EPA is not proposing to change our previous rejection of the AERMOIST procedure in this action, nor did we in the October 2020 final action. EPA's conclusion from its review of AERMOIST in the previous action still applies, which was that the AERMOIST procedure is not an appropriate option for use in the Indiana attainment plan for the following reasons: (1) There is no multi-monitor database of $SO_2$ monitoring data available for the four major sources of $SO_2$ in the Indiana Area to conduct a source-specific statistical test to determine if AERMOIST provides a definitive improvement over the current regulatory default version of AERMOD; (2) AERMOIST was universally applied to all the major sources in the Indiana Area regardless of whether the source plumes are actually saturated; and (3) there is a lack of supporting analysis for using relative humidity measurements in AERMOIST.[11]

PADEP submitted multiple additional modeling analyses not relying upon AERMOIST to develop and/or support emission limits for the four main sources of $SO_2$ emissions in the Indiana Area: (1) A February 5, 2020 modeling analysis using randomly reassigned emission (RRE) values to support the 30-day limit for Seward; (2) an October 11, 2017 modeling analysis using RRE values to support the 30-day limit for Seward; (3) an October 11, 2017 modeling analysis using RRE values to develop a 24-hour emission limit for Keystone; (4) a February 5, 2020 modeling analysis to reexamine the Critical Emission Value (CEVs) for Keystone, Conemaugh, Homer City and Seward; and (5) an October 11, 2017 modeling analysis to determine the CEVs for the four main $SO_2$ sources: Keystone, Conemaugh, Homer City and Seward.

In the October 2020 final action, EPA focused our review on the CEV and RRE modeling from the February 5, 2020, submittal used to support Seward's longer-term limit and on review of the CEV and RRE modeling in the October 11, 2017 submittal used to develop Keystone's longer-term limit. Our reconsideration of these reviews, and the reasons for why we now think we were in error to fully approve the analyses, is explained in detail below.

EPA reviewed the October 11, 2017, and the February 5, 2020, modeling analyses, which were used by PADEP to determine the CEVs for Keystone, Conemaugh, Seward and Homer City.[12]

applies in undesignated areas and in areas that meet the NAAQS—designated ''attainment areas''—as well as areas where there is insufficient information to determine if the area meets the NAAQS—designated ''unclassifiable areas.'' The NNSR program is established in part D of title I of the CAA and applies in areas that are not in attainment of the NAAQS—designated ''nonattainment areas.'' The Minor NSR program addresses construction or modification activities that do not qualify as ''major'' and applies regardless of the designation of the area in which a source is located. Together, these programs are referred to as the NSR programs. Section 173 of the CAA lays out the NNSR program for preconstruction review of new major sources or major modifications to existing sources, as required by CAA section 172(c)(5). The programmatic elements for NNSR include, among other things, compliance with the lowest achievable emissions rate and the requirement to obtain emissions offsets.

[10] The period of meteorological data needed for an air-quality analysis is described in section 8.4.2 (e) of appendix W: ''[T]he use of five years of adequately representative National Weather Service or comparable meteorological data, at least one year of site-specific, or at least three years of prognostic meteorological data, are required.''

[11] A detailed discussion of the deficiencies of the AERMOIST modeling analysis submitted for the Indiana Area can be found in EPA's AERMOIST modeling TSD for the Indiana Area which can be found under Docket ID No. EPA–R03–OAR–2017–0615 and available online at *www.regulations.gov.*

[12] Refer to EPA's Modeling TSDs for the Indiana Area under Docket ID EPA–R03–OAR–2017–0615, available at *www.regulations.gov* for EPA's review of the modeling domains (TSD For the Modeling Portions of the Document Entitled ''State Implementation Plan Revision: Attainment Demonstration and Base Year Inventory Indiana, PA

Continued

In the October 11, 2017, submittal, the Indiana Area was divided into two separate modeling domains. One domain included portions of Armstrong County which only addressed emissions from Keystone as a source. The other domain covered all of Indiana County and addressed emissions from all four sources in the nonattainment area. For both domains, background concentrations included impacts from non-modeled sources. Each separate model domain used its own (different) background concentration. EPA continues to agree with Pennsylvania that two modeling domains are appropriate due to the long distance between Keystone and the other three sources, and the predominant wind direction. EPA also continues to assert that the use of a different, and higher background for the Keystone CEV modeling, while not required, provides additional assurances that the CEV for Keystone is protective of the NAAQS. 85 FR 66420.

AERMOD was used to determine the CEVs for Conemaugh, Keystone, and Seward where the modeled 1-hour emission rates demonstrate attainment of the 2010 1-hour $SO_2$ NAAQS. The $SO_2$ emission rates for Homer City were based on the unit 1, unit 2, and unit 3 combined mass-based $SO_2$ emission limits established in Plan Approval 32–00055H,[13] which authorized the installation of Novel Integrated Desulfurization (NID) systems, often referred to as Dry Flue Gas Desulphurization (FGD) systems on unit 1 and unit 2. This 1-hour $SO_2$ limit was based on air dispersion modeling that demonstrated attainment of the 2010 1-hour $SO_2$ NAAQS.

In the February 5, 2020, modeling analysis, an alternative finer scale grid in the southeast corner of the original Indiana County domain was used, as well as multi-level site-specific meteorological data that were generated during the period from September 2015 through August 2016, and updated background concentrations. When all the updates were modeled, Seward's 1-hour CEV had to be reduced approximately 11% from the original CEV to show attainment with the NAAQS (CEV changed from 5,079 lb/hr to 4,500 lb/hr). The CEVs for the other three SIP sources did not change. The CEV rates used in the demonstration analysis for each of the four sources are summarized in the following table. The modeled emission rate in grams per second was converted to pounds per hour, which is the CEV for each source.[14] Upon reconsideration, EPA is not proposing to change the October 2020 decision that the CEVs were modeled correctly.[15]

TABLE 2—FEBRUARY 5, 2020 MODEL RUN RESULTS—CRITICAL EMISSION VALUES

| Source | Critical emission value - $SO_2$ emission rates modeled in attainment model run (g/s) | Critical emission value - $SO_2$ emission rates modeled in attainment model run (lb/hr) |
|---|---|---|
| Seward | 566.99 | 4500.0 |
| Homer City Unit 1 | 195.30 | 1550.0 |
| Homer City Unit 2 | 195.30 | 1550.0 |
| Homer City Unit 3 | 410.75 | 3260.0 |
| Keystone | 1223.60 | 9711.1 |
| Conemaugh | 426.00 | 3381.0 |

The October 11, 2017, submittal also included a modeling analysis using randomly reassigned historical hourly emissions for Keystone for 100 AERMOD simulations (referred to as RRE Modeling). The hourly modeled emission values were based on 2016 actual hourly emissions that reflect emission patterns based on plant operations and reassigned to determined fixed values through a binning approach in which the upper limit for each corresponding bin was used as the modeled emission rate. The emissions profile was such that the actual emission rate for 15% of the hours per year were above the CEV of 9,711 lb/hr, and those hours fell within 15 days in each month. Because of this pattern, where hourly actual emissions values above the CEV were clustered together on a limited number of days rather than individually dispersed throughout the year, Pennsylvania created a ''rule'' in the modeling of binned reassigned fixed values, whereby the actual hours over the CEV were modeled in separate clusters which Pennsylvania calls ''high emission event days.'' The total amount of $SO_2$ emissions each day, however, are constrained by a limit which restricts the total pounds of $SO_2$ emissions, on a 24-hour block average basis, to be at or below 9,600 lb/hr. The hours for which the emissions were modeled above the CEV were not randomly dispersed individually throughout the year because the plant did not and likely will not operate that way in order to meet the limit. Thus, these high emission events were modeled in a way that is representative of the variability in the historic (2016) emissions data and of expected emissions performance occurring in compliance with the allowable emissions limit (as asserted in Pennsylvania's submittal).

The ''rule'' constrained the high emission events days to not exceed 9,604 lb/hr on a 24-hour block average; however, not every day was modeled with hourly emission rates resulting in a 24-hour block average approaching or equal to 9,604 lbs/hr. As previously described, the historical emissions data demonstrate that not every day is a high emission event day based on the historic variability of the source. Pennsylvania modeled about 50% of the days in a month where binned reassigned hourly $SO_2$ emissions were always below the CEV value and about 50% of the days in a month as high emission event days where there were at least three hours of binned reassigned emissions over the CEV during those 24 hours. The high

Nonattainment Area for the 2010 1-Hour Sulfur Dioxide National Ambient Air Quality Standard,'' dated October 2017 pages 9–14, and TSD For the Modeling Portions of the Document Entitled ''Supplemental Information to Address a Comment Received by the EPA on Pennsylvania's 1-hour Sulfur Dioxide Attainment Demonstration for the Indiana, Pennsylvania Nonattainment Area'' submitted on February 5, 2020 pages 12–15) and 85 FR 66240 at 66247–66248.

[13] Plan Approval 32–00055H was issued on April 2, 2012, and modified on April 4, 2013, by PADEP.

[14] Based on the National Institute of Standards and Technology conversion: 1 pound = 453.59237 grams

[15] While the current CEV modeling is not a reason for disapproval, as discussed later in the preamble, EPA encourages Pennsylvania to ensure that the revised attainment plan includes modeling that provides for attainment in all areas with known NAAQS violations.

emission events days included nine days (30% of the days) in a month where the 24-hour averages were near 9,600 lb/hr. The remaining six high emission event days per month experienced three hours of emissions above the CEV, yet emissions during the remaining hours of the day resulted in the 24-hour daily average falling at 6,333 lb/hr for five of the six days and at 8,964 lb/hr for one of the six days. However, the other hours in these days were assigned values at or below the CEV, reflecting the predominance of values below the CEV in the modeled emissions distribution (which in turn reflected the predominance of values below the CEV in the historical record), resulting in daily average emission rates for these days below 9,600 lb/hr. The remaining days (not categorized as high emission events days) had 24-hour daily average emissions between 5,000 lb/hr and 6,200 lb/hr.

Pennsylvania developed 100 different annual emission profiles using the historic data of high emission event days, and randomly re-assigning the other hourly emissions such that the 24-hour limit of 9,600 lbs/hr is modeled during 30% of the days across each month. These emission files provide a large array of temporally varying hourly actual emissions which take into account the ''rule'' where hourly actual emissions above the CEV are clustered together into high emission event days, reflecting the variability in the historic emissions data and historic plant operations. Each of the 100 emissions scenarios were modeled with five years of meteorological data using AERMOD. For each of the 100 5-year AERMOD simulations for Keystone, the 5-year average of the 99th percentile of the daily maximum 1-hour $SO_2$ modeled concentrations were below the NAAQS.[16]

When reconsidering the RRE modeling for Keystone, EPA examined whether the RRE modeling provided the necessary analysis to determine if the longer term limits were comparably stringent to the modeled 1-hour CEVs and whether the RRE approach demonstrated that the longer term limits provided for attainment.

While the 2014 $SO_2$ Nonattainment Guidance did not preclude states from using other approaches to determine appropriate longer term average limits, EPA did recommend that in all cases the analysis begin with the determination of the CEV (a constant hourly emissions level at which attainment is modeled to occur) and include an assessment showing that the longer term limits are of comparable stringency to the 1-hour CEV. This is a critical element in the attainment demonstration because it provides a similar level of assurance that complying with the longer term limit, in lieu of the hourly limit reflecting the modeled CEV, will also provide for attainment.

As described earlier, Pennsylvania provided adequate CEV modeling for Keystone, Seward, Homer City, and Conemaugh, but Pennsylvania did not provide evidence that the longer term limits derived via the application of RRE modeling were comparable in stringency to the 9,711 lb/hr CEV for Keystone. Essentially, the necessary steps to establish the comparably stringent relationship between a modeled 1-hour CEV and longer term limits were not taken.

In the October 2020 final rule action, EPA did not address whether the longer term limits derived via the RRE modeling of binned reassigned historical emissions were in fact comparably stringent to the 1-hour CEV, and at that time only focused our review on whether the RRE modeling of binned re-assigned historical actual emissions projected future emissions performance that would result in NAAQS attainment. In that final rule, EPA stated that ''the RRE modeling provided enough permutations of emissions and meteorology that we can be reasonably confident that Keystone's longer-term limit is protective of the NAAQS. This conclusion is based upon the large number of emission distribution profiles (100), the frequency and distribution of high emission event days, the 9,600 lb/hr 24-hour emission limit modeled 30% of the days per month, emissions inputs reflective of the variability in historic plant operations, and meteorological data (five years of National Weather Service data).'' (85 FR 66240 at 66244).

Upon reconsideration, EPA has determined that without a comparably stringent analysis and a clear link between the modeled 1-hour CEV and the longer term limit, EPA does not have adequate assurance that Keystone's longer term limit, considering worst case emissions scenarios permissible under the limit, is protective of the 1-hour $SO_2$ standard. EPA did not address this issue clearly in the October 2020 final action; however, EPA was clear in the 2014 $SO_2$ Guidance, which states, ''A comparison of the 1-hour limit and the proposed longer term limit, in particular an assessment of whether the longer term average limit may be considered to be of comparable stringency to a 1-hour limit at the critical emission value, would be a critical element of a demonstration that any longer term average limits in the SIP will help provide adequate assurance that the plan will provide for attainment and maintenance of the 1-hour NAAQS.'' (pg. 26).

In addition to not having established that the longer term limits are comparably stringent to the 1-hour CEV, Pennsylvania's binning approach used in the RRE modeling was dependent upon historical emissions performance and assumed continued performance that was well below that which is permissible under the limit. The binned emissions approach may have been a valid way to characterize factual air quality resulting from actual emissions and may be useful in a designations or attainment determination context. However, because the approach did not characterize maximally possible emissions that could occur in compliance with the emission limit nor provide a comparably stringent analysis, EPA now considers that it falls short of demonstrating that the limits will provide for attainment under all worst case emissions scenarios that are permissible under the limit, and that it was incorrect for EPA to fully approve the attainment demonstration in the absence of this demonstration.

In order to establish the comparable stringency of a longer term limit to a modeled attaining 1-hour CEV, EPA's 2014 Guidance recommended using a comparison of the 99th percentile of historic hourly emissions to the 99th percentile of the longer term averaged emissions of the same dataset to develop an adjustment factor for use in converting the modeled 1-hour CEV to a comparably stringent longer term limit. The focus on the 99th percentile of data is purposeful to ensure that extreme hourly variability was correctly accounted for in developing the longer term limits and showing that the longer term limits account for the worst case emissions performance that is permissible under the limits. Generally, when applying EPA's recommended methodology for developing a comparably stringent longer term limit, a source with a history of frequent spikes of high hourly emissions will have a lower adjustment factor, resulting in a greater reduction in the numeric value of the comparably stringent longer term limit, than a source with less frequent spikes of high hourly emissions. Development of a longer term limit based on a variability metric other than the 99th percentile metric of the historic emissions variability should be accompanied by

[16] See EPA's March 1, 2011 clarification memo ''Additional Clarification Regarding Application of Appendix W Modeling Guidance for the 1-hour $NO_2$ National Ambient Air Quality Standard.''

justification of how the longer term limit is comparably stringent to the 1-hour CEV. In the RRE analysis for Keystone, the Commonwealth of Pennsylvania used the actual hourly emissions distribution of one year (2016) to generate 100 hourly emissions profiles to use in the modeling. Pennsylvania's analysis (*i.e.,* RRE approach) was an assessment of hourly emissions with no assurance (via a comparably stringent consideration) that prospective (future) hourly emissions when complying with the longer term limit (potentially worst case scenarios) were properly accounted for. Pennsylvania did not provide a justification for using a metric other than the 99th percentile of hourly emissions data to support Keystone's longer-term limit. This means that Pennsylvania did not establish that the longer term limit for Keystone was comparably stringent to an attaining 1-hour CEV, and that EPA erred in approving the attainment demonstration and limit as providing for NAAQS attainment. Thus, EPA is proposing to correct its prior approval to a disapproval of the attainment demonstration for Keystone.

In the February 5, 2020, submittal, Pennsylvania included an RRE analysis for Seward to support its already established 30-day average $SO_2$ limit of 3,038.4 lb/hr. First, Pennsylvania determined Seward's CEV of 4,500 lb/hr using AERMOD.[17] Then, using 2016–2018 emissions from Seward, Pennsylvania developed a binned emissions dataset to be used in formulating the inventories modeled in 100 AERMOD simulations. Pennsylvania used a total of 13 bins, including five bins ranging from an upper level of 2,000 lbs/hour to an upper level of 4,500 lbs/hour and eight bins at various ranges above the CEV. Hours without operation were represented as hours with 2,000 lbs/hour, and all the other hours were represented with the upper level of the applicable bin. The dataset included 2.5% of hourly emissions above the CEV (or 220 hours). This was based on how the plant historically operated while complying with this 30-day limit during the appliable time period and how it is expected to operate into the future while in compliance with the 30-day limit. The hours above the CEV were distributed across four high emission events, where the duration of each event was 4, 7, 12, or 16 hours, with the frequency of those events being twice per month, monthly, every six months and once per year, respectively, such that these 220 hours above the CEV were spread across 39 days. The remaining 97.5% of hourly emissions were below the CEV and randomly assigned throughout the annual emissions profile.

Pennsylvania calculated a weighted average of the hourly emissions in the binned inventory by multiplying the bin level times the percentage of hours in each bin and summing the results. This sum, representing the average of the modeled emissions, equaled 3,088 lb/hr. Despite minor variations resulting from the random distribution process, each of the 100 AERMOD simulations had approximately this average level of emissions.

Pennsylvania developed 100 different annual emission profiles using the historic data of high emission event days, and randomly assigning the other hourly emissions such that the average of the 30-day averages of each simulation was close to 3,088 lb/hr. Seward's $SO_2$ emissions limit of 3,038.4 lb/hr on a 30-day rolling average basis is approximately 50 lb/hr less than the approximate average emissions value used in the AERMOD simulations.

As similarly described above for Keystone, when reconsidering the RRE modeling for Seward, EPA has now examined whether the RRE modeling provided the necessary analysis to determine if the longer term limits were comparably stringent to the modeled 1-hour CEVs. Upon reconsideration, EPA has found that the RRE modeling used to support Seward's longer term limit did not provide evidence that the longer term limit is comparably stringent to Seward's CEV of 4,500 lb/hr. As noted previously in the preamble, the CEV for Seward decreased 11% from 5,079 lb/hr in the October 11, 2017, submittal to 4,500 lb/hr in the February 5, 2020, submittal, due to updates to model inputs, in particular, site specific meteorology data, a more refined receptor grid, and updated emissions data. The RRE derived longer-term limit, however, did not change from one submittal to the next. This highlights the failed linkage of the modeled CEV to this longer term limit. In the October 2020 final action, EPA failed to address this critical element in determining whether the State had adequately shown that allowable emissions performance in compliance with a longer term limit for Seward ensures NAAQS attainment.

In relation to whether the binned approach used for Seward's RRE modeling provided adequate assurance that hourly emissions when in compliance with the longer term limit provided for attainment, EPA notes that the binned approach did not account for the 99th percentile of historic hourly data, nor did it provide evidence that an analysis based on a metric other than 99th percentile of hourly emissions data could result in a comparably stringent longer term limit. This means that PADEP did not establish that the longer term limit for Seward was comparably stringent to an attaining 1-hour CEV, and that EPA erred in approving the attainment demonstration and limit as providing for NAAQS attainment. Thus, EPA is proposing to correct its prior approval to a disapproval of the attainment demonstration for Seward.

*D. RACM/RACT*

CAA section 172(c)(1) requires that each attainment plan provide for the implementation of all reasonably available control measures (*i.e.,* RACM) as expeditiously as practicable and shall provide for attainment of the NAAQS. Section 172(c)(6) requires SIPs to contain enforceable emission limitations and control measures as may be necessary or appropriate to provide for NAAQS attainment. EPA interprets RACM, including RACT, under section 172 as measures that a state determines to be both reasonably available and contribute to attainment as expeditiously as practicable ''for existing sources in the area.''

Pennsylvania's October 11, 2017, submittal discusses Federal and state measures that Pennsylvania asserts will provide emission reductions leading to attainment and maintenance of the 2010 $SO_2$ NAAQS. With regard to state rules, Pennsylvania cites its low sulfur fuel rules, which were SIP-approved on July 10, 2014 (79 FR 39330). Pennsylvania's low sulfur fuel oil provisions apply to refineries, pipelines, terminals, retail outlet fuel storage facilities, commercial and industrial facilities, and facilities with units burning regulated fuel oil to produce electricity and domestic home heaters. These low sulfur fuel oil rules reduce the amount of sulfur in fuel oils used in combustion units, thereby reducing $SO_2$ emissions and the formation of sulfates that cause decreased visibility.

The October 11, 2017, submittal also discusses that the main $SO_2$ emitting sources at Conemaugh, Homer City, Keystone, and Seward are all equipped with FGD systems (wet limestone scrubbers, dry FGD, or in-furnace limestone injection systems) to reduce $SO_2$ emissions. Table 3 in this document lists the control technology at each of

[17] This CEV and the description provided are based on Pennsylvania's updated analysis which was provided to EPA on February 5, 2020. The CEV for Seward in the October 11, 2018 submittal was 5,079 lb/hr.

the main $SO_2$ emitting sources at each facility.

TABLE 3—CONTROL TECHNOLOGY AT THE FOUR MAJOR $SO_2$ SOURCES IN THE INDIANA AREA

| Facility | Unit | $SO_2$ control | Control installation date |
|---|---|---|---|
| Conemaugh | 031—Main Boiler 1 | Wet limestone scrubber | ~1994 |
| | 031—Main Boiler 2 | Wet limestone scrubber | ~1995 |
| Homer City | 031—Boiler 1 | Dry FGD | 11/18/2015 |
| | 032—Boiler 2 | Dry FGD | 5/23/2016 |
| | 033—Boiler 3 | Wet limestone scrubber | ~2002 |
| Keystone | 031—Boiler 1 | Wet limestone scrubber | 9/24/2009 |
| | 032—Boiler 2 | Wet limestone scrubber | 11/22/2009 |
| Seward | 034—CFB Boiler 1 | In-furnace limestone injection | ~2004 |
| | 035—CFB Boiler 2 | In-furnace limestone injection | ~2004 |

With these controls installed, the October 11, 2017, submittal discusses facility-specific control measures, namely $SO_2$ emission limits for Conemaugh, Homer City, and Seward, and new $SO_2$ emission limits for Keystone. Keystone's new limits were developed through air dispersion modeling (default AERMOD as described below) submitted by PADEP. In order to ensure that the Indiana Area demonstrates attainment with the $SO_2$ NAAQS, PADEP asserts that the following combination of emission limits at the four facilities is sufficient for the Indiana Area to meet the $SO_2$ NAAQS and serve as RACM/RACT:

- Conemaugh's current $SO_2$ emission limits contained in the Title V Operating Permit (TVOP) 32–00059 because the emission limits for Conemaugh determined by the modeling as necessary for $SO_2$ attainment would be less stringent;
- Seward's current $SO_2$ emission limit in TVOP 32–00040 because the emission limits for Seward determined by the modeling as necessary for $SO_2$ attainment would be less stringent;
- Homer City's current $SO_2$ emission limits established in Plan Approval 32–00055H and Plan Approval 32–00055I; and
- A new, more stringent combined $SO_2$ emission limit for Keystone Unit 1 and Unit 2 of 9,600 lbs/hr block 24-hour average limit.

The emission limits for each of the $SO_2$-emitting facilities are listed in Table 4 in this document.

TABLE 4—$SO_2$ EMISSION LIMITS FOR INDIANA AREA FACILITIES

| Facility | Source description | Emission limit (lbs/hr) | Averaging period |
|---|---|---|---|
| Conemaugh | Unit 1<br>Unit 2 | 1,656 (TVOP 32–00059) | 3-hour block. |
| Homer City | Unit 1<br>Unit 2<br>Unit 3 | 6,360 (Plan Approval 32–00055H) and limits specified in Plan Approval 32–00055I. | 1-hour block. |
| Keystone | Unit 1<br>Unit 2 | 9,600 (New limit based on default AERMOD) | 24-hour block. |
| Seward | Unit 1<br>Unit 2 | 3,038.4 (TVOP 32–00040) | 30-day rolling. |

The emission limits for Conemaugh, Keystone and Seward have averaging times greater than 1-hour (ranging between three hours and 30 days). The $SO_2$ limits at Conemaugh are set to a 3-hour block average. This average is roughly in line with the CEV modeled limit and the ratio from Appendix C in EPA's 2014 $SO_2$ Nonattainment Guidance. Keystone's limits were set to a 24-hour block average based on the 100 RRE simulation method discussed in the Attainment Demonstration section in this proposed rulemaking. A similar approach was used to establish a 30-day rolling average for Seward. Appendices C–1a and C–4 of Pennsylvania's October 11, 2017, SIP submittal, and the modeling report of the February 5, 2020, submittal, provide detailed explanation of the longer-term emission limits.

EPA expects to consider the following factors in evaluating the adequacy of plans with limits based on longer averaging times: (l) Whether the numerical value of the mass emissions limit averaged over a longer time is comparably stringent to a 1-hour limit at the CEV; and (2) whether the longer-term average limit, potentially in combination with other limits, can be expected to constrain emissions sufficiently so that any occasions of emissions above the CEV will be limited in frequency and magnitude and, if they occur, would not be expected to result in NAAQS violations.

EPA analyzed the last five years of emissions data for Keystone and Seward in order to understand the source's historic emissions variability. EPA used the methodology described in Appendix C of the 2014 $SO_2$ Nonattainment Guidance to calculate adjustment factors for each source. Refer to EPA's TSD entitled Reconsideration of the Attainment Plan for the Indiana, PA 1-Hour $SO_2$ Nonattainment Area (January 2022) for a detailed description of EPA's analysis.

The 2014 $SO_2$ Nonattainment Guidance recommends the use of a data set that reflects hourly data for at least 3 to 5 years of stable operation (*i.e.,* without changes that significantly alter emissions variability) to obtain a suitably reliable analysis. EPA analyzed two 3-year periods and one 5-year period for Keystone, and one 3-year

period and one 5-year period for Seward for illustrative purposes. Because the analyses for Seward and Keystone were done for illustrative purposes, the adjustment factors resulting from the analyses are also only for illustrative purposes. Using the current CEV for Keystone of 9,711 lb/hr, and depending upon the years of data used, Keystone's 24-hour block limits could be either 8,573.0 lbs/hr, 8,959.5 lb/hr, or 8,225.3 lbs/hr. Using Seward's CEV determined by Pennsylvania's supplemental analysis (4,500 lbs/hr) the 30-day rolling limit would be 3,484.3 lbs/hr using the 3-year adjustment factor and 2,575.3 lbs/hr using the 5-year adjustment factor.

EPA compared these values to Pennsylvania's RRE modeling derived 24-hr limit for Keystone (9,600 lb/r) and the 30-day limit for Seward (3,038 lb/hr). For Keystone, the comparably stringent values calculated by EPA are between 640 and 1,375 lb/hr less than the limit Pennsylvania claimed was protective of the standard, which was 9,600 lb/hr on a 24-hour block basis. The significant difference between Pennsylvania's RRE-derived 24-hour limit for Keystone and the potential 24-hour limits calculated by EPA using Appendix C of the 2014 $SO_2$ Guidance calls into question whether Keystone's RRE-derived 24-hour limit of 9,600 lb/hr is comparably stringent to the 1-hr CEV. If the RRE-derived limit is not comparably stringent to the CEV that was modeled to show attainment of the $SO_2$ NAAQS, then it is uncertain whether the longer-term 24-hour limit will provide for attainment of the NAAQS.

For Seward, when using the last three years of available emissions data (2018–2020), EPA calculated 30-day emission limit following the Appendix C methodology is 446 lb/hr more than the adopted limit of 3,038 lb/hr. When using the last five years of available emissions data (2016–2020), EPA calculated 30-day limit is 463 lb/hr less than Seward's current limit. The large difference in these 30-day limits probably results from the decrease in $SO_2$ emission spikes at Seward, both in frequency and magnitude, that occurred after 2017. Seward's $SO_2$ emissions spikes have declined in magnitude and frequency over the last 3 years, which may be due to the operational changes referenced in the February 5, 2020, submittal. The 30-day average $SO_2$ limit for Seward has been in place since 2001 and has not been supplemented with additional limits to reflect the operational changes noted. As mentioned earlier in the preamble, EPA must consider whether the longer-term average limit can be expected to constrain emissions sufficiently so that emissions above the CEV will be limited in frequency and magnitude and, if they occur, would not be expected to result in NAAQS violations. Historic hourly emissions (described in the January 2022 TSD) before 2018 show that it is possible for this source to be in compliance with the 30-day limit of 3,038 lb/hr yet have up to 171 hours over the CEV. This data supports EPA's earlier conclusion that the current limit, by itself, does not adequately constrain the frequency and magnitude of hourly exceedances of the CEV and is not comparably stringent to the CEV.

As described earlier in the preamble, in EPA's October 2020 final action on this attainment plan, EPA failed to consider a critical aspect of longer-term limits in relation to the 1-hour $SO_2$ NAAQS, which was whether the longer-term limits for Keystone and Seward were comparably stringent to their CEVs and therefore support a conclusion that compliance with the longer term limits will provide for NAAQS attainment, which is necessary to meet the RACM/RACT requirement under EPA's $SO_2$ policy. Absent a comparably stringent analysis from Pennsylvania, EPA is proposing that it erred in previously approving the RACM/RACT element for the Indiana Area SIP and proposes to change its prior approval of the RACM/RACT element to a disapproval of the RACT/RACM element for Seward and Keystone.

The emission limits of the four SIP sources and all related compliance parameters (*i.e.,* the measures which include system audits, record-keeping and reporting, and corrective actions) have been incorporated into the SIP via EPA's final approval of the Indiana, PA $SO_2$ attainment plan (85 FR 66240, October 19, 2020) which made these changes federally enforceable. EPA is proposing to retain the emission limits and compliance parameters for the main sources of $SO_2$ in the SIP as SIP strengthening measures while Pennsylvania works on revised limits for its attainment plan. Maintaining these limits and measures as SIP strengthening measures is appropriate for limits that improve air quality but do not meet a specific CAA requirement (see 86 FR 14827 at 14828, March 19, 2021).

*E. RFP Plan*

Section 172(c)(2) of the CAA requires that an attainment plan include a demonstration that shows RFP for meeting air quality standards will be achieved through generally linear, incremental improvements in air quality. Section 171(1) of the CAA defines RFP as ''such annual incremental reductions in emissions of the relevant air pollutant as are required by this part (part D) or may reasonably be required by EPA for the purpose of ensuring attainment of the applicable NAAQS by the applicable attainment date.'' As stated originally in the 1994 $SO_2$ Guidelines Document [18] and repeated in the 2014 $SO_2$ Nonattainment Guidance, EPA continues to believe that this definition is most appropriate for pollutants that are emitted from numerous and diverse sources, where the relationship between emissions from these numerous and diverse sources and the effect of those emissions on ambient air quality are difficult to ascertain. In such cases, emissions reductions may be required from numerous and varying types of sources in numerous locations. The relationship between ambient $SO_2$ concentrations and the sources of $SO_2$ emissions is much more discernable and definable. That is, it is easier to determine the effect on ambient $SO_2$ concentrations that $SO_2$ emission reductions from certain sources will produce. Moreover, the emissions reductions from these few sources necessary to attain the $SO_2$ NAAQS usually occur in one step, which often (but not always) results from installation of new or better controls on a few sources that represent a knowable, specific amount of $SO_2$ reductions, rather than the piecemeal and gradual adoption of controls or measures by numerous sources. Therefore, EPA interpreted RFP for $SO_2$ as adherence to an ambitious compliance schedule for the adoption of controls or newer limits on these $SO_2$ sources in both the 1994 $SO_2$ Guideline Document and the 2014 $SO_2$ Nonattainment Guidance.

The purpose of an ambitious compliance schedule is to ensure that $SO_2$ sources reach the $SO_2$ emission limits that were modeled to show attainment as soon as possible, but no later than the compliance date. If the emission limits themselves have not been shown to model attainment, then an ambitious compliance schedule will not necessarily result in attainment, and reasonable further progress toward attainment may not lead to attainment. As noted, on reconsideration EPA does not view the longer term emission limits derived by Pennsylvania using RRE modeling to be comparably stringent to the CEVs used in the modeling that

[18] $SO_2$ Guideline Document, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711, EPA–452/R–94–008, February 1994. Located at: *https://www.epa.gov/ttn/oarpg/t1pgm.html.*

demonstrated future attainment of the NAAQS. Therefore, EPA finds there is a lack of evidence showing that these longer term limits will yield a sufficient reduction in $SO_2$ emissions in the Indiana NAA to attain the NAAQS. As a result, EPA is proposing to determine that Pennsylvania's $SO_2$ attainment plan for the Indiana Area is not adequate to achieve attainment of the NAAQS because the RRE-derived longer term limits have not been adequately shown to provide for sufficient $SO_2$ emission reductions in the Indiana Area. Without this assurance, EPA is proposing to determine that it erred in previously approving the RFP element of Pennsylvania's $SO_2$ attainment plan for the Indiana Area. EPA proposes to change its prior approval of the RFP element to a disapproval of Pennsylvania's attainment plan with respect to the RFP requirements.

*F. Contingency Measures*

In accordance with section 172(c)(9) of the CAA, contingency measures are required as additional measures to be implemented in the event that an area fails to meet the RFP requirements or fails to attain the standard by its attainment date. These measures must be fully adopted rules or control measures that can be implemented quickly and without additional EPA or state action if the area fails to meet RFP requirements or fails to meet its attainment date and should contain trigger mechanisms and an implementation schedule. However, $SO_2$ presents special considerations. As stated in the final 2010 $SO_2$ NAAQS promulgation on June 22, 2010 (75 FR 35520), and in the 2014 $SO_2$ Nonattainment Guidance, EPA explained that because of the quantifiable relationship between $SO_2$ sources and control measures, provided that the attainment plan demonstrates that emissions performance under the allowable emissions limits in the SIP provide for NAAQS attainment, it is appropriate that state agencies develop a comprehensive program to identify sources of violations of the $SO_2$ NAAQS and undertake an aggressive follow-up for compliance and enforcement of those emission limits.

The Consent Order and Agreements (COAs) or Consent Orders (COs) for Conemaugh, Homer City, Keystone, and Seward (*see* Appendices B–1 through B–4 of the October 11, 2017 submittal and updated permits submitted on February 5, 2020) each contain the following measures that are designed to keep the Indiana Area from triggering an exceedance or violation of the $SO_2$ NAAQS: (1) Upon execution of the COA or CO, if $SO_2$ emissions from the combined $SO_2$ emitting sources at the facility exceed 99% of the $SO_2$ emissions limit for the facility, within 48 hours the facility is required to undertake a full system audit of the $SO_2$ emitting sources and submit a written report to PADEP within 15 days, and corrective actions shall be identified by PADEP as necessary; and (2) upon execution of the COA or CO, if the Strongstown monitor (ID 42–063–0004) measures a 1-hour concentration exceeding 75 ppb, PADEP will notify the facility in the NAA, and the facility is required to identify whether any of the $SO_2$-emitting sources at the respective facility were running at the time of the exceedance, and within a reasonable time period leading up to the exceedance, not to exceed 24 hours. If any of the $SO_2$-emitting sources were running at the time of the exceedance, the facility must then analyze the meteorological data on the day the daily exceedance occurred to ensure that the daily exceedance was not due to $SO_2$ emissions from the respective facility. The facility's findings must be submitted to PADEP within 30 days of being notified of the exceedance.

Additionally, if PADEP identifies a daily maximum $SO_2$ concentration exceeding 75 ppb at a PADEP-operated $SO_2$ ambient air quality monitor in the Indiana Area, within 5 days, PADEP will contact Conemaugh, Homer City, Keystone, and Seward to trigger the implementation of the daily exceedance report contingency measure described in section VIII.C. of the October 11, 2017, submittal. If necessary, section 4(27) of the Pennsylvania Air Pollution Control Act (APCA) authorizes PADEP to take any action it deems necessary or proper for the effective enforcement of APCA and the rules and regulations promulgated under APCA. Such actions include the issuance of orders and the assessment of civil penalties. A more detailed description of the contingency measures can be found in section VIII of the October 11, 2017, submittal as well as the COAs and COs included in the submittal and included for incorporation by reference into the SIP.

EPA is proposing to change its prior finding that Pennsylvania's October 11, 2017 and February 5, 2020 submittals include sufficient contingency measures, since EPA is now proposing that they are based on the emission limits, including longer term emission limits, that on reconsideration EPA believes have not been shown as comparably stringent to the CEVs used in the modeling that demonstrated attainment and consequently cannot support a conclusion that compliance with the allowable limits in the attainment plan will provide for NAAQS attainment. Therefore, on reconsideration EPA proposes that it erred in previously approving the contingency measures submitted by Pennsylvania, and now proposes to correct this error by proposing to change its approval of this element to disapproval because they do not follow the 2014 $SO_2$ Nonattainment Guidance and do not meet the section 172(c)(9) requirements. Nevertheless, EPA is proposing to retain the contingency measures in the SIP which were approved into the SIP on October 19, 2020 (85 FR 66240), as SIP strengthening measures. Specific needed amendments to the contingency measures can be evaluated and determined in the context of developing a new attainment plan that appropriately demonstrates that its emission limits and control measures will provide for NAAQS attainment.

## III. Summary of Sierra Club Modeling Analysis for Westmoreland and Cambria Counties Submitted During the Public Comment Period (83 FR 32606, July 13, 2018) and EPA Considerations

*A. Modeled Violations in Westmoreland and Cambria Counties*

During the public comment period for the proposed approval of this attainment plan (83 FR 32606, July 13, 2018), the Sierra Club (in conjunction with the National Parks Conservation Association, PennFuture, Earthjustice, and Clean Air Council) submitted a modeling analysis using actual emissions and the CEVs for Conemaugh and Seward which claimed to show violations of the $SO_2$ NAAQS outside of the nonattainment area, beyond the eastern border of Indiana county within nearby portions of Westmoreland and Cambria counties. The modeling used the same meteorological data, stack parameters, background concentrations and building downwash as Pennsylvania's October 11, 2017, submittal. The Sierra Club modeling used emission inputs of actual historical emissions (2013- 2018 quarter 1) and a finer receptor grid that included receptors outside Indiana County. When modeling 2015–2017 emissions, the resulting design value was 293.4 ug/m$^3$, and when modeling 2013–2017 emissions, the resulting design value was 267.2 ug/m$^3$.[19] The comment letter

[19] In the Round 3 intended designations (82 FR 41903) published September 5, 2017, EPA endorsed a value of 196.4 μg/m$^3$ (based on calculations using all available significant figures) as equivalent to the 2010 $SO_2$ standard. To avoid confusion, EPA is

Continued

and modeling results can be found in the Docket for this action.

Under reconsideration, EPA notes that Sierra Club's modeling, using actual emissions and the CEVs for Conemaugh and Seward, although using slightly different data from PA's modeling, suggests that there are modeled $SO_2$ nonattainment violations outside the NAA, and nothing in PA's submittal rebuts the finding of nonattainment outside the NAA.

As stated in the October 2020 final rule action, although EPA does not consider that a failure to include an analysis of modeled $SO_2$ concentrations outside of the boundaries of the NAA is an independent basis on which to disapprove this attainment plan, EPA is now proposing to revise its prior full approval of the attainment plan to a partial disapproval in order to correct errors made in approving the attainment demonstration, and the RACM/RACT, RFP and contingency measure elements. EPA encourages the state, when developing a new attainment plan that would respond to this partial disapproval, if finalized, to additionally ensure that any revised attainment plan demonstrates attainment for all known modeled violations. EPA is also considering taking a separate statutory action under the Clean Air Act to address the modeled violations in Westmoreland and Cambria counties.

*B. Environmental Justice Considerations*

EPA conducted an environmental justice (EJ) analysis on the Indiana NAA and Westmoreland and Cambria counties. The consideration of environmental justice concerns is consistent with the EPA Administrator's directive and presidential executive orders.[20] The EPA has defined environmental justice as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies.'' [21] A detailed description of the EJ analysis is available in the TSD for this action, which can be found under Docket ID No. EPA–R03–OAR–2017–0615 and online at *www.regulations.gov.*

Vulnerable populations (characterized by the low-income criteria as discussed in the TSD) are found inside and outside the $SO_2$ nonattainment area boundary. In particular, the areas identified by the Sierra Club modeling outside the NAA in Westmoreland and Cambria counties are also identified as vulnerable populations. EPA recommends that Pennsylvania's response to our action, if finalized, should be as expeditious as practicable and take into account the emissions impact on the vulnerable populations both inside the current nonattainment area, and in adjacent areas. EPA is committed to environmental justice for all people and expects PADEP in its CAA obligations to ensure that public health protection of all people in the Commonwealth is consistent with both EPA's and PADEP's commitments.

## IV. Proposed Action

EPA is proposing to amend its prior full approval of the Indiana Area $SO_2$ attainment plan to a partial approval and partial disapproval. Specifically, EPA is proposing to retain approval of the emissions inventory and NNSR elements of Pennsylvania SIP revision and disapprove the attainment plan, RACM/RACT demonstration, RFP element, and contingency measures which were submitted on October 11, 2017, and February 5, 2020. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

## V. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to retain the following information as SIP strengthening measures. These measures were incorporated by reference into the SIP under the approval of this attainment plan (85 FR 66240, October 19, 2020). If this proposed disapproval is finalized, EPA does not intend to remove these measures, but to retain them. The measures are: The portions of the COAs or COs entered between Pennsylvania and Conemaugh, Homer City, Keystone, and Seward that are not redacted, as well as the unredacted portions of the TVOPs or Plan Approval included in the October 11, 2017 submittal and the corrected documents in the February 5, 2020 submittal. These include emission limits and associated compliance parameters (*i.e.,* the measures which include system audits, record-keeping and reporting, and corrective actions). EPA has made, and will continue to make, these materials generally available through *https://www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

## VI. Statutory and Executive Order Reviews

*Executive Orders 12866 and 13563: Regulatory Planning and Review*

Under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011), this action is not a ''significant regulatory action'' and, therefore, is not subject to review by the Office of Management and Budget.

*Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs*

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

*Paperwork Reduction Act*

This rulemaking does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

*Regulatory Flexibility Act*

This action merely proposes to disapprove state requirements as not meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

*Unfunded Mandates Reform Act*

Because this rulemaking proposes to disapprove pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small

expecting attainment demonstrations to show achievement with concentrations at or below precisely 196.4 μg/m³.

[20] On April 7, 2021, the Administrator directed all EPA offices to take immediate and affirmative steps to incorporate EJ considerations into their work, including assessing impacts to pollution-burdened, underserved, and Tribal communities in regulatory development processes and considering regulatory options to maximize benefits to these communities. Message from the EPA Administrator, Our Commitment to Environmental Justice (issued April 7, 2021) at *https://www.epa.gov/sites/production/files/2021-04/documents/regan-messageon commitmenttoenvironmentaljustice-april072021.pdf;* ''Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government'' (E.O. 13985, issued January 20, 2021) at *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/* and 86 FR 7009 (January 25, 2021).

[21] See *https://www.epa.gov/environmentaljustice/learn-about-environmental-justice.*

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

*Executive Order 13132: Federalism*

This action also does not have federalism implications because it does not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to disapprove a state requirement and does not alter the relationship or the distribution of power and responsibilities established in the CAA.

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

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 rulemaking 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).

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

This rulemaking also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it proposes to disapprove a state rule.

*Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant energy action,'' this action is also not subject to Executive Order 13211 (66 FR 28355, May 22, 2001).

*National Technology Transfer Advancement Act*

In reviewing state submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state submission, to use VCS in place of a state submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

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

Executive Order 12898 (59 FR 7629 (February 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA lacks the discretionary authority to address environmental justice in this action. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the CAA.

Accordingly, this action proposing partial disapproval of Pennsylvania's $SO_2$ attainment plan for the Indiana Area, merely disapproves certain state requirements and retains certain state requirements as SIP strengthening measures in the SIP under section 110 of the CAA and will not in-and-of itself create any new requirements. Accordingly, it 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.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: March 8, 2022.

**Diana Esher,**

*Acting Regional Administrator, Region III.*

[FR Doc. 2022–05398 Filed 3–16–22; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL MARITIME COMMISSION

## 46 CFR Chapter IV

**[Docket No. 22–04]**

**RIN 3072–AC90**

## Demurrage and Detention Billing Requirements

**AGENCY:** Federal Maritime Commission.

**ACTION:** Advance notice of proposed rulemaking; Extension of comment period.

**SUMMARY:** The Federal Maritime Commission (Commission) is extending the deadline for the submission of public comments in response to its February 15, 2022, Advance Notice of Proposed Rulemaking on demurrage and detention billing requirements. The Commission grants the request by a coalition of associations seeking a 30-day extension to the comment period.

**DATES:** The comments due date for the advance notice of proposed rulemaking published February 15, 2022, at 87 FR 8506 is extended. Submit comments on or before April 16, 2022.

**ADDRESSES:** You may submit comments, identified by Docket No. 22–04, by email at *secretary@fmc.gov.* For comments, include in the subject line: ''Docket No. 22–04, Comments on Demurrage and Detention Billing Requirements ANPRM.'' Comments should be attached to the email as a Microsoft Word or text-searchable PDF document. Only non-confidential and public versions of confidential comments should be submitted by email.

*Instructions:* For detailed instructions on submitting comments, including requesting confidential treatment of comments, and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to the Commission's website unless the commenter has requested confidential treatment.

*Docket:* For access to the docket to read background documents or comments received, go to the Commission's Electronic Reading Room at: *https://www2.fmc.gov/readingroom/proceeding/22-04.*

**FOR FURTHER INFORMATION CONTACT:** William Cody, Secretary; Phone: (202) 523–5725; Email: *secretary@fmc.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Public Participation

*How do I prepare and submit comments?*

Your comments must be written in English. To ensure that your comments are correctly filed in the docket, please include the docket number of this document in your comments.

You may submit your comments via email to the email address listed above under **ADDRESSES**. Please include the docket number associated with this notice and the subject matter in the subject line of the email. Comments should be attached to the email as a Microsoft Word or text-searchable PDF document. Only non-confidential and public versions of confidential comments should be submitted by email.

*How do I submit confidential business information?*

The Commission will provide confidential treatment for identified confidential information to the extent allowed by law. If your comments contain confidential information, you must submit the following by email to the address listed above under **ADDRESSES**:

- A transmittal letter requesting confidential treatment that identifies the specific information in the comments for which protection is sought and demonstrates that the information is a trade secret or other confidential research, development, or commercial information.
- A confidential copy of your comments, consisting of the complete filing with a cover page marked ''Confidential-Restricted,'' and the confidential material clearly marked on each page. You should submit the confidential copy to the Commission by mail.
- A public version of your comments with the confidential information excluded. The public version must state ''Public Version—confidential materials excluded'' on the cover page and on each affected page and must clearly indicate any information withheld. You may submit the public version to the Commission by email or mail.

*Will the Commission consider late comments?*

The Commission will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments received after that date.

*How can I read comments submitted by other people?*

You may read the comments received by the Commission at the Commission's Electronic Reading Room or the Docket Activity Library at the addresses listed above under **ADDRESSES**.

## II. Discussion

On February 15, 2022, the Commission issued an Advance Notice of Proposed Rulemaking (ANPRM) on demurrage and detention billing requirements. 87 FR 8506. The ANPRM seeks comments on whether the Commission should require common carriers and marine terminal operators to include certain minimum information on or with demurrage and detention billings. Also, the Commission is interested in receiving comments on whether it should require common carriers and marine terminal operators to adhere to certain practices regarding the timing of demurrage and detention billings.

On March 3, 2022, the Commission received a letter, attached, signed by 44 associations requesting that the Commission extend the comment period by an additional 30 days. The associations stated that they ''are in the process of surveying respective member companies to gather their experiences and document them in a manner that is most helpful to the FMC.'' The letter furthers says that the extension would facilitate the associations' efforts to collect information regarding the impact of demurrage and detention billing practices.

This notice grants the request for an extension of the 30-day comment period by an additional 30 days. The comment period now expires on April 16, 2022.

By the Commission.

**William Cody,**

*Secretary.*

[FR Doc. 2022–05572 Filed 3–16–22; 8:45 am]

**BILLING CODE 6730–02–P**

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 2, 15, 68, and 73

**[ET Docket Nos. 21–363 and 19–48; FCC 22–3; FR ID 75329]**

### Updating References to Standards Related to the Commission's Equipment Authorization Program

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) proposes targeted updates to its rules to incorporate new and updated standards that are integral to the testing of equipment and accreditation of laboratories that test RF devices.

**DATES:** Comments are due on or before April 18, 2022. Reply comments are due on or before May 16, 2022. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before May 16, 2022.

**ADDRESSES:** You may submit comments, identified by ET Docket No. 21–363, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20–304 (March 19, 2020). *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.*

*People With Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

**FOR FURTHER INFORMATION CONTACT:** Brian Butler, Office of Engineering and Technology, 202–418–2702,

*Brian.Butler@fcc.gov.* For information regarding the PRA information collection requirements contained in this PRA, contact Nicole Ongele, Office of Managing Director, at (202) 418–2991 or *Nicole.Ongele@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM), ET Docket No. 21–363, ET Docket No. 19–48, FCC 22–3, adopted on January 24, 2022 and released on January 25, 2022. The full text of this document is available by downloading the text from the Commission's website at: *https://www.fcc.gov/document/fcc-proposes-updates-standards-used-equipment-authorization.* When the FCC Headquarters reopens to the public, the full text of this document will also be available for public inspection and copying during regular business hours in the FCC Reference Center, 45 L Street NE, Washington, DC 20554. Alternative formats are available for people with disabilities (braille, large print, electronic files, audio format), by sending an email to *fcc504@fcc.gov* or calling the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

**Comment Filing Procedures**

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

**Initial Paperwork Reduction Act of 1995 Analysis**

This document contains proposed modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

***Ex Parte* Rules—Permit-But-Disclose**

The proceeding this proposed rule initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules, 47 CFR 1.1200 *et seq.* 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). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

**Synopsis**

**I. Background**

The Commission's proposals are limited to the incorporation by reference of standards that are associated with equipment authorization and the recognition of Telecommunication Certification Bodies (TCBs). Incorporation by reference is the process that Federal agencies use when referring to materials published elsewhere to give those materials the same force and effect of law in the Code of Federal Regulations as if the materials' text had actually been published in the **Federal Register**. 5 U.S.C. 552(a)(1) and Office of the Federal Register, IBR Handbook 1 (July 2018), *available at https://www.archives.gov/files/federal-register/write/handbook/ibr.pdf.* By using incorporation by reference, the Commission gives effect to technical instructions, testing methodologies, and other process documents that are developed and owned by standards development organizations. Referencing these documents in the Commission's rules substantially reduces the volume of material that would otherwise be published in the **Federal Register** and the Code of Federal Regulations. It also permits the Commission to more efficiently implement future standards updates. Once the Commission completes any necessary notice-and-comment rulemaking proceedings and applies agency expertise to ensure that any standards adopted are sound and appropriate, the Commission need only update the references to the standards in its rules.

*A. Equipment Authorization*

Section 302 of the Communications Act of 1934, as amended (the Act), 47 U.S.C. 302a(a), authorizes the Commission to make reasonable regulations governing the interference potential of devices that emit RF energy and can cause harmful interference to radio communications. The Commission generally implements this authority by establishing technical rules for RF devices. Examples may be found in 47 CFR parts 15, 22, 24, 27, and 90. One of the primary ways in which the Commission ensures compliance with the technical rules is through the equipment authorization program for RF devices, procedures for which are codified in part 2 of its rules. 47 CFR part 2 subpart J. The Office of Engineering and Technology (OET) administers the day-to-day operation of the equipment authorization program under authority delegated by the Commission. 47 CFR 0.241(b).

Part 2 of the Commission's rules provides two different approval procedures for RF devices subject to equipment authorization—certification and Supplier's Declaration of Conformity (SDoC). 47 CFR 2.901. Certification is a more rigorous approval process for RF devices with the greatest potential to cause harmful interference to other radio operations. A grant of certification is an equipment authorization issued by an FCC-recognized TCB based on an evaluation of the supporting documentation and test data submitted to the TCB. 47 CFR 2.907. SDoC allows a device to be marketed on the basis of testing performed in accordance with a Commission-approved methodology by

the manufacturer, assembler, importer, or seller itself without the need to submit an application to a TCB. 47 CFR 2.906. While both processes involve laboratory testing to demonstrate compliance with Commission requirements, testing associated with certification must be performed by an FCC-recognized accredited testing laboratory. 47 CFR 2.948(a).

Additionally, part 68 of the Commission's rules sets forth requirements to ensure that terminal equipment can be connected to the telephone network without harming its functioning and for the compatibility of hearing aids and land-line telephones so as to ensure that, to the fullest extent made possible by technology and medical science, people with hearing loss have equal access to communications services. In furtherance of these goals, part 68 includes unique, but similar rules related to equipment approval, TCB review, and laboratory testing. 47 CFR part 68 subpart D.

Standards

The Commission's equipment authorization rules, for example 47 CFR 2.910, 2.950, and 15.38, incorporate by reference various standards that have been established by standards-setting bodies including, but not limited to, the American National Standards Institute, Accredited Standards Committee (ASC) C63, a standards organization that is responsible for developing electromagnetic compatibility (EMC) measurement standards and testing procedures; the International Organization for Standardization (ISO), an independent, non-governmental international organization that develops voluntary international standards; and the International Electrotechnical Commission (IEC) which develops international standards for all electrical, electronic, and related technologies. Incorporating external standards within the Commission's rules has been a longstanding practice that reflects the Commission's desire, where appropriate, to harmonize its rules with international standards and aligns the Commission's rules with general federal agency guidance which urges government agencies to use industry developed standards rather than develop their own. OMB Circular A–119, Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities (updated Jan. 27, 2016), available at *https://www.whitehouse.gov/omb/information-for-agencies/circulars/.*

1. Measurement Standards and Laboratory Testing Procedures.

Compliance testing is central to the equipment authorization program. Section 2.947 of the Commission's rules requires test data be measured in accordance with one of three types of standards and measurement procedures, including those acceptable to the Commission and published by national engineering societies such as the Electronic Industries Association, the Institute of Electrical and Electronics Engineers, Inc., and the American National Standards Institute. 47 CFR 2.947(a)(2). Accordingly, the Commission has incorporated by reference such standards into its rules when appropriate; use of these standards is intended to ensure the integrity of the measurement data associated with an equipment authorization. For example, certification applications for unlicensed part 15 intentional radiators (47 CFR 15.3(o)) must include compliance measurement data that was obtained in accordance with the procedures specified in ANSI C63.10—2013, ''American National Standard of Procedures for Compliance Testing of Unlicensed Wireless Devices'' (C63.10). 47 CFR 2.1041(a) and 15.31(a)(3). Other part 15 devices that are not designed to purposely transmit RF energy, unintentional radiators (47 CFR 15.3(z)), must be tested under procedures specified in ANSI C63.4—2014: ''American National Standard for Methods of Measurement of Radio-Noise Emissions from Low-Voltage Electrical and Electronic Equipment in the Range of 9 kHz to 40 GHz'' (C63.4). 47 CFR 2.1041(a) and 15.31(a)(4). In addition to measurement procedures, portions of C63.4 specify particular requirements for the characteristics of test sites that are referenced in the Commission's rules. 47 CFR 2.910(c)(1) and 2.948(d). Specifically, these ''test site validation'' requirements are premised on the assumption that an open area test site provides the best conditions for field strength measurements of radiated emissions and test sites other than open area sites may be employed if they are properly calibrated so that the measurement results correspond to what would be obtained from an open area test site. 47 CFR 15.31(d).

2. Accreditation Standards

Compliance testing data associated with an application for certification must be obtained from a testing laboratory that has been accredited in accordance with the Commission's rules. 47 CFR 2.948(a). Accreditation of test laboratories is currently based on the International Organization for Standardization/International Electrotechnical Commission (ISO/IEC) Standard 17025:2005(E), ''General requirements for the competence of testing and calibration laboratories'' (ISO 17025), and on the FCC requirements. 47 CFR 2.948(e). It is the responsibility of the accreditation body to review the qualifications of a test laboratory's personnel, management systems, and record keeping and reporting practices; to send recognized experts to observe testing at the laboratory; and to verify the testing laboratory's competence to perform tests in accordance with FCC-related measurement procedures. Section 2.949 of the Commission's rules sets forth the requirements for the recognition of laboratory accreditation bodies. An entity seeking to be recognized by the Commission as an accreditation body for test laboratories must demonstrate that it complies with applicable ISO and IEC standards for recognizing such bodies and that it is competent in assessing test laboratories to perform measurements in support of the applicable FCC technical regulations. 47 CFR 2.949. The ISO/IEC standard currently used for recognizing accreditation bodies is ISO/IEC 17011:2004(E), ''Conformity assessment—General requirements for accreditation bodies accrediting conformity assessment bodies'' (ISO:17011). 47 CFR 2.949(b)(1) and 2.910(d)(1).

## II. Discussion

In response to advancements in technologies and measurement capabilities, standards bodies periodically update their standards or adopt new standards to reflect best practices. The Commission's proposals here are based on such developments, as further informed by petitions for rulemaking filed with the Commission. Specifically, the Commission addresses two petitions filed by ASC C63: One seeking to incorporate by reference into its rules a new standard pertaining to test site validation; and one proposing to incorporate by reference a newer version of a currently referenced standard that addresses a variety of compliance testing requirements. The Commission also clarifies the status of two standards on which OET previously sought comment. *Office of Engineering and Technology Seeks Comment on Modifying the Equipment Authorization Rules to Reflect the Updated Versions of the Currently Referenced ANSI C63.4 and ISO/IEC 17025 Standards,* Public Notice, ET Docket No. 19–48, 34 FCC

Rcd 1904, 84 FR 20088 (May 8, 2019) (*Standards Update Notice*). The four standards subject to the NPRM proposals are briefly summarized in the table below.

| Standard | Standard being replaced | Proposed affected rule sections | Summary of rationale for proposed change |
|---|---|---|---|
| C63.25.1—2018 | N/A<br>New standard | 2.910<br>2.948 | Consolidates qualification and validation procedures for radiated test sites intended for use over various frequency ranges. The C63.25.1 standard included in this proposal covers 1 to 18 GHz. |
| C63.10—2020 | C63.10—2013 | 15.31<br>15.38 | Addresses changes in technology. |
| ISO/IEC 17011:2017 | 17011:2004 | 2.910<br>2.948<br>2.949<br>2.950<br>2.960<br>68.160 | Provides more comprehensive requirements for accreditation bodies. |
| ISO/IEC 17025:2017 | 17025:2005 | 2.910<br>2.948<br>2.949<br>2.962<br>68.162 | Provides more comprehensive requirements for testing and calibration labs. |

*A. ''American National Standard Validation Methods for Radiated Emission Test Sites; 1 GHz to 18 GHz'' (C63.25.1)*

On March 6, 2020, ASC C63 filed a petition for rulemaking requesting that the Commission incorporate by reference into the test site validation requirements of § 2.948(d) of the Commission's rules the ANSI C63.25.1—2018 standard, titled ''American National Standard Validation Methods for Radiated Emission Test Sites; 1 GHz to 18 GHz'' (C63.25.1). Petition of the American National Standards Institute, Accredited Standards Committee, C63 Requesting adoption of ANSI C63.25.1—2018 into the Commission's part 2 rules for EMC test site validation from 1 GHz–18 GHz (filed March 6, 2020) *https://www.fcc.gov/ecfs/filing/10306816406385* (*C63.25.1 Petition*). Under the Commission's current rules, measurement facilities used to make radiated emission measurements from 30 MHz to 1 GHz must comply with the site validation requirements in ANSI C63.4—2014 (clause 5.4.4), and, for radiated emission measurements from 1 GHz to 40 GHz the site validation requirements in ANSI C63.4—2014 (clause 5.5.1 a) 1)) apply. 47 CFR 2.948(d). In the *C63.25.1 Petition,* ASC C63 asks the Commission to adopt the C63.25.1 standard as an additional option for test site validation of radiated emission measurements from 1 GHz to 18 GHz.

ASC C63 describes how the C63.25.1 standard consolidates guidance from existing standards to provide test site validation procedures from 1 GHz to 18 GHz while providing an additional testing methodology and states that it expects that future iterations of the standard will cover additional frequencies. For example, the C63.25.1 standard includes a CISPR 16 technique known as the site voltage standing wave ratio (SVSWR) approach to validate test sites for frequencies above 1 GHz, which measures responses between antennas while varying their distances. C63.25.1 also introduces the option of using a new effective test validation method called time domain site validation (TDSV), which ASC C63 says is not yet available or recognized in comparable international standards. ASC C63 states that while TDSV is similar to SVSWR, in that both measure responses between antennas, varying the distance between antennas is not necessary; thus, it asserts, the TDSV method provides a reduction in the sensitivity of test results caused by small test setup changes at higher frequencies where the associated wavelengths are relatively short. Overall, ASC C63 asserts that TDSV improves measurement repeatability, provides additional information on the test site, and ''reduces the sensitivity of the test results caused by small test setup changes due to statistical post processing incorporated in the TDSV method,'' while requiring less time to perform the validation. In short, ASC C63 has described reasons why, even though both SVSWR and TDSV use the same acceptance criterion, parties might want to use the TDSV method.

In consideration of ASC C63's request, the Commission proposes to incorporate ANSI C63.25.1—2018 into its rules, and to allow this standard to be used for test site validation of radiated emission measurements from 1 GHz to 18 GHz. The Commission tentatively concludes that the availability of this additional option would provide useful options and potential benefits in site validation testing, particularly considering that parties could continue to use the procedures currently described in the Commission's rules if they chose to do so. If the Commission adopts this proposal, it tentatively concludes that it is appropriate to incorporate the entire standard by reference. However, the Commission asks whether any procedures or techniques included in ANSI C63.25.1—2018 would not be appropriate for use in the context of demonstrating compliance with the Commission's equipment authorization rules. Commenters in this regard should provide details of their concerns and specifically cite any rule sections for which the new standard may be problematic. Additionally, for which other Commission rules would a reference to ANSI C63.25.1—2018 be appropriate? Because the Commission is proposing to incorporate ANSI C63.25.1—2018 as an option to an already existing requirement, the Commission tentatively concludes that there is no need to designate a transition period. The Commission seeks comment on these tentative conclusions.

*B. ''American National Standard of Procedures for Compliance Testing of Unlicensed Wireless Devices'' (ANSI C63.10)*

On February 4, 2021, the Commission received a petition from ASC C63 requesting that it incorporate by reference ANSI C63.10—2020 ''American National Standard of Procedures for Compliance Testing of Unlicensed Wireless Devices'' into the rules. Petition of the American National Standards Institute, Accredited Standards Committee, C63 Requesting adoption of ANSI C63.10—2020 into the parts 2 and 15 Rules for Compliance Testing Of Unlicensed Radio Devices (filed February 4, 2021). *https://www.fcc.gov/ecfs/filing/10204284915782* (*C63.10 Petition*). This standard, which was approved by ANSI on September 10, 2020, updates the measurement procedures set forth in ANSI C63.10—2013, which is currently referenced in 47 CFR 2.910(c)(2), 2.950(g), and 15.38(g)(3). The standard addresses ''the procedures for testing the compliance of a wide variety of unlicensed wireless transmitters . . . including, but not limited to, remote control and security unlicensed wireless devices, frequency hopping and direct sequence spread spectrum devices, anti-pilferage devices, cordless telephones, medical unlicensed wireless devices, [U–NII] devices, intrusion detectors, unlicensed wireless devices operating on frequencies below 30 MHz, automatic vehicle identification systems, and other unlicensed wireless devices authorized by a radio regulatory authority.'' Daniel Hoolihan, *The American National Standards Committee on EMC—C63®—An Update on Recent Standards Development Activities* (June 30, 2021), *https://incompliancemag.com/article/the-american-national-standards-committee-on-emc-c63/.*

Specifically, this recent version of the standard includes the following changes and updates:

- Frequency hopping spread spectrum procedures were updated to ensure complete on and off times are correctly considered;
- Digital transmission system (DTS) and unlicensed national information infrastructure (U–NII) device procedures were updated to align with the latest FCC KDB guidance;
- Millimeter wave measurement procedures were updated;
- TV White Space test methods were added to the standard;
- Pulse desensitization considerations for frequency-modulated continuous wave (FMCW) type signals are now addressed by the standard;
- Procedures were added for wireless power transfer (WPT) devices that transmit information on the charging frequency;
- Measurement procedures were generally updated to allow for more accurate analyzer sweep time settings where ''auto'' was previously required;
- Editorial corrections/updates were made;
- Requirements for including spectral plots were added; and
- An informative annex was included to provide an overview of dynamic frequency selection (DFS) for U–NII devices.

In light of ASC C63's request, the Commission proposes to incorporate ANSI C63.10—2020 into its rules to replace existing references to ANSI C63.10—2013. The Commission tentatively concludes that it is appropriate to simply replace the existing standard references with references to the new standard, subject to an appropriate transition period. Are there any procedures or techniques included in ANSI C63.10—2020 that would not be appropriate for use in the context of demonstrating compliance with the Commission's equipment authorization rules? Commenters in this regard should provide details of their concerns and specifically cite any rule sections for which the new standard may be problematic. Would a transition period during which either version of ANSI C63.10 could be used remedy these concerns? If so, what time period would be appropriate, and should it generally apply to all rules affected by the new reference? Noting that testing laboratories are re-accredited every two years per 47 CFR 2.948(e), would a two-year transition be appropriate or would a shorter period be sufficient? Additionally, which, if any, of the Commission rules that do not currently reference ANSI C63.10—2013 should reference ANSI C63.10—2020?

*C. ''Conformity assessment—Requirements for accreditation bodies accrediting conformity assessment bodies'' (ISO/IEC 17011)*

Applications for RF devices that are subject to the certification requirements of part 2 of the Commission's rules must be filed with, and approved by, an accredited TCB. 47 CFR 2.907, 2.960(b). Additionally, terminal equipment intended for connection to the public switched telephone network must be subject to certification by a TCB or the Supplier's Declaration of Conformity procedures as set forth in part 68 of the Commission's rules. 47 CFR 68.201.Testing laboratories that provide compliance measurement data associated with part 2 certification applications also must be accredited. 47 CFR 2.948(a). In these instances, TCBs and testing laboratories are accredited by a ''conformity assessment body,'' that meets the requirements and conditions of ISO/IEC 17011:2004 ''Conformity assessment—Requirements for accreditation bodies accrediting conformity assessment bodies.'' 47 CFR 2.960 and 2.949. ISO/IEC 17011:2004 was incorporated into the Commission's rules in 2014. *See FCC Modifies Equipment Authorization Rules,* ET Docket No. 13–44, Report and Order, 29 FCC Rcd 16335, 16356–58, paras. 50–53; 80 FR 33425, 33430–31 (June 12, 2015). A new version of this standard, ISO/IEC 17011:2017, was published in November 2017. The revisions to the standard incorporate changes related to alignment with the International Organization for Standardization's Committee on Conformity Assessment (CASCO) common structure for standards and incorporation of CASCO common elements in clauses on impartiality, confidentiality, complaints and appeal, and management system; recognition of proficiency testing as an accreditation activity; addition of new definitions; introduction of the concept of risk; and incorporation of competence criteria in the document, including an informative annex on knowledge and skills. *See* International Organization for Standardization, *ISO/IEC 17011:2004(E): Conformity assessment—General requirements for accreditation bodies accrediting conformity assessment bodies,* First Edition, (September 2004); International Organization for Standardization, *ISO/IEC 17011:2017: Conformity assessment—Requirements for accreditation bodies accrediting conformity assessment bodies,* Second Edition (November 2017). The Commission proposes to replace the references to ISO/IEC 17011:2004(E) in 47 CFR 2.910, 2.948, 2.949, 2.950, 2.960, and 68.160 with references to ISO/IEC 17011:2017(E), subject to a reasonable transition period. Commenters with concerns related to updating any of these references should specifically cite any rule sections for which the updated standard may be problematic or portions of ISO/IEC 17011:2017(E) that should be excluded from the updated incorporation by reference and provide alternatives or a detailed explanation of their concerns. To ensure adequate time for the transition, the Commission proposes a two-year transition period during which both versions of ISO/IEC

17011 could be used. Is this time period sufficient and, if not, what would be an appropriate timeframe?

*D. Other Standards*

1. 2019 Public Notice

In April of 2019, OET sought comment on updating the Commission's rules to reflect recent changes to two standards: ISO/IEC 17025:2017(E) ''General requirements for the competence of testing and calibration laboratories'' and ANSI C63.4a—2017 ''American National Standard for Methods of Measurement of Radio-Noise Emissions from Low-Voltage Electrical and Electronic Equipment in the Range of 9 kHz to 40 GHz, Amendment 1: Test Site Validation.'' In opening up the instant docket, we seek a fresh record on these matters, as set forth in the proposals that we lay out in detail below. Accordingly, we are terminating the docket that the *Standards Update Notice* had opened (*i.e.,* ET Docket No. 19–48).

a. ''General Requirements for the Competence of Testing and Calibration Laboratories'' (ISO/IEC 17025)

Measurement data intended to demonstrate compliance with certain Commission requirements must be obtained from an accredited testing laboratory. 47 CFR 2.948(a). Currently, 47 CFR 2.910, 2.948, 2.949, 2.962, and 68.162 reference ISO/IEC 17025:2005(E) for the requirements related to test laboratory accreditation. Laboratory accreditation bodies assess a variety of aspects of a laboratory, including the technical competence of staff; the validity and appropriateness of test methods; traceability of measurements and calibration to national standards; suitability, calibration, and maintenance of the testing environment; sampling, handling, and transportation of test items; and quality assurance of test and calibration data. In November 2017, ISO/IEC published ISO/IEC 17025:2017(E)—a new version of the test laboratory accreditation standard currently referenced in the Commission's rules. In addition to adding a definition of ''laboratory,'' the new version replaces certain prescriptive requirements with performance-based requirements and allows for greater flexibility in satisfying the standard's requirements for processes, procedures, documented information, and organizational responsibilities.

*Standards Update Notice,* 34 FCC Rcd at 1905 and n.8 (citing *ISO/IEC 17025 General requirements for the competence of testing and calibration laboratories,* ISO (2017), *available at https://www.ukas.com/download/brochures/ISO-17025-Brochure_EN_FINAL.pdf).*

In the *Standards Update Notice,* OET proposed to update the Commission's rules by replacing references to ISO/IEC 17025:2005(E) with references to ISO/IEC 17025:2017(E). All comments received were supportive of this updated reference. ANSI ASC C63, while supportive, stated that ''ASC C63 also supports the transition period (two years are remaining) to the mandatory use of ISO/IEC 17025:2017; provided however, that the FCC only accept test lab accreditations for labs that meet the requirements of Clause 8.1—Option A of the standard, and that such accreditations explicitly state that the test lab is accredited only in accordance with Option A.'' Reply Comments of ASC C63, ET Docket No. 19–48, at 2.

The Commission proposes to incorporate by reference into its rules ISO/IEC 17025:2017 in its entirety, including Clause 8.1—Option A and Option B and update 47 CFR 68.162(d)(1) to correct typographical errors in the reference of two standards: ISO/IEC 17065 and ISO/IEC 17025. No other party has raised concerns with the availability of two options and ASC C63 did not provide detailed rationale to support their request to incorporate only Option A. In fact, Annex B of ISO/IEC 17025:2017 states that ''[b]oth options are intended to achieve the same result in the performance of the management system and compliance with clauses 4 to 7.'' It is the Commission's understanding that Option B would allow laboratories to operate a quality management system that conforms to a certain standard from the International Organization for Standardization (*i.e.,* ISO 9001) and that Option A of ISO/IEC 17025:2017 incorporates relevant requirements of that same standard. OET believes that Option A is more commonly used but Option B is available because some organizations have implemented an ISO 9001 system and would not need to take additional actions to demonstrate compliance. *International Organization for Standardization, ISO/IEC 17025:2017: General requirements for the competence of testing and calibration laboratories* at Appendix B, Third Edition (November 2017). Accordingly, the Commission tentatively concludes that the flexibility of both options would enable entities who have already implemented a quality management system that would satisfy Option B to avoid the need to take further steps to demonstrate compliance and it seeks comment on this tentative conclusion and on any concerns with providing both options.

While both ISO/IEC 17025:2005(E) and ISO/IEC 17025:2017(E) were considered valid during the transition period in effect at the time of the *Standards Update PN,* accreditations to ISO/IEC 17025:2005(E) became invalid after June 1, 2021. In the *Standards Update PN,* OET proposed to adopt a three-year transition period for use of the proposed updated standard. In consideration of the time that has passed since publication of the *Standards Update PN,* combined with the facts that the Commission's rules require test laboratories to complete the accreditation process every two years (47 CFR 2.948(e)) and that the prior standard has since become invalid within the standards body, the Commission proposes a two-year transition period for compliance with ISO/IEC 17025:2017(E). The Commission seeks comment on the duration of this proposed transition period and how it should be reflected in any transition plans that it adopts.

b. ''Addendum to the American National Standard for Methods of Measurement of Radio-Noise Emissions from Low-Voltage Electrical and Electronic Equipment in the Range of 9 kHz to 40 GHz, Amendment 1: Test Site Validation'' (ANSI C63.4a—2017)

In late 2017, ASC C63 published ANSI C63.4a—2017 ''Addendum to the American National Standard for Methods of Measurement of Radio-Noise Emissions from Low-Voltage Electrical and Electronic Equipment in the Range of 9 kHz to 40 GHz, Amendment 1: Test Site Validation'' (ANSI C63.4a—2017). ASC C63 requested that we incorporate by reference in the Commission's rules ANSI C63.4a—2017 to replace the existing ANSI C63.4—2014: ''American National Standard for Methods of Measurement of Radio-Noise Emissions from Low-Voltage Electrical and Electronic Equipment in the Range of 9 kHz to 40 GHz'' (ANSI C63.4). ASC C63 originally filed comments in ET Docket No. 15–170, which were subsequently moved into ET Docket No 19–48. The Commission's rules reference ANSI 63.4 as an electromagnetic compatibility (EMC) measurement standard for unintentional radiators. 47 CFR 2.910, 2.948, 2.950, 15.31, 15.35, and 15.38. As described in ASC C63's filing, the standard was updated to resolve certain normalized site attenuation issues (including the measurement of equipment under test that exceeds 2 meters in height) and make a variety of corrections, clarifications, and

modifications. In the *Standards Update Notice,* OET sought comment on incorporating by reference ANSI C63.4a—2017 in the appropriate rules. *Standards Update Notice* at 1904–05. Some commenters supported incorporation of the amended standard. However, the Commission received several negative comments, generally citing costs associated with the procedure and stating that there were no problems with existing procedures that warrant adopting an alternative procedure. Further, the Commission indicates its understanding that ASC C63 has made substantial progress toward addressing these and other controversial issues in a pending modification. Based on the comments received and the potential development of an additional modification to the standard, the Commission tentatively concludes that ANSI C63.4 continues to sufficiently address current needs and that incorporation by reference of ANSI C63.4a—2017 into its rules is not warranted at this time. The Commission seeks comment on this tentative conclusion.

2. Additional Updates: ''Calibration and Testing Laboratory Accreditation Systems—General Requirements for Operation and Recognition'' (ISO/IEC Guide 58:1993(E)); ''General Requirements for Assessment and Accreditation of Certification/Registration Bodies'' (ISO/IEC Guide 61:1996(E)); and ''General Requirements for Bodies Operating Product Certification Systems'' (ISO/IEC Guide 65:1996(E))

The Commission notes that its part 2 rules incorporate several references that have become outdated as a result of prior updates to standards that were phased in over specific transition periods. 47 CFR 2.910 and 2.950. Once the transition period passed, the newer standards became the only valid procedure for compliance with the Commission's rules, rendering the prior references no longer relevant. Accordingly, the Commission proposes to delete from § 2.910 of the Commission's rules references to: ISO/IEC Guide 58:1993(E), ''Calibration and testing laboratory accreditation systems—General requirements for operation and recognition,'' First Edition 1993; ISO/IEC Guide 61:1996(E), ''General requirements for assessment and accreditation of certification/registration bodies,'' First Edition 1996; and (6) ISO/IEC Guide 65:1996(E), ''General requirements for bodies operating product certification systems.'' The Commission also proposes to delete the related transition periods provided in § 2.950. 47 CFR 2.910(d)4 through 6 and 47 CFR 2.950 (b), (c) and (d). Additionally, the Commission also proposes to make administrative changes to its rules to reflect any necessary changes to rule cross references that would result from the proposed rule changes.

The Commission seeks comment on whether there are additional conforming or administrative updates to its t rules that should be considered. Additionally, the Commission asks what other rule modifications, including updating other standards currently referenced in the rules or incorporating by reference additional standards not currently referenced in the rules, would be necessary to give full effect to its proposals? Because the standards-setting process is marked by ongoing work to create, review, and update standards, the Commission recognizes that the proposals are part of a larger and continuing effort to ensure that its rules incorporate appropriate standards and reflect relevant standards updates. Commission staff actively monitor the work of standards development organizations, and the Commission is aware that additional standards relevant to the telecommunications sector are in various stages of drafting, voting, and publication. While such developments may warrant the Commission's consideration in the future, it is not seeking comment on such standards within this Notice of Proposed Rulemaking.

## III. Incorporation by Reference

Sections 2.910 and 2.948 of the proposed rules provide for an additional standard (''American National Standard Validation Methods for Radiated Emission Test Sites; 1 GHz to 18 GHz'' (ANSI C63.25.1)) that would be used for test site validation of radiated emission measurements from 1 GHz to 18 GHz. Sections 15.31 and 15.38 of the proposed rules provide for a standard (''American National Standard of Procedures for Compliance Testing of Unlicensed Wireless Devices'' (ANSI C63.10)) that would update existing procedures for testing the compliance of a wide variety of unlicensed wireless transmitters. Sections 2.910, 2.948, 2.949, 2.950, 2.960, and 68.160 provide for a standard (''Conformity assessment—Requirements for accreditation bodies accrediting conformity assessment bodies'' (ISO/IEC 17011)) that would update requirements and conditions for conformity assessment bodies that accredit TCBs and testing laboratories. Sections 2.910, 2.948, 2.949, 2.962, and 68.62 provide a standard (''General requirements for the competence of testing and calibration laboratories'' (ISO/IEC 17025)) that would replace certain prescriptive requirements with performance-based requirements for test laboratory accreditation. The OFR has regulations concerning incorporation by reference. 1 CFR part 51. These regulations require that, for a proposed rule, agencies must discuss in the preamble to the proposed rule the way in which materials that the agency incorporates by reference are reasonably available to interested parties, and how interested parties can obtain the materials. Additionally, the preamble to the proposed rule must summarize the material. 1 CFR 51.5(a).

In accordance with the OFR's requirements, the discussion in section II.A. of this preamble summarizes the provisions of ANSI C63.25.1—2018. Interested persons may purchase a copy of ANSI C63.25.1 from the sources provided in 47 CFR 2.910. A copy of the standard may also be inspected at the FCC's main office. The discussion in section II.B. of this preamble summarizes the provisions of ANSI C63.10—2020. Interested persons may purchase a copy of ANSI C63.10—2018 from the sources provided in 47 CFR 2.910. A copy of the standard may also be inspected at the FCC's main office. The discussion in section II.C. of this preamble summarizes the provisions of ISO/IEC 17011:2017(E). Interested persons may purchase a copy of ISO/IEC 17011:2017(E) from the sources provided in 47 CFR 2.910. A copy of the standard may also be inspected at the FCC's main office. The discussion in sections I.A.1. and II.D.1.a of this preamble summarizes the provisions of ISO/IEC 17025:2005(E). Interested persons may purchase a copy of ISO/IEC 17025:2005(E) from the sources provided in 47 CFR 2.910. A copy of the standard may also be inspected at the FCC's main office. The discussion in section II.D.1.a. of this preamble summarizes the provisions of ISO/IEC 17025:2017(E). Interested persons may purchase a copy of ISO/IEC 17011:2017(E) from the sources provided in 47 CFR 2.910. A copy of the standard may also be inspected at the FCC's main office.

## IV. Procedural Matters

*Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980 (RFA) (*see* 5 U.S.C. 603), as amended (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the proposals addressed in this Notice of Proposed Rulemaking.

The IRFA is found in Appendix B. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the Notice of Proposed Rulemaking, and they should have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this Notice of Proposed Rulemaking, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the RFA. *See* 5 U.S.C. 603(a).

*Paperwork Reduction Act.* This document contains proposed modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

*Ex Parte Rules—Permit but Disclose.* Pursuant to § 1.1200(a) of the Commission's rules, (47 CFR 1.1200(a)) this Notice of Proposed Rulemaking shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. 47 CFR 1.1200 *et seq.* 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). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

**List of Subjects**

*47 CFR Parts 2, and 68*

Communications equipment, Incorporation by reference, Reporting and recordkeeping requirements, Telecommunications.

*47 CFR Part 15*

Communications equipment, Incorporation by reference, Reporting and recordkeeping requirements.

*47 CFR Part 73*

Communications equipment, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission.

**Katura Jackson,**

*Federal Register Liaison Officer.*

**Proposed Rules**

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 2, 15, 68, and 73 as follows:

## PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

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

**Authority:** 47 U.S.C. 154, 302a, 303, and 336.

■ 2. Revise § 2.910 to read as follows:

### § 2.910 Incorporation by Reference.

Certain material is incorporated by reference into this part 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 Federal Communications Commission (FCC) 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 FCC and at the National Archives and Records Administration (NARA). Contact FCC at the address indicated in 47 CFR 0.401(a), tel: (202) 418–0270. 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 following source(s):

(a) International Electrotechnical Commission (IEC), IEC Central Office, 3, rue de Varembe, CH–1211 Geneva 20, Switzerland; email: *inmail@iec.ch;* website: *www.iec.ch.*

(1) CISPR 16–1–4:2010–04: ''Specification for radio disturbance and immunity measuring apparatus and methods—Part 1–4: Radio disturbance and immunity measuring apparatus—Antennas and test sites for radiated disturbance measurements'', Edition 3.0, 2010–04; IBR approved for § 2.948(d).

(2) [Reserved]

(b) Institute of Electrical and Electronic Engineers (IEEE), 2001 L Street NW, Suite 700, Washington, DC 20036–4910, tel: +1 800 701 IEEE (USA and Canada), +1 732 981 0060 (Worldwide), email: *stds-info@ieee.org;* website: *www.ieee.org.*

(1) ANSI C63.4—2014: ''American National Standard for Methods of Measurement of Radio-Noise Emissions from Low-Voltage Electrical and Electronic Equipment in the Range of 9 kHz to 40 GHz'', ANSI approved June 13, 2014 ; IBR approved for § 2.948(d).

(2) ANSI C63.25.1—2018, ''American National Standard Validation Methods for Radiated Emission Test Sites, 1 GHz to 18 GHz'', ANSI approved December 17, 2018; IBR approved for § 2.948(d).

(3) ANSI C63.26—2015, ''American National Standard of Procedures for Compliance Testing of Transmitters Used in Licensed Radio Services'', ANSI approved December 11, 2015, IBR approved for § 2.1041(b).

(c) International Organization for Standardization (ISO), 1, ch. De la Voie-Creuse, CP 56, CH–1211, Geneva 20, Switzerland; tel.: + 41 22 749 01 11; fax: + 41 22 733 34 30; email: *central@iso.org;* website: *www.iso.org.*

(1) ISO/IEC 17011:2004(E), ''Conformity assessment—General requirements for accreditation bodies accrediting conformity assessment bodies'', First Edition, 2004–09–01; IBR approved for §§ 2.948(e); 2.949(b); 2.950(a); 2.960(c).

(2) ISO/IEC 17011:2017(E), ''Conformity assessment—Requirements for accreditation bodies accrediting

conformity assessment bodies'', Second Edition, November 2017; IBR approved for §§ 2.948(e); 2.949(b); 2.950(a); 2.960(c).

(3) ISO/IEC 17025:2005(E), ''General requirements for the competence of testing and calibration laboratories'', Second Edition, 2005–05–15; IBR approved for §§ 2.948(e); 2.949(b); 2.950(b); 2.962(c) and (d).

(4) ISO/IEC 17025:2017, ''General requirements for the competence of testing and calibration laboratories'', Third Edition, November 2017; IBR approved for §§ 2.948(e); 2.949(b); 2.950(b); 2.962(c) and (d).

(5) ISO/IEC 17065:2012(E), ''Conformity assessment—Requirements for bodies certifying products, processes and services'', First Edition, 2012–09–15; IBR approved for §§ 2.960(b); 2.962(b), (c), (d), (f), and (g).

**Note 1 to § 2.910:** The standard(s) listed in paragraph (b) of this section may also be obtained through the IEEE Standards Association Standards Store: P.O. Box 95715, Chicago, IL 60694–5715; website: *www.techstreet.com/ieee.*

**Note 2 to § 2.910:** The standard(s) listed in paragraphs (b) and (c) of this section may also be obtained from the American National Standards Institute (ANSI) through its NSSN operation (*www.nssn.org*), at Customer Service, American National Standards Institute, 25 West 43rd Street, New York, NY 10036, phone: (212) 642–4900.

■ 3. Amend § 2.948 by revising paragraph (d) to read as follows:

**§ 2.948 Measurement facilities.**

* * * * *

(d) When the measurement method used requires the testing of radiated emissions on a validated test site, the site attenuation must comply with the requirements of sections 5.4.4 through 5.5 of the following procedure: ANSI C63.4 (incorporated by reference, see § 2.910). Measurement facilities used to make radiated emission measurements from 30 MHz to 1 GHz must comply with the site validation requirements in ANSI C63.4 (clause 5.4.4); for radiated emission measurements from 1 GHz to 18 GHz must comply with either the site validation requirement of ANSI C63.25.1 or ANSI C63.4 (clause 5.5.1 a) 1)), such that the site validation criteria called out in CISPR 16–1–4 (incorporated by reference, see § 2.910) is met; for radiated emission measurements from 18 GHz to 40 GHz must comply with the site validation requirement of ANSI C63.4 (clause 5.5.1 a) 1)), such that the site validation criteria called out in CISPR 16–1–4 (incorporated by reference, see § 2.910) is met. Test site revalidation must occur on an interval not to exceed three years.

* * * * *

■ 4. Revise § 2.950 to read as follows:

**§ 2.950 Transition periods.**

(a) Prior to [DATE 2 YEARS AFTER EFFECTIVE DATE OF FINAL RULE], an organization accrediting the prospective accredited testing laboratory must be capable of meeting the requirements and conditions of ISO/IEC 17011:2004 (incorporated by reference, see § 2.910) or ISO/IEC 17011:2017 (incorporated by reference, see § 2.910). On or after [DATE 2 YEARS AFTER EFFECTIVE DATE OF FINAL RULE], an organization accrediting the prospective accredited testing laboratory must be capable of meeting the requirements and conditions of ISO/IEC 17011:2017 (incorporated by reference, see § 2.910).

(b) Prior to [DATE 2 YEARS AFTER EFFECTIVE DATE OF FINAL RULE], an organization accrediting the prospective accredited testing laboratory must be capable of meeting the requirements and conditions of ISO/IEC 17025:2005 (incorporated by reference, see § 2.910) or ISO/IEC 17025:2017 (incorporated by reference, see § 2.910). On or after [DATE 2 YEARS AFTER EFFECTIVE DATE OF FINAL RULE], an organization accrediting the prospective accredited testing laboratory must be capable of meeting the requirements and conditions of ISO/IEC 17025:2017 (incorporated by reference, see § 2.910).

(c) All radio frequency devices that were authorized under the verification or Declaration of Conformity procedures prior to November 2, 2017, must continue to meet all requirements associated with the applicable procedure that were in effect immediately prior to November 2, 2017. If any changes are made to such devices after November 2, 2018, the requirements associated with the Supplier's Declaration of Conformity apply.

## PART 15—RADIO FREQUENCY DEVICES

■ 5. The authority citation for part 15 continues to read as follows:

**Authority:** 47 U.S.C. 154, 302a, 303, 304, 307, 336, 544a, and 549.

■ 6. Amend § 15.31 by revising paragraph (a)(3) to read as follows:

**§ 15.31 Measurement standards.**

(a) * * *

(3) Other intentional radiators must be measured for compliance using the following procedure: ANSI C63.10 (incorporated by reference, see § 15.38).

* * * * *

■ 7. Amend § 15.37 by adding paragraph (r) to read as follows:

**§ 15.37 Transition provisions for compliance with this part.**

* * * * *

(r) Prior to [DATE 2 YEARS AFTER EFFECTIVE DATE OF FINAL RULE], measurements for intentional radiators subject to § 15.31(a)(3) must be made using the procedures in ANSI C63.10—2013 or ANSI C63.10—2020 (incorporated by reference, see § 15.31(a)(3)). On or after [DATE 2 YEARS AFTER EFFECTIVE DATE OF FINAL RULE], measurements for intentional radiators subject to this part 15 must be made using the procedures in ANSI C63.10—2020 (incorporated by reference, see § 15.31(a)(3)).

■ 8. Amend § 15.38 as follows:

■ a. Throughout the section,

■ i. By removing the text ''The following documents are available from the following address:'' wherever it appears;

■ ii. By removing the text ''The following document is available from the'' in paragraph (e); and

■ iii. By removing the text ''The following documents are available from the following address:'' in paragraph (h);

■ b. By revising paragraphs (a) and (g).

The revisions read as follows:

**§ 15.38 Incorporation by Reference.**

(a) Certain material is incorporated by reference into this part 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 Federal Communications Commission (FCC) 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 FCC and at the National Archives and Records Administration (NARA). Contact FCC at the address indicated in 47 CFR 0.401(a), Tel: (202) 418–0270. 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.

* * * * *

(g) Institute of Electrical and Electronic Engineers (IEEE), 2001 L Street NW, Suite 700, Washington, DC 20036–4910, tel: +1 800 701 IEEE (USA and Canada), +1 732 981 0060 (Worldwide), email: *stds-info@ieee.org;* website: *www.ieee.org.*

(1) ANSI C63.4—2014: ''American National Standard for Methods of Measurement of Radio-Noise Emissions

from Low-Voltage Electrical and Electronic Equipment in the Range of 9 kHz to 40 GHz'' ' ANSI approved June 13, 2014; IBR approved for §§ 15.31(a); 15.35(a).

(2) ANSI C63.10—2013, ''American National Standard of Procedures for Compliance Testing of Unlicensed Wireless Devices'', ANSI approved June 27, 2013; IBR approved for §§ 15.31(a); 15.37(r) .

(3) ANSI C63.10—2020, ''American National Standard of Procedures for Compliance Testing of Unlicensed Wireless Devices'', ANSI approved January 29, 2021; IBR approved for §§ 15.31(a); 15.37(r).

* * * * *

**Note 1 to § 15.38:** The standard(s) listed in paragraph (g) of this section may also be obtained through IEEE Standards Association Store: P.O. Box 95715, Chicago, IL 60694–5715; website: *www.techstreet.com/ieee.*

## PART 68—CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK

■ 9. The authority citation for part 68 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, and 610.

■ 10. Amend § 68.160 by revising paragraphs (c)(1) and (d) to read as follows:

### § 68.160 Designation of Telecommunication Certification Bodies (TCBs).

* * * * *

(c) * * *

(1) Prior to [DATE 2 YEARS AFTER EFFECTIVE DATE OF FINAL RULE], the organization accrediting the prospective telecommunication certification body must be capable of meeting the requirements and conditions of ISO/IEC 17011:2014 or ISO/IEC 17011:2017. On or after [DATE 2 YEARS AFTER EFFECTIVE DATE OF FINAL RULE], the organization accrediting the prospective telecommunication certification body must be capable of meeting the requirements and conditions of ISO/IEC 17011:2017.

* * * * *

(d) *Incorporation by reference.* The material listed in this paragraph (d) is incorporated by reference into this section 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 Federal Communications Commission (FCC) 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 FCC and at the National Archives and Records Administration (NARA). Contact FCC at the address indicated in 47 CFR 0.401(a), Tel: (202) 418–0270. 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 following source(s) in this paragraph (d):

(1) International Organization for Standardization (ISO), 1, ch. De la Voie-Creuse, CP 56, CH–1211, Geneva 20, Switzerland; *www.iso.org;* Tel.: + 41 22 749 01 11; Fax: + 41 22 733 34 30; email: *central@iso.org.*

(i) ISO/IEC 17011:2004(E), ''Conformity assessment—General requirements for accreditation bodies accrediting conformity assessment bodies,'' First Edition, 2004–09–01.

(ii) ISO/IEC 17011:2017(E), ''Conformity assessment—Requirements for accreditation bodies accrediting conformity assessment bodies,'' Second Edition, November 2017.

(iii) ISO/IEC 17065:2012(E), ''Conformity assessment—Requirements for bodies certifying products, processes and services,'' First Edition, 2012–09–15.

(2) [Reserved]

**Note 1 to paragraph (d):** The standard(s) listed in paragraph (d)(1) of this section are also available from {1} International Electrotechnical Commission (IEC) Central Office, 3, rue de Varembe, CH–1211 Geneva 20, Switzerland; email: *inmail@iec.ch;* website: *www.iec.ch;* and {2} American National Standards Institute (ANSI) through its NSSN operation (*www.nssn.org*), Customer Service, American National Standards Institute, 25 West 43rd Street, New York, NY 10036; telephone: (212) 642–4900.

■ 11. Amend § 68.162 by revising paragraphs (d)(1) and (i) to read as follows:

### § 68.162 Requirements for Telecommunication Certification Bodies.

* * * * *

(d) * * *

(1) In accordance with the provisions of ISO/IEC 17065 the evaluation of a product, or a portion thereof, may be performed by bodies that meet the applicable requirements of ISO/IEC 17025 and ISO/IEC 17065, in accordance with the applicable provisions of ISO/IEC 17065, for external resources (outsourcing) and other relevant standards. Evaluation is the selection of applicable requirements and the determination that those requirements are met. Evaluation may be performed by using internal TCB resources or external (outsourced) resources.

* * * * *

(i) *Incorporation by reference.* The material listed in this paragraph (i) is incorporated by reference into this section 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 Federal Communications Commission (FCC) 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 FCC and at the National Archives and Records Administration (NARA). Contact FCC at the address indicated in 47 CFR 0.401(a), Tel: (202) 418–0270. 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 following source(s) in this paragraph (i):

(1) International Organization for Standardization (ISO), 1, ch. De la Voie-Creuse, CP 56, CH–1211, Geneva 20, Switzerland; *www.iso.org;* Tel.: + 41 22 749 01 11; Fax: + 41 22 733 34 30; email: *central@iso.org.*

(i) ISO/IEC 17025:2017, ''General requirements for the competence of testing and calibration laboratories,'' Third Edition, November 2017.

(ii) ISO/IEC 17065:2012(E), ''Conformity assessment—Requirements for bodies certifying products, processes and services,'' First Edition, 2012–09–15.

(2) [Reserved]

**Note 1 to paragraph (i):** The standard(s) listed in paragraph (i)(1) of this section are also available from {1} International Electrotechnical Commission (IEC) Central Office, 3, rue de Varembe, CH–1211 Geneva 20, Switzerland; email: *inmail@iec.ch;* website: *www.iec.ch;* and {2} American National Standards Institute (ANSI) through its NSSN operation (*www.nssn.org*), Customer Service, American National Standards Institute, 25 West 43rd Street, New York, NY 10036; telephone: (212) 642–4900.

## PART 73—RADIO BROADCAST SERVICES

■ 12. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 13. Amend § 73.1660 by revising Note 1 to paragraph (a)(1) to read as follows:

### § 73.1660 Acceptability of broadcast transmitters.

* * * * *

**Note 1 to paragraph (a)(1):** The verification procedure has been replaced by Supplier's Declaration of Conformity. AM, FM, and TV transmitters previously authorized under subpart J of part 2 of this chapter may remain in use. See § 2.950 of this chapter.

* * * * *

[FR Doc. 2022–05190 Filed 3–16–22; 8:45 am]

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# Notices

Federal Register

Vol. 87, No. 52

Thursday, March 17, 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–AMS–22–0027]**

### Access to Fertilizer: Competition and Supply Chain Concerns

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice; request for public comments.

**SUMMARY:** On July 9, 2021, President Biden issued an Executive Order titled ''Promoting Competition in the American Economy,'' which creates a White House Competition Council and directs Federal agency actions to enhance fairness and competition across America's economy. The Executive Order directs the Council and member agencies to ''identify and advance any additional administrative actions necessary'' to promote competition on an ongoing basis. The Secretary of Agriculture (the Secretary) takes note of wide-ranging concern from agricultural producers regarding access to and pricing of fertilizer. This notice requests comments and information from the public to assist the U.S. Department of Agriculture (USDA) in identifying relevant difficulties, including competition concerns, and potential policy solutions for the fertilizer market.

**DATES:** Comments must be received by May 16, 2022.

**ADDRESSES:** All written comments in response to this notice should be posted online at *www.regulations.gov.* Comments received will be posted without change, including any personal information provided. All comments should reference the docket number AMS–AMS–22–0027, the date of submission, and the page number of this issue of the **Federal Register**. Comments may also be sent to Jaina Nian, Agricultural Marketing Service, USDA, Room 2055–S, STOP 0201, 1400 Independence Avenue SW, Washington, DC 20250–0201. Comments will be made available for public inspection at the above address during regular business hours or via the internet at *www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Jaina Nian, Agricultural Marketing Service, at (202) 378–2541; or by email at *jaina.nian@usda.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

On July 9, 2021, President Biden issued Executive Order 14036, ''Promoting Competition in the American Economy'' (86 FR 36987) (E.O. 14036). E.O. 14036 focuses on the need for robust and open competition in the American economy to secure broad and sustained economic prosperity, promote the welfare of workers, farmers, small businesses, startups, and consumers, and prevent the threat that excessive market concentration poses to basic economic liberties and democratic accountability. With respect to agriculture, E.O. 14036 explains:

> Farmers are squeezed between concentrated market power in the agricultural input industries—seed, fertilizer, feed, and equipment suppliers—and concentrated market power in the channels for selling agricultural products. As a result, farmers' share of the value of their agricultural products has decreased, and poultry farmers, hog farmers, cattle ranchers, and other agricultural workers struggle to retain autonomy and to make sustainable returns.

Additionally, E.O. 14017 ''America's Supply Chains'' (No. AMS–TM–21–0034) (86 FR 20652) (E.O. 14017) directs the Secretary to examine and address risks to supply chains.

As part of USDA's broad and sustained focus on competition and supply chain resiliency, the Secretary takes note of wide-ranging concerns from agricultural producers regarding concentrated market power in the fertilizer industries. Farmers depend on nitrogen, phosphate, and potassium (potash) which are key nutrients in manufactured fertilizer. A handful of fertilizer companies control the channels through which farmers obtain these nutrients to raise a productive crop.[1] In turn, these crops may supply inputs for other agricultural production enterprises, like livestock.

Two companies supply the vast majority of fertilizer potash in North America.[2] Four companies supply 75 percent of U.S. nitrogen fertilizers.[3] These companies' possession of scarce resources, often in other countries,[4] and control over critical production, transportation, and distribution channels raises heightened risks relating to concentration and competition.[5]

Additionally, concentration in the fertilizer industry constrains farmers' options for nutrients. In 1984, many small and medium-sized firms produced nitrogen fertilizer in quantities that met or exceeded domestic demand. However, as domestic industry

[1] One trading consortium of three production firms and one U.S. marketing firm control more than one-third of global potash production. Eight firms account for just over half of global production capacity in phosphate fertilizers. Fertilizer, comprising 21 percent of total agricultural input sales, is also among the largest agricultural input markets in terms of sales, with the largest being animal nutrition (40 percent of total sales). Fertilizer and crop seed are among the highest input costs per price received for farmers. Fuglie, Keith O., Paul W. Heisey, John L. King, Carl E. Pray, Kelly Day-Rubenstein, David Schimmelpfennig, Sun Ling Wang, and Rupa Karmarkar-Deshmukh, (2011), ''Research Investments and Market Structure in the Food Processing, Agricultural Input, and Biofuel Industries Worldwide'', ERR–130, USDA Economic Research Service, available at *https://www.ers.usda.gov/webdocs/publications/44951/11777_err130_1_.pdf?v=8531.8.*

[2] Facts and figures aggregated from various other primary sources. Kreisle, N., (2020), ''Price Effects from the Merger of Agricultural Fertilizer Manufacturers Agrium and PotashCorp'', FTC Bureau of Economics Working Paper #345, available at *https://www.ftc.gov/reports/price-effects-merger-agricultural-fertilizer-manufacturers-agrium-potashcorp.*

[3] Bekkerman, A., Brester, G., & Ripplinger, D. (2020), ''The History, Consolidation, and Future of the U.S. Nitrogen Fertilizer Production Industry'', Choices, Quarter 2, available at *https://www.choicesmagazine.org/choices-magazine/submitted-articles/the-history-consolidation-and-future-of-the-us-nitrogen-fertilizer-production-industry.*

[4] For example, one firm (which acquired the second biggest North American firm in 2016) in Canada accounted for 20 percent of the share of global potash mine capacity, followed by other firms in Russia (13 percent), Belarus (13 percent), and Chinese companies (11 percent).[2] China, whose government predominates its fertilizer markets, has by far the largest fertilizer industry in the world, and accounted for 20 percent of total global R&D in 2006.[1]

[5] The merged company was estimated in 2016 to control 60 percent of North American potash capacity and 30 percent for nitrogen and phosphate. (2016), ''Potash Corp, Agrium talk merger; competition scrutiny expected'', Reuters, available at *https://www.reuters.com/article/us-agrium-m-a-potashcorp/potash-corp-agrium-talk-merger-competition-scrutiny-expected-idUSKCN1151UT.*

consolidated through mergers,[6] the number of U.S. firms declined from 46 to 13 firms between 1984 and 2008, a reduction of 72 percent.[7] Research and development (R&D) spending in the fertilizer industry has remained limited—around 0.21 to 0.25 percent of net sales.[8] Limited R&D is concerning given the concentration and depletion of elemental reserves, some located in politically unstable areas abroad.[9]

Increasing concentration exposes farmers to a range of pricing-related risks. Fertilizers, especially nitrogen (N) nutrients, are already in the top three costs for farmers. Fertilizer costs may swing dramatically up because of individual or layered world events [10] such as strong global demand for agricultural commodities,[11] rising energy prices,[12] export restrictions by major global suppliers,[13] trade sanctions,[14] or war as with the recent Russian invasion of Ukraine.[15] Price volatilities may stem from a small number of firms controlling the few channels for production, transportation,[16] and distribution, which may give them the market power to, among other harms, raise costs for farmers. In 2021, for instance, the prices U.S. farmers paid for fertilizers increased over 60 percent. Nitrogen fertilizers prices increased 95 percent, and potash fertilizers increased over 70 percent. A recent study finds that feed grain farms in 2022 could face an increase of cost of $128,000 per farm due to higher fertilizer cost.[17]

As part of executing our responsibilities under the E.O. 14036 and E.O. 14017, USDA seeks information to assist us in identifying and addressing competition-related challenges in the U.S. fertilizer market and other obstacles to producers accessing affordable, responsibly manufactured fertilizer.

We are further interested in comments as to how the matters raised may be relevant to promoting fair and competitive markets and local and regional food systems, creating new market opportunities (including for value-added agriculture and value-added products), advancing efforts to transform the food system, meeting the needs of the agricultural workforce, supporting and promoting consumers' nutrition security, particularly for low-income populations, supporting the needs of small to mid-sized and underserved producers and processors, and advancing environmental stewardship.

## II. Written Comments

USDA encourages commenters, when addressing the elements below, to clearly indicate the question their comments are responding to by repeating the text of the question before their response. This would assist USDA in more easily reviewing and summarizing the comments received in response to these specific comment areas. In addition, USDA welcomes commenters to refer to, with appropriate explanation, any views set forth in recently or previously submitted comments, such as those to E.O. 14017 ''America's Supply Chains'' (No. AMS–TM–21–0034) (86 FR 20652).

To help USDA identify challenges and solutions in the fertilizer market, USDA is seeking comments on all aspects of the market structure for fertilizer as it affects agricultural producers. We are particularly interested in how fertilizer market challenges affect small to mid-sized producers.

Our request for comment includes but is not limited to the following elements. The questions below are meant to stimulate comments and are not intended to represent particular views of USDA or any other government

[6] In the U.S. the number of companies producing phosphoric acid dropped from 12 to 7 due to mergers from 2002 to 2008. Three companies control 80 percent of the production capacity of phosphoric acid in the U.S. Between 1999–2008, the number of companies producing muriate of potash fell by half, resulting in two companies in 2008 owning 100 percent of U.S. potash production capacity. Wen-Yuan Huang, (2009) ''Factors Contributing to the Recent Increase in U.S. Fertilizer Prices, 2002–08,'' Agricultural Resources Situation and Outlook AR–33, U.S. Department of Agriculture, Economic Research Service, available at: *https://www.ers.usda.gov/webdocs/outlooks/35824/10935_ar33.pdf?v=1826.4.*

[7] Prior to the 1980s, U.S. nitrogen fertilizer production by many small firms met or exceeded total domestic demand. However, between 1984 and 2008, the domestic industry consolidated, with larger firms expanding. The number of active ammonia-producing plants decreased from 59 to 22. In 2018, the four largest U.S. ammonia producers account for 75 percent of total U.S. output. Similarly, one merger in 2016 led to the combined company controlling 60 percent of North American potash capacity and 30 percent for nitrogen and phosphate. (2016)''Potash Corp, Agrium talk merger; competition scrutiny expected,'' Reuters, available at *https://www.reuters.com/article/us-agrium-m-a-potashcorp/potash-corp-agrium-talk-merger-competition-scrutiny-expected-idUSKCN1151UT.*

[8] David Schimmelpfennig & Keith Fuglie, & Paul Heisey, (2011), ''Private research and development for synthetic fertilizers,'' 67–74, USDA Economic Research Service available at *https://www.ers.usda.gov/webdocs/publications/44951/11777_err130_1_.pdf?v=3767.6.*

[9] The shortage of phosphorus, for example, has prompted some to term fertilizer a ''geostrategic time bomb.'' Vaccari, David, (2009), ''Phosphorus Famine: The Threat to Our Food Supply,'' SCIENTIFIC AM, available at *http://www.scientificamerican.com/article.cfm?id=phosphorus-a-looming-crisis.* See also Schmundt, Hilmar, (2010), ''Essential Element Becoming Scarce: Experts Warn of Impending Phosphorus Crisis,'' DER SPIEGEL ONLINE INT'L, available at *https://www.spiegel.de/international/world/essential-element-becoming-scarce-experts-warn-of-impending-phosphorus-crisis-a-690450.html.*

[10] For example, in 2019, a substantial reduction in Chinese purchases of U.S. soybeans may have caused Corn Belt farmers to shift to corn production, which is a more nitrogen-intensive crop. J. Baffes, & W. Koh, (2019), ''Fertilizer Market Outlook,'' World Bank Blogs, available at *https://blogs.worldbank.org/developmenttalk/fertilizer-market-outlook-potash-prices-rise-2019-urea-and-phosphates-remain.*

[11] In 2020, during the early pandemic, relatively inexpensive fertilizer relative to crop prices (1.44, compared to .96 average from 2001–2021) led to strong demand for fertilizers in the U.S., Brazil, and China. J. Beghin, L. Nogueira (2021), ''A Perfect Storm in Fertilizer Markets,'' Department of Agricultural Economics at Clayton Yeutter Institute, available at *https://cap.unl.edu/crops/perfect-storm-fertilizer-markets.*

[12] For instance, natural gas makes up 80 percent of the cost to produce ammonia for nitrogen fertilizer. Prices for natural gas are up four to five times higher than normal. Elkin, E., Durisin, M. (2021), ''Fertilizer Prices Are Getting More Expensive in Europe, Adding to Food-Inflation Concerns,'' Bloomberg Markets, available at *https://www.bloomberg.com/news/articles/2021-10-29/european-fertilizer-prices-set-to-surge-amid-energy-squeeze?sref=c4HfBhdW.*

[13] China, for example, a key supplier of urea, sulphate, and phosphate, has moved to curb fertilizer exports. (2021), ''China's Curbs on Fertilizer Exports to Worsen Global Price Shock, Bloomberg Markets,'' available at *https://www.bloomberg.com/news/articles/2021-10-19/china-s-curbs-on-fertilizer-exports-to-worsen-global-price-shock?sref=c4HfBhdW.*

[14] U.S. and European sanctions against Belarus, for instance, have halted its fertilizer shipments. Belarus accounts for about 10–12 million tons of fertilizer exported, or a fifth of global supply. Elkin, E., Skerritt, J., Ribeiro, T., (2022), ''Fertilizer Markets Roiled by Belarus Potash Force Majeure,'' Bloomberg Business, *https://www.bloomberg.com/news/articles/2022-02-17/belarus-potash-maker-roils-fertilizer-markets-with-force-majeure?sref=c4HfBhdW.*

[15] Russia accounts for 15 percent of the global trade in nitrogen fertilizers and 17 percent of global potash fertilizer exports. Additionally, Russian exports of natural gas, which is a key ingredient for the production of nitrogen fertilizers, account for 20 percent of global trade. Ukraine is an important supplier of cereal, which requires fertilizer. North Africa and the Middle East import over 50 percent of cereal needs, wheat, and barley from Ukraine and Russia. Glauber, J. & Laborde, D., (2022), ''How will Russia's invasion of Ukraine affect global food security?,'' International Food Policy Research Institute, available at *https://www.ifpri.org/blog/how-will-russias-invasion-ukraine-affect-global-food-security.*

[16] Transportation costs accounted for 22 percent of the cost of ammonia shipped from Trinidad and Tobago to the U.S. Gulf (and up the Mississippi River by barge); and more than 50 percent of the cost of ammonia shipped from Russia Togliatti to the Gulf. Ammonia must be transported in refrigerated vessels or pressurized containers (barge). Because of this and increasing rail rates, the cost to ship ammonia by rail is 44 percent higher than by barge. Increasing freight service costs have also contributed to increased costs of fertilizer.

[17] ''Economic Impact of Higher Fertilizer Prices on AFPC's Representative Crop Farms,'' Joe L. Outlaw et al, Agricultural & Food Policy Center, Department of Agricultural Economic, Texas A&M AgriLife Research Briefing Paper 22–01, January 2022, available at *https://afpc.tamu.edu/research/publications/files/711/BP-22-01-Fertilizer.pdf.*

agency. Commenters should feel free to respond to those they feel most relevant to them, or as their time and interests permit. Comments may overlap or be organized as the commenter feels most appropriate. Please offer descriptive or quantitative information, as available and relevant.

(1) Please describe challenges and concerns with market concentration and power in the fertilizer industries, including the extent of control by any firms over farmers' and business' access to fertilizer, pricing, availability, transportation and delivery, quality, and any other contract terms or other factors. Please describe how these challenges have developed or evolved over time, and any details on geographic or other divergences within various regions of the United States or between the United States and international markets for fertilizer.

(2) Please comment on both long and short-term trends in fertilizer prices. What role have fertilizer, crop prices, or availability of key raw materials and manufacturing played in any changes? Has price volatility increased and if so, what accounts for this increase in volatility? Please comment on any trends and the relationship of fertilizer prices to prices of relevant crops, such as corn and soybeans.

(3) Please share your views on whether the existing fertilizer market is sufficiently competitive. If you believe it is not, how do competition problems manifest themselves? For example, is there evidence of collusion, market manipulation, or other anticompetitive practices among competitors, buyers of farm products, commodity traders or related financial firms to fix or alter prices, allocate markets, or restrict from where a farmer buys inputs and sells product? Is there evidence of private or public communications by fertilizer companies relating to price, output or supply that appear to go beyond those necessary to communicate important information to customers?

(4) What effect have these mergers had on a merged firm's market power and the ability to squeeze farmers or squeeze out competitors? Are there indications that firms have made it harder for new fertilizer firms to start up and grow? Is there evidence that firms have controlled or reduced supply to keep supply low and prices high? Have certain mergers allowed the acquisition of technologies or businesses that produce, transport, or retail fertilizer that competitors rely on, with the effect of lessening competition? Is there evidence of merged firms using their market power to price below cost or run losses in certain segments to undercut competitors or potential new market entrants?

(5) What role do contractual or sales practices in fertilizer play with regard to producer access or prices paid to fertilizer? Have contractual or sales practices changed recently, or over time? Has the duration of these contracts changed over time and if so, how? Do some contracts require farmers to buy or use fertilizer from one supplier? Is there evidence of fertilizer companies preferentially pricing products differently for some farmers or dealers and not others? To what extent and in what ways do buyers of farm products influence farmers' use of fertilizer?

(6) Please describe any requirements or inducements to bundle a main product (fertilizer) with another product or service, and any impacts on competition. For instance, does such a practice induce a farmer's lock-in or allow the firm offering the main product (fertilizer) with the secondary product (*e.g.,:* pest management chemical or seed) to exclude competitors from offering the second product? What impacts do any of the contractual requirements listed above or any other contractual or sales practices have on competition?

(7) How do transportation and delivery affect fertilizer competition and access to fertilizer? For instance, the U.S. receives imports of fertilizer derivatives through the Gulf of Mexico, and ships fertilizer product up the Mississippi River. To what extent does market power by fertilizer or applicable firms over these or other key transportation channels affect competition and farmer's access to fertilizer? What risks relating to supply chain, labor or other disruptions are most relevant?

(8) Please comment on the U.S. agricultural system's reliance on foreign supply of some fertilizers and global supply chain risks that could result from trade disruptions. Please comment on how the conflict in Ukraine may be impacting fertilizer markets. If other supply chain or trade disruptions have been experienced, please describe the effects and challenges in dealing with such events. Would greater availability of domestic or North American options mitigate risks? Would reducing dependence on suppliers from any one country or region mitigate risks? What tools might be deployed to achieve those ends?

(9) Please comment on sustainability, climate, and other environmental concerns and risks relating to fertilizer markets. Have market concentration and power exacerbated these challenges and risks? Have they facilitated sectoral adjustment for climate and sustainability purposes? Would shifting fertilizer production to countries with high standards on labor and environmental protection improve competition, better manage sustainability risks, or otherwise improve public interest outcomes? What other strategies may exist to raise sustainability standards along supply chains?

(10) What obstacles exist to the financing and development of new fertilizer capacity that would enhance the competitiveness of fertilizer markets? Would new or expanded domestic manufacturing, mining, processing, or alternative fertilizer production capacity help promote access to and affordability of fertilizer for agricultural producers? Are there existing ''shovel ready'' manufacturing, mining, or other processes that could or should be adjusted to facilitate new fertilizer production? Are there other potential new entrants in the near or medium-term? How might USDA best support investment in new fertilizer capacity in the U.S.?

(11) How can USDA further support more efficient use of fertilizer? Are current precision agriculture tools effective at reducing fertilizer application rates without impacting yield? Could sub-field management of application rates improve economic resiliency of farms? Are there tools that USDA could support to facilitate better application rates, timing, and appropriate use of existing fertilizer sources? How could risk management tools such as crop insurance help with yield gaps from reduced nitrogen application rates, for example? How could USDA's working lands and other conservation programs better support more target and efficient use of fertilizer? How might adverse community, labor, and environmental costs arising from the production fertilizer in certain geographies be better factored into USDA grants, loans, or regulatory programs? Are there ways USDA could support more effective use of other fertilizers (*e.g.:* manure) from livestock? Could considering these factors improve competition in certain markets? Please share your views.

(12) Are there concerns or challenges related to data—*e.g.,* to collection, privacy, accessibility, control, concentrated market power, or any other aspect—as it affects affordability, accessibility, and use of more targeted application of fertilizer? For instance, to what extent does the expanded application of targeted site-specific crop management using data from sensors,

climate readings, or mechanical systems in agriculture impact competition and farmers' access to fertilizer or other agricultural inputs? Is there evidence of firms with market power using information obtained regarding farmers' farming practices to adversely affect farmers or competitors? Are there ways that USDA or other agencies can safeguard a farmer's control of data and enhance competition and fair access?

(13) Please comment on the availability and accessibility of market information and data for fertilizers. Which public or private sources do you rely on to receive information on fertilizer prices and other related markets? Are you able to access timely, accurate, and comprehensive information on spot prices of fertilizers in local, regional, and national markets? If not, how can USDA further facilitate price reporting information and transparency for market participants? Beyond price reporting, what other market related information would be helpful that is currently limited or not accessible?

(14) In what other ways can USDA support farmers' ability to adapt to variability in fertilizer costs? How might USDA assist small producers in hedging or otherwise mitigating sudden, unexpected jumps in the spot price of fertilizer? How might USDA better support modes of production that rely less on fertilizer, or support access to markets that may pay a premium for products relying on less fertilizer? How can USDA further facilitate appropriate conservation of land, and/or support farmers' flexibility in starting up and sustaining other farm enterprises?

(15) What other tools, investments, or programs could USDA or other agencies deploy to enhance the competitiveness of fertilizer markets? Please suggest any other actionable steps that USDA or other agencies could take to help address any identified concerns.

## III. Requirements for Written Comments

The *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. USDA prefers that comments be provided in an attached document. USDA 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 *www.regulations.gov* by entering docket number AMS–AMS–22–0027 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 are also 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 nonconfidential version of the submission will be placed in the public file on *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 nonconfidential 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. If a public hearing is held in support of this supply chain assessment, a separate **Federal Register** notice will be published providing the date and information about the hearing.

**Melissa R. Bailey,**

*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 2022–05670 Filed 3–16–22; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

**[Doc. No. AMS–AMS–22–0026]**

## Competition in Food Retail and Distribution Markets and Access for Agricultural Producers and Small and Midsized Food Processors

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice; request for public comments.

**SUMMARY:** On July 9, 2021, President Biden issued an Executive Order on ''Promoting Competition in the American Economy,'' which creates a White House Competition Council and directs Federal agency actions to enhance fairness and competition across America's economy. The Executive Order directs the Secretary of Agriculture (the Secretary), among other things, to submit a report on the effect of retail concentration and retailers' practices on the conditions of competition in the food industries. This notice requests comments and information from the public to assist the U.S. Department of Agriculture (USDA) in preparing the report required by the Executive Order and advancing policy steps to promote competition in the food and agricultural markets.

**DATES:** Comments must be received by May 16, 2022.

**ADDRESSES:** All written comments in response to this notice should be posted online at *www.regulations.gov.* Comments received will be posted without change, including any personal information provided. All comments should reference the docket number AMS–AMS–22–0026, the date of submission, and the page number of this issue of the **Federal Register**. Comments may also be sent to Jaina Nian, Agricultural Marketing Service, USDA, Room 2055–S, STOP 0201, 1400 Independence Avenue SW, Washington, DC 20250–0201. Comments will be made available for public inspection at the above address during regular business hours or via the internet at *www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Jaina Nian, Agricultural Marketing Service, at (202) 378–2541; or by email at *jaina.nian@usda.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

On July 9, 2021, President Biden issued Executive Order 14036, ''Promoting Competition in the American Economy'' (86 FR 36987)

(E.O. 14036). E.O. 14036 focuses on the need for robust and open competition in the American economy to secure broad and sustained economic prosperity, promote the welfare of workers, farmers, small businesses, startups, and consumers, and prevent the threat that excessive market concentration poses to basic economic liberties and democratic accountability. With respect to agriculture E.O. 14036 notes:

> Consolidation in the agricultural industry is making it too hard for small family farms to survive. Farmers are squeezed between concentrated market power in the agricultural input industries—seed, fertilizer, feed, and equipment suppliers—and concentrated market power in the channels for selling agricultural products. As a result, farmers' share of the value of their agricultural products has decreased, and poultry farmers, hog farmers, cattle ranchers, and other agricultural workers struggle to retain autonomy and to make sustainable returns.

In relevant part, E.O. 14036 directs the Secretary, among other things—

> to improve farmers' and smaller food processors' access to retail markets, not later than 300 days after the date of this order, in consultation with the Chair of the FTC, [to] submit a report to the Chair of the White House Competition Council, on the effect of retail concentration and retailers' practices on the conditions of competition in the food industries, including any practices that may violate the Federal Trade Commission Act, the Robinson-Patman Act (Pub. L. 74–692, 49 Stat. 1526, 15 U.S.C. 13 *et seq.*), or other relevant laws, and on grants, loans, and other support that may enhance access to retail markets by local and regional food enterprises.

This notice requests comments and information from the public to assist USDA in preparing and executing the report required by E.O. 14036. To facilitate those comments and information on access to retail markets, we highlight certain questions and concerns that are relevant to our efforts.

Consolidation in food retail and related parts of the supply chain, such as distribution, present potential risks of unfair and anticompetitive practices throughout the food supply chain. Increases in concentration have been an important trend in food retail over the last few decades, as the share of single-store firms or local chains has declined from 55 percent in 1977 to 35 percent as of 2007, while the concentration ratio of the four largest food retailers hit 34 percent in 2019.[1] Food distribution is concentrated in certain markets as well, with two firms dominating upwards of 70 percent of the national broadline distribution market.[2] Additionally, insufficient analytic attention has been paid to the connections between retail, distribution, and processing firms and the implications for competition in the food and agricultural supply chains.

The rise in food retail and distribution concentration in recent decades potentially impacts agricultural producers and small, midsized and otherwise independent (SME) processors—as well as potentially ultimately impacting consumers. Concentration in food retail and distribution may magnify and contribute to consolidation among meat and poultry processing firms, among other food system market participants.[3] Such firms themselves may consolidate to secure leverage against consolidated food retail firms, which in turn may make it more difficult for SME processors to access food retail markets. Concerns relating to exclusionary and predatory conduct in food retail and distribution thus may be particularly relevant to the viability of new and expanded meat and poultry processing facilities and other new food system market entrants, which are receiving over $1 billion of support under the White House Meat and Poultry Processing Supply Chain Action Plan.[4]

USDA will use public comments received through this notice to inform our policymaking and advocacy to help increase fairness and competition in food retail and related segments of the American food and agricultural markets. We are particularly interested in the role that rules, regulations, and enforcement under the Packers and Stockyards Act of 1921 and the Robinson-Patman Act of 1936—both of which were designed to regulate discriminatory limits on market access—may play in enhancing market access for agricultural producers and SME processors to retail markets, and especially in preventing predatory pricing by incumbent market participants to exclude new market entrants and competitors.

We are also interested in comments addressing the role that grants, loans, and other programs and services may play to enhance access to retail markets by agricultural producers, SME food processors, and other local and regional food enterprises. The Department is particularly interested in the role that cooperative or community-owned grocery retail and food distribution networks have or may play in addressing market challenges and in better serving producer, worker, community, and consumer needs, for example in remote locations or underserved communities.

Commenters may further provide information relevant to promoting local and regional food systems, creating new market opportunities (including for value-added agriculture and value-added products), advancing efforts to transform the food system, meeting the needs of the agricultural workforce, supporting and promoting consumers' nutrition security, particularly for low-income populations, and supporting the needs of underserved and small to mid-sized producers and processors.

## II. Written Comments

USDA encourages commenters, when addressing the elements below, to clearly indicate the question their comments are responding to by repeating the text of the question before their response. This would assist USDA in more easily reviewing and summarizing the comments received in response to these specific comment areas. In addition, USDA welcomes commenters to refer, with appropriate explanation, to any views set forth in recently or previously submitted comments, such as those to E.O. 14017 ''America's Supply Chains'' (No. AMS–TM–21–0034) (86 FR 20652) or ''Investments and Opportunities for Meat and Poultry Processing Infrastructure'' (No. AMS–TM–21–0058) (86 FR 37728).

This request for information includes but is not limited to the following elements. The questions below are meant to stimulate comments, and

[1] Retail Trends, Economic Research Service, USDA, available at *https://www.ers.usda.gov/topics/food-markets-prices/retailing-wholesaling/retail-trends/* (last accessed March 2022); Lucia Foster, John Haltiwanger, Shawn Klimek, C.J. Krizan, and Scott Ohlmacher, (2016), ''The Evolution of National Retail Chains: How We Got Here,'' *Handbook of the Economics of Retailing and Distribution,* Emek Basker, ed. London, UK: Edward Elgar Publishing.

[2] See Federal Trade Commission v. Sysco Corporation, U.S. Dist. Ct. (D.C.), Memorandum of Opiniont (2015), available at *https://www.ftc.gov/system/files/documents/cases/150623syscomemo.pdf;* see also, generally, ''Wholesaling,'' USDA Economic Research Service, available at *https://www.ers.usda.gov/topics/food-markets-prices/retailing-wholesaling/wholesaling/* (last accessed March 2022).

[3] Four large meat-packing companies dominate over 80 percent of the beef sales market and, yet, over the last five years, farmers' share of the price of beef has dropped by more than a quarter—from approximately 52 percent to 37 percent—while the price of beef for consumers has risen. Four large meat-packing companies dominate about 70 percent of the pork market, and four large poultry integrators make up 54 percent of the poultry market, although a pending merger would raise that further. Annual Report, Packers and Stockyards Division, USDA, available at *https://www.ams.usda.gov/reports/psd-annual-reports* (last accessed March 2022).

On monopsony's effects up the supply chain, generally, see Barry Lynn, *Cornered* (New York: Wiley, 2010).

[4] Meat and Poultry Supply Chain, USDA, available at *https://www.usda.gov/meat* (last accessed March 2022).

commenters should feel free to respond to those they feel most relevant to them, or as their time and interests permit. Comments may overlap or be organized as the commenter feels most appropriate. Please offer descriptive or quantitative information, as available and relevant.

*Competition and Impacts*

(1) Are market concentration and power, and lack of competition, problems in food retail and distribution markets? If so, where and in what ways? What practices in the food retail and distribution markets are most concerning from a competition standpoint? Are there particular practices that exclude or disadvantage new market participants or potential market participants, unfairly transfer risk, or otherwise abuse market power or make it harder to compete? Please describe specific experiences and challenges, if possible.

(2) How do concentration and size in the food retail and distribution markets affect the ability of agricultural producers and new, SME food processors to access the retail marketplace? Are agricultural producers and SME food processors that serve local and regional markets affected differently? Are there regional and other demographic variations to any of the impacts? Please describe specific experiences and challenges, if possible.

(3) How does competition and concentration among distributors and other parts of the wholesale food market relate to food retail concentration and competition? How do distribution and wholesale food market competition and concentration affect access to markets for agricultural producers and SME food processors? Does buying power of some retailers at the wholesale level make it difficult for some producers or SME processors to access distribution within these channels?

(4) How are SME grocery retailers specifically affected by concentration and potentially anticompetitive practices in food retail markets? What about distributors that may serve them? Do any of those challenges affect agricultural producers and SME food processors? Please describe specific experiences and challenges, if possible.

(5) How are smaller food service businesses, schools, hospitals, and other institutional food buyers affected by concentration or potentially anticompetitive practices in food processing and distribution? What effects do concentration and potentially anticompetitive conduct have on food prices, quality and safety, distribution and availability of healthy foods that meet nutrition standards, or other needs specific to these buyers and food providers?

(6) How are workers, consumers, other small businesses, communities, and others along the food supply chain affected by concentration or potentially anticompetitive practices in food retail and distribution markets? What effects do concentration and potentially anticompetitive conduct have on food prices, quality and safety; distribution and accessibility to healthy foods, and food and nutrition security; and worker empowerment, equity for underserved producers, and environmental sustainability? Are challenges with food deserts aggravated by concentration or competition issues in the food and agricultural supply chains? Do impacts to any of these concerns vary by region, commodity, or by other demographics?

*Business Practices*

(7) Please describe the role that exclusive dealing arrangements play in the food retail and distribution marketplaces. Do they facilitate, inhibit, or otherwise affect opportunities in the industry for SME processors? How do they affect the development of new products and the growth, diversity, or resilience of the industry? Do they facilitate, inhibit, or otherwise affect product quality and risk management? Do differences in commodity, product, or region affect the practices, risks, barriers, or outcomes? Are tribal businesses and enterprises and underserved communities affected differently? Does the size, scale, or market power generally of the companies involved in such an arrangement matter for how these arrangements affect competition?

(8) Please describe the role that slotting fees, category captains, and other preferential access or discounts play in retail food markets, including but not limited to meat and poultry. Are certain segments, such as organic or value-added products like grass-fed meats, affected differently? What affect do such behaviors have on access to the retail marketplace? How are preferential relationships in the marketplace manifested, and do those relationships limit new market entrants from accessing the marketplace? Do those relationships improve risk management or otherwise enhance market access in certain circumstances? Should any of these practices be limited or changed to support new market entrants, and if so, how?

(9) If you are a small or mid-sized producer, have you had to change any business or marketing practices in order to effectively navigate required slotting fees to gain market access? Have these changes negatively impacted the overall profits of the products you sell? Do you believe that slotting fees are adversely or unfairly deployed against small or mid-sized producers or otherwise affect market access and what is the basis for your belief?

(10) Please share any concerns relating to predatory pricing by incumbent food processors, threats of retaliation by incumbent food processors against retailers for offering new or different products, or other practices designed to exclude competitors from the marketplace. When and where have they occurred? Were antitrust enforcement tools able to address the challenges in a timely and effective manner? If not, why not?

(11) Please comment on implications, negative or positive, of mergers in the food retail or distribution sectors. Have certain mergers changed contracting or sales practices? Have certain mergers allowed the acquisition of rivals or technologies or companies that competitor firms rely on? Have mergers negatively or positively impacted workers? Have mergers delivered efficiencies?

*Information and Supply Chain Market Structures*

(12) What roles do control and access to retail data play in competition and access for farmers and SME food processors? Are there significant imbalances in access to information among producers, packers, distributor, and retailers, and how do those imbalances affect choices and outcomes in the market? Describe the role that data sharing between food retail companies and larger food processors, such as packers, plays in the market environment, if any. How do any differences affect competition and market access, and should any of these be limited, and if so how?

(13) Describe the role that retailer ownership, including financing, of livestock and packing play in supply chain competition and access to retail for producers and SME processors? Are competition concerns, if any, similar in other agricultural commodity markets? Have these practices reduced or eliminated the need for, or competition among, certain suppliers to some retail firms? Are certain segments, such as organic or value-added products like grassfed meats, affected differently? Should ownership, financing, or other forms of vertical integration be promoted, limited, or otherwise changed, and, if so, how?

(14) Please discuss how transportation—including rail and

ocean shipping—and delivery systems may affect competition in food retail and distribution. Are certain ownership structures, business relationships, or business practices of particular concern? How do transportation costs, fees, or levels of service affect the competitiveness of downstream businesses? Has concentration in transportation industries led to negative service outcomes or other potentially unfair practices? Have contractual arrangements that penalize suppliers, including transportation companies, for not delivering in sufficient quantities or on other particular terms become more prevalent? Have they become problematic as market power has grown, or in certain circumstances?

(15) Describe the role that label claims and labeling standards play in access to retail markets for agricultural producers. Are public or private resources sufficiently available for smaller agricultural producers seeking to develop or use labels? Do labels standards, verification, and enforcement appropriately support access to markets for agricultural producers and SME processors? Are there any instances when a larger supplier used, including potentially misused, a label to gain market access or advantage over smaller producers or SME processors? Please share concerns and recommendations, if any.

(16) What role, if any, does financing or financial markets play any of the issues addressed above?

(17) Are there any other aspects of the regulatory environment that affect retail market competition and access to retail for producers and SME processors? Are there specific elements of these requirements that could be more effectively tailored? What types of resources would be helpful to assist SMEs with compliance?

*Policy Responses*

(18) How can antitrust and market regulation and enforcement, including relating to mergers, unfair practices, and price discrimination, do more to address competition concerns in food retail and distribution markets? Should Federal and state antitrust enforcers place greater emphasis on adverse consequences of buyer power? Should greater attention be paid to information asymmetries and preferential access to data? How could USDA utilize its regulatory and enforcement authorities more effectively?

(19) How can predatory pricing by entrenched market participants be better identified and acted upon by relevant enforcement authorities? Can laws that prohibit discriminatory or preferential pricing, such as the Packers and Stockyards Act and the Robinson-Patman Act, play a greater role in preventing predatory pricing schemes, or otherwise promote greater food market access for agricultural producers and SME processors? Please explain.

(20) How could other USDA programs, services, and authorities be further deployed to enhance access to retail markets for agricultural producers and SME food processors? For example—

- How might grants, loans, and other support from USDA enhance access to retail markets by local and regional food enterprises?
- How might USDA marketing programs enhance access to retail markets for agricultural producers and SME food processors, including programs which facilitate access to a variety of markets, support value-added production and product diversification; increase diversification in distribution channels and market development, such as food hubs, non-profit and cooperative distribution models; and provide technical assistance to producers that helps access USDA programs and improve market readiness? [5]
- How might food and nutrition grant and loan programs better support competition in retail and better access for producers and SME processors? [6]
- How might government procurement processes further support agricultural producers and SME processors effectively access institutional customers, such as schools and hospitals? [7]
- Are there ways to facilitate easier access to food safety compliance resources, and other ways to level the playing field for SME processors? [8]
- What additional information or transparency could USDA's Market News Service provide on retail, wholesale, or distribution markets, through the Livestock Mandatory Reporting Act of 1999 or otherwise? [9] Are there information or educational tools, services, or access to data that could be helpful?
- What additional market analysis or advocacy could USDA do with respect to local and regional food systems, transportation, or otherwise that could support fair and competitive food retail and distribution markets? [10]
- How else can competition be enhanced in food retail, distribution, and related areas? Please discuss any other relevant matters USDA should consider.

## III. Requirements for Written Comments

The *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. USDA prefers that comments be provided in an attached document. USDA 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 *www.regulations.gov* by entering docket number AMS–AMS–22–0026 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 are also 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

[5] See, *e.g.,* ''USDA Announces Supplemental American Rescue Plan Funding Available through the Local Agriculture Market Program, Including Funding to Expand Farm-to-Institution Opportunities,'' USDA, March 1, 2022, available at *https://www.usda.gov/media/press-releases/2022/03/01/usda-announces-supplemental-american-rescue-plan-funding-available.*

[6] See, *e.g.,* Healthy Food Financing Initiative, available at *https://www.investinginfood.com/what-we-do/* (last accessed March 2022).

[7] See USDA Agricultural Marketing Service, ''Commodity Procurement,'' available at *https://www.ams.usda.gov/commodity-procurement* (last accessed March 2022).

[8] For more information, see ''Food Safety,'' Agricultural Marketing Service, available at *https://www.ams.usda.gov/services/local-regional/food-sector/food-safety* (last accessed March 2022).

[9] See USDA Market News, ''Retail Reports,'' available at *https://www.ams.usda.gov/market-news/retail* (last accessed Feb. 2022).

[10] See USDA Agricultural Marketing Service, ''Market Research and Analysis,'' available at *https://www.ams.usda.gov/services/market-research* (last accessed March 2022).

version of the submission. The nonconfidential version of the submission will be placed in the public file on *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 nonconfidential 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. If a public hearing is held in support of this supply chain assessment, a separate **Federal Register** notice will be published providing the date and information about the hearing.

**Melissa R. Bailey,**

*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 2022–05669 Filed 3–16–22; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

**[Doc. No. AMS–AMS–22–0025]**

### Competition and the Intellectual Property System: Seeds and Other Agricultural Inputs

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice; request for public comments.

**SUMMARY:** On July 9, 2021, President Biden issued an Executive Order titled ''Promoting Competition in the American Economy,'' which creates a White House Competition Council and directs Federal agency actions to enhance fairness and competition across America's economy. Among other things, the Executive Order directs the Secretary of Agriculture (the Secretary) to prepare a report on concerns and strategies for ensuring that the intellectual property (IP) system, while incentivizing innovation, does not also unnecessarily reduce competition in seed and other input markets. This notice requests comments and information from the public to assist the U.S. Department of Agriculture (USDA or the Department) in preparing the report required by the Executive Order and advancing policy steps on seeds and other inputs identified in and developed by the report.

**DATES:** Comments must be received by May 16, 2022.

**ADDRESSES:** All written comments in response to this notice should be posted online at *www.regulations.gov.* Comments received will be posted without change, including any personal information provided. All comments should reference the docket number AMS–AMS–22–0025, the date of submission, and the page number of this issue of the **Federal Register**. Comments may also be sent to Jaina Nian, Agricultural Marketing Service, USDA, Room 2055–S, STOP 0201, 1400 Independence Avenue SW, Washington, DC 20250–0201. Comments will be made available for public inspection at the above address during regular business hours or via the internet at *www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Jaina Nian, Agricultural Marketing Service, at (202) 378–2541; or by email at *jaina.nian@usda.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

On July 9, 2021, President Biden issued Executive Order 14036, ''Promoting Competition in the American Economy'' (86 FR 36987) (E.O. 14036). E.O. 14036 focuses on the need for robust and open competition in the American economy to secure broad and sustained economic prosperity, promote the welfare of workers, farmers, small businesses, startups, and consumers, and prevent the threat that excessive market concentration poses to basic economic liberties and democratic accountability. With respect to agriculture, E.O. 14036 states:

> Consolidation in the agricultural industry is making it too hard for small family farms to survive. Farmers are squeezed between concentrated market power in the agricultural input industries—seed, fertilizer, feed, and equipment suppliers—and concentrated market power in the channels for selling agricultural products. As a result, farmers' share of the value of their agricultural products has decreased, and poultry farmers, hog farmers, cattle ranchers, and other agricultural workers struggle to retain autonomy and to make sustainable returns.

In relevant part, E.O. 14036 directs, *inter alia,* that the Secretary—

> to help ensure that the intellectual property system, while incentivizing innovation, does not also unnecessarily reduce competition in seed and other input markets beyond that reasonably contemplated by the Patent Act (see 35 U.S.C. 100 *et seq.* and 7 U.S.C. 2321 *et seq.*), in consultation with the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, submit a report to the Chair of the White House Competition Council, enumerating and describing any relevant concerns of the Department of Agriculture and strategies for addressing those concerns across intellectual property, antitrust, and other relevant laws.

As part of executing our responsibilities under the E.O. 14036 for this report on seeds and other inputs, the Department takes note of wide-ranging concerns from agricultural producers regarding concentrated market power in the agricultural input industries and their connections to the intellectual property system. Four companies account for 85 and 76 percent of corn and soybean seed markets, controlling key sources for a farmer's planting.[1] Four companies account for 90 percent of the global grain trading and processing market, controlling, among other grain-related markets, a farmer's means for obtaining livestock feed.[2] Four companies account for 61 percent of farm machinery markets.[3] Two companies account for more than 90 percent of chicken genetics for chicks sold in poultry markets.[4]

During a series of joint workshops held in 2010 by USDA and the Department of Justice (DOJ), farmers described their experiences relating to

[1] In 2015, the largest four sellers of corn and soybean seed accounted for 85 and 76 percent of U.S. corn and soybean seed sales, respectively, up from 60 and 51 percent in 2000. F. Ciliberto, G. Moshini, and E. Perry, ''Valuing product innovation: Genetically engineered varieties in US corn and soybeans,'' *RAND J. Econ* 50 (2019): 615–644.

[2] In 2012, the largest four firms accounted for 86 and 79 percent of wet corn milling and soybean processing markets, respectively. Four firms accounted for 61 percent of the world's farm machinery, up from 46 percent in 1977. J. MacDonald, (2017), ''Consolidation, Concentration, and Competition in the Food System,'' Economic Review, Federal Reserve Bank of Kansas City, Volume 102, Special Issue: ''Agricultural Consolidation: Causes and the Path Forward'' (September 2017): 85–105, available at *https://www.kansascityfed.org/documents/765/2017-Consolidation,%20Concentration,%20and%20Competition%20in%20the%20Food%20System.pdf.*

[3] Sophia Murphy, David Burch, and Jennifer Clapp, ''Cereal Secrets: The world's largest grain traders and global agriculture'' (Oxford, UK: Oxfam, 2012), available at *https://www-cdn.oxfam.org/s3fs-public/file_attachments/rr-cereal-secrets-grain-traders-agriculture-30082012-en_4.pdf.*

[4] Two companies, one acquired in 1985 by one of the world's largest meat processing firms, control 90 percent of the chicken breeding market. Dale Weihoff, ''How the Chicken of Tomorrow became the Chicken of the World'' (Institute for Agriculture and Trade Policy, 2013), available at *https://www.iatp.org/blog/201303/how-the-chicken-of-tomorrow-became-the-chicken-of-the-world;* Glenn E. Bugos, ''Intellectual Property Protection in the American Chicken-Breeding Industry,'' Business History Review 66 (1992): 127–168, available at *https://www.jstor.org/stable/3117055.*

agricultural inputs, intellectual property, and market power—many of which are still relevant today.[5] Seed prices have been a central concern: Rising more than 700 percent between 2000 and 2015 for genetically modified (GM) seed, and more than 200 percent for non-GM seed for the same period.[6]

A healthy IP system plays an important role in facilitating that research. The introduction of GM seeds have generally been accompanied by higher productivity.[7] Moreover, R&D spending and new variety introductions by the private seed industry has generally grown in recent decades.[8] Given that global demand for food is expected to double in the next 30 years, while public funding for research and advancements in agriculture, food and nutrition have flatlined or declined over the past decade, it is important to ensure that private sector research continues to support innovations in development of seed genetics, chemical controls, and crop characteristics.[9]

Yet there are also developments in the research landscape that should raise concerns. For example, small and medium-sized enterprises (SMEs), which have historically served as primary sources of innovation, face barriers to entry.[10] Some segments, such as organic seeds, also remain underserved.

Seeds and their corollary pesticide products are not the only agricultural inputs where control over intellectual property may intersect with concerns around concentration and competition. The IP system is relevant to control over animal genetics in livestock and poultry, farm machinery and precision technology and data, and more.

USDA is interested in all relevant comments on the topics noted above. We are particularly interested in what effects various forms of IP, such as patents, have on small to mid-sized seed businesses and plant breeding programs. Other important input markets include those for equipment; fertilizer; feed; pest control; chemical management agents; animal breeding and genetics; storage and transportation; hatcheries; or pre-farm markets, including farm input derivatives, processing, trading, and financing.

We are further interested in comments addressing the role of fair and competitive markets in promoting local and regional food systems, creating new market opportunities (including for value-added agriculture and value-added products), advancing efforts to transform the food system, meeting the needs of the agricultural workforce, supporting and promoting consumers' nutrition security, particularly for low-income populations, and supporting the needs of underserved and small to mid-sized producers and processors.

## II. Written Comments

USDA encourages commenters, when addressing the elements below, to clearly indicate the question their comments are responding to by repeating the text of the question before their response. This would assist USDA in more easily reviewing and summarizing the comments received in response to these specific comment areas. In addition, USDA welcomes commenters to refer to, with appropriate explanation, any views set forth in recently or previously submitted comments, such as those to E.O. 14017 ''America's Supply Chains'' (No. AMS–TM–21–0034) (86 FR 20652).

For its report on competition in the intellectual property system, including for seeds and other inputs, USDA is particularly interested in comments and information directed to how to achieve the policy goals listed in E.O. 14036 of ensuring that the intellectual property system, while incentivizing innovation, does not also unnecessarily reduce competition in seed and other input markets beyond that reasonably contemplated by the Patent Act (see 35 U.S.C. 100 *et seq.* and 7 U.S.C. 2321 *et seq.*) and the Plant Variety Protection Act (PVPA) (7 U.S.C. 2321 *et seq.*), and of otherwise supporting the policy objectives of fair and competitive markets for agricultural and food products.

Our request for comment includes but is not limited to the following elements. The questions below are meant to stimulate comments and are not intended to represent particular views of USDA or any other government agency. Commenters should feel free to respond to those they feel most relevant to them, or as their time and interests permit. Comments may overlap or be organized as the commenter feels most appropriate. Please offer descriptive or quantitative information, as available and relevant.

### *Concentration and Market Power in Agricultural Inputs*

(1) Please describe challenges, concerns, and any other views (including relating to any benefits) with market concentration and market power in the agricultural input industries, including, as applicable, effects on farmers, competitors and related markets; pricing; availability; transportation and delivery; quality; research and innovation; economic growth, labor markets, and inequality issues; supply chain resiliency; and any other factors.

(2) Please share your views on access, availability, pricing, quality, and related matters relating to seeds. In particular, are seed companies offering an adequate variety of types of seeds and traits that meet your needs as a grower? Are seed

[5] One farmer described being once ''free to choose from about a hundred different varieties of non-GMO soybeans . . . [and now] ''forced as a farmer to go to the seed companies, these few seed companies that are left, to purchase my seed.'' Farmers described how firms with market power raised technology fees mid-contract for continued use of seed or product, selectively favored large farmers through pricing schemes; and for at least one farmer increased the cost of seed and chemical weed control by 153 percent during his 25 years of farming. Describing the IP system, one farmer stated, ''it's a combination of the utility patents and the consolidation of the seed industry which has entrapped me as a farmer . . .''. U.S. Department of Justice. (2010). *Farmer Presentation of Issues* [Video], available at *https://youtu.be/YZOiJ_CZnoU?t=2605;* U.S. Department of Justice. (2010), *Public Workshops Exploring Competition Issues in Agriculture* [Workshop transcript], available at *https://www.justice.gov/sites/default/files/atr/legacy/2010/12/20/iowa-agworkshop-transcript.pdf.*

[6] USDA Crop and Seed Price Index from NASS; Crop-specific seed prices from USDA NASS for 1990–2015 (after which NASS discontinued its seed price series) and extended over 2016–2020 using USDA ERS Cost-of-Production estimates. Note, prices have fallen declined since 2015, with commodity price swings playing a significant factor.

[7] One study estimated that 44 percent of the value added by enhanced productivity was retained by farmers, with the rest captured by seed companies as a return on their investment in R&D. The result may be is similar in effect to the introduction of hybrid corn seed in the 1940s and 1950s. F. Ciliberto, G. Moschini, and E.D. Perry (2019), ''Valuing Product Innovation: Genetically Engineered Varieties in U.S. Corn and Soybeans,'' *RAND Journal of Economics,* 50: 615–644.

[8] Seed-biotech companies have spent, on average, about 10–15 percent of their seed sales on research and development, which appears fairly consistent over time. J. Fernandez-Cornejo, (2004), ''The Seed Industry in U.S. Agriculture: An Exploration of Data and Information on Crop Seed Markets, Regulation, Industry Structure, and Research and Development,'' *Agriculture Information Bulletin,* No. (AIB–786), USDA–ERS; FAO 2019, ''Analysis of Sales and Profitability with the Seed Sector,'' Independent Report by HIS Markit (Phillips McDougall) for the Co-Chairs of the Ad-Hoc Open-Ended Working Group to Enhance the Functioning of the Multilateral System of FAO's International Treaty on Plant Genetic Resources for Food and Agriculture; K. Fuglie, et al. (2011), ''Research Investments and Market Structure in the Food Processing, Agricultural Input, and Biofuel Industries Worldwide,'' Economic Research Report 130, USDA–ERS.

[9] G.L. Mehaffy, (2012), ''Challenge and change,'' *Educause Review,* 47(5), 25–42.

[10] It is not yet clear whether the recent growth in venture capital financing in food and agriculture will yield new innovations and new competitors, or whether incumbent firms will establish ''kill zones'' similar to what has occurred in the technology sector—acquisitions of start-ups that threaten the dominant players. On similar practices in other sectors, see M. Jarsulic, ''Antitrust *Enforcement for the 21st Century,*'' *(2019), The Antitrust Bulletin, Vol. 64 Issue 4, available at https://journals.sagepub.com/doi/full/10.1177/0003603X19877008.*

companies regularly providing new and improved varieties for growers? Have gains in yield or net returns resulting from use of new varieties been adequate to compensate farmers for the cost of seeds? Are regional needs, tribal and underserved communities, climate concerns, and product-specific needs, such as organic seeds, being appropriately served by the seed marketplace?

(3) For agricultural inputs other than seeds, please share similar responses to those solicited for seeds in Question 2, above, relating to access, availability, pricing, quality and related matters. Please respond as to whether companies are offering adequate product varieties to meet producer needs, whether there are new and improved varieties or products, and whether there are gains in yield or other producer benefits, including net returns. Are regional needs, tribal and underserved communities, climate concerns, and product-specific needs, being appropriately served by the marketplace?

*Intellectual Property*

(4) Please share your views on whether, and if so how, the existing IP system—including plant patents, utility patents, and plant variety protection certificates—appropriately balances the need to incentivize innovation with the goal of ensuring public access to new and improved products at reasonable cost. Please explain why or why not, and discuss in context of seeds or the particular agricultural input of concern. If you have concerns, please explain the concerns and provide suggestions on how the IP system can be improved to address those concerns.

(5) For seeds in particular, is the patent side of the plant-related IP system appropriately reserving its grant of statutory patent monopolies to inventions that are of significant utility, novelty and non-obviousness? Do you have concerns about patent quality in the area of plant-related IP or plant-related technologies? If you have concerns, please explain.

(6) Does the existing IP system, as relating to seeds and other agricultural inputs, effectively meet the statutory goal of rewarding invention through protection from competition for a fixed term? Does it fairly and effectively promote competition and innovation, or does it inappropriately suppress competition and innovation? Please explain. If you believe the IP system inappropriately suppresses competition or insufficiently rewards innovation, please explain and provide concrete examples where possible.

(7) Do farmers, ranchers, and other stakeholders have sufficient access to off-protection and generic options? If not, are regulatory tools, systems, or practices being utilized to inhibit access? For example, do you believe there is evidence of inappropriate strategies to extend the life of patents? Please explain and provide examples.

(8) Please share your views on whether and how the different forms of IP protection for new plant varieties appropriately promote access to germplasm for the development of new varieties. Please share specifics where possible and provide suggested improvements to ensure farmers' and breeders' access to germplasm for variety development.

(9) Please comment on IP enforcement. Do you believe farmers, breeders and small and medium sized enterprises face challenges concerning enforcement of their plant related IP rights? If so, please provide concrete examples. Do you believe farmers, breeders and small and medium sized enterprises face challenges from other companies asserting their IP rights against them? If so, please provide specific examples. Please also offer recommended solutions for mitigating those challenges.

(10) Are there other ways in which the IP system, including copyrights and trademarks, may positively or adversely affect choice, quality, and other aspects of competition in seeds or other agricultural inputs? For example, what role does IP play, if any, in farmers' and ranchers' ability to repair and maintain equipment? [11] Please provide examples.

*Business Practices and Other Competition Matters*

(11) What role do contractual or sales practices in seed and other agricultural input markets play with regard to a farmer's or business's autonomy, innovation, or ability to compete? How have contractual or sales practices changed over time? Do some firms' contracts require farmers to buy inputs from or sell exclusively to one or a few firms? What impacts do these contractual requirements have on competition?

(12) Is there evidence of contracting or sales practices locking a farmer into a mode of production and inhibiting them from entering other farm enterprises? To what extent do requirements or inducements to buy a main product (*e.g.,* seed) with a second product (*e.g.,* pest management chemical), bundle, stacked trait, or service impact the farmer or other agricultural input competitors? For instance, does such a practice lock a farmer into or out of certain product choices? Please offer specific recommendations for reforms.

(13) What role do marketing and labeling practices have on competition in seeds or other agricultural inputs? Do labeling and naming practices provide sufficient notice that the seed or other agricultural input in question is protected by IP or not protected? Please explain.

(14) Please comment on implications, negative or positive, of mergers in the seed industry and in industries that sell other agricultural inputs. Have certain mergers changed contracting or sales practices? Have certain mergers allowed the acquisition of rivals or technologies or companies that competitor firms rely on? Have mergers delivered efficiencies? Please offer recommendations for specific actions where appropriate.

(15) Please comment on the presence of, and any concerns around, licensing restrictions in seeds or other agricultural inputs. Please comment on cross-licensing practices, including restrictions or exclusive cross-licensing permissions, and any related concerns. Do fees on the same type of license vary and if so under what circumstances? Do licensees have access to information on comparable licenses? Are some companies or organizations denied reasonable access to licenses and on what basis? What further guidance, if any, on appropriate licensing practices would be helpful? [12]

(16) Please comment on any other concerns relating to competition matters. For example, do you have concerns relating to manufacturer restrictions on aftermarket competition, preferential pricing schemes that may favor one farmer or competitor over another, or contractual arrangements such as tying or exclusivity arrangements? Do you believe there is evidence of attempts to fix prices, allocate markets, or to restrict from where a farmer buys inputs and sells product? Do you believe there is evidence of agricultural input firms using their market power to price below cost and run losses to undercut and eliminate competitor or potentially competing firms? Is monopsony—where sellers are harmed from market power abuses by buyers—relevant in these industries and supply chains, and if so

[11] See Fed. Trade Comm'n, Nixing the Fix: An FTC Report to Congress on Repair Restrictions (May 2021), available at *https://www.ftc.gov/reports/nixing-fix-ftc-report-congress-repair-restrictions.*

[12] See Dep't Justice & Federal Trade Comm'n, Antitrust Guidelines for the Licensing of Intellectual Property (Jan. 2017), available at *https://www.justice.gov/atr/IPguidelines/download.*

how? What role, if any, does financing or financial markets play in any of the issues addressed above? Please provide examples for concerns raised.

*Information Resources*

(17) Do you believe farmers, breeders and other stakeholders have appropriate access to information, education, and support services around seeds and other agricultural inputs, including information on IP protection and IP-related risks covering seeds they buy and the varietal identity of those seeds? If not, what are the most effective means for improving access to such information? What about other agricultural inputs?

(18) Do farmers, breeders, and other stakeholders have access to adequate information on new applications for plant IP, prior to the award of plant patents, plant variety protection certificates or utility patents to the applicants? Are there improvements that could be made to information accessibility for applications prior to the granting of IP protection? What about for other agricultural inputs?

(19) Please comment on any concerns or challenges related to data—*e.g.,* collection, privacy, accessibility, control, market power, or any other aspect—as it affects competition in seeds or other agricultural inputs. To what extent does the expanded application of site-specific crop management using data from sensors, climate readings, or mechanical systems in agriculture impact competition and farmers' access to seeds and other inputs? What mechanisms would safeguard a farmer's control of data and enhance competition and fair access, while appropriately promoting the effective use of new technologies and data analytics? Are there relevant changes to the IP system that would facilitate innovation, competition, and fair access to data? Please comment on any benefits and opportunities for farmers relating to data and consolidation, as appropriate.

*Additional Matters*

(20) Please share any information relevant to regional needs, tribal and underserved communities, climate concerns, and product-specific matters, such as organic seeds, in relation to any of the concerns raised above.

(21) Please comment on any international policy or risk implications related to any of the above matters. Do one or more of the currently available IP forms of protecting plant-related technologies have particular challenges or benefits in the international context in terms of ensuring fair competition and providing farmers access to improved varieties, and quality, affordable seeds? What about for other agricultural inputs?

*Policy, Programs, and Solutions*

(22) Please comment on the strengths, weaknesses, effectiveness, and gaps in current USDA policies and programs to facilitate access to affordable seeds and other agricultural inputs for farmers, plant breeders, ranchers, and other stakeholders. Are information services, grow out services, and access to seed varietals that are not subject to IP protections sufficiently available? Do farmers, plant breeders, ranchers, and other stakeholders have sufficient voice within relevant agency decision-making, and if not, how could it be improved? How could labeling practices be improved? Please suggest actionable steps that USDA could take to help address any identified concerns.

(23) How could the IP system be improved to address any concerns highlighted?

(24) How could Federal or state antitrust enforcement better address any concerns highlighted?

(25) What other policy changes, tools, investments, or programs could USDA or other agencies deploy to enhance the competitiveness of seeds and other agricultural input markets in relation to any of the concerns highlighted by your responses to the aforementioned questions?

## III. Requirements for Written Comments

The *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. USDA prefers that comments be provided in an attached document. USDA 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 *http://www.regulations.gov* by entering docket number AMS–AMS–22–0025 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 are also 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 nonconfidential version of the submission will be placed in the public file on *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 nonconfidential 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. If a public hearing is held in support of this supply chain assessment, a separate **Federal Register** notice will be published providing the date and information about the hearing.

**Melissa R. Bailey,**

*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 2022–05667 Filed 3–16–22; 8:45 am]

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## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meeting of the Connecticut Advisory Committee

**AGENCY:** Commission on Civil Rights.

**ACTION:** Announcement of meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that the Connecticut Advisory Committee to the U.S. Commission on Civil Rights will hold a fourth briefing via web conference or phone call on Wednesday, March 30, 2022, at 12:00 p.m. (ET). The purpose of the web conference is for project planning.

**DATES:** March 30, 2022, Wednesday, at 12:00 p.m. (ET):

*Join by web conference:* WebEx link: *https://tinyurl.com/u2t5xbas;* password, if needed: USCCR–CT

*Join by phone only, dial:* 1–800–360–9505; Access Code: 2761 876 7626#

**FOR FURTHER INFORMATION CONTACT:** Barbara Delaviez at *ero@usccr.gov* or by phone at 202–539–8246.

**SUPPLEMENTARY INFORMATION:** This meeting is available to the public through the WebEx link and/or phone number/access code above. If joining only via phone, callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Individuals who are deaf, deafblind and hard of hearing. may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the call-in number found through registering at the web links provided for these meeting.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be emailed to Barbara de La Viez at *ero@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (202) 539–8246. Records and documents discussed during the meeting will be available for public viewing as they become available at *www.facadatabase.gov.* Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Regional Programs Unit at the above phone number or email address.

## Agenda

*Wednesday, March 30, 2022, at 12:00 p.m. (ET)*

I. Welcome and Roll Call

II. Project Planning

III. Public Comment

IV. Next Steps

V. Adjournment

Dated: March 11, 2022.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2022–05614 Filed 3–16–22; 8:45 am]

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## COMMISSION ON CIVIL RIGHTS

## Agenda and Notice of Public Meetings of the Delaware Advisory Committee

**AGENCY:** Commission on Civil Rights.

**ACTION:** Announcement of public meetings.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that the Delaware State Advisory Committee to the Commission will hold six, two-hour virtual panel briefings to discuss the COVID–19 medical disparities—testing, infections, treatment, vaccinations and other factors—experienced by people of color in Delaware and the social determinants for such disparities. The six virtual panel presentations are all titled, *COVID–19 Medical Disparities and the Social Determinants for those Disparities that Affect People of Color in Delaware.* There are two two-hour morning and afternoon virtual panel briefings at 11:00 a.m. (ET) and again at 2: 00 p.m. ET, respectively, on Wednesday, March 23, 2022, and Monday, March 28, 2022. Two-hour virtual briefings are also scheduled on Wednesday, March 30, 2022, at 11:00 a.m. (ET) and Friday, April 1, 2022, at 1:00 p.m. (ET), respectively.

## Dates and How To Join the Meetings

*Wednesday, March 23, 2022, at 11:00 a.m. (ET)*

- To join by web conference: *https://tinyurl.com/bdzf77mb*
- To join by phone only, dial 1–800–360–9505; Access code: 2764 584 3838#

*Wednesday, March 23, 2022, at 2:00 p.m. (ET)*

- To join by web conference: *https://tinyurl.com/3fexevty*
- To join by phone only, dial 1–800–360–9505; Access code: 2762 497 4740#

*Monday, March 28, 2022, at 11:00 a.m. (ET)*

- To join by web conference: *https://tinyurl.com/55z58sy8*
- To join by phone only, dial 1–800–360–9505; Access code: 2762 803 0597#

*Monday, March 28, 2022, at 2:00 p.m. (ET)*

- To join by web conference: *https://tinyurl.com/54utjtw4*
- To join by phone only, dial 1–800–360–9505; Access code: 2763 073 3320#

*Wednesday, March 30, 2022, at 11:00 a.m. (ET)*

- To join by web conference: *https://tinyurl.com/mr37pmuj*
- To join by phone only, dial 1–800–360–9505; Access code: 2763 511 0806#

*Friday, April 1, 2022, at 1:00 p.m. (ET)*

- To join by web conference: *https://tinyurl.com/2p8atzaw*
- To join by phone only, dial 1–800–360–9505; Access code: 2763 511 0806#

**FOR FURTHER INFORMATION CONTACT:** Ivy Davis at *ero@usccr.gov* or by phone at (202) 539–8468.

**SUPPLEMENTARY INFORMATION:** Each meeting is available to the public through the WebEx links above and all participants will be asked to register before being admitted into the meeting. Registration is requested so that agency staff can keep registrants informed about the Committee's activities, including its planned report. If joining only via phone, callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Individuals who are deaf, deafblind and hard of hearing. may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the call-in number found through registering at the web link provided for this meeting.

Immediately after each two- hour panel presentation, members of the public are entitled to make brief comments of approximately five minutes during the Public Comment portion of the agenda. Members of the public may also submit written comments; the written comments must be emailed to the Eastern Regional Office within 30 days following the meeting. Written comments may be emailed to: Ivy Davis at *ero@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (202) 539–8468. Records and documents discussed during the meeting will be available for public viewing as they become available at *www.facadatabase.gov.* Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Regional Programs Unit at the above email address or phone number.

**Agenda Briefings**

This is the agenda for each of the six virtual panel presentations.

I. Roll Call
II. Welcome
III. Virtual Panel Presentations
IV. Public Comment
V. Closing Remarks
VI. Adjourn

*Exceptional Circumstance:* Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstances of the immediacy of the subject matter.

Dated: March 11, 2022.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2022–05613 Filed 3–16–22; 8:45 am]

BILLING CODE P

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Procedures for Submitting Request for Exclusions From the Section 232 National Security Adjustments of Imports of Steel and Aluminum

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on November 22, 2021, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

*Agency:* Bureau of Industry and Security.

*Title:* Procedures for Submitting Request for Exclusions from the Section 232 National Security Adjustments of Imports of Steel and Aluminum.

*OMB Control Number:* 0694–0139.

*Form Number(s):* None.

*Type of Request:* Regular submission, extension of a current information collection.

*Number of Respondents:* 84,401.

*Average Hours per Response:* 4 hours.

*Burden Hours:* 337,604.

*Needs and Uses:* On March 8, 2018, the President issued Proclamations 9704 and 9705 concurring with the findings of the two reports and determining that adjusting imports through the imposition of duties on steel and aluminum is necessary so that imports of steel and aluminum will no longer threaten to impair the national security. The Proclamations also authorized the Secretary of Commerce, in consultation with the Secretary of Defense, the Secretary of the Treasury, the Secretary of State, the United States Trade Representative, the Assistant to the President for Economic Policy, the Assistant to the President for National Security Affairs, and other senior executive branch officials as appropriate, to grant exclusions from the duties for domestic parties affected by the duties. This could take place if the Secretary determines the steel or aluminum for which the exclusion is requested is not produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality or should be excluded based upon specific national security considerations. The President directed the Secretary to promulgate regulations as may be necessary to implement an exclusion process. The purpose of this information collection is to allow for submission of exclusions requests from the remedies instituted in presidential proclamations adjusting imports of steel into the United States and adjusting imports of aluminum into the United States.

*Affected Public:* Business or other for-profit organizations.

*Frequency:* On Occasion.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* Section 232 of the Trade Expansion Act of 1962, Presidential Proclamations 9704 and 9705.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0694–0139.

**Sheleen Dumas,**

*Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.*

[FR Doc. 2022–05678 Filed 3–16–22; 8:45 am]

BILLING CODE 3510–33–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Renewable Energy and Energy Efficiency Advisory Committee

**AGENCY:** International Trade Administration, Department of Commerce.

**ACTION:** Notice of an open meeting.

**SUMMARY:** The Renewable Energy and Energy Efficiency Advisory Committee (REEEAC or the Committee) will hold a virtual meeting via WebEx on Thursday March 31, 2022, hosted by the U.S. Department of Commerce. The meeting is open to the public with registration instructions provided below.

**DATES:** March 31, 2022, from 1:00 p.m. to 4:00 p.m. Eastern Standard Time (EST). Members of the public wishing to participate must register in advance with the REEEAC Designated Federal Officer (DFO) Cora Dickson at the contact information below by 5:00 p.m. EST on Friday, March 25, in order to pre-register, including any requests to make comments during the meeting or for accommodations or auxiliary aids.

**ADDRESSES:** To register, please contact Cora Dickson, REEEAC DFO, Office of Energy and Environmental Industries (OEEI), Industry and Analysis, International Trade Administration, U.S. Department of Commerce at (202) 482–6083; email: *Cora.Dickson@trade.gov.* Registered participants will be emailed the login information for the meeting, which will be conducted via WebEx.

**FOR FURTHER INFORMATION CONTACT:** Cora Dickson, REEEAC DFO, Office of Energy and Environmental Industries (OEEI), Industry and Analysis, International Trade Administration, U.S. Department of Commerce at (202) 482–6083; email: *Cora.Dickson@trade.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background:* The Secretary of Commerce established the REEEAC pursuant to discretionary authority and in accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. App.), on July 14, 2010. The REEEAC was re-chartered most recently on June 5, 2020. The REEEAC provides

the Secretary of Commerce with advice from the private sector on the development and administration of programs and policies to expand the export competitiveness of U.S. renewable energy and energy efficiency products and services. More information about the Committee, including the list of appointed members for this charter, is published online at *http://trade.gov/reeeac.*

On March 31, 2022, the REEEAC will hold the seventh meeting of its current charter term. The Committee, with officials from the Department of Commerce and other agencies, will discuss major issues affecting the competitiveness of the U.S. renewable energy and energy efficiency industries, covering four broad themes: Trade promotion and market access, global decarbonization, clean energy supply chains, and technology and innovation. The Committee will also review recommendations developed by subcommittee in these areas. To receive an agenda please make a request to REEEAC DFO Cora Dickson per above. The agenda will be made available no later than March 25, 2022.

The Committee meeting will be open to the public and will be accessible to people with disabilities. All guests are required to register in advance by the deadline identified under the DATE caption. Requests for auxiliary aids must be submitted by the registration deadline. Last minute requests will be accepted but may not be possible to fill.

A limited amount of time before the close of the meeting will be available for oral comments from members of the public attending the meeting. To accommodate as many speakers as possible, the time for public comments will be limited to two to five minutes per person (depending on number of public participants). Individuals wishing to reserve speaking time during the meeting must contact REEEAC DFO Cora Dickson using the contact information above and submit a brief statement of the general nature of the comments, as well as the name and address of the proposed participant, by 5:00 p.m. EST on Friday, March 25, 2022. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the International Trade Administration may conduct a lottery to determine the speakers. Speakers are requested to submit a copy of their oral comments by email to Cora Dickson for distribution to the participants in advance of the meeting.

Any member of the public may submit written comments concerning the REEEAC's affairs at any time before or after the meeting. Comments may be submitted via email to the Renewable Energy and Energy Efficiency Advisory Committee, c/o: Cora Dickson, DFO, Office of Energy and Environmental Industries, U.S. Department of Commerce; *Cora.Dickson@trade.gov.* To be considered during the meeting, public comments must be transmitted to the REEEAC prior to the meeting. As such, written comments must be received no later than 5:00 p.m. EST on Friday, March 25, 2022. Comments received after that date will be distributed to the members but may not be considered at the meeting.

Copies of REEEAC meeting minutes will be available within 30 days following the meeting.

**Man K. Cho,**

*Deputy Director, Office of Energy and Environmental Industries.*

[FR Doc. 2022–05607 Filed 3–16–22; 8:45 am]

**BILLING CODE 3510–DR–P**

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## DEPARTMENT OF COMMERCE

### International Trade Administration

### Amended Application Deadlines to the Minority-Business Focused Trade Mission to Italy, Spain and Portugal, Cyber Security Business Development Mission to India, and the U.S.–UK Financial Innovation Partnership (FIP) Trade Mission

**AGENCY:** International Trade Administration, Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** The United States Department of Commerce, International Trade Administration, is announcing amended dates and deadlines for submitting applications for three upcoming trade missions that were previously announced and published in the **Federal Register**:

- Minority-Business Focused Trade Mission to Italy, Spain, and Portugal, scheduled from May 15–20, 2022. The new application deadline is extended to March 25, 2022.
- Cybersecurity Business Development Mission to India, originally scheduled from May 2–5 is postponed to May 23–27, 2022. The new application deadline is extended to April 15, 2022.
- U.S.–UK Financial Innovation Partnership (FIP) trade mission, scheduled from June 27–29, 2022. The new application deadline is extended to April 15, 2022.

**SUPPLEMENTARY INFORMATION:** Amendments to Revise the Deadline for Submitting Applications.

### Background

#### Minority-Business Focused Trade Mission to Italy, Spain, and Portugal

The United States Department of Commerce, International Trade Administration, is amending the Notice published at 87 FR 2130 (January 13, 2022), regarding the deadline for submitting applications for ITA's planned Minority-Business Focused Trade Mission to Italy, Spain, and Portugal, scheduled from May 15–20, 2022. The new final deadline for applications has been extended to March 25, 2022. Applications may be accepted after that date if space remains and scheduling constraints permit. Interested U.S. companies and trade associations/organizations that have not already submitted an application are encouraged to do so. The U.S. Department of Commerce will review applications and make selection decisions on a rolling basis in accordance with the Notice published at 87 FR 2130 (January 13, 2022). The applicants selected will be notified as soon as possible.

### Contacts

*Project Lead*

Scott Pozil, Regional Senior Commercial Officer, Paris, France, +33 625278431, *Scott.Pozil@trade.gov,* Overall Lead.

Tanya Cole, Principal Commercial Officer, Milan, Italy, +39 340 495 3498, *Tanya.Cole@trade.gov.*

Linda Caruso, Deputy Senior Commercial Officer, Madrid, Spain, +34 670 020 110, *Linda.Caruso@trade.gov.*

Rafael Patino, Senior Commercial Officer, Lisbon, Portugal, +35 91 931 9781, *Rafael.Patino@trade.gov.*

Fernando Jimenez, Senior International Trade Specialist, U.S. Export Assistance Center, Phoenix, AZ, +1 480 737 1128, Domestic Point of Contact.

### Background

#### Cybersecurity Business Development Mission to India

The International Trade Administration has determined that to allow for optimal execution of recruitment and event scheduling for the mission, the dates of the mission are postponed from May 2–5, 2022 to May 23–27, 2022. As a result of the shift of the event dates the application deadline is also revised to April 15, 2022. Applications may be accepted after that date if space remains and scheduling

constraints permit. Interested U.S. companies and trade associations/organizations that have not already submitted an application are encouraged to do so. The U.S. Department of Commerce will review applications and make selection decisions on a rolling basis in accordance with the 85 FR 56578 (September 14, 2020). The applicants selected will be notified as soon as possible. The proposed schedule is updated as follows:

PROPOSED TIMETABLE

| | |
|---|---|
| Sunday, May 22, 2022 | Trade Mission Participants Arrive in New Delhi. |
| Monday, May 23, 2022 | • Welcome and Country Briefing.<br>• One-on-One business matchmaking appointments.<br>• Networking Lunch (No-Host).<br>• One-on-One business matchmaking appointments.<br>• Networking Reception at Deputy Chief of Mission residence (To Be Confirmed (TBC)). |
| Tuesday, May 24, 2022 | • Breakfast roundtable with Indian industry groups and associations (TBC).<br>• Cyber Security event to share best practices and promote participants.<br>• Networking Lunch (No-Host).<br>• Ministry and other Indian Government Briefings and Meetings.<br>• Transportation from Hotel to Airport Included.<br>• Travel to Mumbai. |
| Wednesday, May 25, 2022 | • Welcome Briefing, Mumbai and Maharashtra State.<br>• One-on-One business matchmaking appointments.<br>• Networking Lunch (No-Host).<br>• One-on-One business matchmaking appointments.<br>• Networking Reception at Consul General residence (TBC). |
| Thursday, May 26, 2022 | • Breakfast roundtable with Indian industry groups and associations (TBC).<br>• Cyber Security event to share best practices and promote participants.<br>• Networking Lunch (No-Host).<br>• Indian Government Briefings and Meetings.<br>• Travel to Airport (Not Included). |
| Friday, May 27, 2022 | • OPTIONAL STOP—Bangalore or Hyderabad.<br>• One-on-One business matchmaking appointments.<br>• Networking Lunch (No-Host).<br>• One-on-One business matchmaking appointments. |

**Contact**

Delia Valdivia, Senior International Trade Specialist, U.S. Commercial Service, Los Angeles, CA, 310–597–8218, *delia.valdivia@trade.gov.*

**Background**

**U.S.–UK Financial Innovation Partnership (FIP) Trade Mission**

The United States Department of Commerce, International Trade Administration, is amending the Notice published at 85 FR 56578 (September 14, 2020), regarding the deadline for submitting applications for ITA's planned U.S.–UK Financial Innovation Partnership (FIP) trade mission, scheduled from June 27–29, 2022. The new final deadline for applications has been extended to April 15, 2022. Applications may be accepted after that date if space remains and scheduling constraints permit. Interested U.S. companies and trade associations/organizations that have not already submitted an application are encouraged to do so. The U.S. Department of Commerce will review applications and make selection decisions on a comparative basis in accordance with the Notice published at 85 FR 56578 (September 14, 2020). The applicants selected will be notified as soon as possible.

**Contact**

Vincent Tran, International Trade Specialist, Office of Finance and Insurance Industries, Washington, DC, (202) 482–2967, *Vincent.Tran@trade.gov.*

**Gemal Brangman,**

*Director, ITA Events Management Task Force.*

[FR Doc. 2022–05675 Filed 3–16–22; 8:45 am]

BILLING CODE 3510–DR–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–952, A–583–844, C–570–953]**

### Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China and Taiwan: Continuation of Antidumping Duty Orders and Countervailing Duty Order

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** As a result of the determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC) that revocation of the antidumping duty (AD) orders on narrow woven ribbons with woven selvedge (NWRs) from the People's Republic of China (China) and Taiwan and the countervailing duty (CVD) order on NWRs from China would likely lead to continuation or recurrence of dumping and net countervailable subsidies, and material injury to an industry in the United States, Commerce is publishing this notice of continuation of the AD orders and the CVD order.

**DATES:** Applicable March 10, 2022.

**FOR FURTHER INFORMATION CONTACT:** Reginald Anadio or Thomas Martin, 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) 482–3166 or (202) 482–3936, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On September 1, 2010, Commerce published in the **Federal Register** the AD orders on NWRs from China and Taiwan,[1] and the CVD order on NWRs

[1] *See Notice of Antidumping Duty Orders: Narrow Woven Ribbons With Woven Selvedge from Taiwan and the People's Republic of China: Antidumping Duty Orders,* 75 FR 53632 (September 1, 2010), as amended in *Narrow Woven Ribbons With Woven Selvedge from Taiwan and the People's Republic of China: Amended Antidumping Duty Orders,* 75 FR

Continued

from China.[2] On August 2, 2021, Commerce published the notice of initiation of the sunset reviews of the *AD Orders* and the *CVD Order,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[3] Commerce conducted expedited (120-day) sunset reviews of these orders, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2).

As a result of its reviews, Commerce determined, pursuant to sections 751(c)(1) and 752(c) of the Act, that revocation of the *AD Orders* would likely lead to continuation or recurrence of dumping, and that revocation of the *CVD Order* would likely lead to continuation or recurrence of countervailable subsidies.[4] Commerce, therefore, notified the ITC of the magnitude of the dumping margins and net countervailable subsidy rates likely to prevail should the *AD Orders* and the *CVD Order* be revoked.[5] On March 10, 2022, the ITC published its determination, pursuant to section 751(c) of the Act, that revocation of the *AD Orders* and the *CVD Order* would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[6]

**Scope of the AD Orders and the CVD Order**

The merchandise covered by the scope of the *AD Orders* and *CVD Order* is narrow woven ribbons with woven selvedge, in any length, but with a width (measured at the narrowest span of the ribbon) less than or equal to 12 centimeters, composed of, in whole or in part, man-made fibers (whether artificial or synthetic, including but not limited to nylon, polyester, rayon, polypropylene, and polyethylene teraphthalate), metal threads and/or metalized yarns, or any combination thereof.

Narrow woven ribbons subject to the *AD Orders* and *CVD Order* may:

- Also include natural or other non-man-made fibers;
- Be of any color, style, pattern, or weave construction, including but not limited to single-faced satin, double-faced satin, grosgrain, sheer, taffeta, twill, jacquard, or a combination of two or more colors, styles, patterns, and/or weave constructions;
- Have been subjected to, or composed of materials that have been subjected to, various treatments, including but not limited to dyeing, printing, foil stamping, embossing, flocking, coating, and/or sizing;
- Have embellishments, including but not limited to appliqué, fringes, embroidery, buttons, glitter, sequins, laminates, and/or adhesive backing;
- Have wire and/or monofilament in, on, or along the longitudinal edges of the ribbon; Have ends of any shape or dimension, including but not limited to straight ends that are perpendicular to the longitudinal edges of the ribbon, tapered ends, flared ends or shaped ends, and the ends of such woven ribbons may or may not be hemmed;
- Have longitudinal edges that are straight or of any shape, and the longitudinal edges of such woven ribbon may or may not be parallel to each other;
- Consist of such ribbons affixed to like ribbon and/or cut-edge woven ribbon, a configuration also known as an ''ornamental trimming;''
- Be wound on spools; attached to a card; hanked (*i.e.,* coiled or bundled); packaged in boxes, trays or bags; or configured as skeins, balls, bateaus or folds; and/or
- Be included within a kit or set such as when packaged with other products, including but not limited to gift bags, gift boxes and/or other types of ribbon.

Narrow woven ribbons with woven selvedge subject to the *AD Orders* and *CVD Order* include all narrow woven fabrics, tapes, and labels that fall within this written description of the scope of the *AS Orders* and *CVD Order.*

Excluded from the scope of the *AD Orders* and *CVD Order* are the following:

(1) Formed bows composed of narrow woven ribbons with woven selvedge;

(2) ''pull-bows'' (*i.e.,* an assemblage of ribbons connected to one another, folded flat and equipped with a means to form such ribbons into the shape of a bow by pulling on a length of material affixed to such assemblage) composed of narrow woven ribbons;

(3) narrow woven ribbons comprised at least 20 percent by weight of elastomeric yarn (*i.e.,* filament yarn, including monofilament, of synthetic textile material, other than textured yarn, which does not break on being extended to three times its original length and which returns, after being extended to twice its original length, within a period of five minutes, to a length not greater than one and a half times its original length as defined in the (HTSUS, Section XI, Note 13) or rubber thread;

(4) narrow woven ribbons of a kind used for the manufacture of typewriter or printer ribbons;

(5) narrow woven labels and apparel tapes, cut-to-length or cut-to-shape, having a length (when measured across the longest edge-to-edge span) not exceeding eight centimeters;

(6) narrow woven ribbons with woven selvedge attached to and forming the handle of a gift bag;

(7) cut-edge narrow woven ribbons formed by cutting broad woven fabric into strips of ribbon, with or without treatments to prevent the longitudinal edges of the ribbon from fraying (such as by merrowing, lamination, sono-bonding, fusing, gumming or waxing), and with or without wire running lengthwise along the longitudinal edges of the ribbon;

(8) narrow woven ribbons comprised at least 85 percent by weight of threads having a denier of 225 or higher;

(9) narrow woven ribbons constructed from pile fabrics (*i.e.,* fabrics with a surface effect formed by tufts or loops of yarn that stand up from the body of the fabric);

(10) narrow woven ribbon affixed (including by tying) as a decorative detail to non-subject merchandise, such as a gift bag, gift box, gift tin, greeting card or plush toy, or affixed (including by tying) as a decorative detail to packaging containing non-subject merchandise;

(11) narrow woven ribbon that is (a) affixed to non-subject merchandise as a working component of such non-subject merchandise, such as where narrow woven ribbon comprises an apparel trimming, book marker, bag cinch, or part of an identity card holder, or (b) affixed (including by tying) to non-subject merchandise as a working component that holds or packages such non-subject merchandise or attaches packaging or labeling to such non-subject merchandise, such as a ''belly band'' around a pair of pajamas, a pair of socks or a blanket;

(12) narrow woven ribbon(s) comprising a belt attached to and imported with an item of wearing apparel, whether or not such belt is removable from such item of wearing apparel; and

56982 (September 17, 2010) (collectively, *AD Orders*).

[2] *See Narrow Woven Ribbons With Woven Selvedge from the People's Republic of China: Countervailing Duty Order,* 75 FR 53642 (September 1, 2010) (*CVD Order*).

[3] *See Initiation of Five-Year (Sunset) Review,* 86 FR 41439 (August 2, 2021).

[4] *See Narrow Woven Ribbons With Woven Selvedge from the People's Republic of China and Taiwan: Final Results of the Antidumping Duty Orders,* 86 FR 63335 (November 16, 2021); *see also Narrow Woven Ribbons With Woven Selvedge from the People's Republic of China: Final Results of the Expedited Second Five-Year Sunset Review of the Countervailing Duty Order,* 86 FR 68637 (December 3, 2021).

[5] *Id.*

[6] *See Narrow Woven Ribbons With Woven Selvedge from China and Taiwan, Inv. No. 701–TA–467 and 731–TA–1164–1165 (Second Review),* 87 FR 13755 (March 10, 2022).

(13) narrow woven ribbon(s) included with non-subject merchandise in kits, such as a holiday ornament craft kit or a scrapbook kit, in which the individual lengths of narrow woven ribbon(s) included in the kit are each no greater than eight inches, the aggregate amount of narrow woven ribbon(s) included in the kit does not exceed 48 linear inches, none of the narrow woven ribbon(s) included in the kit is on a spool, and the narrow woven ribbon(s) is only one of multiple items included in the kit.

The merchandise subject to the *AD Orders* and *CVD Order* is classifiable under the HTSUS statistical categories 5806.32.1020; 5806.32.1030; 5806.32.1050 and 5806.32.1060. Subject merchandise also may enter under subheadings 5806.31.00; 5806.32.20; 5806.39.20; 5806.39.30; 5808.90.00; 5810.91.00; 5810.99.90; 5903.90.10; 5903.90.25; 5907.00.60; and 5907.00.80 and under statistical categories 5806.32.1080; 5810.92.9080; 5903.90.3090; and 6307.90.9891. The HTSUS statistical categories and subheadings are provided for convenience and customs purposes; however, the written description of the merchandise covered by the *AD Orders and CVD Order* is dispositive.

**Continuation of the Orders**

As a result of the determinations by Commerce and the ITC that revocation of the *AD Orders* and the *CVD Order* would likely lead to continuation or recurrence of dumping, countervailable subsidies, and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), Commerce hereby orders the continuation of the *AD Orders* and the *CVD Order.* U.S. Customs and Border Protection will continue to collect AD and CVD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the orders will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next sunset review of the *AD Orders* and the *CVD Order* not later than 30 days prior to the fifth anniversary of the effective date of continuation.

**Notification to Interested Parties**

These five-year (sunset) reviews and this notice are in accordance with sections 751(c) and 751(d)(2) of the Act and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: March 10, 2022.

**Lisa W. Wang,**

*Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2022–05634 Filed 3–16–22; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[RTID 0648–XB892]**

## North Pacific Fishery Management Council; Public Meetings

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

**ACTION:** Notice of public meetings.

**SUMMARY:** The North Pacific Fishery Management Council (Council) and its advisory committees will meet April 4, 2022, through April 11, 2022, via hybrid conference.

**DATES:** The Council's Scientific and Statistical Committee (SSC) will begin at 8 a.m. in the Aleutian/Alaska room on Monday, April 4, 2022, and continue through Wednesday, April 6, 2022. The Council's Advisory Panel (AP) will begin at 8 a.m. in the Denali room on Tuesday, April 5, 2022, and continue through Friday, April 8, 2022. The Council will begin at 8 a.m. in the Aleutian/Alaska room on Wednesday, April 6, 2022, and continue through Monday, April 11, 2022. All times listed are Alaska Standard Time.

**ADDRESSES:**

*Meeting address:* The meetings will be a hybrid conference. The in-person component of the meeting will be held at the Anchorage Hilton Hotel, 500 W 3rd Ave., Anchorage, AK 99501, or join the meeting online through the links at *https://www.npfmc.org/upcoming-council-meetings.*

*Council address:* North Pacific Fishery Management Council, 1007 W 3rd Ave., Anchorage, AK 99501–2252; telephone: (907) 271–2809. Instructions for attending the meeting via webconference are given under *Connection Information*, below.

**FOR FURTHER INFORMATION CONTACT:** Diana Evans, Council staff; email: *diana.evans@noaa.gov.* For technical support please contact our administrative staff, email: *npfmc.admin@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Agenda**

*Monday, April 4, 2022, Through Wednesday, April 6, 2022*

The SSC agenda will include the following issues:

(1) Scallops—SAFE report, ABC/OFL, Plan Team report
(2) Central GOA rockfish adjustments—Initial Review
(3) Bering Sea Fishery Ecosystem Plan (BS FEP)—review progress: (a) FEP Team report, (b) Local Knowledge, Traditional Knowledge, Subsistence (LKTKS) Taskforce report, (c) Climate Change Taskforce (CCTF) report
(4) Alaska Climate Integrated Modeling (ACLIM) Update—Review
(5) Bering Sea Aleutian Islands (BSAI) Directive report—review

The agenda is subject to change, and the latest version will be posted at *https://meetings.npfmc.org/Meeting/Details/2855* prior to the meeting, along with meeting materials.

In addition to providing ongoing scientific advice for fishery management decisions, the SSC functions as the Council's primary peer review panel for scientific information, as described by the Magnuson-Stevens Act section 302(g)(1)(e), and the National Standard 2 guidelines (78 FR 43066).

The peer-review process is also deemed to satisfy the requirements of the Information Quality Act, including the OMB Peer Review Bulletin guidelines.

*Tuesday, April 5, 2022, Through Friday, April 8, 2022*

The Advisory Panel agenda will include the following issues:

(1) IFQ Omnibus Amendments—Final Action, Enforcement Committee Report
(2) RQE Fee Collection Program—Final Action
(3) Scallops—SAFE report, ABC/OFL, Plan Team report
(4) Central GOA rockfish adjustments—Initial Review
(5) Bristol Bay red king crab (BBRKC) Management, Biology, and Gear Impact
(6) Bering Sea Fishery Ecosystem Plan (BS FEP)—review progress: (a) FEP Team report, (b) Local Knowledge, Traditional Knowledge, Subsistence (LKTKS) Taskforce report, (c) Climate Change Taskforce (CCTF) report, (d) Ecosystem Committee report
(7) Alaska Climate Integrated Modeling (ACLIM) Update—Review
(8) Staff Tasking

*Wednesday, April 6, 2022, Through Monday, April 11, 2022*

The Council agenda will include the following issues. The Council may take appropriate action on any of the issues identified.

(1) All B Reports (Executive Director, Pacific Northwest Crab and Industry Advisory Committee, and Executive Committee, NMFS Management, NOAA GC, ADF&G, USCG, USFWS, NIOSH, Cooperative Reports)
(2) IFQ Omnibus Amendments—Final Action, Enforcement Committee Report
(3) RQE Fee Collection Program—Final Action
(4) Scallops—SAFE report, ABC/OFL, Plan Team report
(5) SSC report in full
(6) Central GOA rockfish adjustments—Initial Review
(7) Bristol Bay red king crab (BBRKC) Management, Biology, and Gear Impact
(8) Bering Sea Fishery Ecosystem Plan (BS FEP)—review progress: (a) FEP Team report, (b) Local Knowledge, Traditional Knowledge, Subsistence (LKTKS) Taskforce report, (c) Climate Change Taskforce (CCTF) report, (d) Ecosystem Committee report
(9) Alaska Climate Integrated Modeling (ACLIM) Update—Review
(6) Bering Sea Aleutian Islands (BSAI) Directive report—review
(10) Staff Tasking

**Connection Information**

You can attend the meeting online using a computer, tablet, or smart phone; or by phone only. Connection information will be posted online at: *https://www.npfmc.org/upcoming-council-meetings.* For technical support please contact our administrative staff, email: *npfmc.admin@noaa.gov.* If you are attending the meeting in-person, please refer to the COVID avoidance protocols on our website, *https://www.npfmc.org/upcoming-council-meetings/.*

**Public Comment**

Public comment letters will be accepted and should be submitted electronically through the links at *https://www.npfmc.org/upcoming-council-meetings.* The Council strongly encourages written public comment for this meeting, to avoid any potential for technical difficulties to compromise oral testimony. The written comment period is open from March 18, 2022 to April 1, 2022, and closes at 12 p.m., Alaska Time on April 1, 2022.

Although other non-emergency issues not on the agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Actions will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

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

Dated: March 14, 2022.

**Tracey L. Thompson,**

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

[FR Doc. 2022–05639 Filed 3–16–22; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[RTID 0648–XB745]**

## Permits; Foreign Fishing

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

**ACTION:** Notice of application for transshipment permit; request for comments.

**SUMMARY:** NMFS publishes for public review and comment information regarding a permit application for transshipment of farmed salmon from aquaculture operations in Maine waters to processing plants in Canada by Canadian flagged vessels. NMFS approved permits in January 2022 for four vessels for the entity requesting the permit, True North Salmon Limited Partnership and 697002 NB, Inc. The recent application is for one additional vessel to perform the same functions as the four previously permitted vessels. The application for a transshipment permit is submitted under provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This action is necessary for NMFS to make a determination that the permit application can be approved.

**DATES:** Written comments must be received by March 31, 2022.

**ADDRESSES:** Written comments on this action, identified by 'RTID 0648–XB745', should be sent to Kent Laborde in the NMFS Office of International Affairs and Seafood Inspection by email at *kent.laborde@noaa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Kent Laborde at (301) 427–8364 or by email at *kent.laborde@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 204(d) of the Magnuson-Stevens Act (16 U.S.C. 1824(d)) authorizes the Secretary of Commerce (Secretary) to issue a transshipment permit authorizing a vessel other than a vessel of the United States to engage in fishing consisting solely of transporting fish or fish products at sea from a point within the United States Exclusive Economic Zone (EEZ) or, with the concurrence of a state, within the boundaries of that state, to a point outside the United States.

Section 204(d)(3)(D) of the Magnuson-Stevens Act provides that an application to transship from U.S. waters to another country using non-U.S. vessels may not be approved until the Secretary determines that no owner or operator of a U.S. vessel with adequate capacity to perform the transportation for which the application is submitted has indicated an interest in performing the transportation at fair and reasonable rates. NMFS received no public comment on its previous notice (86 FR 72579, December 22, 2021) regarding the four Canadian flagged vessels for which NMFS issued transshipment permits in January, 2022. Therefore, NMFS maintains its prior conclusion that no U.S. vessels have an interest in performing the transport. NMFS is publishing this notice to inform the public that one additional vessel for the aforementioned entity will be permitted to perform the activities described below.

**Summary of Application**

NMFS received an application from True North Salmon Limited Partnership and 697002 NB, Inc, requesting authorization to transfer salmon from United States farm pens in Maine waters to one Canadian vessel for the purpose of transporting the salmon to Black's Harbour, Canada for processing. This vessel would be in addition to the four vessels permitted in January of 2022 to perform the same activities. The transshipment operations will occur within the boundaries of the State of Maine, and within 12 nautical miles (22.22 kilometers) from Maine's seaward boundary.

Dated: March 11, 2022.

**Alexa Cole,**

*Director, Office for International Affairs and Seafood Inspection, National Marine Fisheries Service.*

[FR Doc. 2022–05598 Filed 3–16–22; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XB889]**

### Mid-Atlantic Fishery Management Council (MAFMC); Public Meetings

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

**ACTION:** Notice of public meetings.

**SUMMARY:** The Mid-Atlantic Fishery Management Council (Council) will hold public meetings of the Council.

**DATES:** The meetings will be held Tuesday, April 5 through Thursday, April 7, 2022. For agenda details, see **SUPPLEMENTARY INFORMATION.**

**ADDRESSES:** This meeting will be conducted in a hybrid format, with options for both in person and webinar participation. The meeting will be held at the Seaview, Dolce Hotel, 401 South New York Road, Galloway, NJ 08205; telephone: (609) 652–1800. Webinar registration details will be available on the Council's website at *https://www.mafmc.org/briefing/april-2022.*

*Council address:* Mid-Atlantic Fishery Management Council, 800 N State St., Suite 201, Dover, DE 19901; telephone: (302) 674–2331; *www.mafmc.org.*

**FOR FURTHER INFORMATION CONTACT:** Christopher M. Moore, Ph.D. Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 526–5255. The Council's website, *www.mafmc.org* also has details on the meeting location, proposed agenda, webinar listen-in access, and briefing materials.

**SUPPLEMENTARY INFORMATION:** The following items are on the agenda, although agenda items may be addressed out of order (changes will be noted on the Council's website when possible.)

**Tuesday, April 5, 2022**

*2022 Mid-Atlantic State of the Ecosystem & EAFM Risk Assessment Update Report* (Dr. Sarah Gaichas, NEFSC)
Review and provide feedback
*Climate Change Scenario Planning*
Update on recent webinars and plans for scenario creation workshop
*Surfclam Species Diagnostics and Population Connectivity Estimates to Inform Management* (Dr. Matthew Hare and Hannah Hurtung, Cornell University)
*Offshore Wind Energy Updates*
Update on Ocean Wind project
Update on Atlantic Shore wind project
Update from BOEM

**Wednesday, April 6, 2022**

*2023 Golden Tilefish Specifications*
Review SSC, Advisory Panel, Monitoring Committee, and staff recommendations for 2023 specifications
Recommend changes to 2023 specifications if necessary
*2023 Blueline Tilefish Specifications*
Review SSC, Advisory Panel, Monitoring Committee, and staff recommendations for 2023 specifications
Recommend changes to 2023 specifications if necessary
*Sea Turtle Bycatch in MAFMC Trawl Fisheries*
Review results from public outreach and provide feedback to NMFS
*2022 Illex Specifications*
Review SSC, Advisory Panel, Monitoring Committee, and staff recommendations for 2022 specifications
Recommend changes to 2022 specifications if necessary
*Atlantic Mackerel Rebuilding 2.0 Amendment: Approve Alternatives for Public Hearing Document*
Review Committee recommendations and approve alternatives for public hearing document

**Thursday, April 7, 2022**

Business Session
Committee Reports (SSC, EOP Committee/AP, RSC–RSA, Executive Committee); Executive Director's Report; Organization Reports; and Liaison Reports
*Other Business and General Public Comment*

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c).

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Shelley Spedden, (302) 526–5251, at least 5 days prior to the meeting date.

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

Dated: March 14, 2022.

**Tracey L. Thompson,**

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

[FR Doc. 2022–05638 Filed 3–16–22; 8:45 am]

**BILLING CODE 3510–22–P**

## CONSUMER PRODUCT SAFETY COMMISSION

### Commission Agenda and Priorities; Notice of Hearing

**AGENCY:** U.S. Consumer Product Safety Commission.

**ACTION:** Notice of public hearing.

**SUMMARY:** The U.S. Consumer Product Safety Commission (Commission or CPSC) will conduct a public hearing to receive views from all interested parties about the Commission's agenda and priorities for fiscal year 2023, which begins on October 1, 2022, and for fiscal year 2024, which begins on October 1, 2023. We invite members of the public to participate. Written comments and oral presentations concerning the Commission's agenda and priorities for fiscal years 2023 and 2024 will become part of the public record. Due to the COVID–19 pandemic, this year's hearing will be held virtually as a CPSC webinar meeting. All attendees should preregister for the webinar. To preregister for the webinar, please visit *https://attendee.gotowebinar.com/register/5493266066878024208* and fill in the information. After registering, you will receive a confirmation email containing information about joining the webinar. Detailed instructions for the hearing participants and other interested parties will be made available on the CPSC website on the public calendar: *https://www.cpsc.gov/Newsroom/Public-Calendar.*

**DATES:** The hearing will begin via webinar at 10 a.m. on April 27, 2022 and will conclude the same day.

**ADDRESSES:** Due to the COVID–19 pandemic, this year's hearing will be held virtually as a webinar meeting at *https://attendee.gotowebinar.com/register/5493266066878024208.* Requests to make oral presentations, and texts of oral presentations and

written comments should be captioned, ''Agenda and Priorities FY 2023 and/or 2024,'' and sent by electronic mail (email) to: *cpsc-os@cpsc.gov.* Requests to make oral presentations and the written text of any oral presentations must be received by the Division of the Secretariat not later than 5 p.m. Eastern Daylight Time (EDT) on March 30, 2022. The Commission will accept written comments as well. These also must be received by the Division of the Secretariat not later than 5 p.m. EDT on March 30, 2022.

**FOR FURTHER INFORMATION CONTACT:** For information about the hearing, or to request an opportunity to make an oral presentation, please send an email to Alberta E. Mills, Division of the Secretariat, U.S. Consumer Product Safety Commission at *cpsc-os@cpsc.gov.* An electronic copy of the CPSC's Strategic Plan can be found at: *www.cpsc.gov/about-cpsc/agency-reports/performance-and-budget.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

Section 4(j) of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2053(j)) requires the Commission to establish an agenda for action under the laws the Commission administers, and to the extent feasible, select priorities for action at least 30 days before the beginning of each fiscal year. Section 4(j) of the CPSA provides further that before establishing its agenda and priorities, the Commission shall conduct a public hearing and provide an opportunity for the submission of comments.[1]

## II. Registration for CPSC Webinar

The public hearing will be held on April 27, 2022, at 10:00 a.m. EDT via CPSC Webinar. All attendees should pre-register for the Webinar. To pre-register for the Webinar, please visit *https://attendee.gotowebinar.com/register/5493266066878024208* and fill in the information. After registering you will receive a confirmation email containing information about joining the webinar. Detailed instructions for the hearing participants and other interested parties will be made available on the CPSC website on the public calendar: *https://www.cpsc.gov/Newsroom/Public-Calendar.*

## III. Oral Presentations and Submission of Written Comments

The Commission is preparing the agency's fiscal year 2023 Operating Plan and fiscal year 2024 Congressional Budget Request. Fiscal year 2023 begins on October 1, 2022, and fiscal year 2024 begins on October 1, 2023. Through this notice, the Commission invites the public to comment on the Commission's agenda and priorities that will be established in the fiscal year 2023 Operating Plan and the fiscal year 2024 Congressional Budget.

Persons who desire to make oral presentations at the hearing on April 27, 2022 should send an email to Alberta E. Mills, Division of the Secretariat, U.S. Consumer Product Safety Commission at *cpsc-os@cpsc.gov* not later than 5 p.m. EDT on March 30, 2022. Texts of the oral presentation should be captioned ''Agenda and Priorities FY 2023, and/or 2024'' and must be received not later than 5 p.m. EDT on March 30, 2022. Oral presentations should be limited to approximately 10 minutes. The Commission reserves the right to impose further time limitations on all presentations and other restrictions.

If you do not want to make an oral presentation, but would like to provide written comments, you may do so. Written comments should be captioned, ''Agenda and Priorities FY 2023 and/or 2024,'' and sent to Alberta E. Mills, Division of the Secretariat, U.S. Consumer Product Safety Commission at *cpsc-os@cpsc.gov* not later than 5 p.m. EDT on March 30, 2022. There is no length restriction for written comments.

**Alberta E. Mills,**

*Secretary, U.S. Consumer Product Safety Commission.*

[FR Doc. 2022–05637 Filed 3–16–22; 8:45 am]

**BILLING CODE 6355–01–P**

[1] The Commission voted 4–0 to approve this notice.

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# DEPARTMENT OF EDUCATION

## Report to Congress Identifying all Federal Financial Assistance Programs for Infrastructure Administered by the Department of Education

**AGENCY:** Office of Finance and Operations, Department of Education.

**ACTION:** Notice.

**SUMMARY:** The Department of Education (Department) publishes a report to Congress, dated March 2022, identifying its Federal financial assistance programs (programs) that allow for grant funds to be used for infrastructure projects, and that also identifies those programs that are inconsistent with the Infrastructure Investment and Jobs Act (*i.e.,* they do not require that all of the iron, steel, manufactured products, and construction materials used in the project be produced in the United States; do not issue waivers to this requirement; or are subject to waivers of general applicability).

**FOR FURTHER INFORMATION CONTACT:** Phillip Juengst, U.S. Department of Education, Office of Acquisition and Grants Administration, 400 Maryland Avenue SW, Room 5B242, Washington, DC 20202. Telephone: (202) 453–6396. Email: *Phillip.Juengst@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service, toll free, at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:** The Department publishes this notice containing a report to Congress, dated March 2022, identifying its programs that allow for grant funds to be used for infrastructure projects, and that also identifies those programs that are inconsistent with section 70914 of the Infrastructure Investment and Jobs Act (*i.e.,* they do not require that all of the iron, steel, manufactured products, and construction materials used in the project be produced in the United States; do not issue waivers to this requirement; or are subject to waivers of general applicability). The report to Congress is in the Appendix of this notice.

*Accessible Format:* On request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site, you can view this document, as well as all other documents of this Department, published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit

your search to documents published by the Department.

**Denise L. Carter,**

*Acting Assistant Secretary, Office of Finance and Operations, and Delegated To Perform the Functions and Duties of the Chief Financial Officer.*

## Appendix—Report to Congress Identifying all Federal Financial Assistance Programs for Infrastructure Administered by the Department of Education

*March 2022*

### Preface

The *Report to Congress Identifying all Federal Financial Assistance Programs for Infrastructure Administered by the U.S. Department of Education* identifies the Department of Education's (Department's) Federal financial assistance programs (programs) that allow for grant funds to be used for infrastructure projects, and identifies those programs that are inconsistent with section 70914 of the *Infrastructure Investment and Jobs Act Pub. L. 117–58* (that is, they do not require that all of the iron, steel, manufactured products, and construction materials used in the project be produced in the United States; do not issue waivers to this requirement; or are subject to waivers of general applicability).

The report consists of a Summary section that addresses whether the Department's programs identified in the report include domestic content procurement preferences and provides details on any applicable domestic content procurement preference. The Summary section also addresses whether programs have waiver provisions to these preferences in place or are subject to waivers of general applicability. The report also includes Exhibits listing the Department programs that allow for grant funds to be used for infrastructure projects. The Exhibits include the Department's program office names, the program titles, the Assistance Listing Numbers (ALNs); the award types; and the type of infrastructure activity permitted under the programs (that is, construction and/or broadband infrastructure activities).

### Section I. Summary

This report is submitted in accordance with section 70913 of the *Infrastructure Investment and Jobs Act Public Law 117–58* (the Act or IIJA), which requires Federal agencies to submit to Congress and the Office of Management and Budget (OMB), and publish in the **Federal Register**, a report listing all Federal financial assistance programs for infrastructure administered by Federal agencies. The report must identify those programs that do not have an established domestic content procurement preference for which Federal financial assistance may not be obligated unless: (1) All iron and steel used in the project will be produced in the United States; (2) the manufactured products used in the project will be produced in the United States; or (3) the construction materials used in the project will be produced in the United States. These requirements are defined and established in sections 70912(2) and 70914 of the Act. Additionally, the report must identify which of those programs that have established domestic content procurement preferences in place also allow waivers to these preferences or allow for waivers of general applicability to be issued (see section 70914(b)(c) and (d) of the Act).

The Department's financial assistance programs provide services from early intervention services to employment training programs. Many of these programs provide grants to states or local educational agencies and support students and families from vulnerable populations, including children with disabilities and those from disadvantaged backgrounds. These programs also provide grants and loans to postsecondary students and facilitate research that examines ways that states, schools, districts, and postsecondary institutions can improve America's education system. Generally, grants under these programs do not engage in infrastructure; specifically, they do not acquire real property or engage in construction activities, in accordance with prohibitions in the Education Department General Administrative Regulations sections *75.533* and *76.533.*

Although these programs are generally not focused on funding infrastructure, a number of the Department's programs do authorize infrastructure projects in their statutes or regulations. Three Department program offices, the Office of Elementary and Secondary Education (OESE), the Office of Postsecondary Education (OPE), and the Office of Special Education and Rehabilitative Services (OSERS), administer programs that could allow for infrastructure projects primarily in accordance with subparagraph (K) of the ''infrastructure'' definition established in section 70912(5) of the Act. A smaller number of programs allow infrastructure projects under subparagraph (J). A total of 38 programs are identified within this report. Section 70912(5) of the Act provides that:

(5) *INFRASTRUCTURE.* The term ''infrastructure'' includes, at a minimum, the structures, facilities, and equipment for, in the United States—

(A) roads, highways, and bridges;

(B) public transportation;

(C) dams, ports, harbors, and other maritime facilities;

(D) intercity passenger and freight railroads;

(E) freight and intermodal facilities;

(F) airports;

(G) water-systems, including drinking water and wastewater systems;

(H) electrical transmission facilities and systems;

(I) utilities;

(J) broadband infrastructure; and

(K) buildings and real property.

While the identified programs may be considered infrastructure programs in accordance with subparagraphs (J) and (K) of this definition, generally their focus is not primarily infrastructure. Most projects awarded Federal financial assistance under these programs focus on other allowable and required activities and do not engage in infrastructure activities.

Although the identified programs do not have domestic content procurement preferences established in program statute and regulations, and thus do not provide for waivers of such requirements, the Department supports the administration's efforts of strengthening the use of Federal financial assistance to support American manufacturing by ensuring that the following as established in *2 CFR 200.322* is applicable to projects funded under the identified programs:

(a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

(1) ''Produced in the United States'' means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) ''Manufactured products'' means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

By referencing *2 CFR 200.322* within the Grant Award Notifications it issues to grantees under these programs, the Department requires compliance with *2 CFR 200.322.*

This report reflects the Department's initial analysis of programs and associated Buy America requirements. After OMB develops and releases implementation guidance subject to section 70915 of the Act, the Department will work closely with OMB to ensure that appropriate agency programs that are subject to Build America, Buy America requirements are administered with those requirements in place. This initial analysis is based on the Department's current understanding of information contained in the law and information received to date from OMB regarding the implementation of IIJA section 70915. The Department's intention was to be inclusive of all programs that could potentially fall under these requirements, but this initial analysis is subject to change upon further evaluation by the Department and new guidance from OMB.

### Section II. Exhibits

For each reported program, the Exhibits that follow identify the program office names, the program titles, the ALNs, the award types; and the type of infrastructure activity permitted under the programs (that is, construction and/or broadband infrastructure activities).

EXHIBIT 1—OESE

| Program title | ALN | Award type |
|---|---|---|
| Impact Aid Program, Discretionary Construction Program | 84.041C | Discretionary. |
| Per Pupil Facilities Program | 84.282D | Discretionary. |
| Charter Schools Program Grants for Credit Enhancement for Charter School Facilities | 84.354A | Discretionary. |
| Alaska Native Education | 84.356A | Discretionary. |
| Education of Native Hawaiians | 84.362A | Discretionary. |
| Education Stabilization Fund Allocation for Outlying Areas | 84.425A | Formula. |
| Governors Emergency Education Relief Fund | 84.425C | Formula. |
| Elementary and Secondary School Emergency Relief Fund | 84.425D | Formula. |
| Governors Education Stabilization Fund Allocation for Outlying Areas | 84.425H | Formula. |
| American Rescue Plan—Elementary and Secondary Schools Emergency Relief Fund (ARP–ESSER) | 84.425U | Formula. |
| American Rescue Plan—Outlying Areas SEA (ARP–OA SEA) | 84.425X | Formula. |

EXHIBIT 2—OPE

| Program title | ALN | Award type |
|---|---|---|
| Strengthening Institutions Program (SIP) | 84.031A | Discretionary. |
| Historically Black Colleges and Universities Program | 84.031B | Discretionary. |
| American Indian Tribally Controlled Colleges and Universities (Part F) | 84.031D | Discretionary. |
| Historically Black Colleges and Universities Program (FUTURE Act) | 84.031E | Discretionary. |
| Strengthening Institutions Program (SIP) | 84.031F | Discretionary. |
| Strengthening Historically Black Graduate Institutions Program | 84.031K | Discretionary. |
| Promoting Postbaccalaureate Opportunities for Hispanic Americans Program | 84.031M | Discretionary. |
| Predominantly Black Institutions Program—Formula Grants | 84.031P | Discretionary. |
| Developing Hispanic-Serving Institutions Program | 84.031S | Discretionary. |
| American Indian Tribally Controlled Colleges and Universities | 84.031T | Discretionary. |
| Asian American and Native American Pacific Islander-Serving Institutions Program | 84.382B | Discretionary. |
| Historically Black Colleges and Universities (Graduate) | 84.382G | Discretionary. |
| Howard University (Academic) | 84.915A | Formula. |
| Howard University (Hospital) | 84.915B | Formula. |

EXHIBIT 3—OSERS

| Program title | ALN | Award type |
|---|---|---|
| State Grants—B (611) | 84.027A | Formula. |
| Individuals with Disabilities Education Act/American Rescue Plan Act of 2021 (ARP) | 84.027X | Formula. |
| State Vocational Rehabilitation Services (VR) | 84.126A | Formula. |
| STATE GRANT—B PRESCHOOL (619) | 84.173A | Formula. |
| Individuals with Disabilities Education Act/American Rescue Plan Act of 2021 (ARP) | 84.173X | Formula. |
| INFANT & TODDLERS/FAMILIES (PART C) | 84.181A | Formula. |
| Individuals with Disabilities Education Act/American Rescue Plan Act of 2021 (ARP) | 84.181X | Formula. |
| Helen Keller National Center | 84.904A | Discretionary. |
| National Technical Institute for the Deaf (NTID) | 84.908A | Formula. |
| NTID Endowment Program | 84.908B | Formula. |
| NTID COVID | 84.908D | Formula. |
| Gallaudet University | 84.910A | Formula. |
| Gallaudet COVID Relief | 84.910B | Formula. |

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access. *www.ed.gov*

[FR Doc. 2022–05658 Filed 3–16–22; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

**[Docket No. ED–2021–SCC–0137]**

## Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Project To Support America's Families and Educators (Project SAFE) Grant Application

**AGENCY:** Office of Elementary and Secondary Education (OESE), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension without change of a currently approved collection.

**DATES:** Interested persons are invited to submit comments on or before April 18, 2022.

**ADDRESSES:** Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment''

checkbox. Comments may also be sent to *ICDocketmgr@ed.gov.*

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Amy Banks, 202–453–6704.

**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:* Project to Support America's Families and Educators (Project SAFE) Grant Application.

*OMB Control Number:* 1810–0763.

*Type of Review:* An extension without change of a currently approved collection.

*Respondents/Affected Public:* State, Local, and Tribal Governments.

*Total Estimated Number of Annual Responses:* 13.

*Total Estimated Number of Annual Burden Hours:* 26.

*Abstract:* This is a request for an extension without change of an existing information collection, 1810–0763. The Project Support America's Families and Educators (SAFE) grant program is intended to improve students' safety and well-being by providing resources to local educational agencies (LEAs) that adopt and implement strategies to prevent the spread of the Novel Coronavirus Disease 2019 (COVID–19) consistent with guidance from the Centers for Disease Control and Prevention (CDC) and that are financially penalized for doing so by their State educational agency (SEA) or other State entity. Under the Project SAFE grant program, applications will be submitted on a rolling basis before the end of fiscal year 2021 and throughout fiscal year 2022. Upon receipt of the applications, the intent is to quickly review and make approval decisions of awards as quickly as possible to make the award the funds before the end of this fiscal year.

Dated: March 14, 2022.

**Kate Mullan,**

*PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.*

[FR Doc. 2022–05660 Filed 3–16–22; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Applications for New Awards; Fulbright-Hays Faculty Research Abroad (FRA) Fellowship Program

**AGENCY:** Office of Postsecondary Education, Department of Education.

**ACTION:** Notice.

**SUMMARY:** The Department of Education (Department) is issuing a notice inviting applications (NIA) for fiscal year (FY) 2022 for the Fulbright-Hays Faculty Research Abroad (FRA) Fellowship Program, Assistance Listing Number 84.019A. This notice relates to the approved information collection under OMB control number 1840–0005.

**DATES:**

*Applications Available:* May 9, 2022.

*Deadline for Transmittal of Applications:* July 13, 2022.

Preapplication Webinar and Applicant Resources: The Department will hold a preapplication meeting via webinar for prospective applicants. Detailed information regarding this webinar will be provided on the International and Foreign Language Education's website at *www2.ed.gov/about/offices/list/ope/iegps/index.html.* For additional information, especially for new potential grantees unfamiliar with grantmaking at the Department, please consult our funding basics resources at *https://www2.ed.gov/fund/grant/about/grantmaking/index.html.*

**ADDRESSES:** The addresses pertinent to this competition—including the addresses for obtaining and submitting an application—can be found under **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Dr. Pamela J. Maimer, U.S. Department of Education, 400 Maryland Avenue SW, Room 258–24, Washington, DC 20202. Telephone: (202) 453–6891. *Email: FRA@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 Fulbright-Hays FRA Fellowship Program provides grants to colleges and universities to fund faculty members seeking to improve their area studies and foreign language skills by conducting research abroad. The program is designed to contribute to the development and improvement of the study of modern foreign languages and area studies in the United States.

*Priorities:* This notice contains one absolute priority and three competitive preference priorities. In accordance with 34 CFR 75.105(b)(2)(ii), the absolute priority and Competitive Preference Priorities 1 and 2 are from the regulations for this program (34 CFR 663.21(d)). Competitive Preference Priority 3 is from the Secretary's Notice of Final Supplemental Priorities and Definitions for Discretionary Grant Programs, published in the **Federal Register** on December 10, 2021 (86 FR 70612) (Supplemental Priorities).

*Absolute 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 absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

*Specific Geographic Regions of the World*

A research project that focuses on one or more of the following geographic areas: Africa, East Asia, Southeast Asia and the Pacific Islands, South Asia, the Near East, Central and Eastern Europe and Eurasia, and the Western Hemisphere (excluding the United States and its territories).

*Competitive Preference Priorities:* For FY 2022, and any subsequent year in which we make awards from the list of unfunded applications from this competition, the following priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award an additional 1 point to an application that meets Competitive Preference Priority 1; an additional 2 points to an application that meets Competitive Preference

Priority 2; and an additional 2 points to an application that meets Competitive Preference Priority 3, for a maximum of 5 additional points.

These priorities are:

*Competitive Preference Priority 1—Focus on Less Commonly Taught Languages (1 point).*

A research project that focuses on any modern foreign language except French, German, or Spanish.

*Competitive Preference Priority 2—Thematic Focus on Academic Fields (2 points).*

A research project conducted in modern foreign languages and area studies with an academic focus on any of the following academic fields: Science (including climate change), technology, engineering (including infrastructure studies), mathematics, computer science, education (comparative or international), international development, political science, public health (including epidemiology), or economics.

*Competitive Preference Priority 3—Promoting Equity in Student Access to Educational Resources and Opportunities (2 points).*

Projects will be implemented by one or more of the following entities:

(1) Community colleges (as defined in this notice).

(2) Historically Black colleges and universities (as defined in this notice).

(3) Tribal colleges and universities (as defined in this notice).

(4) Minority-serving institutions (as defined in this notice).

*Definitions:* The following definitions are from the Supplemental Priorities.

*Community college* means ''junior or community college'' as defined in section 312(f) of the Higher Education Act of 1965, as amended (HEA).

*Historically Black colleges and universities* means colleges and universities that meet the criteria set out in 34 CFR 608.2.

*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 Higher Education Act of 1965 (HEA).

*Tribal college or university* has the meaning ascribed it in section 316(b)(3) of the HEA.

*Program Authority:* 22 U.S.C. 2452(b)(6).

*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, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations for this program in 34 CFR part 663.21. (e) The Supplemental Priorities.

*Note:* The open licensing requirement in 2 CFR 3474.20 does not apply to this program.

## II. Award Information

*Type of Award:* Discretionary grants redistributed as fellowships to individual beneficiaries.

*Note:* The Administration has requested $8,811,000 for multiple activities under the Fulbright-Hays Overseas program for FY 2022. The actual level of funding for this activity, 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 subsequent years from the list of unfunded applications from this competition.

*Estimated Available Funding:* $400,000.

*Estimated Range of Awards:* $25,000–$40,000.

*Estimated Average Size of Awards:* $40,000.

*Estimated Number of Awards:* 10.

*Note:* The Department is not bound by any estimates in this notice.

*Project Period:* The institutional project period is 18 months. Faculty may request funding for a period of no less than 3 months and no more than 12 months.

## III. Eligibility Information

1. *Eligible Applicants:* IHEs. Eligible faculty members at the IHE submit their individual research narratives and forms to their home IHE representative, who compiles the faculty submissions and incorporates them into the grant application that the institution submits electronically to the Department through the G5 system.

2. a. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

b. *Administrative Cost Limitation:* In accordance with 34 CFR 663.30(d), the Secretary awards the institution an administrative allowance of $100 for each fellowship listed in the grant award document.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

## IV. Application and Submission Information

1. *Address to Request Application Package:* Both IHEs and faculty member applicants can obtain an application package via the internet or from the Education Publications Center (ED Pubs). To obtain a copy via the internet, use the following address: *www.G5.gov.* To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a TDD or a TTY, call toll free: 1–877–576–7734.

You can contact ED Pubs at its website, *www.EDPubs.gov,* or at its email address, *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this program as follows: Assistance Listing Number 84.019A.

2. *Submission Dates and Times:* Submit applications for grants under the program electronically using *G5.gov.* For information (including dates and times) about how to submit your application electronically, please refer to *Other Submission Requirements below.*

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT**. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

3. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

4. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

5. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria

that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 10 pages and the bibliography to no more than two 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, including 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 the cover sheet; budget section, including the narrative budget justification; the assurance and certifications; or the one-page abstract, the resumes, the biography, or letters of support. However, the recommended page limit does apply to all of the application narrative.

6. *DUNS/UEI, Taxpayer Identification Number, and System for Award Management:* To do business with the Department, you must—

a. Have a DUNS/UEI number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS/UEI number and TIN with the System for Award Management (SAM), the Government's primary registrant database;

c. Provide your DUNS/UEI number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

Until April 3, 2022, you can obtain a DUNS number from Dun and Bradstreet at the following website: *http://fedgov.dnb.com/webform.* A DUNS number can be created within one to two business days. Beginning on April 4, 2022, we will transition to using UEI numbers instead of DUNS numbers. If you are not already registered in SAM at that time, you can obtain a UEI directly through the SAM system.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2 to 5 weeks for your TIN to become active.

The SAM registration process can take approximately 7 business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data you enter into the SAM database. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS/UEI number and TIN. We strongly recommend that you register early.

*Note:* Once your SAM registration is active, it may be 24 to 48 hours before you can submit an application through G5.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS/UEI number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov.* To further assist you with obtaining and registering your DUNS/UEI number and TIN in SAM or updating your existing SAM account, we have prepared a *SAM.gov* Tip Sheet, which you can find at: *www2.ed.gov/fund/grant/apply/sam-faqs.html.*

7. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless an IHE qualifies for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Submit applications for grants under the Fulbright-Hays FRA Fellowship Program, Assistance Listing Number 84.019A, electronically using the G5 system, accessible through the Department's G5 site at: *www.G5.gov.* While completing the electronic application, both the IHE and the faculty applicant will be entering data online that will be saved into a database. Neither the IHE nor the student applicant may email an electronic copy of a grant application to us.

Please note the following:

• The process for submitting applications electronically under the Fulbright-Hays FRA Fellowship Program requires several steps. The following is a brief overview of the process; however, all applicants should review the detailed description of the application process in the application package. In summary, the major steps are—

(1) IHEs must email the name of the institution and the full name and email address of the project director to *FRA@ed.gov.* We suggest that applicant IHEs submit this information no later than 2 weeks prior to the application deadline date to ensure that they obtain access to G5 well before that date;

(2) Faculty applicants must complete their individual applications and submit them to their home IHE project director using G5;

(3) Persons providing references for individual faculty applicants must complete and submit reference forms to the IHE's project director, using G5; and

(4) The IHE's project director must officially submit the IHE's application, including all eligible individual faculty applications, reference forms, and other required forms, using G5.

• The IHE must complete the electronic submission of the grant application by 4:30:00 p.m., Eastern Time, on the application deadline date. G5 will not accept an application for this competition after 4:30:00 p.m., Eastern Time, on the application deadline date. Therefore, we strongly recommend that both the IHE and the faculty applicant begin the application process early and not wait until close to the application deadline date to prepare their applications. The table below shows the days and times that the G5 website will be available.

G5—HOURS OF OPERATION IN EASTERN TIME

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|---|---|---|---|---|---|---|
| Unavailable from 09:00 p.m.–11:59 p.m. | Unavailable from 12:00 a.m.–06:00 a.m. | Available 24 hours | Unavailable from 09:00 p.m.–11:59 p.m. | Unavailable from 12:00 a.m.–06:00 a.m. | Available 24 hours | Available 24 hours. |

• Faculty applicants will not receive additional point value because they submit their application in electronic format, nor will we penalize the IHE or the faculty applicant if the applicant qualifies for an exception to the

electronic submission requirement, as described elsewhere in this section, and submits an application in paper format.

• IHEs must upload all application documents electronically, including the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• Both IHEs and faculty applicants must upload the narrative sections and all other attachments to their application as files in a read-only flattened Portable Document Format (PDF), meaning any fillable documents must be saved and submitted as nonfillable PDF files. Do not upload any interactive or fillable PDF files. If you upload a file type other than a read-only, nonmodifiable PDF (*e.g.,* Word, Excel, WordPerfect) or submit a password-protected file, we will be unable to review that material. Please note that this will likely result in your application not being considered for funding. The Department will not convert material from other formats to PDF.

• Prior to submitting your electronic application, please redact any personally identifiable information (SSN, birthdate, etc.). You may wish to print a copy of your application package for your records.

• After the individual faculty applicant electronically submits their application to the IHE, the faculty applicant will receive an automatic acknowledgment from the G5 system. After the person submits a reference electronically to the Department on behalf of a faculty applicant, they will receive an electronic confirmation from the G5 system. After the applicant IHE submits its application, including all eligible individual faculty applications to the Department, the applicant IHE will also receive an automated acknowledgment from G5 that will include a unique PR/Award number for the IHE's application.

• Within 3 working days after submitting its electronic application, the applicant IHE must—

(1) Print the SF 424 from G5;

(2) Have the Authorizing Representative sign this form;

(3) Place the PR/Award number in the upper right-hand corner of the hard copy signature page of the SF 424; and

(4) Email the signed SF 424 to the Application Control Center at *FRA@ed.gov.*

• We may request that you provide hard copies with original signatures for other forms in the application at a later date.

*Application Deadline Date Extension in Case of System Unavailability:* If an IHE is prevented from electronically submitting its application on the application deadline date because the G5 system is unavailable, we will grant the IHE an extension until 4:30 p.m., Eastern Time, the following business day to enable the IHE to transmit its application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) The IHE is a registered user of the G5 system and the IHE has initiated an electronic application for this competition; and

(2) (a) G5 is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Eastern Time, on the application deadline date; or

(b) G5 is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Eastern Time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting the IHE an extension. To request a time extension due to G5 unavailability or to confirm our acknowledgment of G5's unavailability, an IHE may contact either (1) the person listed under **FOR FURTHER INFORMATION CONTACT** or (2) the e-Grants help desk at 1–888–336–8930. If G5 is unavailable due to technical problems with the system and the application deadline is extended, an email will be sent to all registered users who have initiated a G5 application. The deadline date extensions described in this section apply only to the unavailability of the G5 system.

b. *Submission of Paper Applications.* We discourage paper applications, but if electronic submission is not possible (*e.g.,* you do not have access to the internet), (1) you must provide a prior written notification that you intend to submit a paper application and (2) your paper application must be postmarked by the application deadline date.

The prior written notification may be submitted by email or by mail to the person listed under **FOR FURTHER INFORMATION CONTACT**. If you submit your notification by email, it must be received by the Department no later than 14 calendar days before the application deadline date. If you mail your notification to the Department, it must be postmarked no later than 14 calendar days before the application deadline date.

If you submit a paper application, you must have, and include on your application, a DUNS/UEI number and mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, OFO/G5 Functional Application Team, Mail Stop 5C231, Attention: 84.019A, 400 Maryland Avenue SW, Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

*Note:* The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

We will not consider applications postmarked after the application deadline date.

*Note for Mail Delivery of Paper Applications:* If you mail your application to the Department—

(1) You must indicate on the envelope and in Item 11 of the SF 424 the ALN, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The G5 Functional Application Team will notify you of the Department's receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

## V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from the regulations for this program in 34 CFR 663.21 and are as follows:

(a) *Quality of proposed project (60 points).* The Secretary reviews each application to determine the quality of the research project proposed by the applicant. The Secretary considers—

(1) The statement of the major hypotheses to be tested or questions to be examined, and the description and justification of the research methods to be used (10 points);

(2) The relationship of the research to the literature on the topic and to major

theoretical issues in the field, and the project's importance in terms of the concerns of the discipline (10 points);

(3) The preliminary research already completed or plans for research prior to going overseas, and the kinds, quality and availability of data for the research in the host country or countries (10 points);

(4) The justification for overseas field research, and preparations to establish appropriate and sufficient research contacts and affiliations abroad (10 points);

(5) The applicant's plans to share the results of the research in progress with scholars and officials of the host country or countries and the American scholarly community (10 points); and

(6) The objectives of the project regarding the sponsoring institution's plans for developing or strengthening, or both, curricula in modern foreign languages and area studies (10 points).

(b) *Qualifications of the applicant (40 points).* The Secretary reviews each application to determine the qualifications of the applicant. The Secretary considers—

(1) The overall strength of applicant's academic record (teaching, research, contributions, professional association activities) (10 points);

(2) The applicant's excellence as a teacher or researcher, or both, in his or her area or areas of specialization (10 points);

(3) The applicant's proficiency in one or more of the languages (other than English and the applicant's native language), of the country or countries of research, and the specific measures to be taken to overcome any anticipated language barriers (15 points); and

(4) The applicant's ability to conduct research in a foreign cultural context, as evidenced by the applicant's previous overseas experience, or documentation provided by the sponsoring institution, or both (5 points).

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).

For FY 2022, faculty applications are divided into seven categories based on the world area focus of their research projects, as described in the absolute priority listed in this notice. Foreign language and area studies experts on discrete world area-based panels will evaluate the faculty applications. Each panel reviews, scores, and ranks its assigned applications separately from the applications assigned to the other world area panels. At the conclusion of the panel review process, however, all faculty applications will be ranked together from the highest to lowest score for funding recommendation purposes.

If there are applications on the rank order slate with the same average score, the Fulbright Foreign Scholarship Board's policy governing veteran's preference will be used in the tiebreaker and selection process. Veteran's preference will be used first to determine which application to recommend for funding. This means that in instances where two or more applications have the same average score on the rank order slate, and there are insufficient funds to support all of the equally ranked applications, the veteran's application will be given preference.

For the applications that have tied average scores but are not subject to the veteran's preference, the Department will use the average score assigned on the Technical Review Forms for the ''Quality of the Proposed Project'' selection criterion. If a tie still exists, the average score for Competitive Preference Priority 1 will be used as the tiebreaker. A final tiebreaker, should it become necessary, will use the average score assigned for the ''Qualifications of the Applicant'' selection criterion.

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 the IHE's U.S. Representative and U.S. Senators and send the IHE a Grant Award Notification

(GAN). We may also notify the IHE informally.

If a faculty application is not evaluated or not selected for funding, we notify the IHE.

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 its binding commitments under the grant.

3. *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. 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.*

4. *Performance Measures:* For the purpose of Department reporting under 34 CFR 75.110, the Department will use the following performance measure:

*FRA Measure:* The percentage of Fulbright-Hays FRA fellows who increased their foreign language scores in speaking, reading, or writing by at least one proficiency level.

## 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. 2022–05640 Filed 3–16–22; 8:45 am]

**BILLING CODE 4000–01–P**

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## DEPARTMENT OF EDUCATION

## Applications for New Awards; Personnel Development To Improve Services and Results for Children With Disabilities—Early Childhood Personnel Equity Center

**AGENCY:** Office of Special Education and Rehabilitative Services, Department of Education.

**ACTION:** Notice.

**SUMMARY:** The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2022 for the Early Childhood Personnel Equity Center, Assistance Listing Number 84.325C. This notice relates to the approved information collection under OMB control number 1820–0028.

**DATES:**

*Applications Available:* March 17, 2022.

*Deadline for Transmittal of Applications:* May 16, 2022.

*Deadline for Intergovernmental Review:* July 15, 2022.

*Pre-Application Webinar Information:* No later than March 22, 2022, the Office of Special Education and Rehabilitative Services (OSERS) will post details on pre-recorded informational webinars designed to provide technical assistance to interested applicants. Links to the webinars may be found at *www2.ed.gov/fund/grant/apply/osep/new-osep-grants.html.*

**ADDRESSES:** For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 27, 2021 (86 FR 73264) and available at *www.federalregister.gov/d/2021–27979.* Please note that these Common Instructions supersede the version published on February 13, 2019, and, in part, describe the transition from the requirement to register in *SAM.gov* a Data Universal Numbering System (DUNS) number to the implementation of the Unique Entity Identifier (UEI). More information on the phase-out 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:** Tracie Dickson, U.S. Department of Education, 400 Maryland Avenue SW, Room 5176, Potomac Center Plaza, Washington, DC 20202–5076. Telephone: (202) 245–7844. Email: *Tracie.Dickson@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 purposes of this program are to (1) help address State-identified needs for personnel preparation in special education, early intervention, related services, and regular education to work with children, including infants and toddlers, with disabilities; and (2) ensure that those personnel have the necessary skills and knowledge, derived from practices that have been determined through scientifically based research and experience, to be successful in serving those children.

*Priority:* This competition includes one absolute priority. In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in the statute (see sections 662 and 681(d) of the Individuals with Disabilities Education Act (IDEA); 20 U.S.C. 1462 and 1481(d)).

*Absolute 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 absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

*Early Childhood Personnel Equity Center.*

*Background:*

All children have the right to equitable learning opportunities.

Enhancing equity within the early childhood system requires a specific focus on preservice preparation so that the future workforce is racially, ethnically, and linguistically diverse and has the competencies to support the developmental and learning needs of the increasing population of infants, toddlers, and preschool children (young children) from racially, ethnically, and linguistically diverse backgrounds. Approximately 50 percent of infants and toddlers in the United States are children of color (ZERO TO THREE, 2021), one in four young children are learning both a home language and English simultaneously (Luo, Song, Villacis, & Santiago-Bonilla, 2021). This trend is reflected in the IDEA Section 618 data submitted by States that shows a substantial number of children and families from racially, ethnically, and linguistically diverse backgrounds enrolled in IDEA Part C and Part B, Section 619 with 50 percent of infants and toddlers and 48 percent of preschool children identified as racially, ethnically, and linguistically diverse (U.S. Department of Education, 2020).

To support the developmental needs of young children and their families from racially, ethnically, and linguistically diverse backgrounds, it is essential that preservice preparation programs are intentionally designed to prepare early childhood personnel to serve young children and their families in their communities (Cochran-Smith et al., 2016). Currently, most early childhood preservice preparation programs do not consistently provide programs of study that are both equity-based and competency-aligned (Cochran-Smith et al., 2016; National Center on Early Childhood Development, Teaching, and Learning, 2018). An equity-based program of study includes, but is not limited to, developing scholars' understanding of dual language learning, disability, systemic racism, and the role of cultural inclusivity in learning; implicit bias and its manifestation in decision making; individualized pedagogy and assessment methods; and building partnerships with diverse families.

Current research demonstrates that the diversity of the early childhood setting and staff, and the caregiver–child relationship, are important considerations for meeting children's developmental and learning needs during the early years (Accavitti & Williford, 2020; James & Iruka, 2018). For example, caregiver–child relationships are positively impacted by increased racial, ethnic, and linguistic diversity, including more positive caregiver perceptions, particularly around behavior (Kunemund et al., 2020). While having a diverse workforce is necessary to improve outcomes for young children and families from racially, ethnically, and linguistically diverse backgrounds, the demographics of personnel entering the early intervention and special education fields do not reflect the demographics of the young children and families served under IDEA. Data from the Personnel Development Program Data Collection System (PDPDCS) show that graduates from OSEP-supported personnel preparations programs are more likely to be White. Specifically, the race/ethnicity of funded scholars was 62 percent White, 14 percent Hispanic, 9 percent Black, 3 percent Asian, and 12 percent unreported (U.S. Department of Education, OSEP, 2021).

Many individuals from racially, ethnically, and linguistically diverse backgrounds experience systemic barriers to accessing and successfully completing comprehensive preparation programs. Increasing the diversity of faculty is one strategy that has proven successful in removing barriers to graduation for scholars from racially, ethnically, and linguistically diverse backgrounds. College faculty from racially, ethnically, and linguistically diverse backgrounds increased in the United States over the past two decades, but faculty are still disproportionately more likely to be White (U.S. Department of Education, National Center for Education Statistics, 2020). This is true in early intervention and special education, as PDPDCS data show that graduates of OSEP-supported doctoral programs, who often accept faculty positions upon graduation, were 78 percent White, 5 percent Hispanic, 6 precent Black, 6 percent Asian, and 5 percent unreported. (U.S. Department of Education, OSEP, 2021). Research shows that there is a correlation between preservice scholar performance and the increased racial, ethnic, and linguistic backgrounds of faculty. For example, a study looking at community college classrooms found that performance gaps of scholars of color can close by 20 to 50 percent if faculty more closely resemble scholars (Davis & Fry, 2019). When taught by faculty from racially, ethnically, and linguistically diverse backgrounds, scholars from diverse backgrounds obtain better grades (Carver-Thomas, 2018), are less likely to drop a course, are more likely to pass a course, and are more likely to complete the degree requirements that lead to graduation (Marchitello & Trinidad, 2019).

This Center will advance the Secretary's priorities related to supporting a diverse educator workforce and professional growth to strengthen student learning.

*Priority:*

The purpose of this priority is to fund a cooperative agreement to establish and operate a national Early Childhood Personnel Equity Center to improve outcomes for young children with disabilities by increasing the number of early childhood personnel [1] and faculty from racially, ethnically, and linguistically diverse backgrounds and enhancing equity content within early childhood preparation programs [2] to ensure that early childhood personnel have the necessary knowledge, skills, competencies, and dispositions to deliver equitable evidence-based interventions and services to young children with disabilities and their families.

The project must achieve, at a minimum, the following expected outcomes:

(a) Increased capacity of institutions of higher education (IHEs) with early childhood preparation programs to develop, implement, and sustain a program of study centered within an equity framework that is aligned with national professional organization personnel standards, State personnel standards, and evidence-based practices (EBPs); [3]

(b) Increased capacity of States to revise and implement State personnel standards so that they are aligned to national professional organization personnel standards and define the knowledge, skills, competencies, and dispositions that early childhood personnel need to deliver equitable interventions and services for young children with disabilities and their families;

(c) Increased capacity of IHEs at the associate, bachelor's, master's, and doctoral levels to attract, prepare, and graduate scholars from racially, ethnically, and linguistically diverse backgrounds that will lead to an early childhood workforce that is more diverse;

[1] For the purposes of this priority, ''early childhood personnel'' include early childhood educators, early interventionists, early childhood special educators, and related services providers that provide services to young children with disabilities and their families.

[2] For the purposes of this priority, ''early childhood preparation programs'' include associate, bachelor's, master's, and doctoral programs that prepare early childhood personnel.

[3] For the purposes of this priority, ''evidence-based practices'' means practices that, at a minimum, demonstrate a rationale (as defined in 34 CFR 77.1), where a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

(d) Increased capacity of States, local educational agencies (LEAs), and early intervention service providers to address personnel shortages by partnering with IHEs to develop an infrastructure and implement programs and incentives that attract, prepare, and graduate scholars from racially, ethnically, and linguistically diverse backgrounds at the associate, bachelor's, master's, and doctoral levels and support them to enter and stay in the early childhood profession; and

(e) Increased capacity of IHEs to recruit and retain faculty from racially, ethnically, and linguistically diverse backgrounds to improve scholar engagement and retention in early childhood preparation programs.

In addition to these programmatic requirements, to be considered for funding under this priority, applicants must meet the application and administrative requirements in this priority, which are:

(a) Demonstrate, in the narrative section of the application under ''Significance,'' how the proposed project will—

(1) Address current and emerging needs to strengthen early childhood preservice preparation to ensure that the early childhood workforce is prepared to serve young children with disabilities and their families who are from racially, ethnically, and linguistically diverse backgrounds. To meet this requirement, the applicant must—

(i) Demonstrate knowledge of equity issues within early childhood education and the role of personnel preparation in addressing these issues;

(ii) Present applicable data demonstrating the need for IHEs to strengthen early childhood preservice programs of study so that they are centered within an equity framework to prepare personnel to deliver equitable interventions and services for young children with disabilities and their families; and

(iii) Demonstrate knowledge of the current research on equity-centered programs of study in early childhood; and the current capacity of faculty in IHEs to develop, implement, and sustain a program of study centered within an equity framework to prepare personnel to deliver equitable interventions and services for young children with disabilities and their families;

(2) Address the current and emerging needs of early childhood preparation programs to attract, prepare, and graduate scholars from racially, ethnically, and linguistically diverse backgrounds from the associate, bachelor's, master's, and doctoral levels. To meet this requirement, the applicant must—

(i) Present national and State data on the current need to increase early childhood personnel from racially, ethnically, and linguistically diverse backgrounds and research on the benefits of having an early childhood workforce that is diverse;

(ii) Demonstrate knowledge of the current research and policy initiatives related to increasing scholars from racially, ethnically, and linguistically diverse backgrounds in early childhood preparation programs; and

(iii) Present information on the current capacity of early childhood preparation programs to implement strategies such as policies that support the admission of scholars from racially, ethnically, and linguistically diverse backgrounds; provide financial and academic support and mentoring; and establish articulation agreements to attract, prepare, and graduate scholars from racially, ethnically, and linguistically diverse backgrounds that better meet the personnel needs in States;

(3) Address the needs of States to partner with IHEs to address the current shortages of personnel and to ensure that the early childhood workforce is racially, ethnically, and linguistically diverse and prepared to serve young children with disabilities and their families from racially, ethnically, and linguistically diverse backgrounds. To meet this requirement, the applicant must—

(i) Present applicable data on how States' personnel standards are aligned to national professional organization personnel standards and address the skills, knowledge, competencies, and dispositions needed to deliver equitable interventions and services for young children with disabilities and their families, and how early childhood preparation programs align programs of study to State personnel standards; and

(ii) Present information on the current capacity of States to partner with IHEs to implement strategies such as financial support, incentives, and career ladders to attract, prepare, and retain early childhood personnel from racially, ethnically, and linguistically diverse backgrounds;

(4) Address the needs of IHEs to attract and retain faculty from racially, ethnically, and linguistically diverse backgrounds into early childhood preparation programs. To meet this requirement, the applicant must—

(i) Present national and State data on the current need to increase faculty from racially, ethnically, and linguistically diverse backgrounds in early childhood preparation programs and research on the benefits of having faculty from racially, ethnically, and linguistically backgrounds;

(ii) Demonstrate knowledge of the current research and policy initiatives related to increasing faculty from racially, ethnically, and linguistically diverse backgrounds in early childhood preparation programs; and

(iii) Present information on the current capacity of early childhood preparation programs to implement strategies such as collaborative networks and mentoring to advance retention, promotion, and tenure as well as post-tenure support to attract and retain faculty from racially, ethnically, and linguistically diverse backgrounds; and

(5) Improve the capacity of the early childhood workforce to deliver equitable interventions and services for young children with disabilities and their families, and the likely magnitude or importance of this improvement.

(b) Demonstrate, in the narrative section of the application under ''Quality of project services,'' how the proposed project will—

(1) Ensure equal access and treatment for members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. To meet this requirement, the applicant must describe how it will—

(i) Identify the needs of the intended recipients for TA and information; and

(ii) Ensure that services and products meet the needs of the intended recipients of the grant;

(2) Achieve its goals, objectives, and intended outcomes. To meet this requirement, the applicant must provide—

(i) Measurable intended project outcomes; and

(ii) In Appendix A, the logic model[4] by which the proposed project will achieve its intended outcomes that depicts, at a minimum, the goals, activities, outputs, and intended outcomes of the proposed project;

(3) Use a conceptual framework (and provide a copy in Appendix A) to develop project plans and activities, describing any underlying concepts, assumptions, expectations, beliefs, or theories, as well as the presumed relationships or linkages among these variables, and any empirical support for this framework;

[4] Logic model (34 CFR 77.1) (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

**Note:** The following websites provide more information on logic models and conceptual frameworks: *www.osepideasthatwork.org/logicModel* and *www.osepideasthatwork.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework.*

(4) Be based on current research and make use of EBPs. To meet this requirement, the applicant must describe—

(i) The current research on frameworks and key components of an equity-based program of study; strategies to attract, prepare, and graduate scholars from racially, ethnically, and linguistically diverse backgrounds in preparation programs; strategies to attract and retain faculty from racially, ethnically, and linguistically diverse backgrounds in early childhood preparation programs; and capacity building of IHE and State partnerships to attract, prepare, and retain an early childhood workforce that is racially, ethnically, and linguistically diverse;

(ii) The current research about adult learning principles and implementation science that will inform the proposed TA to IHEs, faculty, and States; and

(iii) How the proposed project will incorporate current research and practices in the development and delivery of its products and services;

(5) Develop products and provide services that are of high quality and sufficient intensity and duration to achieve the intended outcomes of the proposed project. To address this requirement, the applicant must describe—

(i) How it proposes to identify or develop the knowledge base of:

(A) An equity framework that includes guiding principles, EBPs, and key indicators of equity that is aligned with national professional organization personnel standards and State personnel standards to ensure that scholars in early childhood preparation programs have the knowledge, skills, competencies, and dispositions to serve young children with disabilities and their families from racially, ethnically, and linguistically diverse backgrounds;

(B) A professional development framework to build the capacity of faculty to strengthen their programs of study by developing, implementing, and sustaining an equity framework within the early childhood preparation programs;

(C) State personnel standards that reflect the knowledge, skills, competencies, and dispositions that early childhood personnel need to deliver equitable interventions and services for young children with disabilities and their families that IHEs can align to within their preparation programs; and

(D) Recruitment and retention frameworks with EBPs and innovative strategies for faculty, IHEs, and States to implement to attract, prepare, and graduate scholars from racially, ethnically, and linguistically diverse backgrounds; retain them in the early childhood profession; and attract and retain faculty from racially, ethnically, and linguistically diverse backgrounds in early childhood preparation programs;

(ii) Its proposed approach to universal, general TA,[5] which must identify the intended recipients, including the type and number of recipients, that will receive the products and services, a description of the products and services that the project proposes to make available, and the expected impact of those products and services under this approach. At minimum, the approach must include activities focused on—

(A) Identifying and developing resources and materials to increase the awareness of the importance and benefits of increasing the number of early childhood personnel from racially, ethnically, and linguistically diverse backgrounds; and

(B) Identifying and developing materials, resources, and tools to help faculty, IHEs, and States implement the equity, professional development, and recruitment and retention frameworks and practices to strengthen early childhood preservice preparation programs of study to ensure that the early childhood workforce is diverse and prepared to serve young children and their families from racially, ethnically, and linguistically diverse backgrounds;

(iii) Its proposed approach to targeted, specialized TA,[6] which must identify—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services, a description of the products and services that the project proposes to make available, and the expected impact of those products and services under this approach;

(B) Its proposed approach to measure the readiness of potential TA recipients to work with the project, assessing, at a minimum, their current infrastructure, available resources, and ability to build capacity within their setting;

(C) Its proposed approach to identify and partner with faculty and IHEs at the associate, bachelor's, master's, and doctoral levels;

(D) The process by which the proposed project will collaborate with OSEP-funded early childhood preparation programs to embed the frameworks developed by the project within their preparation programs; and

(E) The process by which the proposed project will collaborate with other federally funded TA centers, including those funded by OSEP and the Department of Health and Human Services (HHS);

(iv) Its proposed approach to intensive, sustained TA,[7] which must identify—

(A) The intended recipients, including the type and number of recipients, that will receive the services, a description of the services that the project proposes to make available, and the expected impact of those services under this approach;

(B) Its proposed approach to measure the readiness of potential TA recipients to work with the project, assessing, at a minimum, their current infrastructure, available resources, and ability to build capacity within their setting;

(C) Its proposed approach for partnering with States and the IHEs within the State to develop, implement, and sustain the infrastructure to implement recruitment and retention frameworks and practices to increase the number of scholars from racially, ethnically, and linguistically diverse backgrounds in early childhood preparation programs and in the early childhood profession and ensure that

[5] ''Universal, general TA'' means TA and information provided to independent users through their own initiative, resulting in minimal interaction with TA center staff and including one-time, invited or offered conference presentations by TA center staff. This category of TA also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the TA center's website by independent users. Brief communications by TA center staff with recipients, either by telephone or email, are also considered universal, general TA.

[6] ''Targeted, specialized TA'' means TA services based on needs common to multiple recipients and not extensively individualized. A relationship is established between the TA recipient and one or more TA center staff. This category of TA includes one-time, labor-intensive events, such as facilitating strategic planning or hosting regional or national conferences. It can also include episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized TA.

[7] ''Intensive, sustained TA'' means TA services often provided on-site and requiring a stable, ongoing relationship between the TA center staff and the TA recipient. ''TA services'' are defined as negotiated series of activities designed to reach a valued outcome. This category of TA should result in changes to policy, program, practice, or operations that support increased recipient capacity or improved outcomes at one or more systems levels.

State personnel standards and IHE programs are aligned to ensure scholars are prepared to deliver equitable interventions and services for young children with disabilities and their families;

(D) The process by which the proposed project will collaborate with other federally funded TA centers, including those funded by OSEP and HHS, to increase the racial, ethnic, and linguistic diversity of the early childhood workforce and ensure they are prepared to serve young children with disabilities and their families from racially, ethnically, and linguistically diverse backgrounds; and

(E) The process by which the proposed project will ensure the use of TA practices supported by evidence and continuously evaluate the practices to improve the delivery of TA; and

(v) How the proposed project will use non-project resources to achieve the intended project outcomes;

(6) Develop products and implement services that maximize efficiency. To address this requirement, the applicant must describe—

(i) How the proposed project will use technology to achieve the intended project outcomes;

(ii) With whom the proposed project will collaborate and the intended outcomes of this collaboration; and

(iii) How the proposed project will use non-project resources to achieve the intended project outcomes; and

(7) Develop a dissemination plan that describes how the applicant will systematically distribute information, products, and services to varied intended audiences, using a variety of dissemination strategies, to promote awareness and use of the project's products and services.

(c) In the narrative section of the application under ''Quality of the project evaluation,'' include an evaluation plan for the project as described in the following paragraphs. The evaluation plan must describe measures of progress in implementation, including the criteria for determining the extent to which the project's products and services have met the goals for reaching its target population; measures of intended outcomes or results of the project's activities in order to evaluate those activities; and how well the goals or objectives of the proposed project, as described in its logic model, have been met.

The applicant must provide an assurance that, in designing the evaluation plan, it will—

(1) Designate, with the approval of the OSEP project officer, a project liaison with sufficient dedicated time, experience in evaluation, and knowledge of the project to work in collaboration with the Center to Improve Program and Project Performance (CIPP),[8] the project director, and the OSEP project officer on the following tasks:

(i) Revise the logic model submitted in the application to provide for a more comprehensive measurement of implementation and outcomes and to reflect any changes or clarifications to the model discussed at the kick-off meeting;

(ii) Refine the evaluation design and instrumentation proposed in the application consistent with the revised logic model and using the most rigorous design suitable (*e.g.,* prepare evaluation questions about significant program processes and outcomes; develop quantitative or qualitative data collections that permit both the collection of progress data, including fidelity of implementation, as appropriate, and the assessment of project outcomes; and identify analytic strategies); and

(iii) Revise the evaluation plan submitted in the application such that it—

(A) Clearly specifies the evaluation questions, measures, and associated instruments or sources for data appropriate to answer these questions, suggests analytic strategies for those data, provides a timeline for conducting the evaluation, and includes staff assignments for completing the evaluation activities;

(B) Clearly delineates the data expected to be available by the end of the second project year for use during the project's evaluation (3+2 review) for continued funding described under the heading *Fourth and Fifth Years of the Project;* and

(C) Can be used to assist the project director and the OSEP project officer, with the assistance of CIPP, as needed, to specify the project performance measures to be addressed in the project's annual performance report;

(2) Dedicate sufficient staff time and other resources during the first six months of the project to collaborate with CIPP staff, including regular meetings (*e.g.,* weekly, biweekly, or monthly) with CIPP and the OSEP project officer, in order to accomplish the tasks described in this paragraph (c); and

(3) Dedicate sufficient funds in each budget year to cover the costs of carrying out the tasks described in this paragraph (c) and revising and implementing the evaluation plan. Please note in your budget narrative the funds dedicated for this activity.

(d) Demonstrate, in the narrative section of the application under ''Adequacy of resources and quality of project personnel,'' how—

(1) The proposed project will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve the project's intended outcomes. Applicants must specifically demonstrate how the key project personnel have the necessary qualifications and experience in early childhood equity including, but not limited to—

(i) Development and evaluation of racially, ethnically, and linguistically responsive models of early learning, including evidence-based intervention and assessment practices, to support young children with disabilities and their families from racially, ethnically, and linguistically diverse backgrounds;

(ii) The intersection of race, ethnicity, linguistics, and disabilities in early childhood, social and emotional development, disproportionate and exclusionary discipline practices, and the impact of race, ethnicity, and linguistics on the early learning experiences of young children with disabilities and their families;

(iii) Equity-centered adult learning principles; and

(iv) Attracting, preparing, and retaining scholars and faculty from racially, ethnically, and linguistically diverse backgrounds in early childhood preparation programs;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities; and

(4) The proposed costs are reasonable in relation to the anticipated results and benefits.

(e) Demonstrate, in the narrative section of the application under ''Quality of the management plan,'' how—

[8] The major tasks of CIPP are to guide, coordinate, and oversee the design of formative evaluations for every large discretionary investment (*i.e.,* those awarded $500,000 or more per year and required to participate in the 3+2 process) in OSEP's Technical Assistance and Dissemination; Personnel Development; Parent Training and Information Centers; and Educational Technology, Media, and Materials programs. The efforts of CIPP are expected to enhance individual project evaluation plans by providing expert and unbiased TA in designing the evaluations with due consideration of the project's budget. CIPP does not function as a third-party evaluator.

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) Key project personnel and any consultants and subcontractors will be allocated and how these allocations are appropriate and adequate to achieve the project's intended outcomes;

(3) The proposed management plan will ensure that the products and services provided are of high quality, relevant, and useful to recipients; and

(4) The proposed project will benefit from a diversity of perspectives, including those of families, including those who are from racially, ethnically, and linguistically backgrounds; faculty; early childhood administrators and providers; TA providers; researchers; and policy makers; among others, in its development and operation.

(f) Address the following application requirements. The applicant must—

(1) Include, in Appendix A, personnel-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative;

(2) Include, in the budget, attendance at the following:

(i) A one and one-half day virtual kick-off meeting after receipt of the award, and an annual virtual planning meeting with the OSEP project officer and other relevant staff during each subsequent year of the project period.

**Note:** Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative;

(ii) A two and one-half day project directors' conference in Washington, DC during each year of the project period. The project must reallocate funds for travel to the project directors' meeting no later than the end of the third quarter of each budget period if the meeting is conducted virtually;

(iii) Three annual two-day trips to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP; and

(iv) A one-day virtual 3+2 review meeting during the second year of the project period;

(3) Include, in the budget, a line item for an annual set-aside of 5 percent of the grant amount to support emerging needs that are consistent with the proposed project's intended outcomes, as those needs are identified in consultation with, and approved by, the OSEP project officer. With approval from the OSEP project officer, the project must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period;

(4) Describe how the project will engage doctoral scholars or post-doctoral fellows in the work of the project to deepen the knowledge, skills, and competencies, and dispositions that future leaders in the field need to increase the racial, ethnic, and linguistic diversity of the early childhood workforce, ensure early childhood preparation programs are preparing scholars with the knowledge, skills, competencies, and dispositions to serve young children and their families from racially, ethnically, and linguistically diverse backgrounds; deliver equity-focused professional development and TA;

(5) Maintain a high-quality website, with an easy-to-navigate design, that meets government or industry-recognized standards for accessibility;

(6) Ensure that annual project progress toward meeting project goals is posted on the project website; and

(7) Include, in Appendix A, an assurance to assist OSEP with the transfer of pertinent resources and products and to maintain the continuity of services to States during the transition to a new award at the end of this award period, as appropriate.

*Fourth and Fifth Years of the Project:*

In deciding whether to continue funding the project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), including—

(a) The recommendations of a 3+2 review team consisting of experts with knowledge and experience in personnel development and equity within the early childhood system. This review will be conducted during a one-day intensive meeting that will be held during the last half of the second year of the project period;

(b) The timeliness with which, and how well, the requirements of the negotiated cooperative agreement have been or are being met by the project; and

(c) The quality, relevance, and usefulness of the project's products and services and the extent to which the project's products and services are aligned with the project's objectives and likely to result in the project achieving its intended outcomes.

Under 34 CFR 75.253, the Secretary may reduce continuation awards or discontinue awards in any year of the project period for excessive carryover balances or a failure to make substantial progress. The Department intends to closely monitor unobligated balances and substantial progress under this program and may reduce or discontinue funding accordingly.

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*Waiver of Proposed Rulemaking:* Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priority in this notice.

*Program Authority:* 20 U.S.C. 1462 and 1481.

**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, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

**Note:** The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

**Note:** The regulations in 34 CFR part 86 apply to IHEs only.

## II. Award Information

*Type of Award:* Cooperative agreement.

*Estimated Available Funds:* The Administration has requested $250,000,000 for the Personnel Development to Improve Services and Results for Children With Disabilities program for FY 2022, of which we intend to use an estimated $2,000,000 for this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for 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.

*Maximum Award:* We will not make an award exceeding $2,000,000 for a single budget period of 12 months

*Estimated Number of Awards:* 1.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 60 months.

## III. Eligibility Information

1. *Eligible Applicants:* State educational agencies; State lead agencies under Part C of the IDEA; LEAs, including public charter schools that are considered LEAs under State law; IHEs; other public agencies; private nonprofit organizations; freely associated States and outlying areas; Indian Tribes or Tribal organizations; and for-profit organizations.

2. a. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

b. *Indirect Cost Rate Information:* This program uses an unrestricted indirect cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *www2.ed.gov/about/offices/list/ocfo/intro.html.*

c. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application. Under 34 CFR 75.708(e), a grantee may contract for supplies, equipment, and other services in accordance with 2 CFR part 200.

4. *Other General Requirements:*

(a) Recipients of funding under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants for, and recipients of, funding must, with respect to the aspects of their proposed project relating to the absolute priority, involve individuals with disabilities, or parents of individuals with disabilities ages birth through 26, in planning, implementing, and evaluating the project (see section 682(a)(1)(A) of IDEA).

## IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 27, 2021 (86 FR 73264) and available at *www.federalregister.gov/d/2021–27979,* which contain requirements and information on how to submit an application. Please note that these Common Instructions supersede the version published on February 13, 2019, and, in part, describe the transition from the requirement to register in *SAM.gov* a DUNS number to the implementation of the UEI. More information on the phase-out of DUNS numbers is available at *https://www2.ed.gov/about/offices/list/ofo/docs/unique-entity-identifier-transition-fact-sheet.pdf.*

2. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

3. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 70 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, including titles, headings, footnotes, quotations, reference citations, and captions, as well

as all text in charts, tables, figures, graphs, and screen shots.

- Use a font that is 12 point or larger.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the abstract (follow the guidance provided in the application package for completing the abstract), the table of contents, the list of priority requirements, the resumes, the reference list, the letters of support, or the appendices. However, the recommended page limit does apply to all of the application narrative, including all text in charts, tables, figures, graphs, and screen shots.

## V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are listed below:

(a) *Significance (10 points).*

(1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(ii) The importance or magnitude of the results or outcomes likely to be attained by the proposed project.

(b) *Quality of project services (35 points).*

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which there is a conceptual framework underlying the proposed research or demonstration activities and the quality of that framework.

(iii) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice.

(iv) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(v) The extent to which the TA services to be provided by the proposed project involve the use of efficient strategies, including the use of technology, as appropriate, and the leveraging of non-project resources.

(c) *Quality of the project evaluation (15 points).*

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.

(iii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(d) *Adequacy of resources and quality of project personnel (20 points).*

(1) The Secretary considers the adequacy of resources for the proposed project and the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of key project personnel.

(ii) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(iii) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(iv) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(v) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(e) *Quality of the management plan (20 points).*

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(iii) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project.

(iv) How the applicant will ensure that a diversity of perspectives is brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Additional Review and Selection Process Factors:* In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The standing panel requirements under section 682(b) of IDEA also have placed additional constraints on the availability of

reviewers. Therefore, the Department has determined that for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications.

4. *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.

5. *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.

6. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with—

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

## VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* For the purposes of Department reporting under 34 CFR 75.110, we have established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the Technical Assistance and Dissemination to Improve Services and Results for Children With Disabilities program. These measures are:

- *Program Performance Measure 1:* The percentage of Technical Assistance and Dissemination products and services deemed to be of high quality by an independent review panel of experts qualified to review the substantive content of the products and services.
- *Program Performance Measure 2:* The percentage of Special Education Technical Assistance and Dissemination products and services deemed by an independent review panel of qualified experts to be of high relevance to educational and early intervention policy or practice.
- *Program Performance Measure 3:* The percentage of all Special Education Technical Assistance and Dissemination products and services deemed by an

independent review panel of qualified experts to be useful in improving educational or early intervention policy or practice.

• *Program Performance Measure 4:* The cost efficiency of the Technical Assistance and Dissemination Program includes the percentage of milestones achieved in the current annual performance report period and the percentage of funds spent during the current fiscal year.

• *Long-term Program Performance Measure:* The percentage of States receiving Special Education Technical Assistance and Dissemination services regarding scientifically based practices or EBPs for infants, toddlers, children, and youth with disabilities that successfully promote the implementation of those practices in school districts and service agencies.

The measures apply to projects funded under this competition, and grantees are required to submit data on these measures as directed by OSEP.

Grantees will be required to report information on their project's performance in annual and final performance reports to the Department (34 CFR 75.590).

The Department will also closely monitor the extent to which the products and services provided by the Center meet needs identified by stakeholders and may require the Center to report on such alignment in their annual and final performance reports.

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.

**Katherine Neas,**

*Deputy Assistant Secretary, Delegated the authority to perform the functions and duties of the Assistant Secretary for the Office of Special Education and Rehabilitative Services.*

[FR Doc. 2022–05622 Filed 3–16–22; 8:45 am]

**BILLING CODE 4000–01–P**

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## DEPARTMENT OF ENERGY

### Agency Information Collection Extension

**AGENCY:** Office of Management, 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 16, 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 John Harris, Office of Policy, Contract and Financial Assistance Policy Division, Office of Acquisition Management, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585–1615, by email to *John.Harris@hq.doe.gov;* Mr. Harris may be contacted at (202) 287–1471.

**FOR FURTHER INFORMATION CONTACT:** John Harris, (202) 287–1471, *John.Harris@hq.doe.gov*.

**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.:* 1910–5194;

(2) *Information Collection Request Titled:* Certification of Vaccination—DOE Onsite Support Service Contractor Employees;

(3) *Type of Review:* Renewal;

(4) *Purpose:* This information is being collected, and maintained in order to promote the safety of Federal buildings, the Federal workforce, and others on site at agency facilities consistent with the COVID–19 Workplace Safety: Agency Model Safety Principles established by the Safer Federal Workforce Task Force, and guidance from the Centers for Disease Control and Prevention, and the Occupational Safety and Health Administration. Specifically, this information will be used by DOE staff charged with implementing and enforcing workplace safety protocols.

(5) *Annual Estimated Number of Respondents:* 15,000;

(6) *Annual Estimated Number of Total Responses:* 15,000;

(7) *Annual Estimated Number of Burden Hours:* 2,505;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $232,057.

*Statutory Authority:* Executive Order 13991, Protecting the Federal Workforce and Requiring Mask-Wearing (Jan. 20, 2021); Occupational Safety and Health Program for Federal Employees (Feb. 26, 1980); 5 U.S.C. chapters 11, and 79.; the COVID–19 Workplace Safety: Agency Model Safety Principles established by the Safer Federal Workforce Task Force,

and guidance from Centers for Disease Control and Prevention, and the Occupational Safety and Health Administration.

**Signing Authority**

This document of the Department of Energy was signed on March 10, 2022, by John R. Bashista, Director, Office of Acquisition Management and Senior Procurement Executive, 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 14, 2022.

**Treena V. Garrett,**

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

[FR Doc. 2022–05632 Filed 3–16–22; 8:45 am]

**BILLING CODE 6450–01–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:* RP22–692–000.
*Applicants:* Vector Pipeline L.P.
*Description:* Annual Fuel Use Report for 2021 of Vector Pipeline L.P.
*Filed Date:* 3/8/22.
*Accession Number:* 20220308–5168.
*Comment Date:* 5 p.m. ET 3/21/22.

*Docket Numbers:* RP22–693–000.
*Applicants:* Transcontinental Gas Pipe Line Company, LLC.
*Description:* § 4(d) Rate Filing: Rate Schedule S–2 Tracker Filing eff 2/1/2022 to be effective 2/1/2022.
*Filed Date:* 3/10/22.
*Accession Number:* 20220310–5134.
*Comment Date:* 5 p.m. ET 3/22/22.

*Docket Numbers:* RP22–694–000.
*Applicants:* Guardian Pipeline, L.L.C.
*Description:* § 4(d) Rate Filing: Negotiated Rate Pal—Remove Mercuria Agreement GN0810 to be effective 4/11/2022.
*Filed Date:* 3/11/22.
*Accession Number:* 20220311–5017.
*Comment Date:* 5 p.m. ET 3/23/22.

*Docket Numbers:* RP22–695–000.
*Applicants:* Empire Pipeline, Inc.
*Description:* § 4(d) Rate Filing: Fuel Tracker (Empire Tracking Supply Storage 2022) to be effective 4/1/2022.
*Filed Date:* 3/11/22.
*Accession Number:* 20220311–5063.
*Comment Date:* 5 p.m. ET 3/23/22.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

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 11, 2022.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2022–05644 Filed 3–16–22; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER22–1241–000]**

## REV Energy Marketing, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of REV Energy Marketing, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 31, 2022.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: March 11, 2022.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2022–05643 Filed 3–16–22; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 8866–013]**

### Black Canyon Bliss, LLC; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Subsequent License.

b. *Project No.:* 8866–013.

c. *Date Filed:* February 28, 2022.

d. *Applicant:* Black Canyon Bliss, LLC.

e. *Name of Project:* Stevenson No. 2 Hydroelectric Project.

f. *Location:* The existing project is located on an unnamed tributary to the Snake. River in Gooding County, Idaho. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Darek Jentzsch, 20511 F. Street, Rupert, ID 83350, Telephone (208) 532–4119.

i. *FERC Contact:* Maryam Zavareh, (202) 502–8474 or *maryam.zavareh@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* April 29, 2022. The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

m. The application is not ready for environmental analysis at this time.

n. Project *Description:* The existing Black Canyon Bliss Hydro Project consists of a 1,140-foot-long intake; a concrete transition box; an 18-inch diameter, 1,410-foot-long steel penstock; a powerhouse containing a single generating unit with a rated capacity of 24 kW; a tailrace, a 1,150-foot-long, 34.5 kV transmission line to Idaho power connection; and appurtenant facilities. The project generates an annual average of 180 megawatt-hours.

Black Canyon Bliss, LLC proposes to continue to operate the project in a run-of-river mode. The project operates within a flow range of 0.5 cubic feet per second (cfs) (minimum hydraulic capacity of the turbine) and 5 cfs (maximum hydraulic capacity of the turbine).

o. In addition to publishing the full text of this notice in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this notice, as well as other documents in the proceeding (*e.g.,* license application) via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document (P–8866). A copy of the application is typically available to be viewed at the Commission in the Public Reference Room. 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, (866) 208–3676 or (202) 502–8659 (TTY).

You may also register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. *Procedural Schedule:*

The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

| Milestone | Target date |
|---|---|
| Issue Deficiency Letter (if necessary) | April 2022. |
| Issue Scoping Document 1 for comments | July 2022. |
| Comments on Scoping Document 1 Due | August 2022. |
| Issue Notice of Ready for Environmental Analysis | September 2022. |

q. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: March 10, 2022.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2022–05586 Filed 3–16–22; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. NJ22–9–000]**

### Western Area Power Administration; Notice of Petition for Declaratory Order

Take notice that on March 2, 2022, pursuant to the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 35.28(e) and 18 CFR 385.207, the Western Area Power Administration (WAPA), submitted revisions to its non-jurisdictional Open Access Transmission Tariff (OATT) and petitions the Commission for a declaratory order finding that these modifications to WAPA's OATT substantially conform to, or are superior to, the Commission's pro forma OATT and that these WAPA modifications

satisfy the requirements for reciprocity status.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Petitioner.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

*Comment Date:* 5:00 p.m. Eastern Time on April 1, 2022.

Dated: March 10, 2022.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2022–05581 Filed 3–16–22; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER22–1060–000.
*Applicants:* ISO New England Inc.
*Description:* Notice of Withdrawal of February 15, 2022 Petition for Temporary Tariff Waiver, Shortened Comment Period, and Expedited Action of ISO-New England, Inc.
*Filed Date:* 3/9/22.
*Accession Number:* 20220309–5196.
*Comment Date:* 5 p.m. ET 3/30/22.

*Docket Numbers:* ER22–1236–000.
*Applicants:* Louisville Gas and Electric Company.
*Description:* § 205(d) Rate Filing: EKPC PENN Construction In Aid Of Construction Agreement to be effective 5/10/2022.
*Filed Date:* 3/10/22.
*Accession Number:* 20220310–5031.
*Comment Date:* 5 p.m. ET 3/31/22

*Docket Numbers:* ER22–1237–000.
*Applicants:* Louisville Gas and Electric Company.
*Description:* § 205(d) Rate Filing: KU Concurrence EKPC Rice CIAC RS No. 523 to be effective 5/10/2022.
*Filed Date:* 3/10/22.
*Accession Number:* 20220310–5032.
*Comment Date:* 5 p.m. ET 3/31/22.

*Docket Numbers:* ER22–1238–000.
*Applicants:* Kentucky Utilities Company.
*Description:* § 205(d) Rate Filing: KU Concurrence EKPC Penn CIAC RS No. 522 to be effective 5/10/2022.
*Filed Date:* 3/10/22.
*Accession Number:* 20220310–5033.
*Comment Date:* 5 p.m. ET 3/31/22.

*Docket Numbers:* ER22–1239–000.
*Applicants:* Louisville Gas and Electric Company.
*Description:* § 205(d) Rate Filing: EKPC RICE Contribution In Aid Of Construction Agreement to be effective 5/10/2022.
*Filed Date:* 3/10/22.
*Accession Number:* 20220310–5037.
*Comment Date:* 5 p.m. ET 3/31/22.

*Docket Numbers:* ER22–1241–000.
*Applicants:* REV Energy Marketing, LLC.
*Description:* Baseline eTariff Filing: Application for Market-Based Rate Authorization.
*Filed Date:* 3/10/22.
*Accession Number:* 20220310–5051.
*Comment Date:* 5 p.m. ET 3/31/22.

*Docket Numbers:* ER22–1242–000.
*Applicants:* Nevada Power Company.
*Description:* § 205(d) Rate Filing: Schedule 2 Tariff Revision to be effective 3/11/2022.
*Filed Date:* 3/10/22.
*Accession Number:* 20220310–5055.
*Comment Date:* 5 p.m. ET 3/31/22.

*Docket Numbers:* ER22–1243–000.
*Applicants:* Avista Corporation.
*Description:* Compliance filing: Avista Corp MBR Tariff No 9 Compliance Filing for EIM Participation to be effective 3/11/2022.
*Filed Date:* 3/10/22.
*Accession Number:* 20220310–5068.
*Comment Date:* 5 p.m. ET 3/31/22.

*Docket Numbers:* ER22–1245–000.
*Applicants:* Alabama Power Company, Georgia Power Company, Mississippi Power Company.
*Description:* § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: Oglethorpe (Effingham) IA Amendment Filing to be effective 2/28/2022.
*Filed Date:* 3/10/22.
*Accession Number:* 20220310–5085.
*Comment Date:* 5 p.m. ET 3/31/22.

*Docket Numbers:* ER22–1246–000.
*Applicants:* California Independent System Operator Corporation.
*Description:* § 205(d) Rate Filing: 2022–03–10 Intertie Constraint Penalty Price Tariff Amendment to be effective 12/31/9998.
*Filed Date:* 3/10/22.
*Accession Number:* 20220310–5089.
*Comment Date:* 5 p.m. ET 3/31/22.

*Docket Numbers:* ER22–1248–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: Original ISA and ICSA, Service Agreement Nos. 6372 and 6373; Queue No. AC1–189 to be effective 2/10/2022.
*Filed Date:* 3/10/22.
*Accession Number:* 20220310–5098.
*Comment Date:* 5 p.m. ET 3/31/22.

*Docket Numbers:* ER22–1249–000.
*Applicants:* Midcontinent Independent System Operator, Inc., American Transmission Company LLC.
*Description:* § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 2022–03–10_SA 2767 ATC-Manitowoc Public Utilities 2nd Rev CFA to be effective 5/10/2022.
*Filed Date:* 3/10/22.
*Accession Number:* 20220310–5115.
*Comment Date:* 5 p.m. ET 3/31/22.

*Docket Numbers:* ER22–1250–000.
*Applicants:* Arrow Canyon Solar, LLC.
*Description:* Baseline eTariff Filing: Initial Market-Based Rate Petition of Arrow Canyon Solar to be effective 4/30/2022.

*Filed Date:* 3/10/22.
*Accession Number:* 20220310–5131.
*Comment Date:* 5 p.m. ET 3/31/22.

*Docket Numbers:* ER22–1251–000.
*Applicants:* Tucson Electric Power Company.
*Description:* Tariff Amendment: Cancellation of OATT Service Agreements 490 and 491 to be effective 1/1/2022.
*Filed Date:* 3/10/22.
*Accession Number:* 20220310–5138.
*Comment Date:* 5 p.m. ET 3/31/22.

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 10, 2022.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2022–05583 Filed 3–16–22; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER17–910–002; ER17–1509–002; ER17–2181–002; ER18–1102–001.
*Applicants:* Pacific Gas and Electric Company, Pacific Gas and Electric Company, Pacific Gas and Electric Company, Pacific Gas and Electric Company.
*Description:* Informational Filing for a Wholesale Distribution Tariff Service Agreement between Pacific Gas and Electric Company and the City and County of San Francisco Service Agreement No. 275.
*Filed Date:* 3/9/22.
*Accession Number:* 20220309–5198.
*Comment Date:* 5 p.m. ET 3/30/22.

*Docket Numbers:* ER21–2988–002.
*Applicants:* Public Service Company of New Mexico.
*Description:* Compliance filing: PNM Schedule 2 Compliance Filing to be effective 10/1/2021.
*Filed Date:* 3/11/22.
*Accession Number:* 20220311–5002.
*Comment Date:* 5 p.m. ET 4/1/22.

*Docket Numbers:* ER22–1247–000.
*Applicants:* NSTAR Electric Company.
*Description:* NSTAR Electric Company and Park City Wind LLC submit a Petition of Pre-Arranged Settlement of Transmission Support Agreement with a Request for Shortened Comment Period and Expedited Action.
*Filed Date:* 3/8/22.
*Accession Number:* 20220308–5169.
*Comment Date:* 5 p.m. ET 3/22/22.

*Docket Numbers:* ER22–1252–000.
*Applicants:* Pacific Gas and Electric Company.
*Description:* Notice of Termination of Service Agreement No. 27 under Pacific Gas and Electric Company with Gilroy Energy Center, LLC.
*Filed Date:* 3/9/22.
*Accession Number:* 20220309–5199.
*Comment Date:* 5 p.m. ET 3/30/22.

*Docket Numbers:* ER22–1253–000.
*Applicants:* PacifiCorp.
*Description:* § 205(d) Rate Filing: UAMPS Const Agmt St. George POTT to be effective 5/10/2022.
*Filed Date:* 3/10/22.
*Accession Number:* 20220310–5142.
*Comment Date:* 5 p.m. ET 3/31/22.

*Docket Numbers:* ER22–1254–000.
*Applicants:* RockGen Energy LLC.
*Description:* Tariff Amendment: Notice of Cancellation of FERC Electric Tariff No. 1 and Tariff ID to be effective 3/11/2022.
*Filed Date:* 3/10/22.
*Accession Number:* 20220310–5145.
*Comment Date:* 5 p.m. ET 3/31/22.

*Docket Numbers:* ER22–1255–000.
*Applicants:* Pacific Gas and Electric Company.
*Description:* Notice of Termination of Service Agreement No. 43 and 44 of the Wholesale Distribution Tariff under Pacific Gas and Electric Company.
*Filed Date:* 3/9/22.
*Accession Number:* 20220309–5200.
*Comment Date:* 5 p.m. ET 3/30/22.

*Docket Numbers:* ER22–1257–000.
*Applicants:* Midcontinent Independent System Operator, Inc., American Transmission Company LLC.
*Description:* § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 2022–03–11_SA 2795 ATC-City of Hartford 2nd Rev CFA to be effective 5/11/2022.
*Filed Date:* 3/11/22.
*Accession Number:* 20220311–5007.
*Comment Date:* 5 p.m. ET 4/1/22.

*Docket Numbers:* ER22–1258–000.
*Applicants:* Midcontinent Independent System Operator, Inc., American Transmission Company LLC.
*Description:* § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 2022–03–11_SA 2796 ATC-City of Kaukauna 2nd Rev CFA to be effective 5/11/2022.
*Filed Date:* 3/11/22.
*Accession Number:* 20220311–5008.
*Comment Date:* 5 p.m. ET 4/1/22.

*Docket Numbers:* ER22–1259–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* Tariff Amendment: Notice of Cancellation of WMPA, Service Agreement No. 5602; Queue No. AE1–147 to be effective 3/12/2022.
*Filed Date:* 3/11/22.
*Accession Number:* 20220311–5009.
*Comment Date:* 5 p.m. ET 4/1/22.

*Docket Numbers:* ER22–1261–000.
*Applicants:* Midcontinent Independent System Operator, Inc., American Transmission Company LLC.
*Description:* § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 2022–03–11_SA 2775 ATC-Marshfield 2nd Rev CFA to be effective 5/11/2022.
*Filed Date:* 3/11/22.
*Accession Number:* 20220311–5034.
*Comment Date:* 5 p.m. ET 4/1/22.

*Docket Numbers:* ER22–1262–000.
*Applicants:* New York Independent System Operator, Inc.
*Description:* Compliance filing: Compliance filing to comply with Order No. 676–J NAESB WEQ Cybersecurity & PFV to be effective 6/2/2022.
*Filed Date:* 3/11/22.
*Accession Number:* 20220311–5050.
*Comment Date:* 5 p.m. ET 4/1/22.

*Docket Numbers:* ER22–1263–000.
*Applicants:* Tri-State Generation and Transmission Association, Inc.
*Description:* Tariff Amendment: Notice of Cancellation of Service Agreement FERC No. 892 to be effective 2/17/2022.
*Filed Date:* 3/11/22.
*Accession Number:* 20220311–5085.*Comment Date:* 5 p.m. ET 4/1/22.

*Docket Numbers:* ER22–1264–000.
*Applicants:* Tri-State Generation and Transmission Association, Inc.
*Description:* Tariff Amendment: Notice of Cancellation of Service Agreement No. 893 to be effective 2/18/2022.

*Filed Date:* 3/11/22.
*Accession Number:* 20220311–5087.
*Comment Date:* 5 p.m. ET 4/1/22.

*Docket Numbers:* ER22–1265–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: Original NSA, SA No. 6362; Queue No. NQ–90 to be effective 2/9/2022.
*Filed Date:* 3/11/22.
*Accession Number:* 20220311–5091.
*Comment Date:* 5 p.m. ET 4/1/22.

*Docket Numbers:* ER22–1266–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: Original NSA, SA No. 6363; Queue No. H23_W70/K28 to be effective 2/10/2022.
*Filed Date:* 3/11/22.
*Accession Number:* 20220311–5108.
*Comment Date:* 5 p.m. ET 4/1/22.

*Docket Numbers:* ER22–1267–000.
*Applicants:* Southern California Edison Company.
*Description:* Tariff Amendment: Notice of Cancellation EDP Ltr Agreement SCE and San Jacinto Grid SA No. 1097 to be effective 5/11/2022.
*Filed Date:* 3/11/22.
*Accession Number:* 20220311–5109.
*Comment Date:* 5 p.m. ET 4/1/22.

*Docket Numbers:* ER22–1272–000.
*Applicants:* Phillips 66 Energy Trading LLC.
*Description:* Baseline eTariff Filing: Application for Market-Based Rate Authorization, Request for Related Waivers to be effective 5/11/2022.
*Filed Date:* 3/11/22.
*Accession Number:* 20220311–5177.
*Comment Date:* 5 p.m. ET 4/1/22.

Take notice that the Commission received the following electric reliability filings:

*Docket Numbers:* RR22–2–000.
*Applicants:* North American Electric Reliability Corporation.
*Description:* Joint Petition of North American Electric Reliability Corporation and Northeast Power Coordinating Council, Inc. for Approval of Amendments to the Bylaws of Northeast Power Coordinating Council, Inc.
*Filed Date:* 3/11/22.
*Accession Number:* 20220311–5207.
*Comment Date:* 5 p.m. ET 4/1/22.

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 11, 2022.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2022–05645 Filed 3–16–22; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. AD22–4–000]**

### Improving Winter-Readiness of Generating Units; Supplemental Notice of Technical Conference

As announced in the Notice of Technical Conference issued in this proceeding on November 18, 2021, the Federal Energy Regulatory Commission (Commission) will convene a Joint Technical Conference with the North American Electric Reliability Corporation (NERC) and the Regional Entities in the above-referenced proceeding on Wednesday, April 27 and Thursday, April 28, 2022 from approximately 11:00 a.m. to 5:00 p.m. Eastern time each day. The conference will be held virtually via WebEx.

The purpose of this conference is to discuss how to improve the winter-readiness of generating units, including best practices, lessons learned and increased use of the NERC Guidelines, as recommended in the Joint February 2021 Cold Weather Outages Report.[1]

The conference will be open for the public to attend electronically. Registration for the conference is not required and there is no fee for attendance. To join the conference, go to the web Calendar of Events for this event on FERC's website, *www.ferc.gov.* The link for the event will be posted at the top of the calendar page and will ''go live'' just prior to the conference start time. The conference will also be transcribed. Transcripts will be available for a fee from Ace Reporting, (202) 347–3700.

Those who wish to nominate their names for consideration as a panel participant should submit their name, title, company, (or organization they are representing), telephone, email, a one-paragraph biography, picture, and topic they wish to address, to *WinterReadiness2022@ferc.gov* by close of business on Friday, March 25, 2022.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov,* call toll-free (866) 208–3372 (voice) or (202) 208–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

For more information about this technical conference, please contact Lodie White at *Lodie.White@ferc.gov* or (202) 502–8453. For information related to logistics, please contact Sarah McKinley at *Sarah.Mckinley@ferc.gov* or (202) 502–8368.

Dated: March 10, 2022.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2022–05584 Filed 3–16–22; 8:45 am]

**BILLING CODE 6717–01–P**

[1] *See The February 2021 Cold Weather Outages in Texas and the South Central United States—FERC, NERC and Regional Entity Staff Report* at pp. 18, 192 (November 16, 2021), *https://www.ferc.gov/news-events/news/final-report-february-2021-freeze-underscores-winterization-recommendations.*

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2466–037]**

### Appalachian Power Company; Notice of Application Tendered for Filing With the Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.
b. *Project No.:* 2466–037.
c. *Date Filed:* February 28, 2022.
d. *Applicant:* Appalachian Power Company (Appalachian).
e. *Name of Project:* Niagara Hydroelectric Project (Niagara Project).
f. *Location:* The project is located on the Roanoke River, in Roanoke County, Virginia. The project occupies 0.9 acre of federal land managed by the National Park Service.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Mr. Jonathan Magalski, Environmental Supervisor,

Renewables, American Electric Power Service Corporation c/o Appalachian Power Company, 1 Riverside Plaza, Columbus, OH 43215; Phone at (614) 716–2240 or email at *jmmagalski@aep.com.*

i. *FERC Contact:* Laurie Bauer at (202) 502–6519, or *laurie.bauer@ferc.gov.*

j. This application is not ready for environmental analysis at this time.

k. The Niagara Project consists of: (1) A 52-foot-high, 462-foot-long concrete dam, inclusive of the right non-overflow abutment (70 feet long) and main spillway (392 feet long) with a crest elevation of 885 feet National Geodetic Vertical Datum of 1929 (NGVD 29); (2) a 62-acre impoundment with a gross storage capacity of 425 acre-feet at the normal pool elevation of 884.4 feet NGVD 29; (3) an 11-foot-diameter, 500-foot-long corrugated metal pipe penstock with associated entrance and discharge structures; (4) a 1,500-foot-long bypassed reach; (5) a 92-foot-long, 58-foot-wide, 42-foot-high concrete powerhouse containing two generating units with a total authorized installed capacity of 2.4 megawatts (MW); (6) a 103-foot-long auxiliary spillway with a crest elevation of 886 feet NGVD 29 located downstream of the upstream intake; (7) transmission facilities consisting of 50-foot-long, 2.4-kilovolt (kV) generator leads and a 3-phase, 2.4/12-kV, 2,500-kilovolt ampere (kVA) step-up transformer; and (8) appurtenant facilities.

The Niagara Project operates in a run-of-river (ROR) mode under all flow conditions, where inflow equals outflow, with an average annual generation of 8,557 megawatt-hours between 2018 and 2021. The project is operated to maintain the impoundment at or near elevation 884.4 feet NGVD 29, which is 0.6 foot below the crest of the main spillway. During extreme flow conditions, such as rapidly changing inflows, Appalachian operates the project with a minimum impoundment elevation of 883.4 feet NGVD 29. Appalachian releases a minimum flow of 50 cubic feet per second (cfs), or inflow to the impoundment, whichever is less, below the project. Appalachian provides a minimum flow of 8 cfs into the bypassed reach through the sluice gate or over the spillway.

Appalachian proposes to continue operating the project in a ROR mode and to increase the existing minimum flow provided to the bypassed reach to 30 cfs. In addition to this measure, which is intended to protect water quality and aquatic resources in the bypassed reach, Appalachian proposes environmental measures for the protection and enhancement of terrestrial and recreation resources.

l. A copy of the application can be viewed on the Commission's website at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document (P–2466). For assistance, contact FERC at *FERCOnlineSupport@ferc.gov,* or call toll-free, (866) 208-3676 or (202) 502–8659 (TTY).

m. 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, contact FERC Online Support.

n. *Procedural schedule:* The application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate.

| Milestone | Target date |
|---|---|
| Issue Deficiency Letter (if necessary) | March 2022. |
| Request Additional Information (if necessary) | May 2022. |
| Notice of Acceptance/Notice of Ready for Environmental Analysis | January 2023.[1] |

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: March 10, 2022.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2022–05587 Filed 3–16–22; 8:45 am]

**BILLING CODE 6717–01–P**

[1] The Roanoke Logperch Larval Drift Survey, a sub-study of the Fish Community Study, is scheduled to be completed in 2022. In the final license application, Appalachian states that the final study report will be filed in late 2022.

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER22–1250–000]**

### Arrow Canyon Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Arrow Canyon Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 31, 2022.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human

Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: March 11, 2022.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2022–05642 Filed 3–16–22; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP22–62–000]**

### Columbia Gas Transmission, LLC; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on March 2, 2022, Columbia Gas Transmission, LLC, 700 Louisiana Street, Suite 1300, Houston, TX 77002–2700 filed in the above referenced docket a prior notice pursuant to Section 157.205 and 157.216 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act, requesting authorization to abandon one injection/withdrawal well and associated pipelines and appurtenances, located in its Coco C Storage Field in Kanawha County, West Virginia (2022 Coco C Well 7330 Abandonment Project or Project). Columbia proposes to abandon these facilities under authorities granted by its blanket certificate issued in Docket No. CP83–76–000.[1] The proposed abandonments will have no impact on Columbia's existing customers or affect Columbia's existing storage operations. The estimated cost for the Project is approximately $1.0 million, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning this application should be directed to Dave Hammel, Director, Commercial & Regulatory Law, (832) 320–5861, *dave_hammel@tcenergy.com,* Columbia Gas Transmission, LLC, 700 Louisiana Street, Suite 1300, Houston, TX 77002–2700.

Pursuant to Section 157.9 of the Commission's Rules of Practice and Procedure,[2] within 90 days of this Notice the Commission staff will either: complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

#### Public Participation

There are three ways to become involved in the Commission's review of this project: You can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on May 10, 2022. How to file protests, motions to intervene, and comments is explained below.

*Protests*

Pursuant to section 157.205 of the Commission's regulations under the NGA,[3] any person[4] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[5] and must be submitted by the protest deadline, which is May 10, 2022. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

*Interventions*

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure[6] and the regulations under the NGA[7] by the intervention deadline for the project, which is May 10, 2022. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an

[1] *Columbia Gas Transmission Corporation* (predecessor to Columbia Gas Transmission, LLC), 22 FERC ¶ 62,029 (1983).

[2] 18 CFR (Code of Federal Regulations) 157.9.

[3] 18 CFR 157.205.

[4] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[5] 18 CFR 157.205(e).

[6] 18 CFR 385.214.

[7] 18 CFR 157.10.

impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

*Comments*

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before May 10, 2022. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

*How To File Protests, Interventions, and Comments*

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP22–62–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing''; or [8]

(2) You can file a paper copy of your submission by mailing it to the address below.[9] Your submission must reference the Project docket number CP22–62–000.

To mail via USPS, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To mail via any other courier, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission.

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: *dave_hammel@tcenergy.com,* 700 Louisiana Street, Suite 1300, Houston, TX 77002–2700. Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

**Tracking the Proceeding**

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: March 11, 2022.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2022–05646 Filed 3–16–22; 8:45 am]

**BILLING CODE 6717–01–P**

[8] Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

[9] Hand-delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. IC22–8–000]**

### Commission Information Collection Activities (Ferc–1000); Comment Request; Extension

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Three-year renewal of information collection and request for comments.

**SUMMARY:** In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–1000 (Request for a Medical Exception to the COVID–19 Vaccination Requirement).

**DATES:** Comments on the collection of information are due May 16, 2022.

**ADDRESSES:** You may submit copies of your comments (identified by Docket No. IC22–8–000) by one of the following methods:

Electronic filing through *http://www.ferc.gov,* is preferred.

- *Electronic Filing:* Documents must be filed 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 USPS mail or by hand (including courier) delivery:
  - *Mail via U.S. Postal Service Only:* Addressed to Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.
  - *Hand (including courier) delivery to:* Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

*Instructions:* All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at (866) 208–3676 (toll-free).

*Docket:* Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Ellen Brown may be reached by email at *DataClearance@FERC.gov,* or telephone at (202) 502–8663.

**SUPPLEMENTARY INFORMATION:**

*Title:* FERC–1000, Request for a Medical Exception to the COVID–19 Vaccination Requirement.

*OMB Control No.:* 1902–0320.

*Abstract:* The purpose of this three-year renewal of the information collection is to allow the Federal Energy Regulatory Commission to collect information from FERC employees (and their medical providers) applying for a medical exception to the COVID–19 Vaccination Requirement as specified in Part 2 of FERC Form No. 1000.[1]

Consistent with guidance from the Centers for Disease Control and Prevention (CDC), guidance from the Safer Federal Workforce Task Force established pursuant to Executive Order 13991 of January 20, 2021, *Protecting the Federal Workforce and Requiring Mask-Wearing,* and Executive Order 14043 of September 9, 2021, *Requiring Coronavirus Disease 2019 Vaccination for Federal Employees,* the request for this information collection is essential to implement the Commission's health and safety measures regarding the federal employee medical exceptions to the COVID–19 mandatory vaccinations. In addition, the Rehabilitation Act of 1973, as amended, requires Federal Agencies to provide reasonable accommodations to qualified employees with disabilities unless that reasonable accommodation would impose an undue hardship on the employee's Agency. See 29 U.S.C. 791 and 29 CFR part 1614; see also 20 CFR part 1630 and Executive Order 13164 of July 26, 2000, *Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation.* Section 2 of E.O. 14043 mandates that each agency, ''implement, to the extent consistent with applicable law, a program to require COVID–19 vaccination for all of its Federal employees, with exceptions only as required by law.'' This medical exception form (FERC Form No. 1000) is necessary for the Commission to determine whether to grant medical exceptions to the vaccine requirement under the Rehabilitation Act.

The information being requested helps promote the safety of the Federal workforce, Federal buildings, and others on site at FERC facilities. This collection is consistent with the COVID–19 Workplace Safety Agency Model Safety Principles established by the White House Safer Federal Workforce Task Force and guidance from the Centers for Disease Control and Prevention.

*Type of Respondent:* Medical Providers.

*Estimate of Annual Burden:*[2] The Commission estimates the annual public reporting burden for the information collection as:

FERC–1000: REQUEST FOR A MEDICAL EXCEPTION TO THE COVID–19 VACCINATION REQUIREMENT

| | Number of respondents (1) | Annual number of responses per respondent (2) | Total number of responses (1) * (2) = (3) | Average burden & cost per response[3] (4) | Total annual burden hours & total annual cost (3) * (4) = (5) |
|---|---|---|---|---|---|
| Medical Provider ..... | 24 | 1 | 24 | 30 minutes (½ hour); $72 .. | 720 minutes (12 hours); $1,728. |

*Comments:* Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: March 11, 2022.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2022–05641 Filed 3–16–22; 8:45 am]

**BILLING CODE 6717–01–P**

[1] The vaccination requirement issued pursuant to E.O. 14043, is currently the subject of a nationwide injunction. While that injunction remains in place, the Federal Energy Regulatory Commission (FERC) will not process requests for a medical exception from the COVID–19 vaccination requirement pursuant to E.O. 14043. FERC will also not request the submission of any medical information related to a request for an exception from the vaccination requirement pursuant to E.O. 14043 while the injunction remains in place. But FERC may nevertheless receive information regarding a medical exception. That is because, if FERC were to receive a request for an exception from the COVID–19 vaccination requirement pursuant to E.O. 14043 during the pendency of the injunction, FERC will accept the request, hold it in abeyance, and notify the employee who submitted the request that implementation and enforcement of the COVID–19 vaccination requirement pursuant to E.O. 14043 is currently enjoined and that an exception therefore is not necessary so long as the injunction is in place. In other words, during the pendency of the injunction, any information collection related to requests for medical exception from the COVID–19 vaccination requirement pursuant to E.O. 14043 is not undertaken to implement or enforce the COVID–19 vaccination requirement.

[2] ''Burden'' is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to Title 5 Code of Federal Regulations 1320.3.

[3] Cost estimates are based on industry costs for general internal medicine physicians (29–1216) defined by the Bureau of Labor Statistics. The cost figure for the general internal medicine physicians in 2021 was an average annual salary plus benefits of $300,076/year or $144/hour.

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. P–2376–052]**

### Eagle Creek Reusens Hydro, LLC; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2376–052.

c. *Date Filed:* February 28, 2022.

d. *Applicant:* Eagle Creek Reusens Hydro, LLC (Reusens Hydro).

e. *Name of Project:* Reusens Hydroelectric Project (Reusens Project).

f. *Location:* The project is located on the James River in Bedford and Amherst Counties, Virginia. The project does not occupy any federal land.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Ms. Joyce Foster, Director, Licensing and Compliance Eagle Creek Renewable Energy, LLC, 7315 Wisconsin Avenue, Suite 1100W, Bethesda, MD 20814; Phone at (804) 338–5110 or email at *Joyce.Foster@eaglecreekre.co;* and Ms. Jody Smet, Vice President, Regulatory Affairs, Eagle Creek Renewable Energy, LLC, 7315 Wisconsin Ave., Suite 1100W, Bethesda, MD 20814; Phone at (240) 482–2700 or email at *jody.smet@eaglecreekre.com.*

i. *FERC Contact:* Laurie Bauer at (202) 502–6519, or *laurie.bauer@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. See, 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* April 29, 2022.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. 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. All filings must clearly identify the project name and docket number on the first page: Reusens Project (P–2376–052).

m. This application is not ready for environmental analysis at this time.

n. *The Reusens Project consists of:* (1) A 24-foot-high, 416-foot-long concrete dam and spillway containing eight 16.75-foot-high, 44-foot-wide floodgates; (2) a 25-foot-high concrete curved auxiliary spillway; (3) a 500-acre impoundment with a gross storage capacity of 6,869 acre-feet at the normal pool elevation of 550.7 feet National Geodetic Vertical Datum of 1929; (4) an intake sction of Powerhouse A containing three 6.83-foot-wide, 17.92-foot-high steel, concrete, and timber gates and Powerhouse B containing two 6.67-foot-wide, 17.5-foot-high timber gates; (5) a 105.5-foot-long, 83-foot-wide, 86-foot-high steel frame, concrete and brick Powerhouse A containing three vertical Francis turbine-generator units with a total installed capacity of 7.5 megawatts (MW); (5) a 55-foot-long, 27-foot-wide, 84-foot-high steel frame, concrete and brick Powerhouse B containing two vertical Francis turbine-generator units with a total installed capacity of 5 MW; (6) a 100-foot-wide, 250-foot-long tailrace below Powerhouse A; (7) a 60-foot-wide, 50-foot-long tailrace below Powerhouse B; (8) a 280-foot-long transmission line to three 5,210 kilovolt-ampere 4/34.5 kilovolt step-up transformers which are connected to the grid via a 24-foot-long overhead line; and (9) appurtenant facilities.

The Reusens Project operates in a peaking mode with an average annual generation of 22,504 megawatt-hours between 2018 and 2021.

o. A copy of the application can be viewed on the Commission's website at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document (P–2376). For assistance, contact FERC at *FERCOnlineSupport@ferc.gov,* or call toll-free, (866) 208–3676 or (202) 502–8659 (TTY).

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, contact FERC Online Support.

p. *Procedural schedule:* The application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate.

Issue Deficiency Letter (if necessary)—April 2022
Request Additional Information—April 2022
Issue Acceptance Letter—July 2022
Issue Scoping Document 1 for comments—August 2022
Request Additional Information (if necessary)—September 2022
Issue Scoping Document 2—November 2022
Issue Notice of Ready for Environmental Analysis—November 2022

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: March 10, 2022.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2022–05580 Filed 3–16–22; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPPT–2022–0132; FRL–9411–04–OSCPP]**

## Certain New Chemicals; Receipt and Status Information for February 2022

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

**ACTION:** Notice.

**SUMMARY:** EPA is required under the Toxic Substances Control Act (TSCA), as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, to make information publicly available and to publish information in the **Federal Register** pertaining to submissions under TSCA Section 5, including notice of receipt of a Premanufacture notice (PMN), Significant New Use Notice (SNUN) or Microbial Commercial Activity Notice (MCAN), including an amended notice or test information; an exemption application (Biotech exemption); an application for a test marketing exemption (TME), both pending and/or concluded; a notice of commencement (NOC) of manufacture (including import) for new chemical substances; and a periodic status report on new chemical substances that are currently under EPA review or have recently

concluded review. This document covers the period from 02/01/2022 to 02/28/2022.

**DATES:** Comments identified by the specific case number provided in this document must be received on or before April 18, 2022.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2022–0132, and the specific case number for the chemical substance related to your comment, through the Federal eRulemaking Portal at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

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

**FOR FURTHER INFORMATION CONTACT:**

*For technical information contact:* Jim Rahai, Project Management and Operations Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–8593; email address: *rahai.jim@epa.gov.*

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

**SUPPLEMENTARY INFORMATION:**

## I. Executive Summary

*What action is the Agency taking?*

This document provides the receipt and status reports for the period from 02/01/2022 to 02/28/2022. The Agency is providing notice of receipt of PMNs, SNUNs and MCANs (including amended notices and test information); an exemption application under 40 CFR part 725 (Biotech exemption); TMEs, both pending and/or concluded; NOCs to manufacture a new chemical substance; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review.

EPA is also providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices.* This information is updated on a weekly basis.

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

Under the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 *et seq.,* a chemical substance may be either an ''existing'' chemical substance or a ''new'' chemical substance. Any chemical substance that is not on EPA's TSCA Inventory of Chemical Substances (TSCA Inventory) is classified as a ''new chemical substance,'' while a chemical substance that is listed on the TSCA Inventory is classified as an ''existing chemical substance.'' (See TSCA section 3(11).) For more information about the TSCA Inventory please go to: *https://www.epa.gov/tsca-inventory.*

Any person who intends to manufacture (including import) a new chemical substance for a non-exempt commercial purpose, or to manufacture or process a chemical substance in a non-exempt manner for a use that EPA has determined is a significant new use, is required by TSCA section 5 to provide EPA with a PMN, MCAN or SNUN, as appropriate, before initiating the activity. EPA will review the notice, make a risk determination on the chemical substance or significant new use, and take appropriate action as described in TSCA section 5(a)(3).

TSCA section 5(h)(1) authorizes EPA to allow persons, upon application and under appropriate restrictions, to manufacture or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a)(2), for ''test marketing'' purposes, upon a showing that the manufacture, processing, distribution in commerce, use, and disposal of the chemical will not present an unreasonable risk of injury to health or the environment. This is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: *http://www.epa.gov/oppt/newchems.*

Under TSCA sections 5 and 8 and EPA regulations, EPA is required to publish in the **Federal Register** certain information, including notice of receipt of a PMN/SNUN/MCAN (including amended notices and test information); an exemption application under 40 CFR part 725 (biotech exemption); an application for a TME, both pending and concluded; NOCs to manufacture a new chemical substance; and a periodic status report on the new chemical substances that are currently under EPA review or have recently concluded review.

*C. Does this action apply to me?*

This action provides information that is directed to the public in general.

*D. Does this action have any incremental economic impacts or paperwork burdens?*

No.

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

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

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

## I. Status Reports

In the past, EPA has published individual notices reflecting the status of TSCA section 5 filings received, pending or concluded. In 1995, the Agency modified its approach and streamlined the information published in the **Federal Register** after providing notice of such changes to the public and an opportunity to comment (See the **Federal Register** of May 12, 1995, (60 FR 25798) (FRL–4942–7). Since the passage of the Lautenberg amendments to TSCA in 2016, public interest in information on the status of section 5 cases under EPA review and, in particular, the final determination of

such cases, has increased. In an effort to be responsive to the regulated community, the users of this information, and the general public, to comply with the requirements of TSCA, to conserve EPA resources and to streamline the process and make it more timely, EPA is providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices.* This information is updated on a weekly basis.

## III. Receipt Reports

For the PMN/SNUN/MCANs that have passed an initial screening by EPA during this period, Table I provides the following information (to the extent that such information is not subject to a CBI claim) on the notices screened by EPA during this period: The EPA case number assigned to the notice that indicates whether the submission is an initial submission, or an amendment, a notation of which version was received, the date the notice was received by EPA, the submitting manufacturer (*i.e.,* domestic producer or importer), the potential uses identified by the manufacturer in the notice, and the chemical substance identity.

As used in each of the tables in this unit, (S) indicates that the information in the table is the specific information provided by the submitter, and (G) indicates that this information in the table is generic information because the specific information provided by the submitter was claimed as CBI. Submissions which are initial submissions will not have a letter following the case number. Submissions which are amendments to previous submissions will have a case number followed by the letter ''A'' (*e.g.,* P–18–1234A). The version column designates submissions in sequence as ''1'', ''2'', ''3'', etc. Note that in some cases, an initial submission is not numbered as version 1; this is because earlier version(s) were rejected as incomplete or invalid submissions. Note also that future versions of the following tables may adjust slightly as the Agency works to automate population of the data in the tables.

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 02/01/2022 TO 02/28/2022

| Case No. | Version | Received date | Manufacturer | Use | Chemical substance |
|---|---|---|---|---|---|
| J–22–0008A | 3 | 02/15/2022 | CBI | (G) Manufacture of an alcohol | (G) Modified Yeast. |
| J–22–0011A | 2 | 01/28/2022 | CBI | (G) Ethanol production | (G) Biofuel producing Saccharomyces cerevisiae modified, genetically stable. |
| P–16–0218A | 7 | 02/03/2022 | CBI | (G) Reactant: Spray Foam Insulation, Architectural Coating. | (G) Acetoacetylated Glycerin. |
| P–20–0124A | 4 | 02/18/2022 | CBI | (G) Additive in Household consumer products. | (S) 5-octen-4-ol, 3,5-dimethyl-, (5E)-. |
| P–20–0126A | 4 | 02/18/2022 | CBI | (G) Additive in household consumer products | (S) 4-Decenal, 5,9-dimethyl-. |
| P–21–0011A | 3 | 02/01/2022 | CBI | (S) Crosslinking agent for inks and coatings | (G) Hexane, 1,6-diisocyanato-, homopolymer, alkyl epoxy ether- and polyethylene glycol mono-Me ether-blocked, reaction products with propylenimine. |
| P–21–0082A | 2 | 02/18/2022 | CBI | (G) Additive in household consumer products | (S) 1-Decen-4-yne. |
| P–21–0205A | 2 | 02/18/2022 | CBI | (G) Additive in household consumer products | (S) Benzene, [2-[(2-methyl-1-undecen-1-yl}oxy]ethyl]-. |
| P–21–0206A | 3 | 02/18/2022 | HollyFrontier Corporation. | (G) Component of gasoline | (G) Alkanes, branched and linear. |
| P–22–0017A | 2 | 02/01/2022 | Sasol Chemicals (USA), LLC. | (S) Paraffin wax substitute for candles, Alkylate for polymer esters. | (S) 1-Eicosanol, manuf. of, distn., residues. |
| P–22–0036 | 2 | 02/07/2022 | Torrecid USA, LLC | (S) coloring agent, pigment for master batch | (S) chromium iron manganese oxide. |
| P–22–0037 | 1 | 02/03/2022 | Allnex USA, Inc | (S) Additol XL 186 is a specific, high efficiency additive which improves the adhesion to metal, especially under humid conditions. | (G) Polyphosphoric acids, esters with heteromonocycle homopolymer. |
| P–22–0039 | 2 | 02/25/2022 | CBI | (S) Colorant for agricultural applications | (G) Poly(oxy-1,2-ethanediyl),alpha,alpha′-[[[4-(4-alkyl heteroaryl)ene]aryl]imino]di-2,1-ethanediyl]bis[omega-hydroxy-]. |
| P–22–0040 | 1 | 02/07/2022 | CBI | (G) Component used in manufacture of high performance batteries. | (S) Manganate(4-), hexakis(cyano-.kappa.C)-, manganese (2+) sodium, (OC-6-11)-. |
| P–22–0041 | 1 | 02/07/2022 | CBI | (G) A component used in the manufacture of batteries. | (S) Ferrate (-4), hexakis(cyano-.kappa.C)-, iron(3+) manganese(2+) sodium, (OC-6-11)-. |
| P–22–0042 | 1 | 02/09/2022 | CBI | (G) Photolithography | (G) Alkanedione, [[[(substituted)aryl]thio]aryl]-, 2-(O-acetyloxime). |
| P–22–0044 | 1 | 02/15/2022 | CBI | (G) Site Limited Intermediate | (G) Silica gel, reaction products with alkyl metal salt. |
| P–22–0045 | 1 | 02/15/2022 | AkzoNobel | (G) Polymer used in the manufacture of paint | (G) Fatty acids, polymer with modified benzofuran-1,3-dione, pentaerythritol and aromatic acid anhydride. |
| P–22–0047 | 2 | 02/25/2022 | CBI | (G) Epoxy additive | (G) Alkyl substituted carbopolycyclic acids and heteromonocyclic esters. |
| P–22–0048 | 2 | 02/24/2022 | Ashland, Inc | (S) Intermediate in film | (G) halogenated dodecyl-acetylen. |
| SN–22–0001A | 2 | 01/28/2022 | CBI | (G) Component in polishing formulation | (S) Ethanol, 2,2′,2″-nitrilotris-, compd. with .alpha.-[2,4,6-tris(1-phenylethyl)phenyl]-.omega.-hydroxypoly(oxy-1,2-ethanediyl) phosphate. |

*The term 'Approved' indicates that a submission has passed a quick initial screen ensuring all required information and documents have been provided with the submission prior to the start of the 90 day review period, and in no way reflects the final status of a complete submission review.

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the NOCs that have passed an initial screening by EPA during this period: The EPA case number assigned to the NOC including whether the submission was an initial or amended submission, the date the NOC was received by EPA, the date of commencement provided by the submitter in the NOC, a notation of the type of amendment (*e.g.,* amendment to generic name, specific name, technical contact information, etc.) and chemical substance identity.

TABLE II—NOCS APPROVED * FROM 02/01/2022 TO 02/28/2022

| Case No. | Received date | Commencement date | If amendment, type of amendment | Chemical substance |
|---|---|---|---|---|
| J–22–0001 ..... | 02/22/2022 | 02/15/2022 | N | (G) Chromosomally-modified saccharomyces cerevisiae. |
| J–22–0002 ..... | 02/22/2022 | 01/31/2022 | N | (G) Chromosomally-modified saccharomyces cerevisiae. |
| P–15–0694 ..... | 02/24/2022 | 02/21/2022 | N | (S) Phenol, polymer with formaldehyde, glycidyl ether, polymers with 1,3-benzenedimethanamine, reaction products with 2-[(c12–14-alkyloxy)methyl]oxirane. |
| P–17–0198 ..... | 02/22/2022 | 02/07/2022 | N | (S) Neodymium, chloro et hydro iso-bu neodecanoate polybutadiene aluminum complexes. |
| P–18–0170 ..... | 02/23/2022 | 02/23/2022 | N | (S) 1-propanaminium, n,n′-(oxydi-2,1-ethanediyl)bis[3-chloro-2-hydroxy-n,n-dimethyl-, dichloride. |
| P–19–0010 ..... | 01/31/2022 | 01/27/2022 | N | (G) Hydrogenated fatty acid dimers, polymers with 1,1′-methylenebis[4-isocyanatobenzene], polypropylene glycol, polypropylene glycol ether with trimethylolpropane (3:1), and 1,3-propanediol, propylene glycol monomethacrylate-blocked. |
| P–19–0052 ..... | 02/03/2022 | 06/03/2020 | N | (S) Poly(oxy-1,2-ethanediyl), alpha-nonyl-omega-hydroxy-, branched and linear. |
| P–19–0158 ..... | 02/15/2022 | 02/08/2022 | N | (G) Alkenoic acid polymer with 2-ethyl-2-(hdroxymethyl)-1,3-alkyldiol, 1,1′-methylenebis(4-isocyantocarbomonocycle) and 3-methyl-1,5-aklydiol. |
| P–21–0005 ..... | 02/11/2022 | 01/20/2022 | N | (G) Carbonmonocyclic alkene polymer with alkyl alkenoate, alkyl alkenoate, alkyl alkenoate and polyalkyldiene alkenoate. |
| P–21–0094 ..... | 02/08/2022 | 01/22/2022 | N | (G) Silane, halogenated. |
| P–21–0135 ..... | 02/09/2022 | 02/06/2022 | N | (G) Alkenoic acid, allyl-, (dialkylamino)alkyl ester, polymer with dialkyl-alkylene-alkanediyl)bis[carbomoncycle], alkylalkyl alkyl-alkenoate and alkanediol mono(2-alkyl-alkenoate), diazenediyl)bis[2-alkylalkanenitrile]-initiated. |
| P–21–0186 ..... | 02/09/2022 | 01/18/2022 | N | (G) Glycerin, alkoxylated alkyl acid esters. |

* The term 'Approved' indicates that a submission has passed a quick initial screen ensuring all required information and documents have been provided with the submission.

In Table III of this unit, EPA provides the following information (to the extent such information is not subject to a CBI claim) on the test information that has been received during this time period: The EPA case number assigned to the test information; the date the test information was received by EPA, the type of test information submitted, and chemical substance identity.

TABLE III—TEST INFORMATION RECEIVED FROM 02/01/2022 TO 02/28/2022

| Case No. | Received date | Type of test information | Chemical substance |
|---|---|---|---|
| J–21–0020 ..... | 02/09/2022 | Complete vector sequence with annotations in FASTA format. | (G) Sulfolobus solfataricus-strain cb1. |
| P–13–0021 ..... | 02/23/2022 | Hexafor 6240 polymer method validation of TOP assay. | (G) Perfluoroacrylate polymer. |
| P–16–0289 ..... | 02/17/2022 | Particle size distribution analysis ..... | (G) Benzene dicarboxylic acid, polymer with alkane dioic acid and aliphatic diamine. |
| P–16–0543 ..... | 02/16/2022 | Exposure monitoring report ..... | (G) Halogenophosphoric acid metal salt. |
| P–21–0176 ..... | 02/23/2022 | Skin Sensitization (OECD Test Guideline 406) ..... | (G) Alkane dioic acid, bis (poly aromatic triazine) alkanoic ether phenoxy ester. |

If you are interested in information that is not included in these tables, you may contact EPA's technical information contact or general information contact as described under **FOR FURTHER INFORMATION CONTACT** to access additional non-CBI information that may be available.

*Authority:* 15 U.S.C. 2601 *et seq.*

Dated: March 14, 2022.

**Pamela Myrick,**

*Director, Project Management and Operations Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 2022–05656 Filed 3–16–22; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL ELECTION COMMISSION

**[Notice 2022–06]**

## Filing Dates for the Oklahoma Senate Special Election

**AGENCY:** Federal Election Commission.

**ACTION:** Notice of filing dates for special election.

**SUMMARY:** Oklahoma has scheduled special elections to fill the U.S. Senate seat being vacated by Senator James M. Inhofe. There are three possible special elections, but only two may be necessary.

- *Primary Election:* June 28, 2022.
- *Possible Runoff Election:* August 23, 2022. In the event that one candidate does not achieve a majority vote in his/her party's Special Primary Election, the top two vote-getters will participate in a Special Runoff Election.
- *General Election:* November 8, 2022.

**FOR FURTHER INFORMATION CONTACT:** Ms. Elizabeth S. Kurland, Information Division, 1050 First Street NE, Washington, DC 20463; Telephone: (202) 694–1100; Toll Free (800) 424–9530.

**SUPPLEMENTARY INFORMATION:**

## Special Primary Only

All principal campaign committees of candidates *only* participating in the Oklahoma Special Primary shall file a Pre-Primary Report on June 16, 2022. (See charts below for the closing date for the report).

## Special Primary and General Without Runoff

If only two elections are held, all principal campaign committees of candidates participating in the Oklahoma Special Primary and Special General Elections shall file a Pre-Primary Report on June 16, 2022; a Pre-General Report on October 27, 2022; and a Post-General Report on December 8, 2022. (See charts below for the closing date for each report).

## Special Primary and Runoff Elections

If three elections are held, all principal campaign committees of candidates *only* participating in the Oklahoma Special Primary and Special Runoff Elections shall file a Pre-Primary Report on June 16, 2022; and a Pre-Runoff Report on August 11, 2022. (See charts below for the closing date for each report.)

## Special Primary, Runoff and General Elections

All principal campaign committees of candidates participating in the Oklahoma Special Primary, Special Runoff and Special General Elections shall file a Pre-Primary Report on June 16, 2022; a Pre-Runoff Report on August 11, 2022; a Pre-General Report on October 27, 2022; and a Post-General Report on December 8, 2022. (See charts below for the closing date for each report.)

Note that these reports are in addition to the campaign committee's regular quarterly filings. (See charts below for the closing date for each report).

## Unauthorized Committees (PACs and Party Committees)

Political committees not filing monthly are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the Oklahoma Special Primary, Special Runoff or Special General Elections by the close of books for the applicable report(s). (See charts below for the closing date for each report.)

Committees filing monthly that make contributions or expenditures in connection with the Oklahoma Special Primary, Special Runoff or Special General Elections will continue to file according to the monthly reporting schedule.

Additional disclosure information for the Oklahoma special elections may be found on the FEC website at *https://www.fec.gov/help-candidates-and-committees/dates-and-deadlines/.*

## Disclosure of Lobbyist Bundling Activity

Principal campaign committees, party committees and leadership PACs that are otherwise required to file reports in connection with the special elections must simultaneously file FEC Form 3L if they receive two or more bundled contributions from lobbyists/registrants or lobbyist/registrant PACs that aggregate in excess of $20,200 during the special election reporting periods. (See charts below for closing date of each period.) 11 CFR 104.22(a)(5)(v), (b), 110.17(e)(2), (f).

CALENDAR OF REPORTING DATES FOR OKLAHOMA SPECIAL ELECTIONS

| Report | Close of books [1] | Reg./cert. & overnight mailing deadline | Filing deadline |
|---|---|---|---|
| **Political Committees Involved in *Only* the Special Primary (06/28/2022) Must File** | | | |
| Pre-Primary | 06/08/2022 | 06/13/2022 | 06/16/2022 |
| July Quarterly | 06/30/2022 | 07/15/2022 | 07/15/2022 |
| **If Only Two Elections Are Held, Political Committees Involved in the Special Primary (06/28/2022) and Special General (11/08/2022) Must File** | | | |
| Pre-Primary | 06/08/2022 | 06/13/2022 | 06/16/2022 |
| July Quarterly | 06/30/2022 | 07/15/2022 | 07/15/2022 |
| October Quarterly | 09/30/2022 | 10/15/2022 | [2] 10/15/2022 |
| Pre-General | 10/19/2022 | 10/24/2022 | 10/27/2022 |
| Post-General | 11/28/2022 | 12/08/2022 | 12/08/2022 |
| Year-End | 12/31/2022 | 01/31/2023 | 01/31/2023 |
| **If Three Elections Are Held, Political Committees Involved in *Only* The Special Primary (06/28/2022) and Special Runoff (08/23/2022) Must File** | | | |
| Pre-Primary | 06/08/2022 | 06/13/2022 | 06/16/2022 |
| July Quarterly | 06/30/2022 | 07/15/2022 | 07/15/2022 |
| Pre-Runoff | 08/03/2022 | 08/08/2022 | 08/11/2022 |
| October Quarterly | 09/30/2022 | 10/15/2022 | [2] 10/15/2022 |
| **If Three Elections Are Held, Political Committees Involved in *Only* The Special Runoff (08/23/2022) Must File** | | | |
| Pre-Runoff | 08/03/2022 | 08/08/2022 | 08/11/2022 |

CALENDAR OF REPORTING DATES FOR OKLAHOMA SPECIAL ELECTIONS—Continued

| Report | Close of books [1] | Reg./cert. & overnight mailing deadline | Filing deadline |
|---|---|---|---|
| October Quarterly | 09/30/2022 | 10/15/2022 | [2] 10/15/2022 |
| **Political Committees Involved in the Special Primary (06/28/2022), Special Runoff (08/23/2022) and Special General (11/08/2022) Must File** | | | |
| Pre-Primary | 06/08/2022 | 06/13/2022 | 06/16/2022 |
| July Quarterly | 06/30/2022 | 07/15/2022 | 07/15/2022 |
| Pre-Runoff | 08/03/2022 | 08/08/2022 | 08/11/2022 |
| October Quarterly | 09/30/2022 | 10/15/2022 | [2] 10/15/2022 |
| Pre-General | 10/19/2022 | 10/24/2022 | 10/27/2022 |
| Post-General | 11/28/2022 | 12/08/2022 | 12/08/2022 |
| Year-End | 12/31/2022 | 01/31/2023 | 01/31/2023 |
| **Political Committees Involved in *Only* the Special General (11/08/2022) Must File** | | | |
| Pre-General | 10/19/2022 | 10/24/2022 | 10/27/2022 |
| Post-General | 11/28/2022 | 12/08/2022 | 12/08/2022 |
| Year-End | 12/31/2022 | 01/31/2023 | 01/31/2023 |

[1] The reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered as a political committee up through the close of books for the first report due.

[2] Notice that this filing deadline falls on a weekend or federal holiday. Filing deadlines are not extended when they fall on nonworking days. Accordingly, reports filed by methods other than registered, certified or overnight mail, or electronically, must be received before the Commission's close of business on the last business day before the deadline.

Dated: March 9, 2022.

On behalf of the Commission,

**Allen J. Dickerson,**

*Chairman, Federal Election Commission.*

[FR Doc. 2022–05653 Filed 3–16–22; 8:45 am]

**BILLING CODE 6715–01–P**

## FEDERAL ELECTION COMMISSION

### Sunshine Act Meeting

**TIME AND DATE:** Tuesday, March 22, 2022 at 10 a.m. and its continuation at the conclusion of the open meeting on March 24, 2022.

**PLACE:** 1050 First Street NE, Washington, DC and virtual (this meeting will be a hybrid meeting).

**STATUS:** This meeting will be closed to the public.

**MATTERS TO BE CONSIDERED:** Compliance matters pursuant to 52 U.S.C. 30109. Matters concerning participation in civil actions or proceedings or arbitration.

* * * * *

**CONTACT PERSON FOR MORE INFORMATION:** Judith Ingram, Press Officer, Telephone: (202) 694–1220.

*Authority:* Government in the Sunshine Act, 5 U.S.C. 552b.

**Vicktoria J. Allen,**

*Acting Deputy Secretary of the Commission.*

[FR Doc. 2022–05789 Filed 3–15–22; 4:15 pm]

**BILLING CODE 6715–01–P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551–0001, not later than April 18, 2022.

*A. Federal Reserve Bank of Richmond* (Brent B. Hassell, Assistant Vice President) P.O. Box 27622, Richmond, Virginia 23261. Comments can also be sent electronically to or *Comments.applications@rich.frb.org:*

1. *Citizens Bancshares Corporation, Olanta, South Carolina;* to acquire Sandhills Holding Company, Inc., and thereby indirectly acquire Sandhills Bank, both of North Myrtle Beach, South Carolina

Board of Governors of the Federal Reserve System, March 14, 2022.

**Michele Taylor Fennell,**

*Deputy Associate Secretary of the Board.*

[FR Doc. 2022–05682 Filed 3–16–22; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Public Health Reassessment and Immediate Termination of Order Suspending the Right To Introduce Certain Persons From Countries Where a Quarantinable Communicable Disease Exists With Respect to Unaccompanied Noncitizen Children

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** General notice.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS), is hereby terminating the Order Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists, issued on August 2, 2021 (August Order), and all related prior orders issued pursuant to the authorities in sections 362 and 365 of the Public Health Service (PHS) Act and the implementing regulation, to the extent they apply to Unaccompanied Noncitizen Children (UC).

**DATES:** This Order was implemented March 11, 2022.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Buigut, Division of Global Migration and Quarantine, National Center for Emerging and Zoonotic Infectious Diseases, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H16–4, Atlanta, GA 30329. Email: *dgmqpolicyoffice@cdc.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

Coronavirus disease 2019 (COVID–19) is a quarantinable communicable disease caused by the SARS–CoV–2 virus. As part of U.S. government efforts to mitigate the introduction, transmission, and spread of COVID–19, CDC issued the August Order, replacing a prior order issued on October 13, 2020 (October Order) which continued a series of orders issued pursuant to 42 U.S.C. 265, 268 and the implementing regulation at 42 CFR 71.40, suspending the right to introduce certain persons into the United States from countries or places where the quarantinable communicable disease exists in order to protect the public health from an increased risk of the introduction of COVID–19 (CDC Orders).

The CDC Orders issued under 42 U.S.C. 265, 268 and 42 CFR 71.40 were intended to reduce the risk of COVID–19 introduction, transmission, and spread at POE and U.S. Border Patrol stations by significantly reducing the number and density of covered noncitizens held in these congregate settings and thereby reducing risks to U.S. citizens and residents, Department of Homeland Security/Customs and Border Patrol personnel and noncitizens at the facilities, and local community healthcare systems. CDC has deemed the measures included in the CDC Orders necessary for the protection of public health during the ongoing COVID–19 pandemic.

The August Order continued a suspension of the right to introduce ''covered noncitizens,'' as defined below, into the United States along the U.S. land and adjacent coastal borders. The August Order specifically excepted UC and incorporated an exception for UC issued by CDC on July 16, 2021 (July Exception). Based on the public health landscape, the current status of the COVID–19 pandemic, the situation in congregate settings where UC seeking to enter the United States are processed and held, and the procedures in place for the processing of UC in such congregate settings, CDC has determined that a suspension of the right to introduce UC is not necessary to protect U.S. citizens, U.S. nationals, lawful permanent residents, personnel and noncitizens at the (POE) and U.S. Border Patrol stations, and destination communities in the United States at this time. This termination as to UC supersedes the July Exception incorporated in the August Order. The present termination does not address the application of the August Order to individuals in family units (FMU) or single adults (SA).

The August Order applied specifically to covered noncitizens, defined as ''persons traveling from Canada or Mexico (regardless of their country of origin) who would otherwise be introduced into a congregate setting in a POE or U.S. Border Patrol station at or near the U.S. land and adjacent coastal borders subject to certain exceptions detailed below; this includes noncitizens who do not have proper travel documents, noncitizens whose entry is otherwise contrary to law, and noncitizens who are apprehended at or near the border seeking to unlawfully enter the United States between POE.'' Three groups typically make up covered noncitizens—single adults (SA), individuals in family units (FMU), and unaccompanied noncitizen children (UC). UC encountered in the United States were specifically excepted from the August Order based on its explicit incorporation by reference of CDC's July Exception of UC.

UC are generally treated differently than other individuals apprehended at the border under ordinary immigration laws. When section 265 does not apply, UC generally are transferred to the care and custody of HHS's Office of Refugee Resettlement (ORR) pursuant to the Trafficking Victims Protection Reauthorization Act of 2008. ORR is able to care for UC while implementing appropriate COVID–19 mitigation measures, given ORR's robust network of care facilities that provide testing and medical care, and DHS has already been excepting UC in accordance with CDC's August Order. With CDC's assistance and guidance, ORR also has implemented COVID–19 testing protocols for UC in its care and continues to practice other mitigation measures to prevent and curtail transmission of the SARS–CoV–2 virus among UC in its care.

In the August Order, CDC committed to reassessing the public health circumstances necessitating the Order at least every 60 days by reviewing the latest information regarding the status of the COVID–19 public health emergency and associated public health risks, including migration patterns, sanitation concerns, and any improvement or deterioration of conditions at the U.S. borders. Following a Preliminary Injunction issued by the U.S. District Court for the Northern District of Texas ordering that the July Exception for UC and its incorporation into the August Order be enjoined, CDC determined that it was necessary to conduct an immediate reassessment with respect to UC. This reassessment takes into account the current status of the pandemic.

Based on the reassessment, the CDC Director finds that there is no longer a serious danger of the introduction, transmission, and spread of COVID–19 into the United States as a result of entry of UC and that a suspension of the introduction of UC is not required in the interest of public health. The CDC Director has determined that suspension of entry of UC is not necessary to protect U.S. citizens, U.S. nationals, lawful permanent residents, personnel and noncitizens at POE and U.S. Border Patrol stations, or destination communities in the United States. In light of that determination, CDC is hereby terminating the CDC Orders issued pursuant to 42 U.S.C. 265, 268 and 42 CFR 71.40 as they apply to UC, effective immediately. The current 60-day review process is scheduled to end on March 30, 2022, and CDC will conclude its reassessment of whether

the Order remains necessary in whole or part to protect the public health with respect to SA and FMU by that date.

**Legal Authority**

CDC is hereby immediately terminating the August Order and all prior orders issued pursuant to sections 362 and 365 of the PHS Act (42 U.S.C. 265, 268) and the implementing regulation at 42 CFR 71.40 to the extent they apply to UC.

**Referenced Order**

A copy of the Order is provided below, and a copy of the signed Order can be found at *https://www.cdc.gov/coronavirus/2019-ncov/more/pdf/NoticeUnaccompaniedChildren-update.pdf.*

**U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention (CDC)**

**Order Under Sections 362 & 365 of the Public Health Service Act (42 U.S.C. 265, 268) and 42 CFR 71.40**

**Public Health Reassessment and Immediate Termination of Order Suspending the Right To Introduce Certain Persons From Countries Where a Quarantinable Communicable Disease Exists With Respect to Unaccompanied Noncitizen Children**

**Executive Summary**

The Centers for Disease Control and Prevention (CDC), a component of the U.S. Department of Health and Human Services (HHS), is hereby terminating the Order Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists, issued on August 2, 2021 (August Order),[1] and all related prior orders issued pursuant to the authorities in sections 362 and 365 of the Public Health Service (PHS) Act (42 U.S.C. 265, 268) and the implementing regulation at 42 CFR 71.40 (CDC Orders),[2] to the extent that they apply to Unaccompanied Noncitizen Children (UC). The August Order continued a suspension of the right to introduce ''covered noncitizens,'' as defined in the Order,[3] into the United States along the U.S. land and adjacent coastal borders. The August Order specifically excepted UC and incorporated an exception for UC issued by CDC on July 16, 2021 (July Exception).[4] The August Order states that CDC will reassess at least every 60 days whether the Order remains necessary to protect the public health. CDC was in the process of assessing that question in light of the current public health situation. However, in response to an order of the U.S. District Court for the Northern District of Texas preliminarily enjoining the July Exception and the relevant portion of the August Order based on concerns about the adequacy of the CDC's explanation for those actions and consistent with CDC's continuing review, CDC has reopened this issue and reconsidered whether UC should be subject to the CDC Orders. CDC hereby concludes that UC should not be subject to the CDC Orders based on the current public health circumstances. Based on the public health landscape, the current status of the COVID–19 pandemic, the situation in congregate settings where UC seeking to enter the United States are processed and held, and the procedures in place for the processing of UC in such congregate settings, CDC has determined that a suspension of the right to introduce UC is not necessary to protect U.S. citizens, U.S. nationals, lawful permanent residents, personnel and noncitizens at the ports of entry (POE) and U.S. Border Patrol stations, and destination communities in the United States at this time. This termination as to UC supersedes the July Exception incorporated in the August Order. The present termination does not address the application of the August Order to individuals in family units (FMU) or single adults (SA).

**Outline of Reassessment and Order**

I. Background
A. Public Health Landscape
B. Current Status of the COVID–19 Pandemic
1. Community COVID–19 Levels
2. Information Specific to UC
II. Public Health Reassessment
A. Changing Public Health Conditions
B. Public Health Factors Specifically Relevant to UC Population
III. Legal Considerations
A. Concerns Raised by the District Court
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D. Basis for Termination With Respect to UC Under Sections 362 and 365 of the PHS Act and 42 CFR 71.40
IV. Issuance and Implementation of the Termination
A. Termination as to UC
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**I. Background**

Coronavirus disease 2019 (COVID–19) is a quarantinable communicable disease[5] caused by the SARS–CoV–2 virus. As part of U.S. Government efforts to mitigate the introduction, transmission, and spread of COVID–19, CDC issued the August Order,[6] replacing a prior order issued on October 13, 2020 (October Order) which continued a series of orders issued pursuant to 42 U.S.C. 265, 268 and the implementing regulation at 42 CFR 71.40,[7] suspending the right to introduce[8] certain persons into the United States from countries or places where the quarantinable communicable disease exists in order to protect the public health from an increased risk of the introduction of COVID–19 (CDC

[1] Available at *https://www.cdc.gov/coronavirus/2019-ncov/downloads/CDC-Order-Suspending-Right-to-Introduce-_Final_8-2-21.pdf* (last visited Mar. 7, 2022); *see also* 86 FR 42828 (Aug. 5, 2021).

[2] The ''CDC Orders'' issued pursuant to these legal authorities are found at 85 FR 17060 (Mar. 26, 2020), 85 FR 22424 (Apr. 22, 2020), 85 FR 31503 (May 26, 2020), 85 FR 65806 (Oct. 16, 2020), and 86 FR 42828 (Aug. 5, 2021) (fully incorporating by reference 86 FR 38717 (July 22, 2021), see 86 FR 42828, 42829 at note 3).

[3] *See infra* 1.

[4] Public Health Determination Regarding an Exception for Unaccompanied Noncitizen Children from Order Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists, Centers for Disease Control and Prevention, *https://www.cdc.gov/coronavirus/2019-ncov/more/pdf/NoticeUnaccompaniedChildren.pdf* (July 16, 2021); 86 FR 38717 (July 22, 2021); *see* 86 FR 42828, 42829 at note 1 (Aug. 5, 2021) (which fully incorporated by reference the July Exception relating to UC).

[5] Quarantinable communicable diseases are any of the communicable diseases listed in Executive Order 13295, as provided under section 361 of the Public Health Service Act (42 U.S.C. 264), 42 CFR 71.1. The list of quarantinable communicable diseases currently includes cholera, diphtheria, infectious tuberculosis, plague, smallpox, yellow fever, viral hemorrhagic fevers (Lassa, Marburg, Ebola, Crimean-Congo, South American, and others not yet isolated or named), severe acute respiratory syndromes (including Middle East Respiratory Syndrome and COVID–19), influenza caused by novel or reemergent influenza viruses that are causing, or have the potential to cause, a pandemic, and measles. *See* Exec. Order 13295, 68 FR 17255 (Apr. 4, 2003), as amended by Exec. Order 13375, 70 FR 17299 (Apr. 1, 2005) and Exec. Order 13674, 79 FR 45671 (July 31, 2014), 86 FR 52591 (Sep. 22, 2021).

[6] *See supra* note 1.

[7] Order Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists, 85 FR 65806 (Oct. 16, 2020). The October Order replaced the Order Suspending Introduction of Certain Persons from Countries Where a Communicable Disease Exists, issued on March 20, 2020 (March Order), which was subsequently extended and amended. Notice of Order Under Sections 362 and 365 of the Public Health Service Act Suspending Introduction of Certain Persons from Countries Where a Communicable Disease Exists, 85 FR 17060 (Mar. 26, 2020); Extension of Order Under Sections 362 and 365 of the Public Health Service Act; Order Suspending Introduction of Certain Persons From Countries Where a Communicable Disease Exists, 85 FR 22424 (Apr. 22, 2020); Amendment and Extension of Order Under Sections 362 and 365 of the Public Health Service Act; Order Suspending Introduction of Certain Persons from Countries Where a Communicable Disease Exists, 85 FR 31503 (May 26, 2020).

[8] *Suspension of the right to introduce* means to cause the temporary cessation of the effect of any law, rule, decree, or order pursuant to which a person might otherwise have the right to be introduced or seek introduction into the United States. 42 CFR 71.40(b)(5).

Orders).[9] The August Order applied specifically to covered noncitizens, defined as ''persons traveling from Canada or Mexico (regardless of their country of origin) who would otherwise be introduced into a congregate setting in a POE or U.S. Border Patrol station [10] at or near the U.S. land and adjacent coastal borders subject to certain exceptions detailed below; this includes noncitizens who do not have proper travel documents, noncitizens whose entry is otherwise contrary to law, and noncitizens who are apprehended at or near the border seeking to unlawfully enter the United States between POE.'' [11]

Three groups typically make up covered noncitizens—single adults (SA),[12] individuals in family units (FMU),[13] and unaccompanied noncitizen children (UC).[14] UC encountered in the United States were specifically excepted from the August Order [15] based on its explicit incorporation by reference of CDC's July Exception of UC.[16] The August Order and July Exception distinguished the immigration processing available to SA and FMU from that available to UC.[17] While all three groups are processed by U.S. Customs and Border Protection (CBP), a component of the Department of Homeland Security (DHS), following that initial intake, UC are referred to HHS' Office of Refugee Resettlement (ORR) for care. At both the CBP and ORR stages, UC receive special attention.

The series of CDC Orders issued under 42 U.S.C. 265, 268 and 42 CFR 71.40 were intended to reduce the risk of COVID–19 introduction, transmission, and spread at POE and U.S. Border Patrol stations by significantly reducing the number and density of covered noncitizens held in these congregate settings and thereby reducing risks to U.S. citizens, U.S. nationals, lawful permanent residents, DHS/CBP personnel and noncitizens at the facilities, and local community healthcare systems. CDC has deemed the measures included in the CDC Orders necessary for the protection of public health during the ongoing COVID–19 pandemic.

In the August Order, CDC committed to reassessing the public health circumstances necessitating the Order at least every 60 days by reviewing the latest information regarding the status of the COVID–19 public health emergency and associated public health risks, including migration patterns, sanitation concerns, and any improvement or deterioration of conditions at the U.S. borders.[18] Following a Preliminary Injunction issued by the U.S. District Court for the Northern District of Texas ordering that the July Exception for UC and its incorporation into the August Order be enjoined,[19] CDC determined that it was necessary to conduct an immediate reassessment with respect to UC. This reassessment takes into account the current status of the pandemic. For example, CDC recently released its COVID–19 Community Levels framework, which allows communities and individuals to make decisions and reduce COVID–19 mitigation measures as allowed by local context and unique needs.[20] This was followed by an updated National COVID–19 Preparedness Plan, which lays out the roadmap to help the nation continue to fight COVID–19 in the future, while also allowing resumption of more normal routines.[21]

Based on the reassessment below, the CDC Director finds that there is no longer a serious danger of the introduction, transmission, and spread of COVID–19 into the United States as a result of entry of UC and that a suspension of the introduction of UC is not required in the interest of public health. The CDC Director has determined that suspension of entry of UC is not necessary to protect U.S. citizens, U.S. nationals, lawful permanent residents, personnel and noncitizens at POE and U.S. Border Patrol stations, or destination communities in the United States. In light of that determination, and as described below, CDC is hereby terminating the CDC Orders issued pursuant to 42 U.S.C. 265, 268 and 42 CFR 71.40 as they apply to UC, effective immediately.

### *A. Public Health Landscape*

Since late 2019, SARS–CoV–2, the virus that causes COVID–19, has spread throughout the world, resulting in a pandemic. Since the beginning of the pandemic, the U.S. Government response has focused on taking actions and providing guidance based on the best available scientific information. As the waves of the pandemic have surged and ebbed, so too have actions taken in response to the pandemic. Earlier phases of the pandemic required extraordinary actions by the U.S. Government and society at large. However, epidemiologic data, scientific knowledge, and the availability of public health mitigation measures, vaccines, and therapeutics have permitted many of those early actions to be pulled back in favor of more nuanced, targeted, and narrowly-tailored guidance that provides a less restrictive means to prevent and control the SARS–CoV–2 virus and COVID–19.

As of March 11, 2022, there have been over 450 million confirmed cases of COVID–19 globally, resulting in over six million deaths.[22] The United States has reported over 79 million cases resulting in over 960,000 deaths due to the disease [23] and is currently averaging around 49,000 new cases of COVID–19 a day as of March 11, 2022.[24]

### *B. Current Status of the COVID–19 Pandemic*

The highly infectious SARS–CoV–2 variant B.1.1.529 (Omicron) is responsible for the currently receding wave of the pandemic. The Omicron variant resulted in an extraordinary and unparalleled increase in COVID–19 cases around the world.[25] The United

[9] *See supra* note 2.

[10] POE and U.S. Border Patrol stations are operated by U.S. Customs and Border Protection (CBP), an agency within Department of Homeland Security (DHS).

[11] 86 FR 42828, 42841.

[12] A single adult (SA) is any noncitizen adult 18 years or older who is not an individual in a ''family unit.'' 86 FR 42828, 42830 at note 13.

[13] An individual in a family unit (FMU) includes any individual in a group of two or more noncitizens consisting of a minor or minors accompanied by their adult parent(s) or legal guardian(s). *Id.* at note 14.

[14] CDC understands UC to be a class of individuals similar to or the same as those individuals who would be considered ''unaccompanied alien children'' (*see* 6 U.S.C. 279) for purposes of HHS Office of Refugee Resettlement custody, were DHS to make the necessary immigration determinations under Title 8 of the U.S. Code. 86 FR 38717, 38718 at note 4.

[15] 86 FR 42828, 42829 at note 3.

[16] *See supra* note 4.

[17] *See* 86 FR 42828, 42835–37 (describing the processing of noncitizen SA and FMU by DHS components, CBP and ICE, under both regular Title 8 immigration and under an order pursuant to 42 U.S.C. 265).

[18] 86 FR 42828, 42841.

[19] *See infra* II.B.

[20] *COVID–19 Community Levels,* Centers for Disease Control and Prevention, *https://www.cdc.gov/coronavirus/2019-ncov/science/community-levels.html* (updated Mar. 10, 2022).

[21] *National COVID–19 Preparedness Plan—March 2022,* available at *https://www.whitehouse.gov/wp-content/uploads/2022/03/NAT-COVID-19-PREPAREDNESS-PLAN.pdf (last visited Mar. 9, 2022).*

[22] *Coronavirus disease (COVID–19) pandemic,* World Health Organization, *https://covid19.who.int/* (last visited Mar. 11, 2022).

[23] *COVID Data Tracker,* Centers for Disease Control and Prevention, *https://covid.cdc.gov/covid-data-tracker/#datatracker-home* (last visited Mar. 11, 2022).

[24] *United States COVID–19 Cases, Deaths, and Laboratory Testing (NAATs) by State, Territory, and Jurisdiction,* Centers for Disease Control and Prevention, *https://covid.cdc.gov/covid-data-tracker/#cases_community* (last visited Mar. 11, 2022).

[25] Omicron was first reported to the World Health Organization (WHO) by South Africa on November

Continued

States recorded its highest seven-day moving average number of cases on January 15, 2022.[26] Following this unprecedented peak, the number of COVID–19 cases in the United States began to rapidly decrease, falling by 95% as of March 9, 2022.[27] After a brief period of continued increases,[28] deaths and hospitalizations also reversed course and began a swift descent.[29] These welcomed changes were due, in part, to widespread population immunity[30] and a generally lower overall risk of severe disease and are responsible for allowing the United States to return to more normal routines safely.[31]

1. Community COVID–19 Levels

During the first four waves of the pandemic, CDC relied on a particular formula to calculate community transmission levels and update COVID–19 prevention strategies accordingly.[32] These indicators reflected the goal of limiting transmission in anticipation of vaccines becoming available.[33] The CDC Director examined these indicators in conducting the public health assessment for the August Order.[34]

In February 2022, given increased levels of population immunity, available therapies, and overall milder disease associated with the Omicron variant,[35] CDC released a new framework, ''COVID–19 Community Levels,'' reflecting a shift in focus from eliminating SARS–CoV–2 transmission toward disease control and infrastructure protection.[36] This new framework examines three currently relevant metrics: New COVID–19 hospital admissions per 100,000 population in the past seven days, the percent of staffed inpatient beds occupied by patients with COVID–19, and total new COVID–19 cases per 100,000 population in the past seven days.[37] CDC determined that data on disease severity and healthcare system strain complement case rates, and these data together are more informative for public health recommendations for individual, organizational, and jurisdictional decisions than data on community transmission rates alone.[38] This comprehensive approach to assessing COVID–19 Community Levels can inform decisions about layered COVID–19 prevention strategies, including vaccination and masking to reduce medically significant disease and limit strain on the healthcare system and other societal functions.[39]

Using these data, the COVID–19 Community Levels for each county are classified as low, medium, or high. CDC recommends using county COVID–19 Community Levels to help determine which mitigation measures, such as screening, testing, and mask use, should be implemented within a community.[40] As of March 10, 2022, 72.7% of U.S. counties are classified at the low COVID–19 Community Level, 21.2% of U.S. counties are classified at the medium COVID–19 Community Level, and 6% of U.S. counties are classified at the high COVID–19 Community Level.[41] Furthermore, 82.8% of the U.S. population lives in counties classified as ''low,'' 15% live in counties classified as ''medium,'' and 2.2% live in counties classified as ''high.''[42]

2. Information Specific to UC

Since the beginning of the pandemic, CBP has maintained myriad COVID–19 mitigation efforts in order to protect noncitizens and its workforce.[43] The

24, 2021, and on November 26, 2021, WHO designated it a Variant of Concern (VOC). On November 30, 2021, the U.S. also decided to classify Omicron as a VOC. This decision was based on a number of factors, including detection of cases attributed to Omicron in multiple countries, even among persons without travel history, transmission and replacement of Delta as the predominant variant in South Africa, changes in the spike protein of the virus, and concerns about potential decreased effectiveness of vaccination and treatments.

[26] *See Trends in Number of COVID–19 Cases and Deaths in the U.S. Reported to CDC, by State/Territory,* Centers for Disease Control and Prevention, *https://covid.cdc.gov/covid-data-tracker/#trends_dailycases,* citing a seven-day moving average of 809,202 cases on January 15, 2022 (last updated Mar. 9, 2022).

[27] *Id.* (noting a peak of 809,204 seven-day moving average number of cases to 40,433 seven-day moving average number of cases on March 7, 2022).

[28] *COVID Data Tracker Weekly Review: Stay Up to Date—Interpretive Summary for Jan. 28, 2022,* Centers for Disease Control and Prevention, *https://www.cdc.gov/coronavirus/2019-ncov/covid-data/covidview/past-reports/01282022.html* (Jan. 28, 2022).

[29] *See New Admissions of Patients with Confirmed COVID–19, United States,* Centers for Disease Control and Prevention, *https://covid.cdc.gov/covid-data-tracker/#new-hospital-admissions* (last updated Mar. 10, 2022); *see also supra* note 25.

[30] In addition to vaccine-induced immunity, studies have consistently shown that infection with SARS–CoV–2 lowers an individual's risk of subsequent infection and an even lower risk of hospitalization and death. National estimates of both vaccine- and infection-induced antibody seroprevalence have been measured among blood donors; as of December 2021 these measures demonstrated 94.7% of persons 16 years and older showed antibody seroprevalence for COVID–19. *Science Brief: Indicators for Monitoring COVID–19 Community Levels and Making Public Health Recommendations,* Centers for Disease Control and Prevention, *https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/indicators-monitoring-community-levels.html* (updated Mar. 4, 2022); *Nationwide COVID–19 Infection- and Vaccination-Induced Antibody Seroprevalence (Blood donations),* Centers for Disease Control and Prevention, *https://covid.cdc.gov/covid-data-tracker/#nationwide-blood-donor-seroprevalence* (last updated Feb. 18, 2022).

[31] *Transcript for CDC Media Telebriefing: Update on COVID–19,* Centers for Disease Control and Prevention, *https://www.cdc.gov/media/releases/2022/t0225-covid-19-update.html (Feb. 25, 2022).* COVID–19 vaccines are highly effective against severe illness and death. Widespread uptake of these vaccines, coupled with higher rates of infection-induced immunity at the population level, as well as the broad availability of mitigation measures and effective therapeutics have moved the pandemic to a different phase. *See also State of the Union Address, https://www.whitehouse.gov/state-of-the-union-2022/_(* (Mar. 1, 2022).

[32] In September 2020, CDC released the Indicators of Community Transmission framework, which incorporated two metrics to define community transmission: Total new cases per 100,000 persons in the past seven days, and percentage of Nucleic Acid Amplification Test results that are positive during the past seven days. CDC also encouraged local decision-makers to also assess the following factors, in addition to levels of SARS–CoV–2, to inform the need for layered prevention strategies across a range of settings: Health system capacity, vaccination coverage, capacity for early detection of increases in COVID–19 cases, and populations at risk for severe outcomes from COVID–19. *See* Christie A, Brooks JT, Hicks LA, et al. *Guidance for Implementing COVID–19 Prevention Strategies in the Context of Varying Community Transmission Levels and Vaccination Coverage.* MMWR Morb Mortal Wkly Rep. ePub: 27 July 2021. DOI: *http://dx.doi.org/10.15585/mmwr.mm7030e2.*

[33] *Id.*

[34] *Supra* note 1.

[35] *Supra* note 31.

[36] *Indicators for Monitoring COVID–19 Community Levels and Implementing Prevention Strategies,* Centers for Disease Control and Prevention, *https://www.cdc.gov/coronavirus/2019-ncov/downloads/science/Scientific-Rationale-summary_COVID-19-Community-Levels_2022.02.23.pptx* (Feb. 23, 2022).

[37] New COVID–19 admissions and the percent of staffed inpatient beds occupied represent the current potential for strain on the health system, while data on new cases acts as an early warning indicator of potential increases in health system strain in the event of a COVID–19 surge. Community vaccination coverage and other local information, like early alerts from surveillance, such as through wastewater or the number of emergency department visits for COVID–19, when available, can also inform decision making for health officials and individuals. *Supra* note 21.

[38] *Supra* note 31.

[39] *Id.*

[40] *See supra* note 21.

[41] *COVID–19 by County,* Centers for Disease Control and Prevention, *https://www.cdc.gov/coronavirus/2019-ncov/your-health/covid-by-county.html* (last updated Mar. 10, 2022). Furthermore, 82.8% of the U.S. population lives in counties classified as ''low,'' 15% live in counties classified as ''medium,'' and 2.2% live in counties classified as ''high.''

[42] Per internal CDC calculations.

[43] These mitigation efforts include installing plexiglass dividers in facilities, enhancing ventilation systems, adhering to CDC cleaning and disinfection guidance, and providing masks to migrants, as well as providing PPE to CBP personnel. These measures generally follow the infection prevention control referred to as the hierarchy of controls. *See Hierarchy of Controls,* Centers for Disease Control and Prevention, available at *https://www.cdc.gov/niosh/topics/hierarchy/default.html* (last visited Mar. 9, 2022). The hierarchy of controls is used as a means of determining how to implement feasible and effective control solutions. The hierarchy is outlined as: (1) Elimination (physically remove the

DHS Office of the Chief Medical Officer has worked with local community partners whose work is critical to moving individuals safely out of CBP custody and through the appropriate immigration pathway. Through these partnerships, DHS has supported state, local, tribal, and territorial partners and NGOs in developing robust COVID–19 testing and quarantine programs along the Southwest Border. In addition, vaccine uptake among the CBP workforce has reached approximately 88% among personnel on the U.S.-Mexico border.

CDC understands that in the months between the issuance of the August Order and now, CBP has implemented a robust set of COVID–19 mitigation protocols that have substantially reduced the potential for COVID–19 spread among UC in CBP and ORR facilities. For many months, UC had been tested as they were leaving CBP facilities, prior to transfer to large ORR facilities. On August 25, 2021, CBP began testing UC during CBP's intake process as well, prior to placing UC in congregate settings. Intake testing of UC started with those encountered in the Rio Grande Valley (RGV) Sector of the U.S. Border Patrol—the Sector that has encountered more than 54% percent of UC over the past 12 months. This model has subsequently been expanded to other high-encounter Border Patrol Sectors, including Tucson (January 26, 2022), El Paso (February 3, 2022), and Del Rio (February 3, 2022). Taken together, these Sectors account for over 87% of UC encounters over the past 12 months—indicating that the large majority of UC are now going through this intake processing protocol.

Pursuant to these protocols, UC encountered by Border Patrol agents are tested for COVID–19 in a sheltered, open air location during intake processing prior to entering congregate settings, thus ensuring the ability to segregate UC by test results, provide appropriate care to UC who have tested positive, and minimize further spread. UC that test positive for COVID–19 are cohorted together and kept physically separate from UC who test negative. UC who test positive for COVID–19 go through a streamlined designation and referral process for ORR placement that is substantially faster than the process for other UC, generally resulting in transfers to ORR within 8 to 12 hours of encounter. UC who test positive are transported together (and separately from other UC) to designated ORR facilities that are designed to provide robust care for COVID–19 positive children and to minimize the chance of transmission. UC who test negative go through the normal processing, as applied to UC, and are tested again when they are discharged from CBP facilities prior to transport to large ORR facilities. UC who test positive at this second stage are routed to designated ORR facilities to minimize the potential for COVID–19 spread. All UC are subject to masking requirements while in CBP custody.

Since the inception of these intake processing protocols, CBP has tested more than 45,000 UC with an overall positivity rate of 10%. Consistent with the decline in COVID–19 positivity rates more generally, the UC overall positivity rate has been declining. During the first week of March 2022, the overall positivity rate for UC in CBP custody was around 6%, down from a high of nearly 20% in early February 2022.

CBP's intake processing protocols have also led to a significant decrease in COVID–19 positivity rates for UC in ORR care. Following the start of COVID–19 testing for UC as part of the CBP intake process in August, there was a significant decrease in the proportion of children referred to ORR from the RGV Sector testing positive for COVID–19 within the first four days of ORR custody, as compared to the pre-testing period. As of March 5, 2022, COVID–19 positivity rates in ORR shelter facilities ranged from 4% to 15%—a number that includes those in facilities designed specifically to house COVID-positive UC. Once UC are transferred to ORR care, ORR has in place a range of other mitigation measures, as detailed below, to include universal and proper wearing of masks, physical distancing, frequent hand washing, cleaning and disinfection, improved ventilation, staff vaccination, and cohorting UC according to their COVID–19 test status. Due to operational and facility constraints, CBP reports that it is not able to replicate this robust COVID–19 testing and isolation program for SA and FMU in its custody.

## II. Public Health Reassessment

### *A. Changing Public Health Conditions*

CDC continually reassesses the development of the COVID–19 pandemic and the need for continued measures under 42 U.S.C. 265, 268 and 42 CFR 71.40, the authorities that support the CDC Orders.[44] The public health reassessment for UC described herein is based upon the most recent science and data available to CDC. Based upon these data, CDC has determined that while the use of the CDC Orders to reduce the numbers of noncitizens held in congregate settings in POEs and Border Patrol stations has been part of the layered COVID–19 mitigation measures over the last two years, less restrictive measures than those outlined in prior CDC Orders are now available with respect to UC to mitigate the introduction, transmission, and spread of COVID–19. While the CDC Orders provided an important COVID–19 mitigation measure during certain phases of the pandemic by reducing the number of noncitizens held in congregate settings, other public health measures such as workforce testing, widespread vaccination, variant action plans, and mitigation measures specifically available for the UC population, are now available to provide necessary public health protection for noncitizens, Americans, and the DHS workforce.

CDC believes that the widespread availability of tests for the general public, in addition to other methods of surveillance, will permit the workforce to rapidly institute necessary mitigation measures in the event that cases of COVID–19 are detected. At the same time, vaccination rates are increasing both at home and abroad. Vaccination among the American public and the DHS workforce in particular has been largely successful and, as stated in the August Order, widespread vaccination of federal employees and personnel in congregate settings at POE and U.S. Border Patrol stations is a critical step toward the normalization of border operations.[45] Since August 2021, vaccination rates in the countries of origin for the current majority of UC have also increased dramatically.[46] Such increased global vaccination rates, as well as higher rates of infection-induced immunity globally, provide additional layers of protection. As a public health matter, CDC strongly recommends that all individuals,

hazard); (2) Substitution (replace the hazard); (3) Engineering Controls (isolate people from the hazard); (4) Administrative Controls (change the way people work); and (5) PPE (protect people with Personal Protective Equipment). CBP also continues to update the CBP Job Hazard Analysis and the CBP COVID–19 toolkit based on the latest relevant public health guidance.

[44] *See supra* note 9.

[45] CBP most recently reported vaccination rates between 75% and 91% among its U.S. Border Patrol and Office of Field Operations personnel.

[46] El Salvador, Guatemala, and Honduras constitute the top three countries of origin for UC. Rates of vaccination for each country are as follows: El Salvador 65% fully vaccinated, 4.8% only partly vaccinated; Guatemala: 31% fully vaccinated, 8.5% only partly vaccinated; Honduras: 45% fully vaccinated, 8.5% only partly vaccinated. *Coronavirus (COVID–19) Vaccinations,* Our World in Data, *https://ourworldindata.org/covid-vaccinations* (last visited Mar. 11, 2022).

including noncitizens, receive a COVID–19 vaccine. This aligns with CDC's emphasis on global vaccination. Even if full vaccination cannot be assured, CDC believes vaccination of as many people as possible provides some level of protection against severe illness and hospitalization, thereby protecting citizens, noncitizens and the U.S. healthcare system.

The August Order also highlighted the threat posed by emerging variants and the potential for a future vaccine-resistant variant, either of which could negatively impact U.S. communities and local healthcare resources.[47] Based in part on these threats, CDC concluded at that time that an Order under 42 U.S.C. 265 should remain in place, pending further improvements in the public health situation, and subject to continual assessment.[48] Since the August Order, public health officials have learned a great deal about variants and how best to respond to them. In response to Omicron, the U.S. Government developed a comprehensive plan for monitoring COVID–19, swiftly adapting public health tools to combat a new variant, and deploying emergency resources to help communities.[49] This plan includes a commitment to ensuring that variant surveillance, vaccines, tests, and treatments can be updated and deployed quickly.[50]

As noted above, a significant majority of the U.S. population currently lives in an area classified as having a ''low'' COVID–19 Community Level,[51] meaning most of the population can operate under more relaxed COVID–19 mitigation strategies.[52] Noteworthy for purposes of this reassessment, as of March 10, 2022, of the 24 U.S. counties along the U.S.-Mexico border, 91% of counties on the Southwest Border are now classified as having a ''low''or ''medium'' COVID–19 Community Level.[53]

*B. Public Health Factors Specifically Relevant to UC Population*

For all the reasons set forth above, it is CDC's assessment that there is no longer a public health rationale to apply to UC the August Order and all related prior orders issued pursuant to 42 U.S.C. 265, 268 and 42 CFR 71.40. Moreover, as explained in the July Exception, UC are less likely than FMU and SA to introduce COVID–19.[54] In addition, UC as a population are subject to unique care within CBP and ORR facilities.[55] These facilities are able to provide robust mitigation measures that have proven to be effective in managing COVID–19 and minimizing the risk of spread. These reasons serve as an additional basis to those outlined herein for immediately terminating the August Order and all prior Orders as to UC.

Following the temporary exception of UC from expulsion in January 2021, CDC formally excepted UC from the then-in-place October 2020 Order in July 2021. The July Exception was based on a public health assessment of the specific treatment of UC and the care available to them through ORR and was fully incorporated by reference into CDC's subsequent August Order.[56]

On March 4, 2022, the U.S. District Court for the Northern District of Texas granted a motion for Preliminary Injunction brought by the State of Texas and ordered that the July Exception for UC and its incorporation into the August Order be enjoined, with the injunction stayed through Friday, March 11, 2022. Even prior to that court order, CDC has been reviewing whether the August Order should remain in place as part of its regular public health reassessment every 60 days. Although CDC continues to complete the next regularly scheduled reassessment, CDC accelerated its ongoing and review determined an immediate completion of the assessment of the current public health situation with regard to UC was necessary due to the impending effective date of the injunction. Based on that reassessment, and after carefully considering the issues raised in the court's order, CDC has determined that the current public health situation does not support the application of the August Order to UC. Per the terms of 42 U.S.C. 265 itself, this lack of public health justification means the suspension of the right to introduce UC is not an available measure. In addition, the COVID–19 public health mitigation measures already in place for UC described herein reinforce CDC's determination that the August Order and all related prior orders issued pursuant to 42 U.S.C. 265, 268 and 42 CFR 71.40 should be terminated as to UC.

Following the temporary exception of UC from the October Order in January 2021, the United States experienced an increase in the number of UC arriving daily at the Southwest Border. In response, HHS and ORR, in conjunction with the Federal Emergency Management Agency (FEMA) and with the assistance of the Department of Defense, greatly expanded the capacity for intake and processing of UC. At its height, ORR had capacity of over 30,000 beds[57] and nearly 23,000 children[58] were in its care. Currently, ORR has a capacity of nearly 14,000 beds and fewer than 10,000 children are in ORR care as of March 9, 2022.[59] ORR has successfully processed and discharged over 159,000 UC since January 2021.[60] The successful efforts to expand capacity for UC have resulted in sufficient capacity at ORR sites—both along the border and in the interior—and significantly reduced the length of time that UC remain in CBP custody. As of March 11, 2022, the average time a UC remained in CBP custody before transferring to ORR custody was 23 hours, and no UC have been in CBP custody for over 72 hours.[61] This represents a substantial improvement from early 2021.[62] While the number of UC encountered may remain at elevated levels, expanded ORR capacity and improved processing methods have resulted in UC remaining in CBP custody for shorter periods of time.

With CDC's assistance and guidance, ORR also has implemented COVID–19 testing protocols for UC in its care and

[47] 86 FR 42828, 42837.

[48] *Id.*

[49] *See supra* note 22.

[50] *Id.*

[51] *See supra* note 42.

[52] *See supra* note 31.

[53] *See supra* note 41 (noting 54% (n=13) of counties along the U.S.-Mexico border are considered ''Low'' (San Diego County, CA; Imperial County, CA; Luna, NM; Dona Ana County, NM; Otero County, NM; Eddy County, NM; Lea County, NM; Presidio County, TX; Brewster County, TX; Terrell County, TX; Webb County, TX; Zapata County, TX; Cameron County, TX); 37% of counties (n=9) along the U.S.-Mexico border are classified as having COVID–19 community levels '': Pima County, AZ, Santa Cruz County, AZ; Cochise County, AZ; El Paso County, TX; Hudspeth County, TX; Val Verde County, TX; Kinney County, TX; Maverick County, TX; and Starr County, TX); and 8% of counties (n=2) along the U.S.-Mexico border are classified as having COVID–19 community levels: Yuma, County, AZ and Hidalgo County, TX).

[54] 86 FR 38717 (July 22, 2021).

[55] UC not subject to an order under 42 U.S.C. 265 are generally processed under immigration processes under Title 8 of the U.S. Code and referred from CBP to ORR for care and custody, according to the usual legal framework governing such referrals. Upon transfer to ORR custody, UC are transported to facilities that operate under cooperative agreements or contracts with HHS and must meet ORR requirements to ensure a high level of quality, child-focused care by appropriately trained staff. At these facilities, case managers work to identify and ultimately place UC with vetted sponsors (usually family members within the United States). 86 Fed. Red. 38717, 38719 (July 22, 2020).

[56] *See supra* at note 1.

[57] Per May 2021 monthly data from ORR.

[58] Per April 2021 monthly data from ORR.

[59] Per data from ORR.

[60] *Id.* From January 2021 through February 2022, 15,492 UC have been discharged from ORR care.

[61] As reported by ORR.

[62] For comparison, on March 29, 2021, nearly 5,500 UC were in CBP custody, with 3,540 of those UC in custody for longer than 72 hours; as of March 31, 2021, the average time in CBP custody for UC was 131 hours.

continues to practice other mitigation measures to prevent and curtail transmission of the SARS–CoV–2 virus among UC in its care. These strategies include universal and proper wearing of masks, physical distancing, frequent hand washing, cleaning and disinfection, improved ventilation, staff vaccination, and cohorting UC according to their COVID–19 test status. Per a CDC recommendation, ORR conducts serial testing of staff, as feasible, to allow early detection of a possible outbreak.[63] ORR contract and grantee staff working in facilities serving UC are encouraged to receive the COVID–19 vaccine.[64] As advised by CDC, ORR also restricts movement of unvaccinated personnel between facilities to reduce potential outbreaks resulting from transfer of unvaccinated staff between shelters. These measures help reduce the spread of COVID–19 among UC prior to the UC being discharged to vetted sponsors in U.S. communities.

In addition to the mitigation measures at ORR facilities described above, CDC provided updated recommendations to ORR regarding the vaccination of UC ages 5 and older.[65] ORR subsequently approved the administration of COVID–19 vaccine for age-eligible children. Under ORR care, children ages 5 and over are offered a COVID–19 vaccine as soon as possible, as long as there are no contraindications and vaccination does not delay unification of UC with sponsors. Of the total population of UC in ORR care, approximately 98% are age-eligible for vaccination and, as of March 8, 2022, ORR has administered at least one dose of the COVID–19 vaccine to 62,644 UC and a second dose to 15,994, with a refusal rate under 1%.[66] CDC considers these vaccination efforts to be a critical risk reduction measure that supports excepting UC from the August Order.

Although 20,682 UC total have tested positive for COVID–19 while at ORR shelters during the period of March 24, 2020 to March 3, 2022, 20,304 of those UC testing positive have successfully completed medical isolation, with few requiring medical treatment. Similarly, 13,148 cumulative COVID–19 cases have been reported from Emergency Intake Sites (EIS) as of March 2, 2022; however, only approximately 37 of the UC in this EIS group have required hospitalization.[67]

These numbers indicate that the risk of overburdening the local healthcare systems with UC presenting with severe COVID–19 disease remains low. Based on the robust network of ORR care facilities and the testing and medical care available therein, as well as COVID–19 mitigation protocols that include vaccination for personnel and eligible UC, there is very low likelihood that processing UC in accordance with existing Title 8 immigration procedures will result in undue strain on the U.S. healthcare system or healthcare resources. Moreover, UC released to a vetted sponsor do not pose a significant level of risk for COVID–19 spread into the community because they are released after having undergone testing, quarantine or isolation, and vaccination when possible. UC sponsors also are provided with appropriate medical and public health direction.

Based on the public health reassessment set forth above, as well as the successful COVID–19 mitigation measures that were and continue to be in place for UC, there is no public health basis to resume the suspension of introduction of UC. Resuming the suspension of introduction of UC would not significantly decrease the risk of the introduction, transmission, or spread of COVID–19 at POE or Border Patrol stations. Nor does the introduction of UC into the United States pose a serious danger of the introduction of COVID–19 such that applying the August Order to UC is required in the interest of the public health.

## III. Legal Considerations

### *A. Concerns Raised by the District Court*

In enjoining CDC from enforcing the exception for UC set forth in the July Exception and August Order, the court in *Texas* v. *Biden* found that the July Exception and August Order likely were arbitrary or capricious in violation of the Administrative Procedure Act (APA) for several reasons.[68] CDC takes the court's concerns seriously and has considered each of them in issuing this Order. First, the court stated that ''[t]he record before the Court demonstrates that nothing changed between the October 2020 Order, the July 2021 [Order], and the August 2021 Order. The COVID–19 virus (still) remains a threat.''[69] Regardless of the public health conditions leading up to the July Exception and August Order, CDC's most recent reassessment of the status of the COVID–19 pandemic and associated public health risks makes clear that circumstances have now changed significantly. Case counts and hospitalization rates are decreasing, vaccination rates are increasing, and the availability of testing and treatments also are increasing. These changes and continuing trends in the public health conditions since the conclusion of CDC's previous reassessment support the decision to terminate the Orders as to UC immediately.

Additionally, the court found that the July Exception and August Order did not adequately explain why UC were unlikely to spread COVID–19 to others when they spend, on average, more than a day[70] in congregate settings at DHS facilities ''where they can expose other detainees, DHS personnel, and American citizens and residents to whatever viruses they are carrying.''[71] CDC has considered the court's concern and concluded that because of the overall decrease in cases of COVID–19 throughout the country, including at the Southwest Border, coupled with the increase in vaccination rates, there is an extremely low likelihood that intake processing of UC in DHS facilities will pose a serious danger to the public health. Importantly, vaccines are now widely available and vaccination rates have increased among the American public in general and the DHS workforce in particular, as well as in the countries of origin for the current majority of UC.[72] Additionally, CBP continues to implement a variety of mitigation efforts to prevent the spread of COVID–19 in POE and U.S. Border Patrol facilities, as detailed above.[73]

Next, the court found that ''instead of trying to prevent [UC] from spreading the viruses they are potentially carrying to the interior of the United States, the Government chose to send [UC] away

[63] In ORR facilities where the risk of transmission is moderate to high, public health officials working collaboratively with ORR facilities can determine the appropriateness of offering screening and repeat testing of randomly selected asymptomatic staff and children at the facility, as feasible, to identify cases and prevent secondary transmission.

[64] Additional criteria (*e.g.,* continued symptom monitoring and correct and consistent wearing of masks) should be met by ORR as outlined on CDC's website. *See Science Brief: Options to Reduce Quarantine for Contacts of Persons with SARS–CoV–2 Infection Using Symptom Monitoring and Diagnostic Testing,* Centers for Disease Control and Prevention, *https://www.cdc.gov/coronavirus/2019-ncov/more/scientific-brief-options-to-reduce-quarantine.html* (last updated Dec. 2, 2020).

[65] *Field Guidance #17—COVID–19 Vaccination of Unaccompanied Children (UC) in ORR Care,* Internal Document (CDC memo to ORR, revised Nov. 8, 2021).

[66] Per data reported by ORR.

[67] As reported by ORR.

[68] 2022 WL 658579, at *16–*18.

[69] *Id.* at *16.

[70] In contrast, SA and FMU spend, on average, 2–3 days in congregate settings at the border.

[71] *Id.* at *16.

[72] *See COVID–19 Vaccinations in the United States,* Centers for Disease Control and Prevention, *https://covid.cdc.gov/covid-data-tracker/#vaccinations_vacc-people-onedose-pop-5yr* (updated Mar. 11, 2022).

[73] *See supra* note 43.

from the facilities where the Government could monitor them and their health.'' [74] CDC clarifies that generally DHS is required by the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) to promptly transfer UC to ORR. Even after such transfer, UC remain in U.S. Government custody through ORR's network of providers where they are subject to robust COVID–19-mitigation protocols, including distancing, testing, masking, quarantining, cleaning and disinfection, improved ventilation, staff vaccination, and available vaccination for noncitizen children.[75] These mitigation measures allow ORR to identify COVID–19 cases, and the vast majority of UC who tested positive for COVID–19 while at ORR shelters successfully completed medical isolation. Unlike other covered noncitizens apprehended at the border, UC in ORR custody undergo COVID–19 testing twice before being released to the community. Accordingly, there very low risk that UC are COVID–19 positive when they are released into the community. Moreover, under ORR care, eligible children are offered a COVID–19 vaccine as soon as possible, as long as there are no contraindications and vaccination does not delay unification of UC with vetted sponsors. When UC are released to sponsors, ORR provides their sponsors with appropriate medical and public health direction, including information on how to obtain additional vaccination doses as needed as well as quarantine and isolation guidance when appropriate.

The court also found that the July Exception and August Order did not explain how ''preventing the spread of COVID–19 *between*'' UC can also ''prevent the spread of COVID–19 from the interior of the United States.'' [76] CDC has considered the court's concern and determined that preventing the spread of COVID–19 between UC does prevent the spread of COVID–19 into the interior because the fewer UC that test positive for COVID–19, the lower the transmission rates will be from any UC who is COVID–19 positive into the interior. In any event, as discussed above, CDC has determined that, given the testing of UC that occurs prior to transfer to ORR, as well as the robust mitigation measures implemented by CBP since the August Order and in place at ORR facilities, UC present very little risk of spreading of COVID–19 when they are released to their sponsors.

The court also noted a prior U.S. Border Patrol Chief's statement that CDC adopted the exception for UC before it issued the February 2021 Order pausing application of the October Order to UC. From this, the court concluded that CDC's July Exception and August Order constituted a ''departure from prior policy.'' Regardless of whether there had been any defects in a prior unannounced decision or in the February 2021 Order that affected the July Exception and August Order, CDC is now providing a fuller explanation of its decision to terminate the Orders with respect to UC immediately given the outcome of its most recent public-health reassessment.

*B. Absence of Reliance Interests*

As noted above, in issuing its July Exception, CDC considered the impact of excepting UC from the October 2020 Order on the local healthcare systems in light of, among other things, data showing that the number of UC presenting with severe COVID–19 disease remained low.[77] The U.S. District Court for the Northern District of Texas has found, however, that neither the July Exception nor the August Order ''indicate that the agency considered all of Texas's potential reliance interests.'' [78] In issuing this Order, CDC has considered whether state or local governments, or their subdivisions, have any ''legitimate reliance'' [79] interests on the inclusion of UC in an Order under 42 U.S.C. 265. No state or local government could have any reliance interest relating to the exclusion of UC arising from the August 2021 Order since it expressly excepted UC.[80] Because expulsions of UC under 42 U.S.C. 265 have not been occurring since at least February 2021, no State could rely on UC being covered by the August Order, and CDC does not see a need to provide advance notice that it will continue excepting UC. We therefore focus on the October 2020 Order and its predecessors. CDC finds it useful to distinguish between potential long-term and short-term reliance interests.

On the issue of long-term reliance interests, CDC has determined that no state or local government could be said to have legitimately relied on the October 2020 Order to implement a long-term or permanent change to its operations because the October 2020 Order was by its very nature a short-term order subject to change at any time in response to an evolving public health crisis and is subject to regular review by CDC. Section 265 may be invoked only if there is a ''serious danger of the introduction of [a communicable] disease into the United States, and [if] this danger is so increased by the introduction of persons or property from such country that a suspension of the right to introduce such persons and property is required in the interest of the public health.'' [81] The statute may be invoked only ''for such period of time as [CDC] may deem necessary'' to avert such a danger.[82] Thus, both Section 265 and HHS's implementing regulation recognize that in prohibiting the introduction of covered persons ''in whole or in part,'' [83] a CDC Order is effective ''only for such period of time that the Director deems necessary to avert the serious danger of the introduction of a quarantinable communicable disease.'' [84]

Accordingly, CDC's initial order issued under 42 U.S.C. 265, 268 and 42 CFR 71.40 in March 2020 made clear that the order represented a ''*temporary* suspension of the introduction of [covered] persons into the United States'' [85] and that the order would remain effective only for ''30 days, or until [CDC] determine[s] that the danger of further introduction of COVID–19 into the United States has ceased to be a serious danger to the public health, *whichever is shorter.*'' [86] The March 2020 Order was subsequently extended on April 20, 2020 and amended on May 19, 2020. The fact that the policy was frequently reviewed should have underscored that the use of the Section 265 authority was a temporary measure subject to change at any time. The October 2020 Order again confirmed this understanding of CDC's authority under 42 U.S.C. 265, 268 and 42 CFR 71.40, noting the ''temporary'' nature of the suspension of the introduction of covered persons, and the fact that the Order would be reviewed every 30 days based on ''the latest information regarding the status of the COVID–19 pandemic and associated public health risks to ensure that the Order remains necessary,'' and that CDC ''retain[ed] the authority to extend, modify, or

[74] *Texas,* 2022 WL 658579, at *16.

[75] *See supra* II.B.

[76] *Id.*

[77] *See* 86 FR at 38,720.

[78] *Texas* v. *Biden,* No. 4:21–cv–0579–P, Doc. 100 at 31.

[79] *See Dep't of Homeland Sec.* v. *Regents of the Univ. of Cal.,* 140 S. Ct. 1891, 1913 (2020).

[80] *See* 86 FR at 42838 (''As outlined in the July Exception and incorporated herein, CDC is fully excepting UC from this Order.'').

[81] 42 U.S.C. 265.

[82] *Id.*

[83] *Id.*

[84] 42 CFR 71.40(a).

[85] 85 FR at 17061 (emphasis added).

[86] 85 FR at 17068.

terminate the Order, or implementation of [the] Order, at any time as needed to protect public health.'' [87]

In addition, in November 2020, the United States District Court for the District of Columbia enjoined the expulsion of UC on the ground that Section 265 likely did not authorize such expulsions.[88] Although the government appealed the injunction and obtained a stay of the injunction in January 2021,[89] there remained legal uncertainty over the government's authority to apply Section 265 to UC, thus further rendering it unreasonable for any state or local government to act in long-term reliance on the continued expulsion of UC under Section 265. Moreover, as a factual matter, CDC is not aware of, nor has any state or local government brought to CDC's attention, any reasonable or legitimate reliance on the continued expulsion of UC under 42 U.S.C. 265. For example, no state or local government has indicated that it altered its operations, spending, or regulation in light of the prior application of Section 265 to UC. The total number of UC processed under Title 8 remains relatively small, rendering it unlikely that state or local governments would adversely rely on the application of Section 265 to UC by making any material changes.

Additionally, CDC does not believe that the presence of UC poses a public health risk sufficient to justify continued application of 42 U.S.C. 265 to UC. Because 42 U.S.C. 265 authorizes the CDC to prevent the introduction of noncitizens only when necessary to address a public health risk, no state or local government could rely on Section 265 continuing to be applied in the absence of such a risk. Therefore, CDC's considered judgment is that no state or local government currently has a long-term reliance interest in the continued expulsion of UC under the October 2020 Order and that any long-term reliance interests that might be said to exist in connection with the continued expulsion of UC under the October 2020 Order are outweighed by CDC's determination that there is no public health justification to expel UC at this time.[90] To the extent that any state or local government did rely on the expulsion of UC for purposes of resource allocation despite the reasons cautioning against such reliance, CDC concludes that resource allocation concerns do not outweigh CDC's determination that expulsion of UC is not required to avert a serious danger to public health.

CDC has also considered whether there may be any short-term reliance on the continued expulsion of UC under the October 2020 Order.[91] Because CDC is unaware of any such reliance beyond the potential allocation of resources CDC already considered for local healthcare systems, CDC does not believe that any state or local government could have reasonably relied, even on a short-term basis, on the continued expulsion of UC. As noted above, any such reliance would not have been reasonable given the statutory requirement that 42 U.S.C. 265 be invoked only if there is a ''serious danger of the introduction of [a communicable] disease into the United States, and that this danger is so increased by the introduction of persons or property from such country that a suspension of the right to introduce such persons and property is required in the interest of the public health,'' as well as the statutory mandate that Section 265 be utilized only ''for such period of time as [CDC] may deem necessary'' to avert such a danger. Any reliance also would have been particularly unwarranted because UC were subject to expulsion under 42 U.S.C. 265 for only a very limited time—from March 2020 to November 2020, and then briefly from January 29, 2021 to shortly before the February 11, 2021 notice. As such, the exclusion of UC from 42 U.S.C. 265 expulsions has been the status quo generally since November 2020 and certainly since at least February 2021. Thus, since the start of this public health emergency, the period of time during which UC have been excepted from expulsion under Section 265 is longer than the period of time during which they were subject to such expulsion. Even if an entity had reasonably relied on the inclusion of UC in an order under 42 U.S.C. 265 prior to February 2021, it should have adjusted its position by now. Therefore, CDC does not believe that any potential short-term reliance interests can reasonably outweigh CDC's public health determination that there is no public health justification for expelling UC under 42 U.S.C. 265 at this time.

Finally, Orders under 42 U.S.C. 265; 268 and 42 CFR 71.40 are not, and do not purport to be, policy decisions about controlling immigration; rather, as explained, CDC's exercise of its authority under Section 265 depends on the existence of a public health emergency. Thus, to the extent that border communities were relying on an order under 42 U.S.C. 265 as a means of controlling immigration, such reliance would not be reasonable or legitimate. Even if such reliance were reasonable or legitimate, that reliance would not outweigh CDC's public health assessment.

In conclusion, any such reliance interests, whether short- or long-term, do not outweigh CDC's determination that expulsion of UC is not necessary to avert a serious danger to public health. Because disruption of ordinary processing of UC is a weighty action, CDC does not believe it is appropriate to resume expulsion when CDC has concluded that such action is not warranted under the terms of 42 U.S.C. 265.

*C. Timing Considerations*

As noted in the August Order, CDC reassesses ''[t]he circumstances necessitating the Order . . . at least every 60 days.'' [92] Accordingly, CDC has been in the process of evaluating the status of the pandemic and the evolving public health conditions since the conclusion of its previous review on January 29, 2022, to determine whether the Order remains necessary in whole or part to protect the public health. The current 60-day review process is scheduled to end on March 30, 2022, and CDC will conclude its reassessment of whether the Order remains necessary in whole or part to protect the public health with respect to SA and FMU by that date.

CDC had previously excepted UC in its July Exception, as reiterated and incorporated in its August Order.[93] On March 4, 2022, the District Court for the Northern District of Texas issued a preliminary injunction ''enjoining and restraining'' CDC from enforcing the July Exception and August Order to the extent that they ''except unaccompanied alien children from the Title 42 procedures based solely on their status as unaccompanied alien children'' because, the court found, CDC had not

[87] 85 FR at 65807, 65812.

[88] *See P.J.E.S.* v. *Wolf,* 502 F. Supp. 3d 492 (D.D.C. 2020).

[89] Order, *P.J.E.S.* v. *Mayorkas, et al.,* No. 20–5357 (D.C. Cir. Jan. 29, 2021), Doc. No. 1882899.

[90] *See Regents,* 140 S. Ct. at 1913 (explaining that features evidencing the temporary and non-rights-conferring nature of a government program ''surely are pertinent in considering the strength of any reliance interests,'' and can be considered by the agency).

[91] *See Regents,* 140 S. Ct. at 1913 (rejecting the government's argument that the fact that the DACA program provided benefits only in two-year increments and was said not to confer any substantive rights ''automatically preclude[d] reliance interests,'' but noting that such disclaimers ''are surely pertinent in considering the strength of any reliance interests'').

[92] *Supra* note 1.

[93] *See* 86 FR 38,717 (July 22, 2021); 86 FR at 42,837–38; *see also* 86 FR 9942 (Feb. 17, 2021).

adequately explained its decision to treat UC differently than other noncitizens subject to the October Order.[94] The court stayed its preliminary injunction for seven days.[95]

Because CDC has determined, after considering current public health conditions and recent developments, that expulsion of UC is not warranted to protect the public health, and in recognition of the unique vulnerabilities of UC, CDC is immediately terminating the CDC Orders to the extent they apply to UC. Because of their vulnerabilities, UC are generally treated differently than other individuals apprehended and processed at the border under the immigration laws. When Section 265 does not apply, UC generally are transferred to the care and custody of HHS's ORR pursuant to the TVPRA.[96] ORR is able to care for UC while implementing appropriate COVID–19 mitigation measures, given ORR's robust network of care facilities that provide testing and medical care, and DHS has already been excepting UC in accordance with CDC's August Order. Because CDC has in its expert judgment determined again that, based on current circumstances, the expulsion of UC under Section 265 is not necessary to protect the public health, there is no justification for subjecting UC to the potentially significant harms they could suffer if the CDC Orders were to be applied to them.[97] For these reasons, CDC is terminating the CDC Orders to the extent they apply to UC.

*D. Basis for Termination With Respect to UC Under Sections 362 and 365 of the PHS Act and 42 CFR 71.40*

CDC is hereby immediately terminating the August Order[98] and all prior orders issued pursuant to sections 362 and 365 of the PHS Act (42 U.S.C. 265, 268) and the implementing regulation at 42 CFR 71.40 to the extent they apply to UC.[99]

CDC is committed to using the least restrictive means necessary and avoiding the imposition of unnecessary burdens in exercising its communicable disease authorities. This aligns with the underlying legal authority in 42 U.S.C. 265, which makes clear that this authority extends only for *such period of time* deemed necessary to avert the serious danger of the introduction of a quarantinable communicable disease into the United States.[100] Such an order must also be predicated, in part, upon a determination that the danger of such introduction is so increased that a suspension of the right to introduce such persons into the United States is *required in the interest of public health.*[101]

CDC has considered these and other relevant factors in the foregoing reassessment with respect to UC, including the overall shift in the U.S. Government response to the pandemic, and in the context of reviewing the August Order with respect to UC, has determined that less restrictive means are available to avert the public health risks associated with the introduction, transmission, and spread of COVID–19 into the United States. Although COVID–19 continues to spread within the United States, the numerous tools for disease prevention, mitigation, and treatment which have been implemented over the past two years (including those specific to UC in the custody of the federal government) are sufficient at this point in time to protect public health, such that an order suspending the right to introduce UC under 42 U.S.C. 265 is no longer required in the interest of public health. CDC is not addressing application of the August Order to FMU and SA through this termination.

## IV. Issuance and Implementation of Termination

*A. Termination as to UC*

Based on the foregoing public health reassessment, I hereby Terminate immediately with respect to UC the August Order and all previous orders issued pursuant to Sections 362 and 365 of the PHS Act (42 U.S.C. 265, 268) and their implementing regulation at 42 CFR 71.40.[102]

Immediate termination of the August Order with respect to UC is based on the current status of the COVID–19 pandemic and the public health mitigation measures available for UC and the public. In making this determination, I have considered myriad facts, including epidemiological information regarding COVID–19, the emergence of SARS–CoV–2 variants, the morbidity and mortality associated with the disease for individuals in certain risk categories, COVID–19 Community Levels, national levels of transmission and immunity, the availability and efficacy of vaccination and treatments, as well as care available to UC and public health concerns with congregate settings at border facilities. While holding UC in congregate settings with limited options for COVID–19 mitigation is accompanied by some inherent risk, the overall public health landscape in the United States has changed such that the justification for the August Order is no longer sustained with respect to UC particularly in light of the mitigation measures as applied to UC.

As noted previously, CDC is not addressing application of the August Order to FMU and SA through this termination. DHS will continue to exercise its discretion to issue exceptions pursuant to a DHS-approved process or on a case-by-case basis, based on the totality of the circumstances as set forth in the August Order to FMU and SA, as appropriate.

*B. APA Review*

This Termination shall be immediately effective with respect to UC. I consulted with DHS and other federal departments as needed before I issued this Order and requested that DHS aid in the implementation of this Termination and continued aspects of the Order because CDC does not have the capability, resources, or personnel needed to do so.[103]

This Termination, like the preceding Orders issued under this authority, is not a rule subject to notice and comment under the APA. Even if it were, notice and comment and a delay in effective date are not required because there is good cause to dispense with prior public notice and the opportunity to comment on this Termination; it would be impracticable and contrary to public health practices, the public interest, and immigration laws that apply in the absence of an order under 42 U.S.C. 265 to delay the issuing and effective date of this Termination.[104] In addition, this Order concerns ongoing discussions with Canada, Mexico, and other countries regarding how best to control COVID–19 transmission over shared borders and therefore directly ''involve[s] . . . a . . . foreign affairs function of the United States.''[105] Thus, for both of the foregoing reasons, notice and comment

[94] *Texas* v. *Biden,* No. 4:21–cv–579 (N.D. Tex. Mar. 4. 2022).

[95] *Id.*

[96] *See D.B.* v. *Cardall,* 826 F.3d 721, 738 (4th Cir. 2016) (''The intricate web of statutory provisions relating to [UC] reflects Congress's unmistakable desire to protect that vulnerable group.'').

[97] *See Huisha-Huisha* v. *Mayorkas,*—F.4th—, 2022 WL 628061, *12 (D.C. Cir. Mar. 4, 2022) (noting that some migrants who are expelled could be subject to persecution and victimization).

[98] *See supra* notes 1 and 4.

[99] *See supra* note 7.

[100] 42 U.S.C. 265; 42 CFR 71.40.

[101] 42 CFR 71.40.

[102] Control of Communicable Diseases; Foreign Quarantine: Suspension of the Right to Introduce and Prohibition of Introduction of Persons into United States from Designated Foreign Countries or Places for Public Health Purposes, 85 FR 56424 (Sept. 11, 2020); 42 CFR 71.40.

[103] 42 U.S.C. 268; 42 CFR 71.40(d).

[104] 5 U.S.C. 553(a)(1).

[105] 5 U.S.C. 553(a)(1).

and a delay in effective date are not required.

With this Termination, I hereby determine that the danger of further introduction, transmission, or spread of COVID–19 into the United States from UC, as defined in the August Order, has ceased to be a serious danger to the public health and therefore the continuation of the August Order, and all previous orders issued under the same authority, with respect to UC is no longer necessary to protect public health. Nothing in this Termination will prevent me from issuing a new Order under 42 U.S.C. 265, 268 and 42 CFR 71.40 based on new findings, as dictated by public health needs.

**Sherri Berger,**

*Chief of Staff, Centers for Disease Control and Prevention.*

[FR Doc. 2022–05687 Filed 3–15–22; 11:15 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

**[OMB No. 0970–0476]**

### Proposed Information Collection Activity; Generic Clearance for Disaster Information Collection Forms

**AGENCY:** Office of Human Services Emergency Preparedness and Response, Administration for Children and Families, HHS.

**ACTION:** Request for public comment.

**SUMMARY:** The Administration for Children and Families (ACF) is requesting a 3-year extension of the Generic Clearance for Disaster Information Collection Forms (OMB #0970–0476) and the five forms currently approved for ACF programs. There are no changes requested to the umbrella generic and no substantial changes to the currently approved forms.

**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:* The information collected through the forms approved under the Generic Clearance for Disaster Information Collection Forms is used to provide real-time updates during the response and recovery phases of a disaster. The same generic form has been tailored for each of the five following ACF offices or programs: the Children's Bureau, the Family Violence Prevention and Services Program, the Office of Child Care, the Office of Head Start, and the Runaway and Homeless Youth (RHY) Program. It is possible that more program offices may request approval of a tailored version in the future.

The requested information is submitted by ACF grantees, which includes states and tribes.

**Currently Approved Forms**

*Family and Youth Services Bureau, Family Violence Prevention and Services Program.* This form collects information on post-disaster impacts and disaster recovery, including requests for assistance from state administrators, tribes/tribal organizations, state coalitions, or resource centers comprising the Domestic Violence Resource Network; shelters that have been evacuated due to damage; shelter residents being served in alternate locations; reports of an increase in requests for assistance; capacity shortfalls; and reported increase in domestic violence post-disaster.

*Office of Child Care.* The baseline information includes the number of licensed, regulated, and license-exempt child care providers in the state; the number of children who are served by the ACF Office of Child Care's Child Care and Development Fund (CCDF); emergency contact information for the CCDF administrator, the licensing contacts, and resource and referral agencies; interruptions in systems that facilitate contacting the child care providers; contact person for state record-keeping systems; number of children served; and damage assessment plans of the licensing agency. The disaster impact information includes the number and type of child care providers closed, the number of closed providers that serve children who benefit from ACF CCDF, the number of children with CCDF subsidies affected by the closures, total child care capacity lost, whether the providers whose facilities have closed will be able to reopen, whether damaged facilities have been able to remain open, degree of disruption in services; state decision to implement temporary operating standards for child care providers; and requests for behavioral and mental health services for children, families, and staff. Post-disaster recovery questions include ability of child care providers to reopen, number of service slots lost due to closures, total number of child care providers that are open in the disaster impact zone; and staff shortages.

*Family and Youth Services Bureau, Runaway and Homeless Youth Program.* This form collects information on post-disaster impacts and disaster recovery, including requests from grantees for technical assistance; a safety and accountability report for children and youth in RHY programs; reports of damage to RHY facilities; and a report of any children or youth that have been relocated due to damages to facilities.

*Children's Bureau.* This form requests information on any disaster-caused disruptions of the child abuse/neglect reporting and investigation system; reports of unaccompanied children needing protection, identification, and reunification with legal caregivers; actions taken by the Child Welfare Agency; impacts to Chafee Foster Care Independence Program providers; accountability and safety report for youth receiving services; reports on any increase in the number of child abuse or neglect reports in the affected areas; impacts to Safe and Stable Families or Community Based Child Abuse Prevention providers; whether families receiving in-home services are being supported; displaced or temporarily relocated foster families; coordination of needed services and supervision by the Child Welfare Agency; new or increased interstate challenges; and compromised program records.

*Office of Head Start.* Number of Head Start (HS) centers and service slots located in the disaster impact zone; number of centers and available service slots open and number closed post-disaster; number of HS centers with undetermined status; general access to services for children and families in the impacted areas; disruptions in transportation; ability of families to receive care elsewhere; number of HS centers closed post-disaster and number of service slots lost; and other program service interruptions.

*Respondents:* ACF Grantees and State Administrators.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Annual burden hours |
|---|---|---|---|---|
| Children's Bureau Disaster Information Collection Form | 10 | 1 | 1 | 10 |
| Family Violence Prevention and Services Program Disaster Information Collection Form | 10 | 1 | 1 | 10 |
| Office of Child Care Disaster Information Collection Form | 7 | 1 | 2 | 14 |
| Office of Head Start Disaster Information Collection Form | 10 | 1 | 2 | 20 |
| Runaway and Homeless Youth Program Disaster Information Collection Form | 10 | 1 | 1 | 10 |
| Future Program Office Disaster Information Collection Forms | 40 | 1 | 1.5 | 60 |

*Estimated Total Annual Burden Hours:* 124.

*Comments:* The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

*Authority:* 42 U.S.C. 68 Disaster Relief; 42 U.S.C. Section 5121; Pub. L. 113–5.

**Mary B. Jones,**

*ACF/OPRE Certifying Officer.*

[FR Doc. 2022–05671 Filed 3–16–22; 8:45 am]

**BILLING CODE 4182–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Proposed Collection: Public Comment Request; The Maternal, Infant, and Early Childhood Home Visiting Program: Advancing Health Equity in Response to the COVID–19 Public Health Emergency, 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 16, 2022.

**ADDRESSES:** Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, 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:**

*Information Collection Request Title:* The Maternal, Infant, and Early Childhood Home Visiting (MIECHV) Program: Advancing Health Equity in Response to the COVID–19 Public Health Emergency OMB No. 0906–XXXX, NEW

*Abstract:* The MIECHV Program is authorized by Social Security Act, Title V, § 511 (42 U.S.C. 711) and Congress made available supplemental appropriations to carry out the program through the American Rescue Plan Act (Pub. L. 117–2). American Rescue Plan Act funds are being used to support the MIECHV: Advancing Health Equity in Response to the COVID–19 Public Health Emergency project. The project includes five case studies to be conducted in communities across the United States. Communities will be selected based on a county level assessment of available data on social and structural determinants of health, the variation in COVID–19 patterns including disparities in key COVID–19 indicators, and the existence of MIECHV-funded local implementing agencies. The five communities will represent a mix of urban and rural counties and Tribal communities with measurable health disparities by race and ethnicity. The case studies will lead to a deeper understanding of the ways in which COVID–19 has shaped families' experiences, and the role home visiting plays (and could play) in addressing the inequities that continue to accrue from the pandemic within a community. Information gained from these case studies can inform the development of more responsive home visiting systems and more equitable health and family support systems more broadly. Data collection activities include key informant interviews, focus groups, and online surveys. All necessary human subject protections will be adhered to, including seeking Institutional Review Board approval of data collection and analysis plans prior to commencing any data collection activities.

*Need and Proposed Use of the Information:* HRSA is seeking additional information about the strategies and partners home visiting programs have used to advance health equity in communities disproportionately impacted by the COVID–19 public health emergency. HRSA intends to use this information to provide technical assistance and disseminate best practices to MIECHV awardees, publish findings for lay and research audiences to advance the field's knowledge of home visiting's role in COVID–19 response, and to prepare state and local home visiting programs to address disparities in access to care and outcomes, including during future public health emergencies.

*Likely Respondents:* States, territories, and, where applicable, nonprofit organizations receiving MIECHV funding to provide home visiting services within states; state and local representatives from home visiting, public health, health care, and other human service agencies in the early childhood system; community organizers, Tribal elders, religious

leaders; families (including families participating in MIECHV-funded home visiting services and those with shared experiences); community members, including community-based program administrators and community service providers, including home visitors.

*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 [1]

| Form name | Number of respondents | Number of responses per respondent | Total responses | Average burden per response (in hours) | Total burden hours |
|---|---|---|---|---|---|
| Community Interview Protocol | 60 | 1 | 60 | 1.50 | 90 |
| Family and Community Focus Group Guide | 240 | 1 | 240 | 2.00 | 480 |
| Community and Home Visitor Survey Instrument | 500 | 1 | 500 | 0.75 | 375 |
| Program Data | 15 | 1 | 15 | 2.00 | 30 |
| Total | 815 | | 815 | | 975 |

[1] There may be variation in the number of study participants and home visiting programs in each community (*e.g.,* some selected communities may have fewer home visitors). The total burden hours presented here provide information assuming the maximum number of respondents in each community.

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. 2022–05635 Filed 3–16–22; 8:45 am]

BILLING CODE 4165–15–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

**[Document Identifier: OS–0990–0302]**

## Agency Information Collection Request. 60-Day Public Comment Request

**AGENCY:** Office of the Secretary, HHS.

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

**DATES:** Comments on the ICR must be received on or before May 16, 2022.

**ADDRESSES:** Submit your comments to *Sherrette.Funn@hhs.gov* or by calling (202) 795–7714.

**FOR FURTHER INFORMATION CONTACT:** When submitting comments or requesting information, please include the document identifier 0990–0302 and project title for reference, to Sherrette A. Funn, email: *Sherrette.Funn@hhs.gov,* or call (202) 795–7714 the Reports Clearance Officer.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Title of the Collection:* Medical Reserve Corps Unit Profile and Reports.

*Type of Collection:* Revision.

*OMB No.:* 0990–0302.

*Abstract:* Medical Reserve Corps Units are currently located in 748 communities across the United States and represent a resource of over 300,000 volunteers. In order to continue to support MRC units, detailed information about the MRC units, including unit/user demographics, contact information, volunteer numbers and information about non-emergency and emergency unit activities is needed by the MRC Program. MRC Unit Leaders are asked to update this information on the MRC website at least quarterly and to participate in a technical assistance assessment using the Capability Assessment and Factors for Success at least annually. This collection informs resources and tools developed as part of national programing and helps to identify trends and target technical assistance to support MRC units' preparedness to respond to disasters in their communities. The MRC unit data collection has been refined to eliminate duplication and streamline data collection tools.

ANNUALIZED BURDEN HOUR TABLE

| Forms (if necessary) | Respondents (if necessary) | Number of respondents | Number of responses per respondents | Average burden per response | Total burden hours |
|---|---|---|---|---|---|
| Unit Profile | MRC Unit Leader | 748 | 4 | 15/60 | 748 |
| Capability Assessment | MRC Unit Leader | 748 | 1 | 30/60 | 374 |
| Factors for Success | MRC Unit Leader | 748 | 1 | 30/60 | 374 |

ANNUALIZED BURDEN HOUR TABLE—Continued

| Forms (if necessary) | Respondents (if necessary) | Number of respondents | Number of responses per respondents | Average burden per response | Total burden hours |
|---|---|---|---|---|---|
| Unit Activity Reporting | MRC Unit Leader | 748 | 4 | 15/60 | 748 |
| Total | | | 10 | | 2,244 |

**Sherrette A. Funn,**

*Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.*

[FR Doc. 2022–05612 Filed 3–16–22; 8:45 am]

**BILLING CODE 4150–47–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Findings of Research Misconduct

**AGENCY:** Office of the Secretary, HHS.

**ACTION:** Notice.

**SUMMARY:** Findings of research misconduct have been made against Shuo Chen, Ph.D. (Respondent), formerly a postdoctoral researcher, Department of Physics, University of California, Berkeley (UCB). Respondent engaged in research misconduct in research reported in a grant application submitted for U.S. Public Health Service (PHS) funds, specifically National Institute of Neurological Disorders and Stroke (NINDS), National Institutes of Health (NIH), grant application K99 NS116562–01. The administrative actions, including supervision for a period of one (1) year, were implemented beginning on February 28, 2022, and 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:

*Shuo Chen, Ph.D., University of California, Berkeley:* Based on the report of an investigation conducted by UCB and additional analysis conducted by ORI in its oversight review, ORI found that Dr. Shuo Chen, formerly a postdoctoral researcher, Department of Physics, UCB, engaged in research misconduct in research reported in a grant application submitted for PHS funds, specifically NINDS, NIH, grant application K99 NS116562–01.

ORI found that Respondent engaged in research misconduct by intentionally, knowingly, and/or recklessly falsifying data and methods by altering, reusing, and relabeling source two-photon microscopy and electrophysiological data to represent images of mouse hippocampal neurons in the following grant application:

• K99 NS116562–01, ''Investigation into network dynamics of hippocampal replay sequences by ultrafast voltage imaging,'' submitted to NINDS, NIH, on June 25, 2019.

ORI found that Respondent intentionally, knowingly, and/or recklessly falsified two-photon microscopy and in vivo electrophysiological activity images, figure legends, and text descriptions of hippocampal neurons from a mouse running on a treadmill in a head-fixed virtual reality (VR) set up. Specifically:

• Respondent reused an image of visual cortex neurons to represent fluorescence calcium imaging of hippocampal neurons in Figure 6d and its associated text and figure legend of K99 NS116562–01.

• Respondent reused in vivo electrophysiological data from control mice of spatial receptive fields for all recorded place cells during linear track exploration sessions from Supplemental Figure 1b from *Nat Neurosci.* 2018 Jul;21(7):996–1003 (doi: 10.1038/s41593–018–0163–8) to represent several sessions of two-photon hippocampal calcium imaging of progressive place fields, obtained from multiple mice running on a treadmill in a head-fixed VR set up, in Figure 6e and its associated text and figure legend of K99 NS116562–01.

Respondent neither admits nor denies ORI's findings of research misconduct. The parties entered into a Voluntary Settlement Agreement (Agreement) to conclude this matter without further expenditure of time, finances, or other resources. The settlement is not an admission of liability on the part of the Respondent.

Respondent voluntarily agreed to the following:

(1) Respondent will have his research supervised for a period of one (1) year beginning on February 28, 2022 (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. A committee of 2–3 senior faculty members at the institution who are familiar with Respondent's field of research, but not including Respondent's supervisor or collaborators, will provide oversight and guidance during the Supervision Period. The committee will review primary data from Respondent's laboratory on a quarterly basis and 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. The committee will conduct an advance review of each application for PHS funds, or 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 in the proposed application, report, manuscript, or abstract is supported by the research record.

(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 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.

(5) During the Supervision Period, Respondent will exclude himself voluntarily from serving in any advisory or consultant capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee.

Dated: March 14, 2022.

**Wanda K. Jones,**

*Acting Director, Office of Research Integrity, Office of the Assistant Secretary for Health.*

[FR Doc. 2022–05659 Filed 3–16–22; 8:45 am]

**BILLING CODE 4150–31–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Proposed Collection; 60-Day Comment Request; National Cancer Institute (NCI) Generic Clearance for Application Information From Fellows, Interns, and Trainees

**AGENCY:** National Institutes of Health, HHS.

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirement of the Paperwork Reduction Act of 1995 to provide opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI) will publish periodic summaries of propose projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

**DATES:** Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

**FOR FURTHER INFORMATION CONTACT:** To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Diane Kreinbrink, Program Manager, Office of Management Policy and Compliance, National Cancer Institute, 9609 Medical Center Drive, Room 1W706, Bethesda, Maryland, 20892 or call non-toll-free number (240) 276–7283 or email your request, including your address to: *diane.kreinbrink@nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

**SUPPLEMENTARY INFORMATION:** Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires: Written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimizes the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

*Proposed Collection Title:* Generic Clearance for Application Information from Fellows, Interns, and Trainees, 0925–0761, Expiration Date 07/31/2022, EXTENSION, National Cancer Institute (NCI), National Institutes of Health (NIH).

*Need and Use of Information Collection:* The ''Generic Clearance for Application Information from Fellows, Interns, and Trainees'' request supports research experiences for high school, post-baccalaureate (including post masters) individuals, graduate students, and postdoctoral fellows, interns, and trainees in a multidisciplinary environment at the NCI. This information collection request is for applications, reference letters, letters of intent and interest, and other related documentation necessary for various Divisions, Offices, and Centers at NCI to evaluate the eligibility, merits, and quality of potential candidates. The applications will also assist in matching potential candidates to various training and internship programs. The information is for internal use to make decisions about candidates invited to visit and attend NCI fellowships, internships, and other training opportunities.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 7,500 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

| Category of respondent | Number of respondents | Number of responses per respondent | Average time per response (in hours) | Total annual burden hours |
|---|---|---|---|---|
| Individuals (Applicants) | 3,000 | 1 | 60/60 | 3,000 |
| Individuals (Reference Letters) | 9,000 | 1 | 30/60 | 4,500 |
| Totals | | 12,000 | | 7,500 |

Dated: March 14, 2022.

**Diane Kreinbrink,**

*Project Clearance Liaison, National Cancer Institute, National Institutes of Health.*

[FR Doc. 2022–05663 Filed 3–16–22; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–6314–N–01]**

## Annual Indexing of Basic Statutory Mortgage Limits for Multifamily Housing Programs; Annual Indexing of Substantial Rehabilitation Threshold

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** In accordance with Section 206A of the National Housing Act, HUD is providing notice of adjustment to the Basic Statutory Mortgage Limits for Multifamily Housing Programs for Calendar Year 2022. HUD is also providing notice of adjustment to the per unit cost threshold for determining substantial rehabilitation in the Multifamily Housing Programs pursuant to its administrative guidance for Calendar Year 2022.

**DATES:** Applicable date: January 1, 2022.

**FOR FURTHER INFORMATION CONTACT:** Thomas Bernaciak, Deputy Director, Office of Multifamily Production, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410–8000, telephone (202) 402–3242 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:** Section 206A of the National Housing Act (12 U.S.C. 1712a) provides authority for the annual adjustment for the following FHA multifamily statutory dollar limits:

I. Section 207(c)(3)(A) (12 U.S.C. 1713(c)(3)(A));
II. Section 213(b)(2)(A) (12 U.S.C. 1715e(b)(2)(A));
III. Section 220(d)(3)(B)(iii)(I) (12 U.S.C. 1715k(d)(3)(B)(iii)(I));
IV. Section 221(d)(4)(ii)(I) (12 U.S.C. 1715l(d)(4)(ii)(I));
V. Section 231(c)(2)(A) (12 U.S.C. 1715v(c)(2)(A)); and
VI. Section 234(e)(3)(A) (12 U.S.C. 1715y(e)(3)(A)).

Section 206A states that the preceding ''Dollar Amounts'' shall be adjusted annually (commencing in 2004) on the effective date of the Federal Reserve Board's adjustment of the $400 figure in the Home Ownership and Equity Protection Act of 1994 (HOEPA). The adjustment of the Dollar Amounts shall be calculated using the percentage change in the Consumer Price Index for All Urban Consumers (CPI–U) as applied by the Federal Reserve Board for purposes of the above-described HOEPA adjustment.

### (b) Notification

The Federal Reserve Board on a timely basis shall notify the Secretary, or his designee, in writing of the adjustment described in subsection (a) and of the effective date of such adjustment to permit the Secretary to undertake publication in the **Federal Register** of corresponding adjustments to the Dollar Amounts. The dollar amount of any adjustment shall be rounded to the next lower dollar.

Note that 206A has not been updated to reflect the fact that HOEPA has been revised to use $1,000 as the basis for the adjustment rather than $400, and the Consumer Finance Protection Bureau has replaced the Federal Reserve Board in administering the adjustment. These changes were made by the Dodd-Frank Wall Street Reform and Consumer Protection Act's amendments to the Truth in Lending Act, as further explained in the regulatory implementation of said changes found in the **Federal Register** notice published on January 31, 2013 (78 FR 6856, 6879).

The percentage change in the CPI–U used for the HOEPA adjustment is a 4.2 percent increase and the effective date of the HOEPA adjustment is January 1, 2022. The Dollar Amounts under Section 206A have been adjusted correspondingly and have an effective date of January 1, 2022, in accordance with the **Federal Register** notice published on November 2, 2021 (86 FR 60357).

These revised statutory limits may be applied to FHA multifamily mortgage insurance applications submitted or amended on or after January 1, 2022, so long as the loan has not been initially endorsed.

The adjusted Dollar Amounts for Calendar Year 2022 are shown below.

### Basic Statutory Mortgage Limits for Calendar Year 2022 Multifamily Loan Program

Section 207—Multifamily Housing

Section 207 Pursuant to Section 223(f)—Purchase or Refinance Housing

Section 220—Housing in Urban Renewal Areas

| Bedrooms | Non-elevator | Elevator |
|---|---|---|
| 0 | $57,197 | $66,715 |
| 1 | 63,360 | 73,923 |
| 2 | 75,683 | 90,643 |
| 3 | 93,285 | 113,526 |
| 4+ | 105,608 | 128,367 |

Section 213—Cooperatives

| Bedrooms | Non-elevator | Elevator |
|---|---|---|
| 0 | $61,986 | $66,002 |
| 1 | 71,472 | 74,778 |
| 2 | 86,197 | 90,930 |
| 3 | 110,334 | 117,636 |
| 4+ | 122,920 | 129,131 |

Section 234—Condominium Housing

| Bedrooms | Non-elevator | Elevator |
|---|---|---|
| 0 | $63,251 | $66,564 |
| 1 | 72,930 | 76,305 |
| 2 | 87,956 | 92,789 |
| 3 | 112,588 | 120,039 |
| 4+ | 125,427 | 131,765 |

Section 221(d)(4)—Moderate Income Housing

| Bedrooms | Non-elevator | Elevator |
|---|---|---|
| 0 | $56,922 | $61,488 |
| 1 | 64,617 | 70,490 |
| 2 | 78,107 | 85,717 |
| 3 | 98,036 | 110,887 |
| 4+ | 110,779 | 121,723 |

Section 231—Housing for the Elderly

| Bedrooms | Non-elevator | Elevator |
|---|---|---|
| 0 | $54,118 | $61,488 |
| 1 | 60,501 | 70,490 |
| 2 | 72,248 | 85,717 |
| 3 | 86,947 | 110,887 |
| 4+ | 102,221 | 121,723 |

Section 207—Manufactured Home Parks per Space—$26,258

### Indexing of per Unit Limit for Substantial Rehabilitation for Calendar Year 2022

The 2016 Multifamily Accelerated Processing (MAP) Guide established a base amount of $15,000 per unit to define substantial rehabilitation for FHA insured loan programs. Section 5.1.2.A.2.b of the 2020 MAP guide requires that this base amount be annually adjusted for inflation based on the percentage change published by the Bureau of Labor Statistics of the Department of Labor or other inflation cost index. Applying the HOEPA adjustment to the base amount, the 2022 base amount per dwelling unit to determine substantial rehabilitation for FHA insured loan programs is $16,983.

This per unit cost threshold for substantial rehabilitation may be applied to FHA multifamily mortgage insurance applications submitted or amended on or after January 1, 2022, so long as the loan has not been initially endorsed.

**Environmental Impact**

This notice involves the statutorily required establishment of mortgage limits and discretionary establishment of cost limits which do not constitute development decisions affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

**Lopa P. Kolluri,**

*Principal Deputy Assistant Secretary for the Office of Housing—Federal Housing Administration.*

[FR Doc. 2022–05578 Filed 3–16–22; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–HQ–FAC–2022–N225; FXGO1664091HCC0–FF09D00000–190]**

### Hunting and Wildlife Conservation Council; Call for Nominations; Extension

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Call for nominations; extension.

**SUMMARY:** The Secretary of the Interior and the Director of the U.S. Fish and Wildlife Service seek nominations for membership on the Hunting and Wildlife Conservation Council (Council). This is a 15-day extension of the call for nominations published in the **Federal Register** on February 18, 2022.

**DATES:** The nomination period announced on February 18, 2022, at 87 FR 9374 is extended. Nominations via email must be date stamped no later than April 1, 2022.

**ADDRESSES:** Please address nomination letters to Mr. Douglas Hobbs, U.S. Fish and Wildlife Service. You may email nominations to Douglas Hobbs, at *doug_hobbs@fws.gov.*

**FOR FURTHER INFORMATION CONTACT:** Douglas Hobbs, at the email address in **ADDRESSES**, or by telephone at (703) 358–2336. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

**SUPPLEMENTARY INFORMATION:** The Secretary of the Interior and the Director of the U.S. Fish and Wildlife Service seek nominations for membership on the Hunting and Wildlife Conservation Council (Council). The Council reports to the Secretary of the Interior and the Secretary of Agriculture to provide recommendations regarding the establishment and implementation of conservation endeavors that benefit wildlife resources; encourage partnership among the public, sporting conservation organizations, and Federal, State, Tribal, and territorial governments; and benefit fair chase recreational hunting and safe recreational shooting sports. On February 18, 2022, the original call for nominations published in the **Federal Register** (87 FR 9374), with a 30-day nomination period ending March 21, 2022. This notice provides additional time for nominations (see **DATES**, above). For more information on the Council's duties, member terms, vacancies to fill, the nomination method, and eligibility, see the February 18, 2022, notice (87 FR 9374).

*Authority:* 5 U.S.C. appendix 2.

**Barbara Wainman,**

*Assistant Director—External Affairs.*

[FR Doc. 2022–05651 Filed 3–16–22; 8:45 am]

**BILLING CODE 4333–15–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R4–ES–2022–0016; FXES11130400000EA–123–FF04EF1000]**

### Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Alabama Beach Mouse, Baldwin County, AL; Categorical Exclusion

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; request for comment and information.

**SUMMARY:** We, the Fish and Wildlife Service (Service), announce receipt of an application from Rhonda H. Barber (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally listed Alabama beach mouse incidental to construction in the City of Orange Beach, Baldwin County, Alabama. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and the Service's preliminary determination that this HCP qualifies as low-effect, categorically excluded, under the National Environmental Policy Act. To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

**DATES:** We must receive your written comments on or before April 18, 2022.

**ADDRESSES:** *Obtaining Documents:* You may obtain copies of the documents online in Docket No. FWS–R4–ES–2022–0016 at *https://www.regulations.gov.*

*Submitting Comments:* If you wish to submit comments on any of the documents, you may do so in writing by any of the following methods:

- *Online: https://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R4–ES–2022–0016.
- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS–R4–ES–2022–0016; U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Lynn, Project Manager, by telephone at 251–441–5868 or via email at *william_lynn@fws.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

**SUPPLEMENTARY INFORMATION:** We, the Fish and Wildlife Service (Service), announce receipt of an application from Rhonda H. Barber (applicant) for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests the ITP to take the federally listed Alabama beach mouse (*Peromyscus polionotus*

*ammobates*) (ABM) incidental to the construction of a single-family home (project) in the City of Orange Beach, Baldwin County, Alabama. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and the Service's preliminary determination that this HCP qualifies as low-effect, categorically excluded, under the National Environmental Policy Act (NEPA; 42 U.S.C. 4231 *et seq.*). To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

**Project**

The applicant requests a 50-year ITP to take ABM by converting approximately 0.20 acre (ac) of occupied ABM foraging and sheltering habitat incidental to the construction of a single-family home located on a 1.397-ac parcel in Baldwin County, Alabama. The previous single-family home that was located on the site was destroyed in 2004 by Hurricane Ivan. The site was left fallow, and 0.832 acr of ABM foraging and sheltering habitat formed on the site. The applicant would impact 0.20 ac of the occupied 0.832 ac of ABM habitat in constructing the single-family home. An existing concrete driveway (0.053 ac) will be used in the redevelopment plan to minimize new impacts to the species. The concrete driveway may need to be replaced and, if it is replaced, additional concrete will be used. The applicant proposes to donate a $2.30-per-square-foot in-lieu fee totaling $20,037.60 to the Alabama Coastal Heritage Trust (ACHT) for the 0.20-ac impact. ACHT will use the donation to manage, maintain, or acquire ABM habitat within the City of Orange Beach or elsewhere within the range of the ABM.

The applicant also proposes to implement standard minimization and mitigation measures to remove the remaining nonnative vegetation on 0.429 ac on the site and restore the area to ABM habitat. The standard mitigation and minimization measures to be implemented on the site include installing sea turtle-friendly lighting and tinted windows, landscaping with native vegetation, enhancing the frontal dune area, constructing a concrete driveway that will not disperse in a storm surge, implementing refuse-control measures during construction and also requiring that future residents utilize such measures, and restoring ABM habitat after tropical storms. Free-roaming cats and the use of exterior rodenticide will be prohibited within the parcel. Post-construction ABM habitat on site should total 1.14 ac of the 1.397-ac parcel. The Service would require the applicant to donate the total contribution to ACHT prior to engaging in any activities on the parcel that are associated with the project.

**Public Availability of Comments**

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment—including your personal identifying information—may be made available to the public. While you may request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

**Our Preliminary Determination**

The Service has made a preliminary determination that the applicant's project, including land clearing, infrastructure building, landscaping, and the proposed mitigation and minimization measures, would individually and cumulatively have a minor or negligible effect on the Alabama beach mouse and the environment. Therefore, we have preliminarily concluded that the ITP for this project would qualify for categorical exclusion and that the HCP is low effect under our NEPA regulations at 40 CFR 1506.6 and 43 CFR 46.305. A low-effect HCP is one that would result in (1) minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) minor or negligible effects on other environmental values or resources; and (3) impacts that, when considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result in significant cumulative effects to environmental values or resources over time.

**Next Steps**

The Service will evaluate the application and the comments received to determine whether to issue the requested permit. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take on the species. We will consider all of the above in determining whether the permit issuance criteria of section 10(a)(l)(B) of the ESA have been met. If met, the Service will issue ITP number PER0027719 to Rhonda H. Barber.

**Authority**

The Service provides this notice under section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.32) and NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6 and 43 CFR 46.305).

**William J. Pearson,**

*Field Supervisor, Alabama Ecological Service Field Office.*

[FR Doc. 2022–05666 Filed 3–16–22; 8:45 am]

BILLING CODE 4333–15–P

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## DEPARTMENT OF THE INTERIOR

## Geological Survey

**[GX22EF00COM0000]**

## Reconciliation of Derogatory Geographic Names Tribal Consultation; Correction

**AGENCY:** U.S. Geological Survey, Interior.

**ACTION:** Notice; correction.

**SUMMARY:** The U.S. Department of the Interior (DOI) published a document in the **Federal Register** on February 23, 2022, concerning conducting Tribal Consultation sessions to obtain oral and written comments on candidate replacement names for geographic feature names recently declared derogatory by DOI Secretary's Order 3404 (S.O. 3404). These sessions will be held virtually. The document contained an error when accessing the Zoom links.

**FOR FURTHER INFORMATION CONTACT:** Joseph Younkle, Special Assistant to the Assistant Secretary for Water and Science, Office of the Assistant Secretary—Water and Science, (202) 853–4345 or at *joseph_younkle@ios.doi.gov.*

**SUPPLEMENTARY INFORMATION:**

**Correction**

In **Federal Register** of February 22, 2022, in FR Doc 87, 10232. Correct the hyperlinks for the table under the ''Tribal Consultation sessions will be held virtually at the following date and location,'' to read:

Tribal Consultation sessions will be held virtually at the following date and location, and require pre-registration:

| Date | Time | Venue |
|---|---|---|
| March 21, 2022 ..... | 12:00 p.m.–2:00 p.m. Mountain Time ... | Zoom. To register please copy or type the following link into your internet browser: *tinyurl.com/28ebukm7*. |
| March 22, 2022 ..... | 11:00 a.m.–1:00 p.m. Pacific Time ..... | Zoom. To register please copy or type the following link into your internet browser: *tinyurl.com/czknm5b3*. |
| March 23, 2022 ..... | 1:00 p.m.–3:00 p.m. Eastern Time ..... | Zoom. To register please copy or type the following link into your internet browser: *tinyurl.com/5a3ajejt*. |

You can also register from the Department of the Interior Upcoming Tribal Consultation page at *https://www.doi.gov/priorities/tribal-consultation/upcoming-tribal-consultations* or *https://go.usa.gov/xzR7t.*

Dated: March 14, 2022.

**Michael Tischler,**

*Director, National Geospatial Program, U.S. Geological Survey, Chair, DOI Derogatory Geographic Names Task Force.*

[FR Doc. 2022–05650 Filed 3–16–22; 8:45 am]

BILLING CODE 4338–11–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLCO956000 L14400000.BJ0000 22X]**

### Notice of Filing of Plats of Survey, Colorado

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of official filing.

**SUMMARY:** The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management (BLM), Colorado State Office, Lakewood, Colorado, 30 calendar days from the date of this publication. The surveys, which were executed at the request of the U.S. Forest Service, the National Park Service, and the BLM, are necessary for the management of these lands.

**DATES:** Unless there are protests of this action, the plats described in this notice will be filed on April 18, 2022.

**ADDRESSES:** You may submit written protests to the BLM Colorado State Office, Cadastral Survey, 2850 Youngfield Street, Lakewood, CO 80215–7210.

**FOR FURTHER INFORMATION CONTACT:** Janet Wilkins, Chief Cadastral Surveyor for Colorado, telephone: (303) 239–3818; email: *j1wilkin@blm.gov.*

Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Ms. Wilkins. 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 supplemental plat of the NW¼SE¼ of section 11 in Township 49 North, Range 8 West, New Mexico Principal Meridian, Colorado, was accepted on November 2, 2021.

The plat, in two sheets, incorporating the field notes of the dependent resurvey and subdivision of section 5 in Township 28 South, Range 70 West, Sixth Principal Meridian, Colorado, was accepted on November 16, 2021.

The plat and field notes of the dependent resurvey and subdivision of section 25 in Township 8 North, Range 73 West, Sixth Principal Meridian, Colorado, was accepted on December 1, 2021.

The plat and field notes of the dependent resurvey and survey in Township 50 North, Range 8 West, New Mexico Principal Meridian, Colorado, was accepted on December 16, 2021.

The plat and field notes of the dependent resurvey and subdivision of section 34 in Township 5 South, Range 72 West, Sixth Principal Meridian, Colorado, was accepted on December 29, 2021.

The plat, in two sheets, incorporating the field notes of the dependent resurvey in Township 10 North, Range 85 West, Sixth Principal Meridian, Colorado, was accepted on January 18, 2022.

A person or party who wishes to protest any of the above surveys must file a written notice of protest within 30 calendar days from the date of this publication at the address listed in the **ADDRESSES** section of this notice. A statement of reasons for the protest may be filed with the notice of protest and must be filed within 30 calendar days after the protest is filed. If a protest against the survey is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed or otherwise resolved.

Before including your address, phone number, email address, or other personal identifying information in your protest, please be aware that your entire protest, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 43 U.S.C. Chap. 3)

**Janet Wilkins,**

*Chief Cadastral Surveyor.*

[FR Doc. 2022–05657 Filed 3–16–22; 8:45 am]

BILLING CODE 4310–JB–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[FF06RBSW00 XXXF5137BC FVRS31100600000/NDM–21192]**

### Notice of Proposed Withdrawal, Transfer of Administrative Jurisdiction, and Opportunity for Public Meeting for the Dash Lake Waterfowl Production Area, North Dakota

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of proposed withdrawal.

**SUMMARY:** At the request of the United States Fish and Wildlife Service (FWS) and subject to valid existing rights, the Secretary of the Interior proposes to withdraw 13.50 acres of public land from appropriation under the public land laws, including location and entry under the United States mining laws, but not from leasing under the mineral and geothermal leasing laws, for 100 years, and transfer administrative jurisdiction to FWS to protect and reserve the land for management as part of the Dash Lake Waterfowl Production Area in Towner County, North Dakota. Publication of this notice temporarily segregates the land for up to 2 years from appropriation under the public land laws, including location and entry under the United States mining laws, subject to valid existing rights, but not from leasing under the mineral and geothermal leasing laws, while the application is being processed. The notice initiates a 90-day public comment period and announces an

opportunity to request a public meeting on the proposed withdrawal.

**DATES:** Comments and requests for a public meeting must be received by June 15, 2022.

**ADDRESSES:** All comments should be sent to the Bureau of Land Management (BLM) Montana State Office, Attn: MT924, 5001 Southgate Drive, Billings, MT 59102; or sent by email to *dsorg@blm.gov.* The BLM will not consider comments via telephone calls.

**FOR FURTHER INFORMATION CONTACT:** Debby Sorg, Land Law Examiner, BLM Montana State Office, telephone: (406) 896–5045, email: *dsorg@blm.gov;* or you may contact the BLM office at the address noted earlier. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Ms. Sorg. 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 applicant is the FWS, and its petition/application requests the Secretary of the Interior withdraw the following described public land from all forms of appropriation under the public land laws, including location and entry under the United States mining laws, subject to valid existing rights, but not from leasing under the mineral and geothermal leasing laws; transfer administrative jurisdiction to FWS; and reserve the land for management of a waterfowl production area for a 100-year term.

**Fifth Principal Meridian, North Dakota**

T. 163 N., R. 65 W.,
Sec. 5, lot 3.
The area described contains 13.50 acres.

The Secretary of the Interior approved the FWS's petition. Therefore, the petition/application constitutes a withdrawal proposal of the Secretary of the Interior (43 CFR 2310.1–3(e)).

The use of a rights-of-way, interagency agreement, or cooperative agreement would not provide adequate protection of the waterfowl production area.

No additional water rights will be needed to fulfill the purpose of this new withdrawal.

There are no suitable alternative sites since these lands are located within the Dash Lake Waterfowl Production Area.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the BLM Montana/Dakotas State Director no later than June 15, 2022. If the authorized officer determines that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** and a local newspaper at least 30 days before the scheduled date of the meeting.

For a period until March 18, 2024, the public land described earlier will be segregated from all forms of appropriation under the public land laws, including location and entry under the United States mining laws, subject to valid existing rights, but not from leasing under the mineral and geothermal leasing laws, unless the application is denied or canceled, or the withdrawal is approved prior to that date. The BLM and the FWS are preparing an environmental assessment and anticipate reaching a finding of no significant impact. Information regarding the proposed withdrawal, including environmental and other reviews will be available at the Montana State Office and on BLM's ePlanning site at *https://eplanning.blm.gov/eplanning-ui/project/2017980/510.*

This application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

**Theresa M. Hanley,**

*Acting Montana State Director.*

[FR Doc. 2022–05686 Filed 3–16–22; 8:45 am]

**BILLING CODE 4333–15–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–NPS0033556; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: U.S. Department of Agriculture, Forest Service, Shasta Trinity National Forest, Redding, CA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of Agriculture, Forest Service, Shasta Trinity National Forest (USDA Shasta Trinity National Forest) has completed an inventory of human remains in consultation with the appropriate Indian Tribes, and has determined that there is a cultural affiliation between the human remains and present-day Indian Tribes or organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the USDA Shasta Trinity National Forest. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the USDA Shasta Trinity National Forest at the address in this notice by April 18, 2022.

**FOR FURTHER INFORMATION CONTACT:** Rachel A. Birkey, Forest Supervisor, Shasta Trinity National Forest, 3644 Avtech Parkway, Redding, CA 96002, telephone (530) 226–2500, email *rachel.birkey@usda.gov* or Matthew Padilla, Shasta-Trinity National Forest Headquarters, 3644 Avtech Parkway, Redding, CA 96002, telephone (530) 921–3335, email *matthew.j.padilla@usda.gov.*

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the U.S. Department of Agriculture, Forest Service, Shasta Trinity National Forest, Redding, CA. The human remains were removed from Shasta 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). 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 USDA Shasta

Trinity National Forest professional staff in consultation with representatives of the Redding Rancheria, California.

**History and Description of the Remains**

In 1964, human remains representing, at minimum, one individual were removed from a cave in Shasta County, CA. The artifacts were discovered in back dirt that had been excavated from a trench in 1904. The human remains were stored at an unknown location until 2015, at which time they were returned to the Forest Service by California State University-Sacramento (CSUS) in a bag labeled ''CA–SHA–48, Cave, 81–CSUS–121.02.'' In 2016, the Forest Service archeologist was notified that the human remains were under Forest Service control. The human remains are currently located at the University of California-Davis. No known individual was identified. No associated funerary objects are present.

Collection records indicate that site CA–SHA–49 was occupied primarily between 1,700 and 2,000 years ago, as evidenced by three radiocarbon dates obtained in 1974 (this radiocarbon dating was not determined from an analysis of human remains).

**Determinations Made by the U.S. Department of Agriculture, Forest Service, Shasta Trinity National Forest**

Officials of the U.S. Department of Agriculture, Forest Service, Shasta Trinity National Forest have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Redding Rancheria, California.

**Additional Requestors and Disposition**

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Rachel A. Birkey, Forest Supervisor, Shasta Trinity National Forest, 3644 Avtech Parkway, Redding, CA 96002, telephone (530) 226–2500, email *rachel.birkey@usda.gov* or Matthew Padilla, Shasta-Trinity National Forest Headquarters, 3644 Avtech Parkway, Redding, CA 96002, telephone (530) 921–3335, email *matthew.j.padilla@usda*.gov, by April 18, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Redding Rancheria, California may proceed.

The U.S. Department of Agriculture, Forest Service, Shasta Trinity National Forest is responsible for notifying the Redding Rancheria, California that this notice has been published.

Dated: March 9, 2022.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2022–05626 Filed 3–16–22; 8:45 am]

BILLING CODE 4312–52–P

## DEPARTMENT OF THE INTERIOR

## National Park Service

**[NPS–WASO–NAGPRA–NPS0033557; PPWOCRADN0–PCU00RP14.R50000]**

## Notice of Inventory Completion: Diablo Valley College, Pleasant Hill, CA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** Diablo Valley College, a campus of Contra Costa Community College District, has completed an inventory of human remains and associated funerary objects in consultation with the appropriate Indian Tribes or Native Hawaiian organizations and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to Diablo Valley College. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Diablo Valley College at the address in this notice by April 18, 2022.

**FOR FURTHER INFORMATION CONTACT:** Susan Lamb, President, Diablo Valley College, 321 Golf Club Road, Pleasant Hill, CA 94523, telephone (925) 969–2001, email *slamb@dvc.edu.*

**SUPPLEMENTARY INFORMATION:** Notice is hereby given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of Diablo Valley College, Pleasant Hill, CA. The human remains and associated funerary objects were removed from various locations in Contra Costa County, CA, including Concord, Lafayette, Oakley, Alamo, Danville, and San Ramon.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the institution that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

**Consultation**

A detailed assessment of the human remains was made by Diablo Valley College professional staff in consultation (telephonic) with representatives of the Federated Indians of Graton Rancheria, California; Scotts Valley Band of Pomo Indians of California; Wilton Rancheria, California; Yocha Dehe Wintun Nation, California [*previously* listed as Rumsey Indian Rancheria of Wintun Indians of California]; and two non-federally recognized Indian groups, the Muwekma Ohlone Indian Tribe and the Confederated Villages of Lisjan (hereafter referred to as ''The Consulted Tribes and Groups'').

The Buena Vista Rancheria of Me-Wuk Indians of California and the Tule River Indian Tribe of the Tule River Reservation were invited to consult but deferred to The Consulted Tribes and Groups. The Big Valley Band of Pomo Indians of the Big Valley Rancheria, California; Bridgeport Indian Colony [*previously* listed as Bridgeport Paiute Indian Colony of California]; California Valley Miwok Tribe, California; Habematolel Pomo of Upper Lake, California; Hopland Band of Pomo Indians [*previously* listed as Hopland Band of Pomo Indians of the Hopland Rancheria, California]; Mechoopda Indian Tribe of Chico Rancheria, California; Sherwood Valley Rancheria of Pomo Indians of California; and three non-federally recognized Indian groups—the Amah Mutsun Tribal Band of Mission San Juan Bautista; Indian Canyon Mutsun Band of Costanoan; and the Northern Valley Yokuts—were invited to consult but did not participate. Hereafter, the non-

participating Indian Tribes and groups are referred to as ''The Invited Tribes and Groups.''

**History and Description of the Remains**

At an unknown date, human remains representing, at minimum, two individuals were removed from an unknown site in Contra Costa County, CA. In 1961, the human remains were donated to Diablo Valley College by a person identified only as ''Perryman.'' The human remains consist of a lower mandible and an upper cap skull. The sex and age of the individuals are unknown. No known individuals were identified. No associated funerary objects are present.

At an unknown date, human remains representing, at minimum, one individual were removed from Knightsen Mound, close to Oakley, CA. In 1964, the human remains were donated to Diablo Valley College by Jerry Wentling. The human remains consist of a skull, mandible, and bone chips. The sex and age of the individual are unknown. No known individual was identified. The three associated funerary objects include one lot of olivella shell beads, one shell bead necklace, and one shell piece.

At an unknown date, human remains representing, at minimum, one individual were removed ''approximately 75 yards off the main highway and Stone Valley Road'' in Alamo, CA. In 1964, the human remains were donated to Diablo Valley College by Norm LaFleur. The human remains consist of skull fragments. No known individual was identified. No associated funerary objects are present.

In 1956, human remains representing, at minimum, five individuals were removed during an anthropological excavation at Galindo Creek in Concord, CA. In 1964, the human remains were donated to Diablo Valley College by Charles Sapper. The human remains consist of a full skull, skull pieces, a mandible, miscellaneous skull caps glued from four to five skulls, and miscellaneous skeletal materials. The sex and age of the individuals are unknown. No known individuals were identified. No associated funerary objects are present.

In 1965, human remains representing, at minimum, one individual were removed from a site containing graves near Hough Avenue in Lafayette, CA. In 1965, the human remains were donated to Diablo Valley College by Rick Bonnington. The human remains consist of broken skull pieces. The sex and age of the individual are unknown. No known individual was identified. No associated funerary objects are present.

Sometime in the 1960s, human remains representing, at minimum, one individual were collected from Cypress Road on Bethel Island, in Oakley, CA. In March 1970, the human remains were donated to Diablo Valley College by Barbara Sanhuhl Fletcher. The human remains consist of a skull. No known individual was identified. The one associated funerary object is a grinding stone.

At an unknown date or dates, human remains representing, at minimum, four individuals were removed from unknown sites in Alamo, Danville, and San Ramon, CA. During 1972 and 1973, the human remains were donated to Diablo Valley College by Rick Hicks. The human remains consist of two skulls in pieces; a mandible; fragile bones; vertebrae; foot bones; and the skull and skeleton belonging to an infant of indeterminate sex (the sex and age of the other three individuals are unknown). No known individuals were identified. No associated funerary objects are present.

During 1973 and 1974, human remains representing, at minimum, one individual were removed from the ''La Serena archaeological excavation site'' in Alamo, CA. In August of 1977, the human remains were donated to Diablo Valley College by S. Herrmann. The human remains consist of a skull and mandible, and human vertebrae. The sex and age of the individual are unknown. No known individual was identified. No associated funerary objects are present.

Based on collection research, archeological evidence, geographic location, ethnographic information, and oral history evidence, the sites from which the human remains and associated funerary objects listed in this notice were removed are located within the territory traditionally occupied by the Wilton Rancheria and the Muwekma Ohlone Tribe, a non-federally recognized Indian group.

**Determinations Made by Diablo Valley College:**

Officials of Diablo Valley College have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 16 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the four objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Wilton Rancheria, California.

**Additional Requestors and Disposition**

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Susan Lamb, President, Diablo Valley College, 321 Golf Club Road, Pleasant Hill, CA 94523, telephone (925) 969–2001, email *slamb@dvc.edu,* by April 18, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Wilton Rancheria, California and, if joined to a request from the Wilton Rancheria, California, the Muwekma Ohlone Tribe, may proceed.

Diablo Valley College is responsible for notifying The Consulted Tribes and Groups and The Invited Tribes and Groups that this notice has been published.

Dated: March 9, 2022.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2022–05627 Filed 3–16–22; 8:45 am]

BILLING CODE 4312–52–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–NPS0033559; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Intent To Repatriate Cultural Items: U.S. Department of the Interior, National Park Service, Tuzigoot National Monument, Clarkdale, AZ; Correction

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice; correction.

**SUMMARY:** The U.S. Department of the Interior, National Park Service, Tuzigoot National Monument (Tuzigoot National Monument) has corrected a Notice of Intent to Repatriate published in the **Federal Register** on June 25, 2021. This notice corrects the number of unassociated funerary objects. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to Tuzigoot National Monument. If no additional claimants come forward, transfer of control of the cultural items

to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Tuzigoot National Monument at the address in this notice by April 18, 2022.

**FOR FURTHER INFORMATION CONTACT:** Lloyd Masayumptewa, Superintendent, Tuzigoot National Monument, P.O. Box 219, Camp Verde, AZ 86322, telephone (928) 567–5276, email *Lloyd_Masayumptewa@nps.gov.*

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the U.S. Department of the Interior, National Park Service, Tuzigoot National Monument, Clarkdale, AZ, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the Superintendent, Tuzigoot National Monument.

This notice corrects the number of unassociated funerary objects published in a Notice of Intent to Repatriate in the **Federal Register** on June 25, 2021 (86 FR 33736–33737, June 25, 2021). During preparation for repatriation, it was discovered that two objects had been inadvertently omitted from the published notice. Transfer of control of the items in this correction notice has not occurred.

## Correction

In the **Federal Register** (86 FR 33736, June 25, 2021), column 3, paragraph 6 under the heading ''History and Description of the Cultural Items,'' is corrected by substituting the following paragraph:

Between 1933–1934, 18 cultural items were removed from Hatalacva Pueblo in Yavapai County, AZ. The 18 unassociated funerary objects are 14 bowls, one pendant, one cup, one necklace, and one awl.

In the **Federal Register** (86 FR 33737, June 25, 2021), column 1, paragraph 1 is corrected by substituting the following paragraph:

Between 1933–1934, 7,172 cultural items were removed from Tuzigoot Pueblo in Yavapai County, AZ. The 7,172 unassociated funerary objects are one bow, two basketry fragments, one spindle whorl, two axes, one crystal, one prayer stick, 19 dendrochronology samples, 14 jars, 84 bowls, four miniature bowls, four pitchers, four ladles, one miniature jar, 6,969 beads, 12 pendants, 19 bracelets, three unworked shells, eight projectile points, six necklaces, five rings, four worked shells, one worked sherd, two worked bones, two drills, two unworked bones, and one pigment.

In the **Federal Register** (86 FR 33737, June 25, 2021), column 2, paragraphs 1 and 2 are corrected by substituting the following paragraphs:

Pursuant to 25 U.S.C. 3001(3)(B), the 8,086 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.

Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the 8,086 unassociated funerary objects and the Hopi Tribe of Arizona.

## Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Lloyd Masayumptewa, Superintendent, Tuzigoot National Monument, P.O. Box 219, Camp Verde, AZ 86322, telephone (928) 567–5276, email *Lloyd_Masayumptewa@nps.gov,* by April 18, 2022. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects to the Hopi Tribe of Arizona may proceed.

The U.S. Department of the Interior, National Park Service, Tuzigoot National Monument is responsible for notifying the Ak-Chin Indian Community [*previously* listed as the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona]; Fort McDowell Yavapai Nation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Yavapai-Prescott Indian Tribe [*previously* listed as Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona]; and the Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: March 9, 2022.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2022–05628 Filed 3–16–22; 8:45 am]

BILLING CODE 4312–52–P

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# DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

**[S1D1S SS08011000 SX064A000 222S180110; S2D2S SS08011000 SX064A000 22XS501520]**

## Notice of Intent To Prepare an Environmental Impact Statement for Navajo Transitional Energy Company's Spring Creek Mine Federal Mining Plan Modification for Federal Coal Lease MTM–94378

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSMRE) is publishing this notice to announce that, consistent with direction from the U.S. District Court of Montana, it will prepare an Environmental Impact Statement (EIS) for Navajo Transitional Energy Company's (NTEC) Federal mining plan modification for Federal Coal Lease MTM–94378 (the Project). With this notice, OSMRE also announces that it will hold a public scoping meeting, including a 30-day public scoping period to receive comments on the environmental issues that OSMRE should analyze in this EIS. The Spring Creek Mine (SCM) is located in Big Horn County, Montana, approximately 32 miles from Sheridan, Wyoming. The SCM started operation in 1974 and is expected to continue to operate until at least 2025 under the current approved mining plan. The proposed Project would allow 184.1 acres of additional surface disturbance and recovery of an additional 51.5 million tons (Mt) of Federal coal. Under the proposed Project, SCM would continue to mine approximately 13–18 million tons per year (Mtpy) and the production would extend for an additional 3–4 years, depending on production rates. OSMRE plans to analyze the environmental effects of an annual production rate of 18 Mtpy for 4 additional years of production, which is the maximum estimated future annual production rate. This rate is below the

maximum permitted production rate of 30 Mtpy established by the Montana Department of Environmental Quality (MDEQ)-Air Quality Division (AQD) Air Quality Permit MAQP #1120–12.

**DATES:** OSMRE requests comments concerning the scope of the analysis in the EIS, and identification of relevant information, studies, and analyses. All comments must be received April 18, 2022. The public scoping meeting will be held via Zoom from 4:00–6:00 p.m. MST on March 31, 2022. Please register to attend and provide verbal comments during the Zoom public scoping meeting at the following address: (*https://www.osmre.gov/laws-and-regulations/nepa/projects*). There will also be a telephone number provided upon registration.

**ADDRESSES:**

You may submit comments related to the Project by any of the following methods:

- *Email: SCM_LBA1_EIS@wwcengineering.com.*
- *Mail:* ATTN: Spring Creek Mining Plan Modification EIS, C/O: Logan Sholar, OSMRE Western Regions 5, 7–11, P.O. Box 25065, Lakewood, CO 80225–0065.

**FOR FURTHER INFORMATION CONTACT:** Logan Sholar, NEPA Project Manager; telephone (303) 236–6038; email: *lsholar@osmre.gov* or at the address and email provided in the **ADDRESSES** section.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** OSMRE Regions 5, 7–11 will prepare an EIS for SCM's mining plan modification to address issues identified by the U.S. District Court for the District of Montana (the Court) in a 2021 ruling related to the environmental analysis previously prepared by OSMRE for Federal Coal Lease MTM 94378. In accordance with the Mineral Leasing Act of 1920, the Department of the Interior Assistant Secretary for Land and Minerals Management (ASLM) must approve, disapprove, or approve the Project with conditions because the Project contains leased Federal coal. The SCM is operated by NTEC under State Mine Permit C1979012, issued by MDEQ, in accordance with its regulatory authority.

On February 3, 2021, the Court held that OSMRE failed to adequately examine the impacts of coal transportation, non-greenhouse gas emissions, and greenhouse gas emissions in preparing their 2012 Environmental Assessment and recommending approval of the mining plan modification for Federal Coal Lease MTM–94378. The Court deferred vacatur of the mining plan modification decision for 240 days and is allowing OSMRE to conduct remedial NEPA analysis. On August 5, 2021, OSMRE notified the Court that it would prepare an EIS and requested an extension of the deferred vacatur until April 1, 2023, which the Court granted.

*Purpose and Need for the Proposed Action:*

The purpose of this EIS is to respond to the Court's ruling and analyze the effects of coal transportation and greenhouse and non-greenhouse gas emissions resulting from the proposed Project. The EIS will also consider any new information available in analyzing potential impacts to other resources in the environment that could result from the Project.

The Project is needed to allow NTEC, the current mine operator, the opportunity to exercise its valid existing rights for Federal Coal Lease MTM–94378 granted by the Bureau of Land Management.

## Preliminary Proposed Project

The proposed Project would allow 184.1 acres of additional surface disturbance and recovery of an additional 51.5 Mt of federal coal. SCM started operation in 1974 and is expected to continue to operate until approximately 2025 under the current, approved mining plan. The proposed Project would extend the life of the mine for 3–4 years, allowing an additional 13–18 Mtpy, depending on production rates.

## Summary of Expected Impacts

The Agency has completed internal scoping and identified preliminary analysis issues that will be evaluated in the EIS. Reasonably foreseeable effects of mining Federal coal will be evaluated for the following resources:

- Air Quality (measured as concentration of criteria air pollutants regulated under the National Ambient Air Quality Standards, Hazardous Air Pollutants, and Air Quality Related Values such as visibility (haze) and atmospheric deposition)
- Combustion of greenhouse gases as it relates to climate change measured in terms of carbon dioxide equivalent for both 20-year and 100-year global warming potentials
- Surface water and groundwater quality and quantity
- Socio-economic effects, including changes to state and local taxes, royalties, fees, lease bids and bonuses, as well as payroll benefits as well as effects to Environmental Justice populations
- Federally listed threatened/endangered species
- Geology
- Soils
- Cultural Resources
- Visual Resources
- Wildlife

## Anticipated Permits and Authorizations

None at this time.

## Schedule for the Decision-Making Process

The Department plans to issue the Record of Decision on or before April 1, 2023.

## Public Scoping Process

All public scoping comments must be submitted by email or by mail to the addresses listed under **ADDRESSES**. 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 public at any time. While you may request in your comment to withhold your personal identifying information from public review, OSMRE cannot guarantee that this will occur.

The Project web page located at (*https://www.osmre.gov/laws-and-regulations/nepa/projects*) will include the description of the Project as submitted by NTEC, a map of the proposed mining plan modification, and information about how to submit public comment on issues or concerns related to the Project.

OSMRE will review and consider all public scoping comments received and prepare a Scoping Summary Report. The Scoping Summary Report will be used by OSMRE to identify issues to be included in the EIS analysis, resources and issues that can be dismissed from detailed analysis because they are not present or not affected by the Project, and potential alternatives to be analyzed.

## Request for Identification of Potential Alternatives, Information, and Analyses Relevant to the Proposed Action

In addition to comments concerning the scope of the EIS analysis, commenters are encouraged to identify relevant information, studies, and analyses that would assist the Department in making its decision and identify potential alternatives to the Project.

**Lead and Cooperating Agencies**

OSMRE is the lead agency for this EIS. The BLM and MDEQ have been invited to be cooperating agencies on the OSMRE EIS. Other federal agencies, state, tribal, and local governments with jurisdiction by law or special expertise that are interested in participating in the preparation of this EIS should contact the above mentioned NEPA Project Manager.

**Decision Maker**

Assistant Secretary for Lands and Minerals Management.

**Nature of Decision To Be Made**

Informed by the EIS analysis, OSMRE will make a recommendation to the ASLM to approve, disapprove, or approve with conditions the mining plan modification for Federal Coal Lease MTM–94378. The ASLM will consider OSMRE's recommendation when deciding to approve, disapprove, or approve with conditions the mining plan modification for Federal Coal Lease MTM–94378. OSMRE's recommendation to the ASLM is based, at a minimum, on the documentation specified at 30 CFR 746.13.

**David Berry,**

*Regional Director, Interior Regions 5, 7–11.*

[FR Doc. 2022–05623 Filed 3–16–22; 8:45 am]

**BILLING CODE 4310–05–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On March 3, 2022, the Department of Justice lodged a proposed consent decree with the United States District Court for the Northern District of Indiana in the lawsuit entitled *United States and State of Indiana* v. *Northern Indiana Public Service Company,* LLC, Civil Action No. 2:22–cv–48.

The United States and the State of Indiana (the ''State'') filed a complaint in this lawsuit under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The United States and the State's complaint names Northern Indiana Public Service Company, LLC (''NIPSCO''), as the defendant. The complaint requests recovery of costs that the United States and the State incurred responding to releases of hazardous substances at the Town of Pines Superfund Site (''the ''Site'') in Porter County, Indiana. The complaint also seeks injunctive relief. The United States, the State, and NIPSCO signed the consent decree to resolve the claims in the complaint. NIPSCO agrees to pay $619,632.16 of the United States' response costs already incurred, to pay for the United States' and the State's costs to be incurred, and to perform the remedial action that EPA selected for the Operable Unit 2 portion of the Site at an estimated cost of $11.8 million. In return, the United States and the State of Indiana agree not to sue the defendant under sections 106 and 107 of CERCLA for work done under the consent decree and for Past Response Costs and Future Response Costs as defined by the decree.

The publication of this notice opens a period for public comment on the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and State of Indiana* v. *Northern Indiana Public Service Company,* D.J. Ref. No. 90–11–3–12060. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

| *To submit comments:* | *Send them to:* |
|---|---|
| By email ..... | *pubcomment-ees.enrd@usdoj.gov.* |
| By mail ..... | Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611. |

During the public comment period, the consent decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $53 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the appendices, the cost is $13.

**Patricia Mckenna,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2022–05579 Filed 3–16–22; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

### Agency Information Collection Activities; Request for Public Comment

**AGENCY:** Employee Benefits Security Administration (EBSA), Department of Labor.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (the Department), in accordance with the Paperwork Reduction Act, provides the general public and Federal agencies with an opportunity to comment on proposed 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. The Employee Benefits Security Administration (EBSA) is soliciting comments on the proposed extension of the information collection requests (ICRs) contained in the documents described below. A copy of the ICRs may be obtained by contacting the office listed in the **ADDRESSES** section of this notice. ICRs also are available at reginfo.gov (*http://www.reginfo.gov/public/do/PRAMain*).

**DATES:** Written comments must be submitted to the office shown in the **ADDRESSES** section on or before May 16, 2022.

**ADDRESSES:** James Butikofer, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, Room N–5718, Washington, DC 20210, or *ebsa.opr@dol.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. Current Actions**

This notice requests public comment on the Department's request for extension of the Office of Management and Budget's (OMB) approval of ICRs contained in the rules and prohibited transaction exemptions described below. The Department is not proposing any changes to the existing ICRs at this time. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a valid OMB control number. A summary of the ICRs and the current burden estimates follows:

*Agency:* Employee Benefits Security Administration, Department of Labor.

*Title:* Employee Retirement Income Security Act Prohibited Transaction Exemption 1986–128 For Securities Transactions Involving Employee Benefit Plans and Broker-Dealers.

*Type of Review:* Extension of a currently approved collection of information.

*OMB Number:* 1210–0059.

*Affected Public:* Not for-profit institutions, Businesses or other for-profits.

*Respondents:* 11,894.

*Responses:* 819,448.

*Estimated Total Burden Hours:* 19,495.

*Estimated Total Burden Cost (Operating and Maintenance):* $661,045.

*Description:* Prohibited Transaction Class Exemption (PTE) 86–128, which was granted on November 18, 1986, exempts from the prohibited transaction restrictions a fiduciary's use of its authority to cause a plan (including an individual retirement account) or a pooled investment fund to pay a fee to the fiduciary for effecting or executing of securities transactions as agent for the plan or fund. It also permits a fiduciary to act as an agent in an agency cross transaction for both the plan and one or more other parties to the transaction, and to receive reasonable compensation for effecting or executing the agency cross transaction from one or more of the other parties to the transaction.

Section III of the class exemption imposes the following information collection requirements on fiduciaries of employee benefit plans that effect or execute securities transactions (''broker-dealers'') and the independent plan fiduciary authorizing the plan to engage in the transactions with the broker-dealer (''authorizing fiduciary'') under the conditions contained in the exemption: (1) The authorizing plan fiduciary must provide the broker-dealer with an advance written authorization for the transactions; (2) The broker-dealer must provide the authorizing fiduciary with information necessary to determine whether an authorization should be made, including a copy of the exemption, a form for termination, a description of the broker-dealer's brokerage placement practices, and any other reasonably available information regarding the matter that the authorizing fiduciary requests; (3) The broker-dealer must provide the authorizing fiduciary with a termination form, at least annually, explaining that the authorization is terminable at will, without penalty to the plan, and that failure to return the form will result in continued authorization for the broker-dealer to engage in securities transactions on behalf of the plan; (4) The broker-dealer must provide the authorizing fiduciary with either (a) a confirmation slip for each individual securities transaction within 10 days of the transaction containing the information described in Rule 10b–10(a)(1–7) under the Securities Exchange Act of 1934, 17 CFR 240.10b–10 or (b) a quarterly report containing certain financial information including the total of all transaction-related charges incurred by the plan; (5) The broker-dealer must provide the authorizing fiduciary with an annual summary of the confirmation slips or quarterly reports, containing all security transaction-related charges, the brokerage placement practices (if changed), and a portfolio turnover ratio; and (6) A broker-dealer who is a discretionary plan trustee must provide the authorizing fiduciary with an annual report showing separately the commissions paid to affiliated brokers and non-affiliated brokers, on both a total dollar basis and a cents-per-share basis.

These requirements are designed as appropriate safeguards to ensure the protection of the plan assets involved in the transactions, which, in the absence of the class exemption, would not be permitted. These safeguards rely on the prior authorization and monitoring of the broker-fiduciary's activities by a second plan fiduciary that is independent of the first. They are necessary, as required under section 408(a) of ERISA, to ensure that respondents rely on the exemption only in the circumstances protective of plan participants and beneficiaries. The Department has received approval from OMB for this ICR under OMB Control No. 1210–0059. The current approval is scheduled to expire on August 31, 2022.

*Title:* Prohibited Transaction Class Exemption 75–1, Security Transactions with Broker-Dealers, Reporting Dealers, and Banks.

*Type of Review:* Extension of a currently approved collection of information.

*OMB Number:* 1210–0092.

*Affected Public:* Not for-profit institutions, Businesses or other for-profits.

*Respondents:* 6,116.

*Responses:* 6,116.

*Estimated Total Burden Hours:* 1,019.

*Estimated Total Burden Cost (Operating and Maintenance):* $0.

*Description:* Prohibited Transaction Exemption (PTE) 75–1 was granted on October 24, 1975. It consists of five parts covering, among other things, securities transactions between plans and broker-dealers, reporting dealers and banks as well as other parties. PTE 75–1 Part I covers brokerage commissions and related services as well as advice by persons that are not fiduciaries. Part II allows broker-dealers to engage in principal purchases or sales of securities with plans and permits reporting dealers and banks to do the same with respect to Government securities. Part III allows a plan to purchase certain securities from underwriting syndicates of which a plan fiduciary is a member. Part IV allows a plan to purchase from or sell securities to a market maker even if the market maker is a fiduciary. Part V allows a broker-dealer to extend credit to a plan in connection with the purchase or sale of securities. Each of the five parts of the exemption contains its own conditions and limitations.

In order to ensure that the exemption is not abused, that the rights of participants and beneficiaries are protected, and that parties comply with the exemption's conditions, the Department requires limited information collection pertaining to the affected transactions. The information collection requirements that are conditions to reliance on the class exemption consist only of recordkeeping. The records must generally be maintained to enable plan fiduciaries and certain other persons specified in the exemption (*e.g.,* Department representatives and employers of participants and beneficiaries) to determine whether the conditions of the exemptions have been met. The records must demonstrate that the transactions are fair to the plan. For certain transactions covered by the exemption, the records must show that qualitative standards (*e.g.,* that the securities involved are of a certain type) and quantitative standards (*e.g.,* that the amount of securities acquired by the plan does not exceed three percent of the total amount of such securities being offered) were met. Consistent with the other prohibited transaction exemptions granted by the Department, the exemptions require that records of transactions entered in reliance on the exemptions be maintained for a period of 6 years from the date of each transaction. The Department has received approval from OMB for this ICR under OMB Control No. 1210–0092. The current approval is scheduled to expire on August 31, 2022.

*Title:* Notice of Special Enrollment Rights under Group Health Plans.

*Type of Review:* Extension of a currently approved collection of information.

*OMB Number:* 1210–0101.

*Affected Public:* Not-for-profit institutions, Businesses or other for-profits.

*Respondents:* 2,330,305.

*Responses:* 8,746,897.

*Estimated Total Burden Hours:* 1.

*Estimated Total Burden Cost (Operating and Maintenance):* $76,536.

*Description:* The Health Insurance Probability and Accountability Act (HIPAA) provisions limit the extent to which group health plans and their health insurance issuers can restrict health coverage based on pre-existing conditions for individuals who previously had health coverage. Section 701(f) of ERISA also provides special enrollment rights to individuals who have previously declined health coverage offered to them to enroll in health coverage upon the occurrence of specified events, including when they lose other coverage, when employer contributions to the cost of other coverage cease, and when they marry, have a child or adopt a child (''special enrollment events''). Plans and issuers are required to provide for 30-day special enrollment periods following any of these events during which individuals who are eligible but not enrolled have a right to enroll without being denied enrollment or having to wait for a late enrollment opportunity (often called ''open enrollment'').

Under the HIPAA provisions, a group health plan may require, as a pre-condition to having a special enrollment right to enroll in group health coverage after losing eligibility under other coverage, that an employee or beneficiary who declines coverage provide the plan a written statement declaring whether he or she is declining coverage because of having other coverage. Failure to provide such a written statement can then be treated as eliminating the individual's right to special enrollment upon losing eligibility for such other coverage. The regulations further establish that the right to special enroll can be denied in such circumstances only if employees are given notice of the requirement for a written statement and the consequences of failing to provide the written statement at the time an employee declines enrollment. As part of the special enrollment notice, it must be given at or before the time the employee is initially offered the opportunity to enroll.

This information collection request covers the requirement in the implementing regulations under section 701(f) for a special enrollment notice. This information collection implements the disclosure obligation of a plan to inform all employees, at or before the time they are initially offered the opportunity to enroll in the plan, of the plan's special enrollment rules. The regulations require plans and their issuers to provide all employees with a notice describing their special enrollment rights, whether or not they enroll. This provision is necessary to make sure that employees are informed of their special enrollment rights before they take any action that may affect those rights, so that they will be aware of and able to exercise their rights within any 30-day enrollment period following a special enrollment event. The Department has received approval from OMB for this ICR under OMB Control No. 1210–0101. The current approval is scheduled to expire on August 31, 2022.

*Title:* Annual Report for Multiple Employer Welfare Arrangements.

*Type of Review:* Extension of a currently approved collection of information.

*OMB Number:* 1210–0116.

*Affected Public:* Not-for-profit institutions, Businesses or other for-profits.

*Respondents:* 572.

*Responses:* 572.

*Estimated Total Burden Hours:* 120.

*Estimated Total Burden Cost (Operating and Maintenance):* $111,377.

*Description:* The Health Insurance Portability and Accountability Act of 1996 (HIPAA), codified as Part 7 of Title I of the Employee Retirement Security Act of 1974 (ERISA), was enacted to improve the portability and continuity of health care coverage for participants and beneficiaries of group health plans. HIPAA also added section 101(g) to ERISA, providing the Secretary of Labor (Secretary) with authority to require, by regulation, multiple employer welfare arrangements (MEWAs) as defined in section 3(40) of ERISA, that offer or provide coverage for medical benefits but which are not group health plans (non-plan MEWAs), to report annually for the purpose of determining compliance with Part 7 requirements. While the statutory authority was directed at non-plan MEWAs, based on the authority in ERISA sections 101(g), 505, and 734, the Department of Labor (Department) in 2003 promulgated a regulation at 29 CFR 2520.101–2 that required the administrators of both plan MEWAs and non-plan MEWAs that offer or provide coverage for medical benefits, as well certain entities that claim not to be a MEWA solely due to the exception in section 3(40)(A)(i) of ERISA (referred to as ''Entities Claiming Exception'' or ''ECEs''), to file the Form M–1 on an annual basis (Form M–1 annual report).

The Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 (these are collectively known as the ''Affordable Care Act'' or ''ACA'') amended section 101(g) of ERISA to require non-plan MEWAs that provide benefits consisting of medical care to register with the Secretary before operating in a State. In 2011, the Department amended the Form M–1 reporting regulations to enact the ACA required provisions by requiring all MEWAs (plan and non-plan MEWAs) that offer or provide coverage for medical benefits and ECEs to register with the Secretary upon occurrence of certain registration events, such as prior to operating in a State, in addition to continued reporting on an annual basis regarding compliance with part 7 of ERISA.

The primary purpose of the information collection contained in the Form M–1 is to provide the Department with a complete and uniform source of information that identifies MEWAs and helps the Secretary and State regulators evaluate Part 7 compliance by MEWAs. The Department has received approval from OMB for this ICR under OMB Control No. 1210–0116. The current approval is scheduled to expire on August 31, 2022.

*Title:* Multiple Employer Welfare Arrangement Administrative Law Judge Administrative Hearing Procedures.

*Type of Review:* Extension of a currently approved collection of information.

*OMB Number:* 1210–0148.

*Affected Public:* Not-for-profit institutions, Businesses or other for-profits.

*Respondents:* 10.

*Responses:* 10.

*Estimated Total Burden Hours:* 20.

*Estimated Total Burden Cost (Operating and Maintenance):* $668,900.

*Description:* Section 521 of ERISA, 29 U.S.C. 1151, provides that the Secretary of Labor may issue ex parte cease and desist orders when it appears to the Secretary that the alleged conduct of a multiple employer welfare arrangement (MEWA) under section 3(40) of the Act, 29 U.S.C. 1002(40), is fraudulent, or creates an immediate danger to the public safety or welfare, or is causing or can be reasonably expected to cause significant, imminent, and irreparable public injury. Section 521(b) provides that a person that is adversely affected by the issuance of a cease and desist order may request an administrative hearing regarding the order. The Department has promulgated a final regulation that is the subject of this

information collection request, which describes the procedures before an administrative law judge (ALJ) when a person seeks an administrative hearing for review of such an order.

Under section 2571.3 of the rule, the party that is subject to a cease and desist order issued under ERISA section 521 has the burden to initiate an adjudicatory proceeding before an ALJ. Section 2571.3 governs the service of documents necessary to initiate ALJ proceedings by such a party on the Secretary of Labor and the ALJ. The Department expects that MEWAs contesting a cease and desist order will hire outside counsel to draft motions, petitions, pleadings, briefs, and other documents relating to the case. These are information collection requests (ICRs) subject to the Paperwork Reduction Act. The information will be used by a party that is subject to a cease and desist order issued under ERISA section 521 to contest the order through an adjudicatory proceeding before an ALJ. This section would apply in such cases in lieu of 29 CFR 18.3. The Department has received approval from OMB for this ICR under OMB Control No. 1210–0148. The current approval is scheduled to expire on August 31, 2022.

*Title:* Alternative Reporting Methods for Apprenticeship and Training Plans and Top Hat Plans.

*Type of Review:* Extension of a currently approved collection of information.

*OMB Number:* 1210–0153.

*Affected Public:* Not-for-profit institutions, Businesses or other for-profits.

*Respondents:* 1,872.

*Responses:* 1,872.

*Estimated Total Burden Hours:* 312.

*Estimated Total Burden Cost (Operating and Maintenance):* $0.

*Description:* Section 2520.104–22 provides an exemption to the reporting and provision of Part 1 of Title I of ERISA for employee welfare benefit plans that provide exclusively apprenticeship and training benefits if the plan administrator meets the following requirements: (1) Files a notice with the Secretary that provides the name of the plan, the plan sponsor's Employer Identification Number, the plan administrator's name, and the name and location of an office or person from whom interested individuals can obtain certain info about courses offered by the plan; and (2) take steps reasonably designed to ensure that the information required to be contained in the notice is disclosed to employees of employers contribution to the plan who may be eligible to enroll in any course of study sponsored or establish by the plan; (3) and make the notice available to employees upon request.

Under 2520.14–23, the Department provides an alternative method of compliance with the reporting and disclosure of Title I of ERISA for unfunded or insured plan established for a select group of management of highly compensated employees (*i.e.,* top hat plans). In order to satisfy the alternative method of compliance, the plan administrator must file a statement with the Secretary of Labor that includes the name and address of the employer, the employer EIN, a declaration that the employer maintains a plan or plans primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees, and a statement of the number of such plans and the employees covered by each. Plan documents must be made available to the Secretary upon request, and only one statement needs to be filed for each employer maintaining one or more of the plans.

The 2019 final rule requires electronic filing with the Secretary through EBSA's website in accordance with instructions published by the Department. Going forward, EBSA's web-based filing system will be the exclusive method for filing these notices and statements; filings by mail or personal delivery will no longer be accepted. The new web-based system is designed to assist administrators by ensuring that all of the information required by the regulations is included in the notice or statement before the filing can be completed through the website. Upon submission of a completed filing, the new web-based filing system sends an electronic confirmation of receipt to the administrator. This confirmation is not available through the existing paper-based filing system. The design of the new filing system facilitates the requirement that plan administrators of apprenticeship and training plans make notices available to participants upon request under § 2520.104–22(a)(3). Filings are now available to the public on the Department's website at *http://www.dol.gov/ebsa.* The Department has received approval from OMB for this ICR under OMB Control No. 1210–0153. The current approval is scheduled to expire on August 31, 2022.

*Title:* Insurance and Annuity Contracts and Mutual Fund Principal Underwriters (PTE 1984–24).

*Type of Review:* Extension of a currently approved collection of information.

*OMB Number:* 1210–0158.

*Affected Public:* Not-for-profit institutions, Businesses or other for-profits.

*Respondents:* 2,789.

*Responses:* 227,068.

*Estimated Total Burden Hours:* 18,948.

*Estimated Total Burden Cost (Operating and Maintenance):* $92,377.

*Description:* PTE 84–24, as amended, provides an exemption for insurance agents, insurance brokers and pension consultants to receive a sales commission from an insurance company in connection with the purchase, with plan or IRA assets, of an insurance or annuity contract. Relief is also provided for a principal underwriter for an investment company registered under the Investment Company Act of 1940 to receive a sales commission in connection with the purchase, with plan or IRA assets, of securities issued by the investment company.

In order to receive commissions in conjunction with the purchase of an insurance or annuity contract or of securities issued by the investment company, the insurance agent, insurance broker, pension consultant, or principal underwriter must obtain written authorization from the authorizing fiduciary. Prior to obtaining the written authorization, the insurance agent, insurance broker, pension consultant, or principal underwriter must provide the authorizing fiduciary with sufficient materials and disclosures for the authorizing fiduciary to evaluate the appropriateness of the investment. Finally, the insurance agent, insurance broker, pension consultant, or principal underwriter must maintain sufficient records to demonstrate that the conditions of the exemption have been met. In order to ensure that the class exemption is not abused, that the rights of the participants and beneficiaries are protected, and that the exemption's conditions are being complied with, the Department often requires minimal information collection pertaining to the affected transactions. The Department has received approval from OMB for this ICR under OMB Control No. 1210–0158. The current approval is scheduled to expire on August 31, 2022.

*Title:* Employee Retirement Income Security Act of 1974 Investment Manager Electronic Registration.

*Type of Review:* Extension of a currently approved collection of information.

*OMB Number:* 1210–0125.

*Affected Public:* Not-for-profit institutions, Businesses or other for-profits.

*Respondents:* 4.
*Responses:* 4.
*Estimated Total Burden Hours:* 4.
*Estimated Total Burden Cost (Operating and Maintenance):* $270.
*Description:* Section 203A(a) of the Investment Advisers Act of 1940 (and the implementing SEC regulations) provides that investment advisers with less than $25 million in assets under management must register with the state regulatory authority in the state where the investment adviser maintains its principal office and place of business, rather than with the SEC; advisers with more than $30 million in assets under management must register with the SEC; and those with assets under management between those two dollar values are permitted to choose between state registration and registration with the SEC.

Investment advisers that register with a state, rather than with the SEC, must satisfy ERISA's section 3(38) requirement to file a copy of the state registration with the Department by electronically registering through the Investment Adviser Registration Depository (IARD). This is a centralized electronic filing system operated by the SEC in conjunction with state securities regulation authorities. Because the IARD was established by the SEC and the states, and made mandatory for advisers required to file with SEC, and because all states permit filing through IARD even for advisers who do not file with SEC, the Department determined that use of the IARD would eliminate the duplication of filing paper copies of state registration forms with the Department and facilitate creation of a uniform and efficient ''one-stop'' filing system for state-registered filings by advisers who wished to meet the ''investment manager'' definition of ERISA section 3(38).

Previously, state-registered advisers that filed with the states in a variety of ways, including paper, electronically through vendor-provided software, and through IARD were required to file an additional paper copy of the filing with the Department in order to meet the requirements of section 3(38). This information collection incorporates electronic filing as a mandatory element, eliminating the previously required duplicative filing of a paper copy of a state registration with the Department. The Department has received approval from OMB for this ICR under OMB Control No. 1210–0125. The current approval is scheduled to expire on September 30, 2022.

*Title:* Securities Lending by Employee Benefit Plans, Prohibited Transaction Exemption 2006–16.
*Type of Review:* Extension without change of a currently approved collection.
*OMB Number:* 1210–0065.
*Affected Public:* Not-for-profit institutions, Businesses or other for-profits.
*Respondents:* 155.
*Responses:* 1,550.
*Estimated Total Burden Hours:* 297.
*Estimated Total Burden Cost (Operating and Maintenance):* $12,765.
*Description:* In 2006, the Department promulgated a final class exemption, PTE 2006–16, which amended and replaced the exemptions previously provided under PTE 81–6 and PTE 82–63. The final exemption incorporates the exemptions into one renumbered exemption and expands the categories of exempted transactions to include securities lending to foreign banks and broker-dealers that are domiciled in specified countries and to allow the use of additional forms of collateral, all subject to specified conditions outlined in the exemption.

Among other conditions, the class exemption requires a bank or broker-dealer that borrows securities from a plan to provide the lending fiduciary with its most recent audited financial statement. The borrower must also affirm, when the loan is negotiated, that there has been no material adverse change in its financial condition since the previously audited statement. The exemption also requires the agreements regarding the securities loan transaction or transactions and the compensation arrangement for the lending fiduciary to be contained in written documents. Individual agreements are not required for each transaction; rather the compensation agreement may be made in the form of a master agreement covering a series of transactions. The Department has received approval from OMB for this ICR under OMB Control No. 1210–0065. The current approval is scheduled to expire on October 31, 2022.

*Title:* Prohibited Transaction Class Exemption 1988–59, Residential Mortgage Financing Arrangements Involving Employee Benefit Plans.
*Type of Review:* Extension without change of a currently approved collection.
*OMB Number:* 1210–0095.
*Affected Public:* Not-for-profit institutions, Businesses or other for-profits.
*Respondents:* 2,192.
*Responses:* 10,960.
*Estimated Total Burden Hours:* 913.
*Estimated Total Burden Cost (Operating and Maintenance):* $0.
*Description:* Prohibited Transaction Class Exemption (PTE) 88–59, which amended and replaced PTE 82–87, allows employee benefit plans to participate in several different types of residential mortgage financing transactions, provided certain conditions are met. Without this exemption, these transactions would be prohibited under section 406 of ERISA and under the prohibited transaction provisions of section 4975 of the Internal Revenue Code (the Code). The five categories of transactions permitted under the exemption are: (1) Issuance of commitments for the provision of mortgage financing to purchasers of residential dwelling units; (2) receipt by a plan of a fee for the issuance of the commitments; (3) the actual making or purchase of a mortgage loan or participation interest therein pursuant to the commitment; (4) the actual making or purchase of an mortgage loan or participation interest therein without the precondition of a commitment; and (5) the sale, exchange or transfer of a mortgage loan or participation interest therein prior to the maturity date of the instrument, provided that the interest sold, exchanged, or transferred represents the plan's entire interest in such investment.

Among other conditions, the exemption requires a plan to maintain for the duration of any loan made pursuant to this exemption all records necessary to determine whether conditions of the exemption have been met and to make such records available for examination on request by any trustee, investment manager, participant or beneficiary of the plan, or agents of the Department or the IRS. Such records could include, for example, showing the identities of the borrower, lender, any developer or builder involved, the qualifications of the lender, the written acknowledgment of the fiduciary obligation of any real estate manager involved in the transaction, evidence of the type of residential dwelling unit involved, and information concerning comparable mortgages and expenses offered at the time of the commitments. The Department has received approval from OMB for this ICR under OMB Control No. 1210–0095. The current approval is scheduled to expire on October 31, 2022.

*Title:* National Medical Support Notice-Part B.
*Type of Review:* Extension of a currently approved collection of information.
*OMB Number:* 1210–0113.
*Affected Public:* Not-for-profit institutions, Businesses or other for-profits.

*Respondents:* 425,444.

*Responses:* 10,546,371.

*Estimated Total Burden Hours:* 878,864.

*Estimated Total Burden Cost (Operating and Maintenance):* $3,322,107.

*Description:* Pursuant to Section 401(a) of the CSPIA, the Department of Labor (the Department) and HHS jointly promulgated the National Medical Support Notice Final Rule on December 27, 2000 (65 FR 82128) (NMSN Regulation). The NMSN Regulation simplifies the issuance and processing of medical child support orders; standardizes communication between state agencies, employers, and Plan Administrators; and creates a uniform and streamlined process for enforcement of medical child support to ensure that all eligible children receive the health care coverage to which they are entitled.

The NMSN Regulation, codified at 29 CFR 2590.609–2, includes a model National Medical Support Notice (NMSN) that is comprised of two parts: Part A is a notice from the state agency to the employer, entitled: ''Notice to Withhold for Health Care Coverage;'' and Part B is a notice from the employer to the Plan Administrator, entitled: ''Medical Support Notice to Plan Administrator.'' Both Parts have detailed instructions informing the recipient to whom responses are due depending on varying circumstances. This ICR addresses the Plan Administrator's responsibilities under NMSN Regulation to complete Part B of the NMSN, the ''Plan Administrator Response,'' pursuant to the CSPIA and section 609(a)(5)(C) of Title I of ERISA.

The ''Plan Administrator Response'' in Part B of the NMSN requires the Plan Administrator to provide information verifying whether the child is or will be receiving health care coverage from the group health plan. If enrollment has already occurred or can begin immediately, the Plan Administrator's response in Part B serves as notice to the state agency, the participant (parent), the child (or their non-participant parent or guardian) and the employer that the child is or will begin receiving dependent health care coverage pursuant to the group health plan. When the child is eligible for more than one coverage option, the Administrator must first send the Part B response to the state agency so that the agency may choose one option. The Plan Administrator must also use the Part B response to notify all of the above-affected persons of any waiting period before enrollment of the child can occur. The Department has received approval from OMB for this ICR under OMB Control No. 1210–0113. The current approval is scheduled to expire on October 31, 2022.

*Title:* Access to Multiemployer Plan Information.

*Type of Review:* Extension without change of a currently approved collection.

*OMB Number:* 1210–0131.

*Affected Public:* Not-for-profit institutions, Businesses or other for-profits.

*Respondents:* 2,636.

*Responses:* 235,798.

*Estimated Total Burden Hours:* 30,379.

*Estimated Total Burden Cost (Operating and Maintenance):* $521,815.

*Description:* Section 101(k)(1) of ERISA requires multiemployer plan administrators to furnish certain documents to any plan participant, beneficiary, employee representative, or any employer that has an obligation to contribute to the plan upon written request. The Department issued a final rule that implements the disclosure requirements of ERISA section 101(k) on March 2, 2010 (75 FR 9334). The documents that may be requested are: (1) A copy of any periodic actuarial report (including sensitivity testing) received by the plan for any plan year which has been in the plan's possession for at least 30 days; (2) a copy of any quarterly, semi-annual, or annual financial report prepared for the plan by any plan investment manager or advisor or other fiduciary that has been in the plan's possession for at least 30 days; and (3) a copy of any application filed with the Secretary of the Treasury requesting an extension under section 304 of ERISA (or section 431(d) of the Internal Revenue Code of 1986) and the determination of such Secretary pursuant to such application.

The information collection provisions of this final regulation are found in 29 CFR 2520.101–6(a), which requires multiemployer defined benefit and defined contribution pension plan administrators to furnish copies of certain actuarial and financial documents to plan participants, beneficiaries, employee representatives, and contributing employers upon request.

This information constitutes a third-party disclosure from the administrator to participants, beneficiaries, employee representatives, and contributing employers for purposes of the PRA. Pursuant to § 2520.101–6(d)(5), the documents required to be disclosed shall not contain any information that the plan administrator reasonably determines to be either: (i) Individually identifiable information regarding any plan participant, beneficiary, employee, fiduciary, or contributing employer, except that such limitation shall not apply to an investment manager or adviser, or with respect to any other person (other than an employee of the plan) preparing a financial report described in paragraph § 2520.101–6(c)(2); or (ii) proprietary information regarding the plan, any contributing employer, or entity providing services to the plan. The plan administrator must inform the requester if any such information is withheld. The Department has received approval from OMB for this ICR under OMB Control No. 1210–0131. The current approval is scheduled to expire on October 31, 2022.

## II. Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the collections of information are 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 collections of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.
- Evaluate the effectiveness of the additional demographic questions.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the information collection; they will also become a matter of public record.

Signed at Washington, DC, this 11th day of March, 2022.

**Ali Khawar,**

*Acting Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.*

[FR Doc. 2022–05591 Filed 3–16–22; 8:45 am]

BILLING CODE P

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Humanities

### Meeting of Humanities Panel

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

**ACTION:** Notice of meeting.

**SUMMARY:** The National Endowment for the Humanities (NEH) will hold twenty-three meetings, by videoconference, of the Humanities Panel, a federal advisory committee, during April 2022. The purpose of the meetings is for panel review, discussion, evaluation, and recommendation of applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965.

**DATES:** See **SUPPLEMENTARY INFORMATION** for meeting dates. The meetings will open at 8:30 a.m. and will adjourn by 5:00 p.m. on the dates specified below.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Voyatzis, Committee Management Officer, 400 7th Street SW, Room 4060, Washington, DC 20506; (202) 606–8322; *evoyatzis@neh.gov.*

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given of the following meetings:

1. Date: April 1, 2022

This video meeting will discuss applications on the topics of Archaeology, Anthropology, and Studies of Science, for the Collaborative Research program, submitted to the Division of Research Programs.

2. Date: April 1, 2022

This video meeting will discuss applications on the topics of Collections and Access, for the Digital Humanities Advancement Grants program, submitted to the Office of Digital Humanities.

3. Date: April 5, 2022

This video meeting will discuss applications on the topics of Scholarly Communications and Digital Culture, for the Digital Humanities Advancement Grants program, submitted to the Office of Digital Humanities.

4. Date: April 5, 2022

This video meeting will discuss applications on the topics of Philosophy and Religion, for the Scholarly Editions and Translations program, submitted to the Division of Research Programs.

5. Date: April 5, 2022

This video meeting will discuss applications on the topics of Western and Native American History, for the Public Humanities Projects: Exhibitions (Implementation) program, submitted to the Division of Public Programs.

6. Date: April 6, 2022

This video meeting will discuss applications on the topic of Art History, for the Public Humanities Projects: Exhibitions (Implementation) program, submitted to the Division of Public Programs.

7. Date: April 7, 2022

This video meeting will discuss applications for the Public Humanities Projects: Humanities Discussions Grants program, submitted to the Division of Public Programs.

8. Date: April 7, 2022

This video meeting will discuss applications on the topics of Computational Analysis and Spatial Humanities, for the Digital Humanities Advancement Grants program, submitted to Office of Digital Humanities.

9. Date: April 8, 2022

This video meeting will discuss applications on the topic of Cultural History Documentaries, for the Media Projects Production program, submitted to the Division of Public Programs.

10. Date: April 11, 2022

This video meeting will discuss applications on the topic of Public Humanities, for the Digital Humanities Advancement Grants program, submitted to the Office of Digital Humanities.

11. Date: April 12, 2022

This video meeting will discuss applications for the Landmarks of American History and Culture program, submitted to the Division of Education Programs.

12. Date: April 13, 2022

This video meeting will discuss applications for the Institutes for K–12 Educators program, submitted to the Division of Education Programs.

13. Date: April 14, 2022

This video meeting will discuss applications for the Landmarks of American History and Culture program, submitted to the Division of Education Programs.

14. Date: April 19, 2022

This video meeting will discuss applications for the Institutes for K–12 Educators program, submitted to the Division of Education Programs.

15. Date: April 20, 2022

This video meeting will discuss applications for the Institutes for K–12 Educators program, submitted to the Division of Education Programs.

16. Date: April 21, 2022

This video meeting will discuss applications for the Landmarks of American History and Culture program, submitted to the Division of Education Programs.

17. Date: April 21, 2022

This video meeting will discuss applications for the Institutes for Advanced Topics in Digital Humanities program, submitted to the Office of Digital Humanities.

18. Date: April 22, 2022

This video meeting will discuss applications for the Institutes for K–12 Educators program, submitted to the Division of Education Programs.

19. Date: April 25, 2022

This video meeting will discuss applications for the Institutes for Higher Education Faculty program, submitted to the Division of Education Programs.

20. Date: April 26, 2022

This video meeting will discuss applications for the Institutes for K–12 Educators program, submitted to the Division of Education Programs.

21. Date: April 27, 2022

This video meeting will discuss applications for the Institutes for K–12 Educators program, submitted to the Division of Education Programs.

22. Date: April 28, 2022

This video meeting will discuss applications for the Institutes for Higher Education Faculty program, submitted to the Division of Education Programs.

23. Date: April 29, 2022

This video meeting will discuss applications for the Institutes for Higher Education Faculty program, submitted to the Division of Education Programs.

Because these meetings will include review of personal and/or proprietary financial and commercial information given in confidence to the agency by grant applicants, the meetings will be closed to the public pursuant to sections 552b(c)(4) and 552b(c)(6) of Title 5, U.S.C., as amended. I have made this determination pursuant to the authority granted me by the Chairman's Delegation of Authority to Close

Advisory Committee Meetings dated April 15, 2016.

Dated: March 14, 2022.

**Samuel Roth,**

*Attorney-Advisor, National Endowment for the Humanities.*

[FR Doc. 2022–05652 Filed 3–16–22; 8:45 am]

**BILLING CODE 7536–01–P**

## NATIONAL SCIENCE FOUNDATION

### Request for Information on Federal Priorities for Information Integrity Research and Development

**AGENCY:** Networking and Information Technology Research and Development (NITRD) National Coordination Office (NCO) and National Science Foundation (NSF).

**ACTION:** Request for information.

**SUMMARY:** The NITRD NCO and the NSF, as part of an interagency working group on information integrity, request input from interested parties on a range of questions pertaining to Federal priorities for research and development efforts to address misinformation and disinformation. The purpose of this RFI is to understand ways in which the Federal Government might enable research and development activities to advance the trustworthiness of information, mitigate the effects of information manipulation, and foster an environment of trust and resilience in which individuals can be discerning consumers of information.

**DATES:** Interested persons or organizations are invited to submit comments on or before 11:59 p.m. (EST) on May 15, 2022.

**ADDRESSES:** Comments submitted in response to this notice may be sent by the following methods:

- *Email: IIRD-RFI@nitrd.gov.* Email submissions should be machine-readable and not be copy-protected. Submissions should include ''RFI Response: Information Integrity R&D'' in the subject line of the message.
- *Mail:* Attn: Tomas Vagoun, NCO, 2415 Eisenhower Avenue, Alexandria, VA 22314, USA.

*Instructions:* Response to this RFI is voluntary. Each individual or organization is requested to submit only one response. Submissions must not exceed 10 pages in 12 point or larger font, with a page number provided on each page. Responses should include the name of the person(s) or organization(s) filing the comment. Responses to this RFI may be posted online at *https://www.nitrd.gov.* Therefore, no business proprietary information, copyrighted information, or other personally identifiable information should be submitted in response to this RFI.

In accordance with FAR 15.202(3), responses to this notice are not offers and cannot be accepted by the Government to form a binding contract. Responders are solely responsible for all expenses associated with responding to this RFI.

**FOR FURTHER INFORMATION CONTACT:** Tomas Vagoun at *IIRD-RFI@nitrd.gov* or 202–459–9685, or by post mailing to NCO, 2415 Eisenhower Avenue, Alexandria, VA 22314, USA. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., ET, Monday through Friday.

**SUPPLEMENTARY INFORMATION:**

*Background:* Accurate and reliable information is central to our Nation's democratic, economic, geopolitical, and security interests, guiding decisions that impact the well-being of society. Information that is, knowingly or unknowingly, manipulated and disseminated for political, ideological, or commercial gain can have destabilizing consequences for democratic processes, the economy, individual health and well-being, the environment, local and national crisis response efforts, human rights and protections, and national security. New technological advances have enabled manipulated information [1] to reach vast audiences around the world at an unprecedented speed. Thus, preserving the *integrity* of information—ensuring our society is protected against information manipulation—is of national importance.

As announced by the White House [2], Federal Government agencies have formed the Information Integrity Research and Development Interagency Working Group (IIRD IWG) to develop a strategic plan concerning government-wide research and development. The purposes of IIRD IWG are to better understand the full information ecosystem, to design strategies for preserving information integrity and mitigating the effects of information manipulation, to support information awareness and education, and to foster a multi-disciplinary and collaborative research environment in which to reach deeper understanding, while upholding these information integrity goals.

*Information Requested:* Protecting the integrity of the information ecosystem requires an understanding of: Actors and consumers of information (including individuals, organizations, and nation states) and their different capabilities, actions, plans, and intentions; strategies and technologies for creating, disseminating, and sharing manipulated information; solutions for detecting and mitigating information manipulation across a wide range of information media, forms, and communication modalities; social, psychological, and physiological responses to experiencing information manipulation; ways to increase public awareness of information manipulation; the societal benefits of accurate information and vibrant discussion; and protections of the First Amendment.

The IIRD IWG seeks public input on Federal priorities for information integrity research and development (R&D). Responders are asked to answer one or more of the following questions:

1. *Understanding the information ecosystem:* There are many components, interactions, incentives, social, psychological, physiological, and technological aspects, and other considerations that can be used to effectively characterize the information ecosystem. What are the key research challenges in providing a common foundation for understanding information manipulation within this complex information ecosystem?

2. *Preserving information integrity and mitigating the effects of information manipulation:* Strategies for protecting information integrity must integrate the best technical, social, behavioral, cultural, and equitable approaches. These strategies should accomplish a range of objectives including to detect information manipulation, discern the influence mechanisms and the targets of the influence activities, mitigate information manipulation, assess how individuals and organizations are likely to respond, and build resiliency against information manipulation. What are the key gaps in knowledge or capabilities that research should focus on, in order to advance these objectives? What are the gaps in knowledge regarding the differential impact of information manipulation and mitigations on different demographic groups?

3. *Information awareness and education:* A key element of information integrity is to foster resilient and empowered individuals and institutions that can identify and abate manipulated information and create and utilize trustworthy information. What issues should research focus on to understand the barriers to greater public awareness of information manipulation? What challenges should research focus on to support the development of effective educational pathways?

4. *Barriers for research:* Information integrity is a complex and multidisciplinary problem with many technical, social, and policy challenges that requires the sharing of expertise, data, and practices across the full spectrum of stakeholders, both domestically and internationally. What are the key barriers for conducting information integrity R&D? How could those barriers be remedied?

5. *Transition to practice:* How can the Federal government foster the rapid transfer of information integrity R&D insights and results into practice, for the timely benefit of stakeholders and society?

6. *Relevant activities:* What other research and development strategies, plans, or activities, domestic or in other countries, including in multi-lateral organizations and within the private sector, should inform the U.S. Federal information integrity R&D strategic plan?

7. *Support for technological advancement:* How can the Federal information integrity R&D strategic plan support the White House Office of Science and Technology Policy's mission:

• Ensuring the United States leads the world in technologies that are critical to our economic prosperity and national security; and

• maintaining the core values behind America's scientific leadership, including openness, transparency, honesty, equity, fair competition, objectivity, and democratic values.

## References

[1] ''Manipulated information'' refers to information content that is inaccurate, misleading, or deceptive within the context of its intended use and that has the effect of causing harm to individuals, communities, or institutions. ''Information manipulation'' refers to activities that aim to influence specific or multiple audiences through disinformation, misinformation, malinformation, propaganda, manipulated media, and other tactics and techniques that intentionally create or disseminate inaccurate, misleading, or unreliable information.

[2] FACT SHEET: The Biden-Harris Administration is Taking Action to Restore and Strengthen American Democracy (December 8, 2021), The White House, *https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/08/fact-sheet-the-biden-harris-administration-is-taking-action-to-restore-and-strengthen-american-democracy/*.

Submitted by the National Science Foundation in support of the Networking and Information Technology Research and Development (NITRD) National Coordination Office (NCO) on March 14, 2022.

(Authority: 42 U.S.C. 1861.)

**Suzanne H. Plimpton,**

*Reports Clearance Officer, National Science Foundation.*

[FR Doc. 2022–05683 Filed 3–16–22; 8:45 am]

BILLING CODE 7555–01–P

## POSTAL SERVICE

## Privacy Act of 1974; System of Records

**AGENCY:** Postal Service™.

**ACTION:** Notice of modified systems of records.

**SUMMARY:** The United States Postal Service® (Postal Service) is proposing to revise a Customer Privacy Act System of Records (SOR). These modifications are being made to store, send, and host emails for Informed Delivery on a cloud-based platform.

**DATES:** These revisions will become effective without further notice on April 18, 2022, unless in response to comments received on or before that date result in a contrary determination.

**ADDRESSES:** Comments may be submitted via email to the Privacy and Records Management Office, United States Postal Service Headquarters (*privacy@usps.gov*). To facilitate public inspection, arrangements to view copies of any written comments received will be made upon request.

**FOR FURTHER INFORMATION CONTACT:** Janine Castorina, Chief Privacy and Records Management Officer, Privacy and Records Management Office, 202–268–3069 or *privacy@usps.gov.*

**SUPPLEMENTARY INFORMATION:** This notice is in accordance with the Privacy Act requirement that agencies publish their systems of records in the **Federal Register** when there is a revision, change, or addition, or when the agency establishes a new system of records. The Postal Service has determined that Customer Privacy Act System of Records, USPS 820.300 Informed Delivery, should be revised to support the migration of emails to a cloud-based platform.

### I. Background

The Postal Service has determined that Customer Privacy Act Systems of Records (SOR), USPS 820.300 Informed Delivery, should be revised to store, send, and host emails for Informed Delivery on a cloud-based platform.

### II. Rationale for Changes to USPS Privacy Act Systems of Records

The Postal Service constantly seeks to improve efficiency and customer satisfaction. To that end, the Postal Service seeks to implement a new hosting service for Informed Delivery Daily Digest emails through the cloud, replacing the current on-premises solutions.

### III. Description of the Modified System of Records

To implement the change to a cloud-based platform, this System of Records will be modified to include several new categories of records, numbered 11 through 21, to identify data elements associated with Daily Digest emails which will be collected and stored as part of this migration. In addition, a new purpose has been added to identify this new process. Finally, a retention period for the records generated in association with these activities has been added.

Pursuant to 5 U.S.C. 552a (e)(11), interested persons are invited to submit written data, views, or arguments on this proposal. A report of the proposed revisions has been sent to Congress and to the Office of Management and Budget for their evaluations. The Postal Service does not expect this amended system of records to have any adverse effect on individual privacy rights. The notice for USPS SOR 820.300, Informed Delivery is provided below in its entirety, as follows:

**SYSTEM NAME AND NUMBER**

USPS 820.300, Informed Delivery.

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

USPS Headquarters; Contractor Sites; Cloud-based Contractor Sites; Wilkes-Barre Solutions Center; and Eagan, MN.

**SYSTEM MANAGER(S):**

Vice President, Innovative Business Technology, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–1010.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

39 U.S.C. 401, 403, and 404.

**PURPOSE(S) OF THE SYSTEM:**

1. To support the Informed Delivery® notification service which provides customers with electronic notification of physical mail that is intended for delivery at the customer's address.

2. To provide daily email communication to consumers with images of the letter-size mailpieces that they can expect to be delivered to their mailbox each day.

3. To provide an enhanced customer experience and convenience for mail delivery services by linking physical mail to electronic content.

4. To obtain and maintain current and up-to-date address and other contact information to assure accurate and reliable delivery and fulfillment of postal products, services, and other material.

5. To determine the outcomes of marketing or advertising campaigns and to guide policy and business decisions through the use of analytics.

6. To identify, prevent, or mitigate the effects of fraudulent transactions.

7. To demonstrate the value of Informed Delivery in enhancing the responsiveness to physical mail and to promote use of the mail by commercial mailers and other postal customers.

8. To enhance the customer experience by improving the security of Change of Address (COA) and Hold Mail processes.

9. To protect USPS customers from becoming potential victims of mail fraud and identity theft.

10. To identify and mitigate potential fraud in the COA and Hold Mail processes.

11. To verify a customer's identity when applying for COA and Hold Mail services.

12. To support the Targeted Offers application which enables customers to securely share their preferences related to marketing content with mailers.

13. To facilitate the in-person enrollment process for the Informed Delivery feature.

14. To provide customers with the option to voluntarily scan the barcode on the back of government issued IDs to capture name and address information that will be used to confirm eligibility and prefill information collected during the Informed Delivery in-person enrollment process.

15. To store and send Daily Digest emails through a cloud-based service platform.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

1. Customers who are enrolled in Informed Delivery notification service.

2. Customers who are enrolled in Targeted Offers.

3. Mailers that use Informed Delivery notification service to enhance the value of the physical mail sent to customers.

4. Mailers that use Targeted Offers to conduct more targeted digital and physical prospecting campaigns based on consumer preferences.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

1. *Customer information:* Name; customer ID(s); mailing (physical) address(es) and corresponding 11-digit delivery point ZIP Code; phone number(s); email address(es); text message number(s) and carrier.

2. *Customer account preferences:* Individual customer preferences related Start Printed Page 2592 to email and online communication participation level for USPS and marketing information; and mail content preferences for Targeted Offers.

3. *Mailer Information:* Mailing Categories for mailers that use Targeted Offers.

4. *Customer feedback:* Information submitted by customers related to Informed Delivery notification service or any other postal product or service.

5. *Subscription information:* Date of customer sign-up for services through an opt-in process; date customer opts-out of services; nature of service provided.

6. *Data on mailpieces:* Destination address of mailpiece; Intelligent Mail barcode (IMb); 11-digit delivery point ZIP Code; and delivery status; identification number assigned to equipment used to process mailpiece.

7. *Mail Images:* Electronic files containing images of mailpieces captured during normal mail processing operations.

8. *User Data associated with 11-digit ZIP Codes:* Information related to the user's interaction with Informed Delivery email messages, including but not limited to, email open and click-through rates, dates, times, and open rates appended to mailpiece images (user data is not associated with personally identifiable information).

9. *Data on Mailings:* Intelligent Mail barcode (IMb) and its components including the Mailer Identifier (Mailer ID or MID), Service Type Identifier (STID) Serial Number, and unique IA code.

10. *In-Person enrollment process:* Name and address information collected from the voluntary scan of the barcode on the back of government issued IDs used to confirm eligibility and prefill enrollment information.

11. *Data associated with Informed Delivery emails:* Technical information related to email addresses and deliveries, including emails sent, emails received, errors, user data, account data, data related to the detection and mitigation of technical issues, and any other information necessary to the effective and efficient administration of services related to the Informed Delivery feature.

12. *Cloud service Accepted Audit Log:* Event, ID, Timestamp, Log Level, Method, Envelope Targets, Envelope Transports, Envelope Sender, Flags, Message Headers, Message To, Message ID, Message From Email Address, Message Subject, Message Attachments, Message Recipients, Recipient Email Address, Size, Storage URL, Storage Key, Recipient Domain, Campaign, Tags, User Variables.

13. *Cloud service Accepted (Routed) Audit Log:* Event, ID, Timestamp, Log Level, Method, Route Expression, Route ID, Route Match Recipient, Envelope Targets, Envelope Transports, Envelope Sender, Flags—Is Routed, Flags—Is Authenticated, Flags—Is System Test, Flags Is Test Mode, Message Headers, Message To, Message ID, Message From Email Address, Message Subject, Message Attachments, Message Recipients, Recipient Email Address, Message Size, Storage URL, Storage Key, Recipient Domain, Campaign, Tags, User Variables.

14. *Cloud service Delivered Audit Log:* Event, ID, Timestamp, Log Level, Method, Envelope Targets, Envelope Transports, Envelope Sender, Flags—Is Routed, Flags—Is Authenticated, Flags—Is System Test, Flags Is Test Mode Delivery Status TLS, Delivery Status MX Host, Deliver Status Code, Delivery Status Description, Delivery Status Session Seconds, Delivery Status UTF8, Delivery Status Attempt Number, Delivery Status Message, Delivery Status Certificated Verified, Message Headers, Message To, Message ID, Message From Email Address, Message Subject, Message Attachments, Recipient Email Address, Message Size, Storage URL, Storage Key, Recipient Domain, Campaign, Tags, User Variables.

15. *Cloud service Failed (Permanent) Audit Log:* Flags—Event, ID, Timestamp, Log Level, Severity, Reason, Envelope Targets, Envelope Transports, Envelope Sender, Is Routed, Flags Is-Routed, Flags—Is Authenticated, Flags—Is System Test, Flags Is Test Mode, Delivery Status Attempt Number, Delivery Status Message, Delivery Status Code, Delivery Status Description, Delivery Status Session Seconds, Message Headers, Message To, Message ID, Message From Email Address, Message Subject, Message Attachments, Recipient Email Address, Message Size, Storage URL, Storage Key, Recipient Domain, Campaign, Tags, User Variables.

16. *Cloud service Failed (Permanent, Delayed Bounce) Audit Log:* Event, ID, Timestamp, Log Level, Severity, Reason, Delivery Status Message, Delivery Status Code, Delivery Status Description, Flags Is-Delayed-Bounce, Flags Is-Test-Mode, Message Headers, Message To, Message ID, Message From Email Address, Message Subject, Message Attachments, Message Size, Recipient Email Address, Campaigns, Tags, User Variables.

17. *Cloud service Failed (Temporary) Audit Log:* Event, ID, Timestamp, Log Level, Severity, Reason, Envelope

Transport, Envelope Sender, Envelope Sending IP Address, Envelope Targets, Flags Id-Routed, Flags Is-Authenticated, Flags Is-System-Test, Flags Is-Test-Mode, Delivery Status TLS, Deliver Status MX Host, Delivery Status Code, Delivery Status Description, Delivery Status Session Seconds, Delivery Status Retry Seconds, Delivery Status Attempt Number, Delivery Status Message, Delivery Status Certificate Verified, Message Headers, Message To, Message ID, Message From Email Address, Message Subject, Message Attachments, Message Size, Storage URL, Storage Key, Recipient Email Address, Recipient Domain, Campaigns, Tags, User Variables.

18. *Cloud service Unsubscribed Audit Log:* Event, ID, Timestamp, Log Level, Recipient Email Address, Geolocation Country, Geolocation Region, Geolocation City, Campaigns, Tags, User Variables, IP Address, Client Info Client Type, Client Info Client Operating System, Client Info Device Type, Client Info Client Name, Client Info User Agent, Message Headers, Message ID.

19. *Cloud service Complained Audit Log:* Event, ID, Timestamp, Log Level, Recipient Email Address, Tags, Campaigns, User Variables, Flags Is-Test-Mode, Message Headers, Message To, Message ID, Message From, Message Subject, Message Attachments, Message Size.

20. *Cloud service Stored Audit Log:* Event, ID, Timestamp, Log Level, Flags Is-Test-Mode, Message Headers, Message To, Message ID, Message From, Message Subject, Message Attachments, Message Recipients, Message Size, Storage URL, Storage Key, Campaigns, Tags, User Variables.

21. *Cloud service Rejected Audit Log:* Event, ID, Timestamp, Log Level, Flags Is-Test-Mode, Reject Reason, Reject Description, Message Headers, Message To, Message ID, Message From, Message Subject, Message Attachments, Message Size, Campaigns, Tags, User Variables.

**RECORD SOURCE CATEGORIES:**

Individual customers who request to enroll in the Informed Delivery feature notification service; *usps.com* account holders; other USPS systems and applications including those that support online change of address, mail hold services, Premium Forwarding Service, or P.O. Boxes Online; commercial entities, including commercial mailers or other Postal Service business partners and third-party mailing list providers.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

Standard routine uses 1. through 7., 10., and 11. apply.

**POLICIES AND PRACTICES FOR STORAGE OF RECORDS:**

Automated database and computer storage media.

**POLICIES OF PRACTICES FOR RETRIEVAL OF RECORDS:**

By customer email address, 11-Digit ZIP Code and/or the Mailer ID component of the Intelligent Mail Barcode.

**POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:**

1. Mailpiece images will be retained up to 7 days (mailpiece images are not associated with personally identifiable information). Records stored in the subscription database are retained until the customer cancels or opts out of the service.

2. User data is retained for 2 years, 11 months.

3. Records relating to Cloud Storage Audit Logs are retained for 13 months.

Records existing on computer storage media are destroyed according to the applicable USPS media sanitization practice. Any records existing on paper will be destroyed by burning, pulping, or shredding.

**ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:**

Computers and computer storage media are located in controlled-access areas under supervision of program personnel. Access to these areas is limited to authorized personnel, who must be identified with a badge. Access to records is limited to individuals whose official duties require such access. Contractors and licensees are subject to contract controls and unannounced on-site audits and inspections. Computers are protected by mechanical locks, card key systems, or other physical access control methods. The use of computer systems is regulated with installed security software, computer logon identifications, and operating system controls including access controls, terminal and transaction logging, and file management software. Online data transmissions are protected by encryption. Access is controlled by logon ID and password. Online data transmissions are protected by encryption.

**RECORD ACCESS PROCEDURES:**

Requests for access must be made in accordance with the Notification Procedure above and USPS Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.5.

**CONTESTING RECORD PROCEDURES:**

See Notification Procedures below or Record Access Procedures above.

**NOTIFICATION PROCEDURES:**

Customers who want to know if information about them is maintained in this system of records must address inquiries in writing to the system manager. Inquiries must contain name, address, email, and other identifying information.

**EXEMPTIONS PROMULGATED FOR THE SYSTEM:**

None.

**HISTORY:**

December 15, 2021, 86 FR 71299; December 27, 2018, 83 FR 66768; August 25, 2016, *81 FR 58542.*

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**Joshua J. Hofer,**

*Attorney, Ethics and Legal Compliance.*

[FR Doc. 2022–05654 Filed 3–16–22; 8:45 am]

BILLING CODE 7710–12–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–94404; File No. SR–ICEEU–2022–006]**

## Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the ICE Clear Europe Delivery Procedures

March 11, 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 March 7, 2022, ICE Clear Europe Limited (''ICE Clear Europe'' or the ''Clearing House'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes described in Items I, II and III below, which Items have been prepared primarily by ICE Clear Europe. ICE Clear Europe filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(4)(ii) thereunder,[4] such that the proposed rule change was immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4)(ii).

comments on the proposed rule change from interested persons.

**I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change**

The principal purpose of the proposed amendments is for ICE Clear Europe to amend Part H of its Delivery Procedures (''Delivery Procedures'' or ''Procedures'') to cover ICE Endex German THE Natural Gas Daily Futures Contracts (the ''Contracts''), natural gas futures contracts that will be traded on ICE Endex and cleared by ICE Clear Europe. The proposed updates would also make certain conforming changes elsewhere in the Delivery Procedures.

**II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, ICE Clear Europe 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. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(a) Purpose

ICE Clear Europe is proposing to amend Part H of the Delivery Procedures, which currently addresses delivery under ICE Endex German THE Natural Gas Futures Contracts (the ''Monthly Contract''), to also include the Contracts, which are a daily futures contract with respect to the same underlying commodity. The amendments would also make certain conforming changes elsewhere in the Delivery Procedures. The amended Delivery Procedures would provide the delivery specifications and processes related to delivery under the Contracts. Other minor drafting clarifications and updates would also be made.

The amendments would provide that for the Contracts, the price at which the contract is delivered is the Exchange Delivery Settlement Price (EDSP) for the Business Day immediately prior to the calendar day on which the Delivery Day for the Contracts commences in accordance with ICE Endex Rules.

The amendments would state the cessation of trading for the Contracts; specifically, the Contracts cease trading at 18:00 hours on the Business Day which is one Business Day prior to the Delivery Day, in accordance with ICE Endex Rules.

With respect to Exchange for Physicals (EFPs) and Exchange for Swaps (EFSs), the amendments would provide that, for the Contracts, EFPs and EFSs may be posted up to thirty minutes following the cessation of trading.

In the delivery timetable for routine deliveries of the current Monthly Contract, a minor correction would be made regarding timing specifications related to the nomination of a Transferor or Transferee. The related MPFE report to be made available to Clearing Members would be made available after (and not by) 12:30 CET.

A new delivery timetable would be added for routine deliveries under the Contracts and failed delivery under the Contracts. The routine delivery timetable would set out, among other matters, deadlines for submissions of delivery intentions and nominations and other notifications, provision of buyer's and seller's security, confirmation of delivery and payment. The timetable relating to failed deliveries would address, among other matters, additional margin requirements and invoicing of payments for failed deliveries.

In the delivery documentation summary timetable for the current Monthly Contract, a minor correction would be made regarding timing of the confirmation report. When available, a copy of such report must be provided by Buyers and Sellers to the relevant Transferor(s) and Transferee(s) by 12:30 CET (not 14:00 CET).

A new delivery documentation summary timetable for the Contracts would be added which describes the certain reports to be made available to Clearing Members by the Clearing House with respect to the Contracts and certain other forms, as well as timing specifications.

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments to the Delivery Procedures are consistent with the requirements of Section 17A of the Act [5] and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act [6] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest. The proposed changes to the Delivery Procedures are designed to establish delivery procedures relating to the Contracts, which will be traded on ICE Endex and cleared at ICE Clear Europe. The amendments would set out delivery specifications related to the Contracts, including the settlement price, delivery timing and delivery documentation, in line with Delivery Procedures for the Monthly Contract and other types of deliverable energy futures contracts. Contracts providing for delivery under Part H will be cleared by the Clearing House in the substantially same manner as the existing Monthly Contract and other types of deliverable energy futures contracts and will be supported by ICE Clear Europe's existing F&O financial resources, risk management, systems and operational arrangements. Accordingly, ICE Clear Europe believes that its financial resources, risk management, systems and operational arrangements are sufficient to support clearing of such contracts and to manage the risks associated with such contracts. As a result, in ICE Clear Europe's view, the amendments would be consistent with the prompt and accurate clearance and settlement of the contracts, and the protection of investors and the public interest consistent with the requirements of Section 17A(b)(3)(F) of the Act.[7] (In ICE Clear Europe's view, the amendments would not affect the safeguarding of funds or securities in the custody or control of the clearing agency or for which it is responsible, within the meaning of Section 17A(b)(3)(F).[8])

In addition, Rule 17Ad–22(e)(10) [9] provides that ''[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonable designed to, as applicable [. . .] establish and maintain transparent written standards that state its obligations with respect to the delivery of physical instruments, and establish and maintain operational practices that identify, monitor and manage the risks associated with such physical deliveries.'' As discussed above, the amendments would modify Part H of the Delivery Procedures to add procedures applicable to the delivery and settlement of the Contracts. The procedures would address, among other matters, delivery specifications for such contracts and certain other

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 17 CFR 240.17Ad–22(e)(10).

documentation and timing matters, consistent with the requirements of the Clearing House. Clearance of the Contracts would otherwise be supported by ICE Clear Europe's existing financial resources, risk management, systems and operational arrangements. The amendments thus appropriately clarify the role and responsibilities of the Clearing House and Clearing Members with respect to physical delivery. As a result, ICE Clear Europe believes the amendments are consistent with the requirements of Rule 17Ad–22(e)(10).[10]

*(B) Clearing Agency's Statement on Burden on Competition*

ICE Clear Europe does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed amendments to the Delivery Procedures are intended to establish procedures applicable to the delivery and settlement of the Contracts in connection with the listing of such Contracts for trading on the ICE Endex market. ICE Clear Europe believes that such contracts would provide opportunities for interested market participants to engage in trading activity in the relevant German natural gas market. ICE Clear Europe does not believe the amendments would adversely affect competition among Clearing Members, materially affect the cost of clearing, adversely affect access to clearing for Clearing Members or their customers, or otherwise adversely affect competition in clearing services. Accordingly, ICE Clear Europe does not believe that the amendments would impose any impact or burden on competition that is not appropriate in furtherance of the purpose of the Act.

*(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments relating to the proposed amendments have not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any comments received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and paragraph (f) of Rule 19b–4[12] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICEEU–2022–006 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–ICEEU–2022–006. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at *https://www.theice.com/clear-europe/regulation.*

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–ICEEU–2022–006 and should be submitted on or before April 7, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

**Eduardo Aleman,**

*Assistant Secretary.*

[FR Doc. 2022–05596 Filed 3–16–22; 8:45 am]

**BILLING CODE 8011–01–P**

[10] 17 CFR 240.17Ad–22(e)(10).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f).

[13] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–94403; File No. SR–LTSE–2022–01]**

## Self-Regulatory Organizations; Long-Term Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Date of the Pilot Related to the Market-Wide Circuit Breaker in Rule 11.280

March 11, 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 4, 2022, Long-Term Stock Exchange, Inc. (''LTSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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**

LTSE proposes a rule change to extend the pilot related to the market-wide circuit breaker in Rule 11.280.

The text of the proposed rule change is available at the Exchange's website at *https://longtermstockexchange.com/,* 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 on the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to extend the pilot related to the market-wide circuit breaker in Rule 11.280 to the close of business on April 18, 2022.

Background

The Market-Wide Circuit Breaker (''MWCB'') rules, including the Exchange's Rule 11.280, provide an important, automatic mechanism that is invoked to promote stability and investor confidence during periods of significant stress when cash equities securities experience extreme market-wide declines. The MWCB rules are designed to slow the effects of extreme price declines through coordinated trading halts across both cash equity and equity options securities markets.

The cash equities rules governing MWCBs were first adopted in 1988 and, in 2012, all U.S. cash equity exchanges and FINRA amended their cash equities uniform rules on a pilot basis (the ''Pilot Rules'').[3] The Pilot Rules currently provide for trading halts in all cash equity securities during a severe market decline as measured by a single-day decline in the S&P 500 Index (''SPX'').[4] Under the Pilot Rules, a market-wide trading halt will be triggered if SPX declines in price by specified percentages from the prior day's closing price of that index. The triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 halt after 9:30 a.m. and before 3:25 p.m. would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. would not halt market-wide trading. (Level 1 and Level 2 halts may occur only once a day.) A market decline that triggers a Level 3 halt at any time during the trading day would halt market-wide trading for the remainder of the trading day.

The Commission approved the Pilot Rules, the term of which was to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the ''LULD Plan''),[5] including any extensions to the pilot period for the LULD Plan.[6] In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[7] In conjunction with the proposal to make the LULD Plan permanent, the Exchange amended Rule 11.280 to untie the Pilot Rules' effectiveness from that of the LULD Plan and to extend the Pilot Rules' effectiveness to the close of business on October 18, 2020.[8] The Exchange subsequently amended Rule 11.280, to extend the Pilot Rules' effectiveness for an additional year to the close of business on October 18, 2021.[9] The Exchange then further amended Rule 11.280, to extend the Pilot Rules' effectiveness for another year to the close of business on March 18, 2022.[10]

The Exchange now proposes to amend Rule 11.280 to extend the pilot to the close of business on April 18, 2022. This filing does not propose any substantive or additional changes to Rule 11.280.

The MWCB Task Force and the March 2020 MWCB Events

In late 2019, Commission staff requested the formation of a MWCB Task Force (''Task Force'') to evaluate the operation and design of the MWCB mechanism. The Task Force included representatives from the SROs, the Commission, CME, the Commodity Futures Trading Commission (''CFTC''), and the securities industry and conducted several organizational meetings in December 2019 and January 2020.

In Spring 2020, the MWCB mechanism proved itself to be an effective tool for protecting markets through turbulent times. In March 2020, at the outset of the worldwide COVID–19 pandemic, U.S. equities markets experienced four MWCB Level 1 halts, on March 9, 12, 16, and 18, 2020. In each instance, the markets halted as intended upon a 7% drop in the S&P 500 Index, and resumed as intended 15 minutes later.

In response to these events, in the Spring and Summer of 2020, the Task Force held ten meetings that were attended by Commission staff, with the goal of performing an expedited review of the March 2020 halts and identifying any areas where the MWCB mechanism had not worked properly. Given the risk of unintended consequences, the Task Force did not recommend changes that were not rooted in a noted deficiency. The Task Force recommended creating a process for a backup reference price in the event that SPX were to become unavailable, and enhancing functional MWCB testing. The Task Force also asked CME to consider modifying its rules to enter into a limit-down state in the futures pre-market after a 7% decline instead of 5%. CME made the requested change, which became effective on October 12, 2020.[11]

The MWCB Working Group's Study

On September 17, 2020, the Director of the Commission's Division of Trading and Markets asked the SROs to conduct a more complete study of the design and operation of the Pilot Rules and the LULD Plan during the period of volatility in the Spring of 2020.

In response to the request, the SROs created a MWCB ''Working Group'' composed of SRO representatives and industry advisers that included members of the advisory committees to both the LULD Plan and the NMS Plans

[3] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129) (''Pilot Rules Approval Order''). LTSE adopted Pilot Rules as part of its approval as a national securities exchange. *See generally* [cite to Form 1 approval][sic]

[4] The rules of the equity options exchanges similarly provide for a halt in trading if the cash equity exchanges invoke a MWCB Halt. *See, e.g.,* NYSE Arca Rule 6.65–O(d)(4).

[5] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012). The LULD Plan provides a mechanism to address extraordinary market volatility in individual securities.

[6] *See e.g.,* Securities Exchange Act Release Nos. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–NYSE–2011–48) (Approval Order); and 68784 (January 31, 2013), 78 FR 8662 (February 6, 2013) (SR–NYSE–2013–10).

[7] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019).

[8] *See https://www.sec.gov/rules/sro/ltse/2019/34-87357.pdf.*

[9] *See* Securities Exchange Act Release No. 90125 (October 8, 2020), 85 FR 65114 (October 14, 2020) (SR–LTSE–2020–18).

[10] *See* Securities Exchange Act Release No. 93376 (October 18, 2021), 86 FR 58713 (October 22, 2021) (SR–LTSE–2021–06).

[11] *See https://www.cmegroup.com/content/dam/cmegroup/market-regulation/rule-filings/2020/9/20-392_1.pdf; https://www.cmegroup.com/content/dam/cmegroup/market-regulation/rule-filings/2020/9/20-392_2.pdf.*

governing the collection, consolidation, and dissemination of last-sale transaction reports and quotations in NMS Stocks. The Working Group met regularly from September 2020 through March 2021 to consider the Commission's request, review data, and compile its study. The Working Group's efforts in this respect incorporated and built on the work of an MWCB Task Force.

The Working Group submitted its study to the Commission on March 31, 2021 (the ''Study'').[12] In addition to a timeline of the MWCB events in March 2020, the Study includes a summary of the analysis and recommendations of the MWCB Task Force; an evaluation of the operation of the Pilot Rules during the March 2020 events; an evaluation of the design of the current MWCB system; and the Working Group's conclusions and recommendations.

In the Study, the Working Group concluded: (1) The MWCB mechanism set out in the Pilot Rules worked as intended during the March 2020 events; (2) the MWCB halts triggered in March 2020 appear to have had the intended effect of calming volatility in the market, without causing harm; (3) the design of the MWCB mechanism with respect to reference value (SPX), trigger levels (7%/13%/20%), and halt times (15 minutes) is appropriate; (4) the change implemented in Amendment 10 to the Plan to Address Extraordinary Market Volatility (the ''Limit Up/Limit Down Plan'' or ''LULD Plan'') did not likely have any negative impact on MWCB functionality; and (5) no changes should be made to the mechanism to prevent the market from halting shortly after the opening of regular trading hours at 9:30 a.m.

In light of the foregoing conclusions, the Working Group also made several recommendations, including that the Pilot Rules should be permanent without any changes.[13]

Proposal to Extend the Operation of the Pilot Rules Pending the Commission's Consideration of the Exchange's Filing To Make the Pilot Rules Permanent

On July 16, 2021, the NYSE proposed a rule change to make the Pilot Rules permanent, consistent with the Working Group's recommendations.[14] On September 30, 2021, the Commission extended its time to consider the proposed rule change to March 18, 2022.[15] The Exchange now proposes to extend the expiration date of the Pilot Rules to the close of business on April 18, 2022.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[16] in general, and furthers the objectives of Section 6(b)(5) of the Act,[17] in particular, in that it is designed 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. The market-wide circuit breaker mechanism under Rule 11.280 is an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. Extending the market-wide circuit breaker pilot for an additional five [sic] months would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Commission reviews the Exchange's proposed rule change to make the Pilot Rules permanent.

The Exchange also believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning when and how to halt trading in all stocks as a result of extraordinary market volatility. Based on the foregoing, the Exchange believes the benefits to market participants from Pilot Rules should continue on a pilot basis because they will promote fair and orderly markets and protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because the proposal would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Commission reviews the Exchange's proposed rule change to make the Pilot Rules permanent.

Further, the Exchange understands that FINRA and other national securities exchanges have filed or will file proposals to extend their rules regarding the market-wide circuit breaker pilot. Thus, the proposed rule change will help to ensure consistency across market centers 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 written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[18] and Rule 19b–4(f)(6) thereunder.[19] Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[20] and Rule 19b–4(f)(6)(iii) thereunder.[21]

A proposed rule change filed under Rule 19b–4(f)(6)[22] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[23] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange asked that the Commission waive the 30 day operative delay so that the proposal may become operative immediately upon filing. Extending the Pilot Rules' effectiveness to the close of business on April 18, 2022 will extend the protections provided by the Pilot Rules, which would otherwise expire in less than 30 days. Waiver of the operative delay would therefore permit uninterrupted continuation of the MWCB pilot while the Commission reviews the NYSE's

[12] *See Report of the Market-Wide Circuit Breaker (''MWCB'') Working Group Regarding the March 2020 MWCB Events,* submitted March 31, 2021 (the ''Study''), available at *https://www.nyse.com/publicdocs/nyse/markets/nyse/Report_of_the_Market-Wide_Circuit_Breaker_Working_Group.pdf.*

[13] *See id.* at 46.

[14] *See* Securities Exchange Act Release No. 92428 (July 16, 2021), 86 FR 38776 (July 22, 2021) (SR–NYSE–2021–40).

[15] *See* Securities Exchange Act Release No. 93203 (September 30, 2021), 86 FR 55049 (October 5, 2021) (SR–NYSE–2021–57).

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78s(b)(3)(A)(iii).

[19] 17 CFR 240.19b–4(f)(6).

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4 requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Commission has waived this requirement.

[22] 17 CFR 240.19b–4(f)(6).

[23] 17 CFR 240.19b–4(f)(6)(iii).

proposed rule change to make the Pilot Rules permanent. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[24]

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–LTSE–2022–01 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–LTSE–2022–01. 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 LTSE and on its internet website at *https://longtermstockexchange.com/.*

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–LTSE–2022–01 and should be submitted on or before April 7, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

**Eduardo Aleman,**

*Assistant Secretary.*

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[24] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[25] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[SEC File No. 270–512, OMB Control No. 3235–0570]**

## Submission for OMB Review; Comment Request; Extension: Form N–CSR

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Form N–CSR (17 CFR 249.331 and 274.128) is a combined reporting form used by registered management investment companies (''funds'') to file certified shareholder reports under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (''Investment Company Act'') and the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). Specifically, Form N–CSR is to be used for reports under section 30(b)(2) of the Investment Company Act (15 U.S.C. 80a–29(b)(2)) and section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) and 78o(d)), filed pursuant to rule 30b2–1(a) under the Investment Company Act (17 CFR 270.30b2–1(a)). Reports on Form N–CSR are to be filed with the Securities and Exchange Commission (''Commission'') no later than 10 days after the transmission to stockholders of any report that is required to be transmitted to stockholders under rule 30e–1 under the Investment Company Act (17 CFR 270.30e–1). The information filed with the Commission permits the verification of compliance with securities law requirements and assures the public availability and dissemination of the information.

The following estimates of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act of 1995 [1] and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms. Compliance with Form N–CSR is mandatory. Responses to the collection of information will not be kept confidential.

The current total annual burden hour inventory for Form N–CSR is 181,167 hours.[2] The hour burden estimates for preparing and filing reports on Form N–CSR are based on the Commission's experience with the contents of the form. The number of burden hours may vary depending on, among other things, the complexity of the filing and whether preparation of the reports is performed by internal staff or outside counsel.

The Commission's new estimate of burden hours that will be imposed by Form N–CSR is as follows:

[1] 44 U.S.C. 3501 *et seq.*

[2] This estimate is based on the following calculation: 179,443 (previous burden estimate) + 1,724.5 (additional internal burden) = 181,167.5 hours.

TABLE 1—SUMMARY OF REVISED BURDEN HOURS FOR REPORTS ON FORM N–CSR

| | Funds and filings | | | Annual time burden (hours) | |
|---|---|---|---|---|---|
| | Number of funds (A) | Number of annual filings (B) | Number of total filings (C) = (A) × (B) | Hour burden per fund per filing (D) | Total annual hour burden (E) = (C) × (D) |
| Form N–CSR | 14,654 [3] | 2 | 29,308 | 7.75 | 227,137 |

In total, the Commission estimates it will take 227,137 burden hours per year for all funds to prepare and file reports on Form N–CSR. Commission staff estimates that the annual cost of outside services associated with Form N–CSR is approximately $203 per fund and the total annual external cost burden for Form N–CSR is $5,949,524.[4]

Estimates of average burden hours and costs are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms. Compliance with the collection of information requirements of Form N–CSR is mandatory. Responses to the collection of information will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The public may view the background documentation for this information collection at the following website, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Lindsay.M.Abate@omb.eop.gov;* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John R. Pezzullo 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice April 18, 2022 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.

Dated: March 14, 2022.

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022–05679 Filed 3–16–22; 8:45 am]

**BILLING CODE 8011–01–P**

[3] This estimate is based on the number of registered management companies as calculated by the filing type: 1,403 N–1A registrants (13,248 funds); 693 N–2 registrants (691 funds); 5 N–3 registrants (14 funds); 417 N–4 registrants (418 funds); 235 N–6 registrants (236 funds); 47 N–8B–2 registrants (47 funds).

[4] This estimate is based on the following calculation: 14,654 funds × $203 per filing × 2 filings per year = $5,949,524.

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–94402; File No. SR–CboeBZX–2022–016]**

## Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Reflect a Modification to the Permitted Components of the Tracking Basket of the Hartford Large Cap Growth ETF, and To Permit the Use of Custom Baskets by the Hartford Large Cap Growth ETF, the Invesco US Large Cap Core ETF, and the Invesco Real Assets ESG ETF

March 11, 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 March 4, 2022, Cboe BZX Exchange, Inc. filed with the Securities and Exchange Commission (''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

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') proposes to (i) permit the Hartford Large Cap Growth ETF (the ''Fund''), shares of which are listed and traded on the Exchange under BZX Rule 14.11(m), to include select securities from which a Fund's investments are selected such as a broad-based market index (''Investment Universe'') in the Fund's Tracking Basket, and (ii) permit the Fund and certain other series of Tracking Fund Shares that are listed and traded on the Exchange to use Custom Baskets.

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 Exchange adopted BZX Rule 14.11(m) for the purpose of permitting the listing and trading, or pursuant to unlisted trading privileges (''UTP''), of Tracking Fund Shares, which are securities issued by an actively managed open-end management investment company.[3] Exchange Rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 93273 (October 7, 2021), 86 FR 57237 (October 14, 2021) (SR–CboeBZX–2021–063) (Notice and Immediate Effectiveness of a Proposed Rule Change To List and Trade Shares of Hartford Large Cap Growth ETF, a Series of Hartford Funds Exchange-Traded Trust, Under Rule 14.11(m), Tracking Fund Shares (the ''Original Filing'')). Rule 14.11(m)(3)(A) provides that ''[t]he term ''Tracking Fund Share'' means a security that (i) represents an interest in an investment company registered under the

Continued

14.11(m)(2)(A) requires the Exchange to file separate proposals under Section 19(b) of the Act before listing and trading any series of Tracking Fund Shares on the Exchange. Pursuant to this provision, the Exchange submitted proposals to list and trade shares (''Shares'') of Tracking Fund Shares of the Fund.

The Fund is an actively-managed exchange-traded fund for which the Hartford Funds Exchange-Traded Trust (the ''Issuer'') submitted an application for exemptive relief (the ''Application'') which was granted under an exemptive order (the ''Exemptive Order'', and the Exemptive Order together with the Application the ''Exemptive Relief'') issued on August 5, 2021.[4] The Fund's Application incorporated the conditions and requirements to an exemptive order from the SEC under the 1940 Act (15 U.S.C. 80a–1) (the ''Reference Order'')[5] to Fidelity Management & Research Company and FMR Co., Inc., Fidelity Beach Street Trust, and Fidelity Distributors Corporation (collectively referred to as ''Fidelity''). Moreover, the relief in the Exemptive Order incorporates by reference terms and conditions of the same relief of the Reference Order, as that order may be amended from time to time.

Pursuant to the Reference Order, funds operating under such Reference Order are required to publish a basket of securities and cash that, while different from the fund's portfolio, is designed to closely track its daily performance (*i.e.,* the Tracking Basket). Further, it provided that the Tracking Basket will solely consist of a combination of (i) select recently disclosed portfolio holdings (''Strategy Components''); (ii) liquid U.S. exchange-traded funds (''ETFs'') that convey information about the types of instruments (that are not otherwise fully represented by the Strategy Components) in which a fund invests (''Representative ETFs''); and (iii) cash and cash equivalents.

On August 5, 2021, the Reference Order, and by incorporation the Exemptive Relief, was amended to, among other things, permit the Issuer to include select securities from which a Fund's investments are selected such as a broad-based market index (''Investment Universe'') in the Fund's Tracking Basket.[6] Based on this change, the Exchange is submitting this proposal to permit the Fund to include select securities from the Investment Universe in the Fund's Tracking Basket. Such an amendment will allow the Fund to utilize such provision in accordance with the amended Reference Order and its Exemptive Relief and the Exchange is updating the listing rule for the Shares accordingly.

Pursuant to the Reference Order, the Fund and the Invesco US Large Cap Core ETF and Invesco Real Assets ESG ETF[7] (collectively, the ''Fidelity Model Funds'') create shares in return for a deposit by the purchaser of, and redeem shares at a holder's request in return for, a Tracking Basket or cash. Furthermore, the original filings to list and trade shares of the Fidelity Model Funds provided that each of the Fidelity Model Fund would create and redeem their shares using the Tracking Basket or cash. The August 5, 2021 amendments to the Reference Order allow the Fidelity Model Funds to create and redeem their shares using cash, a Tracking Basket or a ''Custom Basket'', which is a creation or redemption unit that differs from a fund's Tracking Basket.[8] Additionally, on September 28, 2021 the Commission approved the Exchange's proposal to amend Exchange Rule 14.11(m) to provide for the use of Custom Baskets consistent with each of the Fidelity Model Funds respective exemptive relief.[9]

Now, the Exchange is submitting this proposal to modify representations made in the original filing of each Fidelity Model Fund that provided that creation and redemption will occur using the Tracking Basket or cash. Specifically, the proposal would permit the Fidelity Model Funds to use a Custom Basket, in addition to a Tracking Basket or cash, to create or redeem their shares in accordance with their respective exemptive relief and amended Exchange Rule 14.11(m).[10] Accordingly, the issuers of each of the Fidelity Model Funds each represent that it and any person acting on behalf of such fund will comply with Regulation Fair Disclosure under the Act,[11] including with respect to any Custom Basket. Each issuer also represents that for each Custom Basket utilized by each Fidelity Model Fund, each business day, before the opening of trading in Regular Trading Hours (as defined in Rule 1.5(w)), the investment company shall make publicly available on its website the composition of any

Investment Company Act of 1940 (''Investment Company'') organized as an open-end management investment company, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (ii) is issued in a specified aggregate minimum number in return for a deposit of a specified Tracking Basket and/or a cash amount with a value equal to the next determined net asset value; (iii) when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified Tracking Basket and/or a cash amount with a value equal to the next determined net asset value; and (iv) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter. Rule 14.11(m)(3)(E) provides that ''[t]he term ''Tracking Basket'' means the identities and quantities of the securities and other assets included in a basket that is designed to closely track the daily performance of the Fund Portfolio, as provided in the exemptive relief under the Investment Company Act of 1940 applicable to a series of Tracking Fund Shares.''

[4] *See* Investment Company Release No. 34324 (July 7, 2021) 86 FR 36839 (July 13, 2021) (the Application) and 34351 (August 5, 2021) (the Exemptive Order) (File No. 812–15232).

[5] *See* Investment Company Act Release No. 33683 (November 14, 2019), 84 FR 64140 (November 20, 2019) (the Fidelity notice of application) and 33712 (December 10, 2019) (the Reference Order) (File No. 812–14364).

[6] *See* Investment Company Act Release No. 34326 (July 9, 2021) 86 FR 37391 (July 15, 2021) (the Fidelity notice of application to amend the Reference Order) and 34350 (August 5, 2021) (the order granting the amendment to the Reference Order).

[7] Similar to the Fund, the exemptive relief provided Invesco US Large Cap Core ETF and Invesco Real Assets ESG ETF incorporates by reference the terms and conditions of the same relief of the Reference Order, as that order may be amended from time to time. *See* Investment Company Act Release No. 34041 (October 1, 2020) 85 FR 63325 (October 7, 2020) (the application for exemptive relief) and 34076 (October 27, 2020) (the exemptive order, together with the application for exemptive relief referred to as the ''Invesco Exemptive Relief'') (File No. 812–15141). Further, the shares of the Invesco US Large Cap Core ETF and Invesco Real Assets ESG ETF are listed and traded on the Exchange. *See* Securities and Exchange Act No. 90686 (December 16, 2020) 85 FR 83657 (December 22, 2020) (SR–CboeBZX–2020–090) (Notice of filing and immediate effectiveness of a proposed rule to list and trade shares of the Invesco Real Assets ESG ETF and the Invesco US Large Cap Core ESG ETF, each a series of the Invesco Actively Managed Exchange-Traded Fund Trust, under Rule 14.11(m) (Tracking Fund Shares)).

[8] *Supra* note 6.

[9] *See* Securities and Exchange Act No. 93147 (September 28, 2021) 86 FR 54772 (October 4, 2021) (SR–CboeBZX–2021–053) (Order granting approval of a proposed rule to change to amend Rule 14.11(m) (Tracking Fund Shares) to provide the use of Custom Baskets consistent with the exemptive relief issued pursuant to the Investment Company Act of 1940 applicable to a series of Tracking Fund Shares).

[10] BZX has already modified the listing rules for the Invesco US Large Cap Core ESG ETF and Invesco Real Assets ESG ETF to permit each of the funds to include select securities from its respective Investment Universe in the fund's Tracking Basket. *See* Securities Exchange Act No. 93546 (November 9, 2021) 86 FR 63429 (November 16, 2021) (SR–CboeBZX–2021–075) (Notice of filing and immediate effectiveness of a proposed rule change to reflect a modification to the permitted components of the Tracking Baskets of the Invesco Real Assets ESG ETF and Invesco US Large Cap Core ESG ETF).

[11] 17 CFR 243.100–243.103. Regulation Fair Disclosure provides that whenever an issuer, or any person acting on its behalf, discloses material nonpublic information regarding that issuer or its securities to certain individuals or entities—generally, securities market professionals, such as stock analysts, or holders of the issuer's securities who may well trade on the basis of the information—the issuer must make public disclosure of that information.

Custom Basket transacted on the previous business day, except a Custom Basket that differs from the applicable Tracking Basket only with respect to cash. Finally, the adviser and sub-adviser to each of the Fidelity Model Funds each represent that a fire wall exists and will be maintained between the respective personnel at each of (i) the adviser and sub-adviser, and (ii) their respective affiliated broker-dealers with respect to access to information concerning the composition and/or changes to the applicable fund's portfolio, Tracking Basket, and/or the Custom Basket, as applicable. Specifically, the adviser and the sub-adviser each represent that the personnel who make decisions on the applicable fund's portfolio composition, Tracking Basket, and/or Custom Basket or who have access to nonpublic information regarding the Fund Portfolio,[12] Tracking Basket, and/or Creation Basket or changes thereto are subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio, Tracking Basket, and/or Creation Basket. In the event that (a) the adviser or a sub-adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer; or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes newly affiliated with a broker-dealer; it will implement and maintain a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the Fund Portfolio, Tracking Basket, and/or Creation Basket, and will be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding such portfolio, Tracking Basket, and/or Creation Basket. Any person or entity, including any service provider for any of the Fidelity Model Funds, who has access to nonpublic information regarding the Fund Portfolio, Tracking Basket, and/or Creation Basket or changes thereto for the Custom Basket Fund will be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund Portfolio, Tracking Basket or Creation Basket or changes thereto. Further, any such person or entity that is registered as a broker-dealer or affiliated with a broker-dealer, must have erected and will maintain a ''fire wall'' between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Fund Portfolio, Tracking Basket, or Creation Basket.

Each of the Fidelity Model Funds will comply with the above-described conditions as well as the conditions of the Reference Order, as amended, and the Exchange is updating the listing rule for the Shares accordingly. Except for the changes noted above, all other representations made in prior filings for each Fidelity Model Fund[13] remain unchanged and will continue to constitute continued listing requirements for each of the Fidelity Model Funds. The Fidelity Model Funds will also continue to comply with the requirements of Rule 14.11(m).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[14] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[15] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The proposed amendments would (i) permit the Issuer to include select securities from the Fund's Investment Universe in the Fund's Tracking Basket, and (ii) permit each of the Fidelity Model Funds the use of Custom Baskets, as provided in the amended Reference Order. The proposed rule change would permit the Fidelity Model Funds to operate consistent with their respective exemptive relief, which incorporates the Reference Order that may be amended from time to time. The Exchange believes that the proposal to permit the Issuer to include select securities from the Fund's Investment Universe in the Fund's Tracking Basket raises no novel issues under the Act.[16] Further, the Exchange believes the proposal to permit the Fidelity Model Funds the use of Custom Baskets is consistent with and contemplated by Rule 14.11(m), as amended, which the Commission found to be consistent with the Act.[17]

Except for the changes noted above, all other representations made in the prior filings for each of the Fidelity Model Funds[18] remain unchanged and, as noted, will continue to constitute continuing listing requirements for the Funds.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. As noted, the proposed amendments are intended to (i) permit the Issuer to include select securities from the Fund's Investment Universe in the Fund's Tracking Basket, and (ii) permit each of the Fidelity Model Funds the use of Custom Baskets, as provided in the amended Reference Order. The Exchange believes that these changes will not impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section

[12] As defined in Rule 14.11(m)(3)(B), the term ''Fund Portfolio'' means the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company's calculation of net asset value at the end of the business day.

[13] *Supra* notes 3 and 6.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] *See* Securities and Exchange Act No. 92946 (September 13, 2021) 86 FR 51941 (September 17, 2021) (SR–CboeBZX–2021–060) (Notice of filing and immediate effectiveness of a proposed rule change to reflect an Amendment to the Application and Exemptive Order governing the following funds, shares of which are listed and traded on the Exchange under BZX Rule 14.11(m): Fidelity Growth Opportunities ETF, Fidelity Magellan ETF, Fidelity Real Estate Investment ETF, Fidelity Small-Mid Cap Opportunities ETF, Fidelity Blue Chip Value ETF, Fidelity Blue Chip Growth ETF, and Fidelity New Millennium ETF). *See also supra* note 10.

[17] *Supra* note 9.

[18] *Supra* notes 3 and 6.

19(b)(3)(A) of the Act [19] and Rule 19b–4(f)(6) [20] thereunder.[21]

A proposed rule change filed under Rule 19b–4(f)(6) [22] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[23] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may take effect upon filing. The Exchange represents that the Funds will continue to comply with the requirements of BZX Rule 14.11(m). The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change does not raise any new or novel issues.[24] Accordingly, the Commission waives the 30-day operative delay and designates the proposal operative upon filing.[25]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov. Please include File Number SR–CboeBZX–2022–016 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–2022–016. 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–2022–016 and should be submitted on or before April 7, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

**Eduardo Aleman,**

*Assistant Secretary.*

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[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange satisfied this requirement.

[22] 17 CFR 240.19b–4(f)(6).

[23] 17 CFR 240.19b–4(f)(6)(iii).

[24] *See* Securities Exchange Act Release Nos. 93147, *supra* note 9, and 93546, *supra* note 10.

[25] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[26] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–94400; File No. SR–NASDAQ–2022–021]**

## Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange Registration Rules in General 4

March 11, 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 March 7, 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 substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend General 4, Rule 1240 (Continuing Education Requirements). While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on March 15, 2022.

The text of the proposed rule change is available on the Exchange's website at *https://www.listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its continuing education requirements in General 4, Rule 1240. This proposed rule change is based on a filing recently submitted by the Financial Industry Regulatory Authority, Inc. (''FINRA''), and is intended to harmonize the Exchange's continuing education rules with those of FINRA so as to promote uniform standards across the securities industry.[3] The Exchange also proposes to amend its manual signature requirements in General 4, Rule 1250 (Form U4 Filing Requirements) to align with changes FINRA has made to similar rules.[4] Each change is discussed in detail below.

The proposed changes are based on the changes approved by the Commission in the approval order for SR–FINRA–2021–015 and as noticed in SR–FINRA–2021–003.[5] The Exchange is proposing to adopt such changes substantially in the same form as proposed by FINRA, with only minor changes necessary to conform to the Exchange's existing rules such as to remove cross-references and rules that are applicable to FINRA members but not to Exchange members.

Continuing Education Rules

(i) Background

The continuing education program for registered persons of broker-dealers (''CE Program'') currently requires registered persons to complete continuing education consisting of a Regulatory Element and a Firm Element. The Regulatory Element, which is administered by FINRA, focuses on regulatory requirements and industry standards, while the Firm Element is provided by each firm and focuses on securities products, services and strategies the firm offers, firm policies and industry trends. The CE Program is codified under the rules of the self-regulatory organizations (''SROs''). The CE Program for registered persons of Exchange members is codified under General 4, Rule 1240.[6]

a. Regulatory Element

General 4, Rule 1240(a) (Regulatory Element) currently requires a registered person to complete the applicable Regulatory Element initially within 120 days after the person's second registration anniversary date and, thereafter, within 120 days after every third registration anniversary date.[7] The Exchange may extend these time frames for good cause shown.[8] Registered persons who have not completed the Regulatory Element within the prescribed time frames will have their Exchange registrations deemed inactive and will be designated as ''CE inactive'' in the CRD system until the requirements of the Regulatory Element have been satisfied.[9] A CE inactive person is prohibited from performing, or being compensated for, any activities requiring FINRA registration, including supervision. Moreover, if registered persons remain CE inactive for two consecutive years, they must requalify by retaking required examinations (or obtain a waiver of the applicable qualification examinations).[10]

The Regulatory Element consists of a subprogram for registered persons generally, and a subprogram for principals and supervisors.[11] While some of the current Regulatory Element content is unique to particular registration categories, most of the content has broad application to both representatives and principals.[12]

The Regulatory Element was originally designed at a time when most individuals had to complete the Regulatory Element at a test center, and its design was shaped by the limitations of the test center-based delivery model. In 2015, FINRA transitioned the delivery of the Regulatory Element to an online platform (''CE Online''), which allows individuals to complete the content online at a location of their choosing, including their private residence. This online delivery provides the Exchange with much greater flexibility in updating content in a timelier fashion, developing content tailored to each registration category and presenting the material in an optimal learning format.

b. Firm Element

General 4, Rule 1240(b) (Firm Element) currently requires each firm to develop and administer an annual Firm Element training program for covered registered persons.[13] The rule requires firms to conduct an annual needs analysis to determine the appropriate training.[14] Currently, at a minimum, the Firm Element must cover training in ethics and professional responsibility as well as the following items concerning securities products, services and strategies offered by the member: (1) General investment features and associated risk factors; (2) suitability and sales practice considerations; and

[3] *See* Securities Exchange Act Release No. 93097 (September 21, 2021), 86 FR 53358 (September 27, 2021) (SR–FINRA–2021–015) (''FINRA Rule Change'').

[4] *See* Securities Exchange Release No. 91262 (March 5, 2021), 86 FR 13935 (March 11, 2021) (SR–FINRA–2021–003).

[5] *See supra* notes 3 and 4.

[6] *See also* General 4, Rule 1210.07 (All Registered Persons Must Satisfy the Regulatory Element of Continuing Education).

[7] *See* General 4, Rules 1240(a)(1) (Requirements) and (a)(4) (Reassociation in a Registered Capacity). An individual's registration anniversary date is generally the date they initially registered with the Exchange in the Central Registration Depository (''CRD®'') system. However, an individual's registration anniversary date would be reset if the individual has been out of the industry for two or more years and is required to requalify by examination, or obtain an examination waiver, in order to reregister. An individual's registration anniversary date would also be reset if the individual obtains a conditional examination waiver that requires them to complete the Regulatory Element by a specified date. Non-registered individuals who are participating in the waiver program under General 4, Rule 1210.09 (Waiver of Examinations for Individuals Working for a Financial Services Industry Affiliate of a Member) (''FSAWP participants'') are also subject to the Regulatory Element. *See also* General 4, Rule 1240(a)(5) (Definition of Covered Person). The Regulatory Element for FSAWP participants correlates to their most recent registration(s), and it must be completed based on the same cycle had they remained registered. FSAWP participants are eligible for a single, fixed seven-year waiver period from the date of their initial designation, subject to specified conditions. Registered persons who become subject to a significant disciplinary action, as specified in General 4, Rule 1240(a)(3) (Disciplinary Actions), may be required to retake the Regulatory Element within 120 days of the effective date of the disciplinary action, if they remain registered. Further, their cycle for participation in the Regulatory Element may be adjusted to reflect the effective date of the disciplinary action rather than their registration anniversary date.

[8] *See* General 4, Rule 1240(a)(2) (Failure to Complete).

[9] *See supra* note 8. Individuals must complete the entire Regulatory Element session to be considered to have ''completed'' the Regulatory Element; partial completion is the same as non-completion.

[10] This CE inactive two-year period is calculated from the date such persons become CE inactive, and it continues to run regardless of whether they terminate their registrations before the end of the two-year period. Therefore, if registered persons terminate their registrations while in a CE inactive status, they must satisfy all outstanding Regulatory Element prior to the end of the CE inactive two-year period in order to reregister with a member without having to requalify by examination or having to obtain an examination waiver.

[11] The S101 (General Program for Registered Persons) and the S201 (Registered Principals and Supervisors).

[12] The current content is presented in a single format leading individuals through a case that provides a story depicting situations that they may encounter in the course of their work.

[13] The rule defines ''covered registered persons'' as any registered person who has direct contact with customers in the conduct of a member's securities sales and trading activities, and the immediate supervisors of any such persons. *See* General 4, Rule 1240(b)(1) (Persons Subject to the Firm Element).

[14] *See* General 4, Rule 1240(b)(2) (Standards for the Firm Element).

(3) applicable regulatory requirements.[15]

A firm, consistent with its needs analysis, may determine to apply toward the Firm Element other required training. The current rule does not expressly recognize other required training, such as training relating to the anti-money laundering (''AML'') compliance program and training relating to the annual compliance meeting,[16] for purposes of satisfying Firm Element training.

c. Termination of a Registration

Currently, individuals whose registrations as representatives or principals have been terminated for two or more years may reregister as representatives or principals only if they requalify by retaking and passing the applicable representative- or principal-level examination or if they obtain a waiver of such examination(s) (the ''two-year qualification period'').[17] The two-year qualification period was adopted prior to the creation of the CE Program and was intended to ensure that individuals who reregister are relatively current on their regulatory and securities knowledge.

(ii) Proposed Rule Change

After extensive work with the Securities Industry/Regulatory Council on Continuing Education (''CE Council'') and discussions with stakeholders, including industry participants and the North American Securities Administrators Association (''NASAA''), FINRA adopted the following changes to the CE Program under its rules.[18] In order to promote uniform standards across the securities industry, the Exchange now proposes to adopt the same changes to its continuing education rules.

a. Transition to Annual Regulatory Element for Each Registration Category

As noted above, currently, the Regulatory Element generally must be completed every three years, and the content is broad in nature. Based on changes in technology and learning theory, the Regulatory Element content can be updated and delivered in a timelier fashion and tailored to each registration category, which would further the goals of the Regulatory Element.[19] Therefore, to provide registered persons with more timely and relevant training on significant regulatory developments, the Exchange proposes amending General 4, Rule 1240(a) to require registered persons to complete the Regulatory Element annually by December 31.[20] The proposed amendment would also require registered persons to complete Regulatory Element content for each representative or principal registration category that they hold, which would also further the goals of the Regulatory Element.[21]

Under the proposed rule change, firms would have the flexibility to require their registered persons to complete the Regulatory Element sooner than December 31, which would allow firms to coordinate the timing of the Regulatory Element with other training requirements, including the Firm Element.[22] For example, a firm could require its registered persons to complete both their Regulatory Element and Firm Element by October 1 of each year.

Individuals who would be registering as a representative or principal for the first time on or after the implementation date of the proposed rule change would be required to complete their initial Regulatory Element for that registration category in the next calendar year following their registration.[23] In addition, subject to specified conditions, individuals who would be reregistering as a representative or principal on or after the implementation date of the proposed rule change would also be required to complete their initial Regulatory Element for that registration category in the next calendar year following their reregistration.[24]

Consistent with current requirements, individuals who fail to complete their Regulatory Element within the prescribed period would be automatically designated as CE inactive.[25] However, the proposed rule change preserves the Exchange's ability to extend the time by which a registered person must complete the Regulatory Element for good cause shown.[26]

The Exchange also proposes amending General 4, Rule 1240(a) to clarify that: (1) Individuals who are designated as CE inactive would be required to complete all of their pending and upcoming annual Regulatory Element, including any annual Regulatory Element that becomes due during their CE inactive period, to return to active status;[27] (2) the two-year CE inactive period is calculated from the date individuals become CE inactive, and it continues to run regardless of whether individuals

[15] *See supra* note 14.

[16] *See* General 9, Sections 20 and 37.

[17] *See* General 4, Rule 1210.08 (Lapse of Registration and Expiration of SIE). The two-year qualification period is calculated from the date individuals terminate their registration and the date the Exchange receives a new application for registration. The two-year qualification period does not apply to individuals who terminate a limited registration category that is a subset of a broader registration category for which they remain qualified. For instance, it would not apply to an individual who maintains his registration as a General Securities Representative but who terminates his registration as an Investment Company and Variable Contracts Products Representative. Such individuals have the option of reregistering in the more limited registration category without having to requalify by examination or obtain an examination waiver so long as they continue to remain qualified for the broader registration category. Further, the two-year qualification period only applies to the representative- and principal-level examinations; it does not extend to the Securities Industry Essentials (''SIE'') examination. The SIE examination is valid for four years, but having a valid SIE examination alone does not qualify an individual for registration as a representative or principal. Individuals whose registrations as representatives or principals have been revoked pursuant to General 5, Rule 8310 (Sanctions for Violation of the Rules) may only requalify by retaking the applicable representative- or principal-level examination in order to reregister as representatives or principals, in addition to satisfying the eligibility conditions for association with a firm. Waivers are granted either on a case-by-case basis under General 4, Rule 1210.03 (Qualification Examinations and Waivers of Examinations) or as part of the waiver program under General 4, Rule 1210.09.

[18] *See supra* note 3. FINRA's changes are based on the CE Council's September 2019 recommendations to enhance the CE Program. *See* Recommended Enhancements for the Securities Industry Continuing Education Program, available at *http://cecouncil.org/media/266634/council-recommendations-final-.pdf*. The CE Council is composed of securities industry representatives and representatives of SROs. The CE Council was formed in 1995 upon a recommendation from the Securities Industry Task Force on Continuing Education and was tasked with facilitating the development of uniform continuing education requirements for registered persons of broker-dealers.

[19] When the CE Program was originally adopted in 1995, registered persons were required to complete the Regulatory Element on their second, fifth and 10th registration anniversary dates. *See* Securities Exchange Act Release No. 35341 (February 8, 1995), 60 FR 8426 (February 14, 1995) (Order Approving File Nos. SR–AMEX–94–59; SR–CBOE–94–49; SR–CHX–94–27; SR–MSRB–94–17; SR–NASD–94–72; SR–NYSE–94–43; SR–PSE–94–35; and SR–PHLX–94–52). The change to the current three-year cycle was made in 1998 to provide registered persons more timely and effective training, consistent with the overall purpose of the Regulatory Element. *See* Securities Exchange Act Release No. 39712 (March 3, 1998), 63 FR 11939 (March 11, 1998) (Order Approving File Nos. SR–CBOE–97–68; SR–MSRB–98–02; SR–NASD–98–03; and SR–NYSE–97–33).

[20] *See* proposed General 4, Rules 1240(a)(1) and (a)(4).

[21] *See* proposed General 4, Rules 1210.07 and 1240(a)(1).

[22] *See* proposed General 4, Rules 1240(a)(1) and (a)(4).

[23] *See* proposed General 4, Rule 1240(a)(1).

[24] *See* proposed General 4, Rule 1240(a)(4).

[25] *See* proposed General 4, Rule 1240(a)(2).

[26] *See supra* note 25. The proposed rule change clarifies that the request for an extension of time must be in writing and include supporting documentation, which is consistent with current practice.

[27] *See supra* note 25.

terminate their registrations;[28] (3) individuals who become subject to a significant disciplinary action may be required to complete assigned continuing education content as prescribed by the Exchange;[29] (4) individuals who have not completed any Regulatory Element content for a registration category in the calendar year(s) prior to reregistering would not be approved for registration for that category until they complete that Regulatory Element content, pass an examination for that registration category or obtain an unconditional examination waiver for that registration category, whichever is applicable;[30] and (5) the Regulatory Element requirements apply to individuals who are registered, or in the process of registering, as a representative or principal.[31] In addition, the Exchange proposes making conforming amendments to General 4, Rule 1210.07.

Under the proposed rule change, the amount of content that registered persons would be required to complete in a three-year, annual cycle for a particular registration category is expected to be comparable to what most registered persons are currently completing every three years. In some years, there may be more required content for some registration categories depending on the volume of rule changes and regulatory issues. In addition, an individual who holds multiple registrations may be required to complete additional content compared to an individual who holds a single registration because, as noted above, individuals would be required to complete content specific to each registration category that they hold.[32] However, individuals with multiple registrations would not be subject to duplicative regulatory content in any given year. The more common registration combinations would likely share much of their relevant regulatory content each year. For example, individuals registered as General Securities Representatives and General Securities Principals would receive the same content as individuals solely registered as General Securities Representatives, supplemented with a likely smaller amount of supervisory-specific content on the same topics. The less common registration combinations may result in less topic overlap and more content overall.

b. Recognition of Other Training Requirements for Firm Element and Extension of Firm Element to All Registered Persons

To better align the Exchange's rulebook with FINRA's rulebook, and, in addition, to better align the Firm Element requirement with other required training, the Exchange proposes amending General 4, Rule 1240(b) to expressly allow firms to consider training relating to the AML compliance program and the annual compliance meeting toward satisfying an individual's annual Firm Element requirement.[33] The Exchange also proposes amending the rule to extend the Firm Element requirement to all registered persons, including individuals who maintain solely a permissive registration consistent with General 4, Rule 1210.02 (Permissive Registrations), thereby further aligning the Firm Element requirement with other broadly-based training requirements.[34] In conjunction with this proposed change, the Exchange proposes modifying the current minimum training criteria under General 4, Rule 1240(b) to instead provide that the training must cover topics related to the role, activities or responsibilities of the registered person and to professional responsibility.[35]

c. Maintenance of Qualification After Termination of Registration

The Exchange proposes adopting paragraph (c) under General 4, Rule 1240 and Supplementary Material .01 and .02 to General 4, Rule 1240 to provide eligible individuals who terminate any of their representative or principal registrations the option of maintaining their qualification for any of the terminated registrations by completing continuing education.[36] The proposed rule change would not eliminate the two-year qualification period. Rather, it would provide such individuals an alternative means of staying current on their regulatory and securities knowledge following the termination of a registration(s). Eligible individuals who elect not to participate in the proposed continuing education program would continue to be subject to the current two-year qualification period. The proposed rule change is generally aligned with other professional continuing education programs that allow individuals to maintain their qualification to work in their respective fields during a period of absence from their careers (including an absence of more than two years) by satisfying continuing education requirements for their credential.

The proposed rule change would impose the following conditions and limitations:

- Individuals would be required to be registered in the terminated registration category for at least one year immediately prior to the termination of that category;[37]
- individuals could elect to participate when they terminate a registration or within two years from the termination of a registration;[38]
- individuals would be required to complete annually all prescribed continuing education;[39]

[28] *See supra* note 25.

[29] *See* proposed General 4, Rule 1240(a)(3). As previously noted, General 4, Rule 1240(a)(3) currently provides that such individuals may be required to retake the Regulatory Element. *See supra* note 7.

[30] *See* proposed General 4, Rule 1240(a)(4).

[31] *See* proposed General 4, Rule 1240(a)(5).

[32] As discussed in the economic impact assessment in the FINRA Rule Change, individuals with multiple registrations represent a smaller percentage of the population of registered persons.

[33] *See* proposed General 4, Rule 1240(b)(2)(D).

[34] *See* proposed General 4, Rule 1240(b)(1). As noted earlier, the current requirement only applies to ''covered registered persons'' and not all registered persons.

[35] *See* proposed General 4, Rule 1240(b)(2)(B).

[36] The proposed option would also be available to individuals who terminate any permissive registrations as provided under General 4, Rule 1210.02. However, the proposed option would not be available to individuals who terminate a limited registration category that is a subset of a broader registration category for which they remain qualified. As previously noted, such individuals currently have the option of reregistering in the more limited registration category without having to requalify by examination or obtain an examination waiver so long as they continue to remain qualified for the broader registration category. In addition, the proposed option would not be available to individuals who are maintaining an eliminated registration category, such as the category for Corporate Securities Representative, or individuals who have solely passed the Securities Industry Essentials examination, which does not, in and of itself, confer registration.

[37] *See* proposed General 4, Rule 1240(c)(1).

[38] *See* proposed General 4, Rule 1240(c)(2). Individuals who elect to participate at the later date would be required to complete, within two years from the termination of their registration, any continuing education that becomes due between the time of their Form U5 (Uniform Termination Notice for Securities Industry Registration) submission and the date that they commence their participation. In addition, FINRA would enhance its systems to notify individuals of their eligibility to participate, enable them to affirmatively opt in, and notify them of their annual continuing education requirement if they opt in.

[39] *See* proposed General 4, Rule 1240(c)(3). However, upon a participant's request and for good cause shown, the Exchange would have the ability to grant an extension of time for the participant to complete the prescribed continuing education. A participant who is also a registered person must directly request an extension of the prescribed continuing education from the Exchange. The continuing education content for participants would consist of a combination of Regulatory Element content and content selected by FINRA and the CE Council from the Firm Element content catalog discussed below. The content would correspond to the registration category for which individuals wish to maintain their qualifications. Participants who are maintaining their qualification status for a principal registration category that

Continued

• individuals would have a maximum of five years in which to reregister;[40]

• individuals who have been CE inactive for two consecutive years, or who become CE inactive for two consecutive years during their participation, would not be eligible to participate or continue;[41] and

• individuals who are subject to a statutory disqualification, or who become subject to a statutory disqualification following the termination of their registration or during their participation, would not be eligible to participate or continue.[42]

The proposed rule change also includes a look-back provision that would, subject to specified conditions, extend the proposed option to individuals who have been registered as a representative or principal within two years immediately prior to the implementation date of the proposed rule change and individuals who have been FSAWP participants immediately prior to the implementation date of the proposed rule change.[43]

In addition, the proposed rule change includes a re-eligibility provision that would allow individuals to regain eligibility to participate each time they reregister with a firm for a period of at least one year and subsequently terminate their registration, provided that they satisfy the other participation conditions and limitations.[44] Finally, the Exchange proposes making conforming amendments to General 4, Rule 1210, including adding references to proposed Rule 1240(c) under General 4, Rule 1210.08.

The proposed rule change will have several important benefits. It will provide individuals with flexibility to address life and career events and necessary absences from registered functions without having to requalify each time. It will also incentivize them to stay current on their respective securities industry knowledge following the termination of any of their registrations. The continuing education under the proposed option will be as rigorous as the continuing education of registered persons, which promotes investor protection. Further, the proposed rule change will enhance diversity and inclusion in the securities industry by attracting and retaining a broader and diverse group of professionals.

Significantly, the proposed rule change will be of particular value to women, who continue to be the primary caregivers for children and aging family members and, as a result, are likely to be absent from the industry for longer periods.[45] In addition, the proposed rule change will provide longer-term relief for women, individuals with low incomes and other populations, including older workers, who are at a higher risk of a job loss during certain economic downturns and who are likely to remain unemployed for longer periods.[46]

d. CE Program Implementation

As stated in the FINRA Rule Change, FINRA and the CE Council also plan to enhance the CE Program in other ways, and these additional enhancements do not require any changes to the FINRA rules.[47] As it relates to the rule changes themselves, the changes relating to the Maintaining Qualifications Program (paragraph (c) of General 4, Rule 1240) and the Financial Services Affiliate Waiver Program (FSAWP) (Supplementary Material .09 to General 4, Rule 1210) will become effective March 15, 2022. All other changes related to the FINRA Rule Change, including the changes relating to the Regulatory Element, Firm Element and the two-year qualification period, will become effective January 1, 2023.[48]

Manual Signature

General 4, Rule 1250(c) currently provides that every initial and transfer electronic Form U4 filing and any amendments to the disclosure information on Form U4 must be based on a manually signed Form U4 provided to the member or applicant for membership by the person on whose behalf the Form U4 is being filed, consistent with FINRA Rule 1010(c). Similarly, the Exchange's Supplementary Material .03 currently

includes one or more corequisite representative registrations must also complete required annual continuing education for the corequisite registrations in order to maintain their qualification status for the principal registration category. The proposed rule change clarifies that the prescribed continuing education must be completed by December 31 of the calendar year, which is consistent with the timing for the proposed annual Regulatory Element.

[40] *See* proposed General 4, Rule 1240(c). In addition, individuals applying for reregistration must satisfy all other requirements relating to the registration process (*e.g.,* submit a Form U4 (Uniform Application for Securities Industry Registration or Transfer) and undergo a background check).

[41] *See* proposed General 4, Rules 1240(c)(4) and (c)(5).

[42] *See* proposed General 4, Rules 1240(c)(1) and (c)(6). Further, any content completed by participants would be retroactively nullified upon disclosure of the statutory disqualification. The following example illustrates the application of the proposed rule change to individuals who become subject to a statutory disqualification while participating in the proposed continuing education program. Individual A participates in the proposed continuing education program for four years and completes the prescribed content for each of those years. During year five of his participation, he becomes subject to a statutory disqualification resulting from a foreign regulatory action. In that same year, the Exchange receives a Form U4 submitted by a member on behalf of Individual A requesting registration with the Exchange. The Form U4 discloses the statutory disqualification event. The Exchange would then retroactively nullify any content that Individual A completed while participating in the proposed continuing education program. Therefore, in this example, in order to become registered with the Exchange, he would be required to requalify by examination. This would be in addition to satisfying the eligibility conditions for association with an Exchange member firm. *See* Exchange Act Sections 3(a)(39) and 15(b)(4) and General 3, Rule 1002.

[43] *See* proposed Supplementary Material .01 to General 4, Rule 1240. Such individuals would be required to elect whether to participate by the implementation date of the proposed rule change. If such individuals elect to participate, they would be required to complete their initial annual content by the end of the calendar year in which the proposed rule change is implemented. In addition, if such individuals elect to participate, their initial participation period would be adjusted based on the date that their registration was terminated. The current waiver program for FSAWP participants would not be available to new participants upon implementation of the proposed rule change. *See* proposed General 4, Rule 1210.09. However, individuals who are FSAWP participants immediately prior to the implementation date of the proposed rule change could elect to continue in that waiver program until the program has been retired. As noted above, FSAWP participants may participate for up to seven years in that waiver program, subject to specified conditions. *See supra* note 7. As discussed above, the proposed rule change provides a five-year participation period for participants in the proposed continuing education program. So as not to disadvantage FSAWP participants, the Exchange has determined to preserve that waiver program for individuals who are participating in the FSAWP immediately prior to the implementation date of the proposed rule change. Because the proposed rule change transitions the Regulatory Element to an annual cycle, FSAWP participants who remain in that waiver program following the implementation of the proposed rule change would be subject to an annual Regulatory Element requirement. *See* proposed General 4, Rule 1240(a)(1). Finally, the proposed rule change preserves the Exchange's ability to extend the time by which FSAWP participants must complete the Regulatory Element for good cause shown. *See* proposed General 4, Rule 1240(a)(2).

[44] *See* proposed Supplementary Material .02 to General 4, Rule 1240.

[45] *See* The Female Face of Family Caregiving (November 2018), available at *https://www.nationalpartnership.org/our-work/resources/economic-justice/female-face-family-caregiving.pdf.*

[46] *See* The COVID–19 Recession is the Most Unequal in Modern U.S. History (September 30, 2020), available at *https://www.washingtonpost.com/graphics/2020/business/coronavirus-recession-equality/* and Unemployment's Toll on Older Workers Is Worst in Half a Century (October 21, 2020), available at *https://www.aarp.org/work/working-at-50-plus/info-2020/pandemic-unemployment-older-workers.*

[47] *See supra* note 3. As described in more detail in the FINRA Rule Change, FINRA will work with the CE Council to develop and incorporate additional resources in connection with the Regulatory and Firm Elements. Similar to FINRA, these additional enhancements do not require any changes to the Exchange rules.

[48] *See* FINRA Regulatory Notice 21–41 at *https://www.finra.org/rules-guidance/notices/21-41.*

provides that in the event a member is not able to obtain an associated person's manual signature or written acknowledgement of amended disclosure information on that person's Form U4 prior to filing of such amendment reflecting the information pursuant to Rule 1250(c)(3), the member must enter ''Representative Refused to Sign/Acknowledge'' or ''Representative Not Available'' or a substantially similar entry in the electronic Form U4 field for the associated person's signature. However, FINRA has since amended their Rule 1010(c) to permit firms to choose to rely on electronic signatures to satisfy the signature requirements when filing Form U4.[49] Cboe Exchange, Inc. (''CBOE'') has also updated its Rule 3.34 to reflect FINRA's updated Rule 1010(c).[50]

The Exchange proposes to amend Rule 1250(c) and Supplementary Material .03 to similarly allow firms to rely on electronic signatures when filing Form U4, consistent with FINRA Rule 1010(c). Specifically, the Exchange proposes to remove the term ''manual'' from ''manual signature'' and the term ''manually'' from ''manually signed.'' The proposed rule change provides members, and applicants for membership, with an opportunity to better manage operational challenges. Particularly, the COVID–19 pandemic amplified the need to better manage operational challenges like those that arose during the pandemic and that may continue to arise in the future. Additionally, the proposed rule change would not require the use of a particular type of technology to obtain a valid electronic signature from the associated person. The Exchange believes that some firms may be unable to obtain the manual signature of applicants for registration resulting in a significant operational backlog. By permitting these firms to rely on electronic signatures to satisfy the signature requirements of Exchange Rule 1250 and Supplementary Material .03, the proposed rule change may reduce or eliminate this backlog. For purposes of the proposed rule change, a valid electronic signature would be any electronic mark that clearly identifies the signatory and is otherwise in compliance with the Electronic Signatures in Global and National Commerce Act (''E-Sign Act'') and the guidance issued by the SEC relating to the E-Sign Act.[51]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[52] in general, and furthers the objectives of Section 6(b)(5) of the Act,[53] in particular, in that it is designed 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.

The Exchange believes that the proposed changes to the Regulatory Element and Firm Element will ensure that all registered persons receive timely and relevant training, which will, in turn, enhance compliance and investor protection. Further, the Exchange believes that establishing a path for individuals to maintain their qualification following the termination of a registration will reduce unnecessary impediments to requalification and promote greater diversity and inclusion in the securities industry without diminishing investor protection.

As it relates to the proposed changes to General 4, Rule 1250(c), the Exchange believes the proposed rule change provides firms with the flexibility to rely on electronic signatures to satisfy the signature requirements of Rule 1250(c). Specifically, the Exchange proposes to amend Exchange Rule 1250(c) and Supplementary Material .03, similar to the amendments made by FINRA and CBOE, to provide the option of filing an initial or a transfer Form U4 based on a manually or an electronically signed copy of the form provided to the member, or applicant for membership, by the individual on whose behalf the form is being filed. Considering the technological advancements that provide for enhanced authentication and security of electronic signatures, the Exchange believes that it is appropriate to amend Rule 1250(c) and Supplementary Material .03 to provide such flexibility. The proposed rule change also addresses the ongoing public health risks stemming from the outbreak of COVID–19 and the operational challenges that firms continue to face as a result of pandemic repercussions. By permitting these firms to rely on electronic signatures to satisfy the signature requirements of Rule 1250(c) and Supplementary Material .03, the proposed rule change may reduce or eliminate an operational backlog due to the difficulty firms may have faced in obtaining the manual signature of applicants for registration as a result of the impact of the pandemic on daily work environments.

The Exchange believes the proposal is consistent with the Act for the reasons described above and for the reasons outlined in the approval order for SR–FINRA–2021–015 and as noticed in SR–FINRA–2021–003.[54]

*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. All members would be subject to the proposed rule change. The proposed rule change relating to the Exchange's CE Program, which is materially identical to the FINRA Rule Change, is designed to result in a more efficient CE Program that addresses relevant regulatory requirements and provides individuals with improved tools and resources to understand and comply with such requirements, enhancing investor protection. Moreover, the proposed rule change would provide new channels for individuals to maintain their qualification status for a terminated registration category and, in so doing, could increase the likelihood that professionals who need to step away from the industry for a period could return, subject to satisfying all other requirements relating to the registration process.

As it relates to the proposed amendments to General 4, Rule 1250, the proposed rule change relating to manual signatures is, in all material respects, substantively identical to recent rule changes adopted by FINRA and CBOE. The Exchange believes the proposed change will reduce a regulatory filing burden for members by allowing them to rely on Form U4 copies with an electronic signature. All members will have the option to rely on such forms with an electronic signature (or continue to rely on forms with a manual signature).

*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.

[49] *See* Securities Exchange Release No. 91262 (March 5, 2021), 86 FR 13935 (March 11, 2021) (SR–FINRA–2021–003).

[50] *See* Securities Exchange Release No. 92562 (August 4, 2021), 86 FR 143701 (August 10, 2021) (SR–CBOE–2021–043).

[51] *See accord* Securities Exchange Act Release No. 85282 (March 11, 2019), 84 FR 9573 (March 15, 2019) (Order Approving File No. SR–FINRA–2018–040) (discussing valid electronic signatures under existing guidance).

[52] 15 U.S.C. 78f(b).

[53] 15 U.S.C. 78f(b)(5).

[54] *See supra* notes 3 and 4.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [55] and Rule 19b–4(f)(6) thereunder.[56]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that this proposed rule change may become operative immediately upon filing. Rule 19b–4(f)(6)(iii) [57] requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

Waiver of the 30-day operative delay would allow the Exchange to implement proposed changes to the Maintaining Qualifications Program and the FSAWP by March 15, 2022 to coincide with FINRA's announced implementation date, thereby eliminating the possibility of a significant regulatory gap between the FINRA and Nasdaq rules and providing more uniform standards across the securities industry. For the proposal related to the manual signature requirement, waiver of the 30-day operative delay would provide immediate relief to firms currently experiencing a significant operational backlog because of the requirement to obtain manual signatures, ultimately benefitting the investing public. The proposed rule change to Rule 1250(c) and Supplementary Material .03 will provide immediate relief to these firms by allowing them to rely on electronic signatures to clear the backlog. Moreover, as noted above, the proposed manual signature rule change is based on a similar rule change by FINRA that has already taken effect. For these reasons, the Commission believes that waiver of the 30-day operative delay for this proposal is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[58]

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–NASDAQ–2022–021 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–2022–021. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. 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–2022–021 and should be submitted on or before April 7, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[59]

**Eduardo Aleman,**

*Assistant Secretary.*

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[55] 15 U.S.C. 78s(b)(3)(A)(iii).

[56] 17 CFR 240.19b–4(f)(6).

[57] 17 CFR 240.19b–4(f)(6)(iii).

[58] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[59] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–94405; File No. SR–CboeEDGX–2022–008]**

## Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify the External Subscriber Fees Applicable To Cboe One Summary Derived Data API Service

March 11, 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 1, 2022, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (''EDGX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (the ''Commission'') a proposed rule change to modify the External

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Subscriber fees applicable to Cboe One Summary Derived Data API Service. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to modify fees charged to External Distributors that distribute Cboe One Summary Derived Data through an Application Programming Interface (''API'')—*i.e.,* the Derived Data API Service, effective March 1, 2022.

Background

By way of background, the Exchange offers a Financial Product Distribution Program (''Program''), under which a Distributor may subscribe to one of three Derived Data Service options, White Label Service,[3] API Service [4] or Platform Service,[5] each of which offers either EDGX Top Data, which is an uncompressed data feed that offers top of book quotations and execution information based on equity orders entered into the System [6] or Cboe One Summary Data, which is a proprietary data product that provides the top of book quotations and execution information for all listed equity securities traded across the Exchange and its affiliated U.S. equities exchanges (the ''Cboe equity exchanges'').[7] Under the Program, regardless of the Service option selected by a Distributor, the Distributors receive the same real-time Exchange data (*i.e.,* EDGX Top or Cboe One Summary) as all other subscribers of such Exchange data. From the Exchange data, a Distributor may create ''Derived Data'', which is pricing data or other data that (i) is created in whole or in part from Exchange data, (ii) is not an index or financial product, and (iii) cannot be readily reverse-engineered to recreate Exchange data or used to create other data that is a reasonable facsimile or substitute for Exchange data. Derived Data may be created by Distributors for a number of different purposes, as determined by the Distributor. The specific use of Exchange data is determined by the Distributor, as applicable fees do not depend on the purpose for placing the Derived Data under the Program.

Cboe One Summary Derived Data API Service External Subscriber Fees

The Derived Data API Service program offers discounted fees for Distributors that make Derived Data available through an API, thereby allowing Distributors to benefit from reduced fees when distributing Derived Data to subscribers that establish their own platforms (rather than relying on a hosted display solution). Instead of the regular flat fee for External Distribution of Exchange data, Distributors of Derived Data under the API Service are charged a tiered External Subscriber Fee based on the number of API Service Platforms (*i.e.,* ''External Subscribers'') that receive Derived Data from the Distributor through a Derived Data API Service and may benefit from discounted pricing based on the number of subscribers. Currently, Distributors under this program are charged a fee of $5,000 per month for each External Subscriber if the Distributor makes Derived Data available to 1–5 External Subscribers; $4,000 per month for each External Subscriber if the Distributor makes Derived Data available to 6–20 External Subscribers, and further lowered to $3,000 per month for each External Subscriber if the Distributor makes Derived Data available to 21 or more External Subscribers. The Exchange now proposes to further reduce the distribution fees for Distributors of Cboe One Summary Derived Data through a Derived API Service. Particularly, the Exchange proposes to modify the External Subscriber fees as follows:

| Number of external subscribers | Current fee | Proposed fee |
|---|---|---|
| 1–5 | $5,000 | $3,000 |
| 6–20 | 4,000 | 2,500 |
| 21 and above | 3,000 | 2,000 |

The Exchange notes that the External Subscriber Fee is non-progressive and based on the number of External Subscribers that receive Derived Data from the Distributor. To illustrate how the discount is applied, the Exchange has codified an example in the Fees Schedule under the notes section of the Derived Data API Service section, which it now proposes to update in connection with the proposed changes to the External Subscriber fees.[8] Currently, the

[3] A ''White Label Service'' is a type of hosted display solution in which a Distributor hosts or maintains a website or platform on behalf of a third-party entity. The service allows Distributors to make Derived Data available on a platform that is branded with a third-party brand, or co-branded with a third party and a Distributor. The Distributor maintains control of the application's data, entitlements and display.

[4] An ''API Service'' is a type of data feed distribution in which a Distributor delivers an API or similar distribution mechanism to a third-party entity for use within one or more platforms. The service allows Distributors to provide Derived Data to a third-party entity for use within one or more downstream platforms that are operated and maintained by the third-party entity. The Distributor maintains control of the entitlements, but does not maintain technical control of the usage or the display.

[5] A ''Platform Service'' is a type of hosted display solution in which a Distributor provides derivative products to Platform Service Data Users within their infrastructure. The service allows Distributors to make Derived Data available as part of a platform, providing users remote access to derivative products based in whole or in part on Exchange Data.

[6] *See* Exchange Rule 13.8(c).

[7] *See* Exchange Rule 13.8(b). The Cboe One Summary external distribution fee is equal to the aggregate EDGX Top, BZX, Top, BYX Top, and EDGA Top fees external distribution fees.

[8] The Exchange notes that it inadvertently omitted appending three asterisks to the External Subscriber Fee in the ''Cboe One Summary Derived Data API Service'' table to reference the corresponding notes section that includes the summary as to how the discount is applied and seeks to update the Fees Schedule now to avoid potential confusion.

example provides that a Distributor providing Derived Data based on Cboe One Summary to six (6) External Subscribers that are API Service Platforms would be charged a monthly fee of $24,000 (*i.e.,* 6 External Subscribers × $4,000 each). The Exchange proposes to update the example to provide that Distributor providing Derived Data based on Cboe One Summary to six (6) External Subscribers that are API Service Platforms would be charged a monthly fee of $15,000 (*i.e.,* 6 External Subscribers × $2,500 each). The proposal to reduce the External Subscriber fees is designed to provide a price structure that is competitive and attract Distributors for its Cboe One Summary data offering through the Derived Data API Service.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[9] in general, and furthers the objectives of Section 6(b)(4),[10] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other recipients of Exchange data.

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act.[11] Specifically, the proposed rule change supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets, and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. In addition, the proposed rule change is consistent with Rule 603 of Regulation NMS,[12] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory.

In adopting Regulation NMS, the Commission granted SROs and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes that the proposed fee change would further broaden the availability of U.S. equity market data to investors, consistent with the principles of Regulation NMS.

The Exchange operates in a highly competitive environment. Indeed, there are 16 registered national securities exchanges that trade U.S. equities and have the capability to offer associated top of book market data products to their customers.[13] Additionally, two other exchange families specifically offer similar consolidated top of book products that compete directly with Cboe One Summary.[14] The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [15] The proposed fee change is a result of the competitive environment, as the Exchange seeks to amend its fees to attract additional Distributors for its Cboe One Summary data offering through the Derived Data API Service.

The Exchange believes that the proposed change is reasonable as it lowers the existing External Subscriber fees and these fee reductions would continue to facilitate cost effective access to market information that is used primarily to create certain derivative instruments rather than to trade U.S. equity securities. As discussed, the Cboe One Summary data offering through the Derived Data API Service allows Distributors to create Derived Data that is based on a more comprehensive view of the U.S. equities market. Because Exchange data in this context is primarily purchased for the creation of Derived Data encompassing certain derivative instruments, Distributors do not require a consolidated view of the market across several exchanges, and will generally purchase such data from a single or select few exchange(s) for their purposes. As noted above, Cboe One Summary includes top of book quotation and transaction data across all four Cboe equity exchanges, which allows Distributors to create more meaningful Derived Data than that available from a single exchange's market data at a potentially reduced price.

The existence of alternatives to the Program therefore ensures that the Exchange cannot set unreasonable or unfairly discriminatory fees, as subscribers are free to elect such alternatives. That is, the Exchange competes with other exchanges that provide similar top of book and/or consolidated top of book products and pricing programs for Derived Data.[16] The availability of diverse competitive products promotes additional competition as it ensures that alternative products from different sources are readily available to Distributors and the broader market. The Exchange therefore believes that the existing Derived Data API Service is not only constrained by competition but also ensures continued competition that acts as a constraint on the pricing of services provided by other national securities exchanges. If a competing exchange were to charge less for a similar product than the Exchange charges under the existing fee structure, even as amended, prospective subscribers may choose not to subscribe to, or cease subscribing to, the Program. The Exchange believes that further lowering the cost of accessing Derived Data may make the Exchange's market information more attractive, and encourage additional Distributors to subscribe to Exchange market data instead of competitor products. While the Exchange has no way of predicting with certainty the impact of the proposed changes, it anticipates up to two Distributors will create Derived Data from Cboe One Summary using the API Service.

Moreover, External Subscriber fees only apply to Distributors that elect to participate in the Program by distributing Derived Data from Cboe

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78k–1.

[12] *See* 17 CFR 242.603.

[13] Competing top-of-book products include, Nasdaq Basic, BX Basic, PSX Basic, NYSE BQT, NYSE BBO/Trades, NYSE Arca BQT, NYSE Arca BBO/Trades, NYSE American BBO/Trades, NYSE Chicago BBO/Trades, IEX TOPS, MIAX PEARL Equities Top of Market Feed, and MEMX MEMOIR Top.

[14] Competing consolidated top of book products include Nasdaq Basic and NYSE BQT. As described on the Nasdaq website, available here: *http://www.nasdaqtrader.com/Trader.aspx?id=nasdaqbasic,* Nasdaq Basic is a ''low cost alternative'' that provides ''Best Bid and Offer and Last Sale information for all U.S. exchange-listed securities based on liquidity within the Nasdaq market center, as well as trades reported to the FINRA Trade Reporting Facility (''TRF'').'' As described on the NYSE website, available here: *https://www.nyse.com/market-data/real-time/nyse-bqt* NYSE Best Quote and Trades (BQT) ''is a cost efficient, consolidated market data feed that provides a unified view of quotes and trades from NYSE, NYSE American, NYSE Arca, NYSE Chicago and NYSE National.''

[15] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[16] *See generally,* the Nasdaq Basic fees at *http://www.nasdaqtrader.com/TraderB.aspx?id=MDDPricingALLN.*

One Summary through an API Service. Cboe One Summary Feed is distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation purchase this data or to make this data available. Accordingly, Distributors can discontinue distributing at any time and for any reason, including due to an assessment of the reasonableness of fees charged, Cboe One Summary Derived Data under the API Service. Indeed, there are no Distributors who are currently subscribing to the API Service for Cboe One Summary Derived Data. Further, as discussed, firms have a wide variety of alternative market data products from which to choose, such as similar proprietary consolidated top of book data products offered by other national securities exchanges,[17] including those that choose to offer discounted fees for the distribution of Derived Data in an effort to compete for this business.

The proposed rule change also continues to provide an alternate, and as proposed, lower, fee structure for providing Cboe One Summary market data to Distributors that make Derived Data available to External Subscribers via API Services. If a Distributor uses an API Service to distribute Derived Data, the Distributor will still be charged a fee that is tiered based on the number of External Subscribers that are provided access to that data instead of the higher fee normally charged for external distribution. The Exchange believes that this fee is equitable and not unfairly discriminatory because the Exchange will apply the same fees to any similarly situated Distributors that elect to participate in the Program based on the number of External Subscribers provided access to Derived Data through an API Service. Also, all Distributors that make Derived Data available to External Subscribers through an API Service will receive a discount compared to the current pricing applicable for external distribution of Cboe One Summary.[18] The Exchange also believes its equitable and not unfairly discriminatory to provide incrementally higher discounted rates to Distributors that provide access to Derived Data to a greater numbers of Subscribers as the discounted rates are designed to incentivize firms to grow the number of External Subscribers that purchase Derived Data from the Distributor.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment, and its ability to price these data products is constrained by competition among exchanges that offer similar data products, and pricing options, to their customers. Top of book data is broadly disseminated by competing U.S. equities exchanges. There are therefore a number of alternative products available to market participants and investors. In this competitive environment potential subscribers are free to choose which competing product to purchase to satisfy their need for market information. Often, the choice comes down to price, as broker-dealers or vendors look to purchase the lowest priced top of book data product, or quality, as market participants seek to purchase data that represents significant market liquidity. In order to better compete for this segment of the market, the Exchange is proposing to reduce fees charged to Distributors that distribute certain Derived Data through an API Service. The Exchange believes that this would facilitate greater access to Exchange data and Derived Data, ultimately benefiting investors that are provided access to such data.

The Exchange believes that the proposed fees do not put any market participants at a relative disadvantage compared to other market participants. The proposed fees would apply equally to external distributors of Cboe One Summary that make Derived Data available through the API Service option offered by the Exchange under the Program. The continued difference in fees under the Program as compared to the normal External Distribution fee for Cboe One Summary is appropriate given that External Subscribers and Users receive Derived Data, which by definition cannot be readily reverse-engineered to recreate Cboe One Summary data or used to create other data that is a reasonable facsimile or substitute for Cboe One Summary. The Exchange therefore believes that the proposed fees neither favor nor penalize one or more categories of market participants in a manner that would impose an undue burden on competition. Moreover, a number of national securities exchanges, including the Exchange and its affiliated Cboe U.S. equities exchanges offer pricing discounts for Derived Data today.[19] These pricing programs reduce the cost of accessing top of book market information that is used, among other things, to create derivative instruments rather than to trade U.S. equity securities. Additionally, the Exchange is proposing to enhance the Program by reducing the fees for Cboe One Summary Derived Data. The Exchange does not believe that the proposal would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges are free to lower their prices to better compete with the Exchange's offering. The Exchange believes that the proposed rule change is pro-competitive as it seeks to offer pricing incentives to customers to better position the Exchange as it competes to attract additional market data subscribers.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[20] and paragraph (f) of Rule 19b–4[21] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[17] *Supra* note 14.

[18] *See* Cboe EDGX U.S. Equities Exchange Fee Schedule.

[19] *Supra* note 16. *See also* Cboe EDGX U.S. Equities Exchange Fee Schedule, Financial Product Distribution Program.

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f).

*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–CboeEDGX–2022–008 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeEDGX–2022–008. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGX–2022–008 and should be submitted on or before April 7, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

**Eduardo Aleman,**

*Assistant Secretary.*

[FR Doc. 2022–05595 Filed 3–16–22; 8:45 am]

**BILLING CODE 8011–01–P**

[22] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–94401; File No. SR–CboeBZX–2022–018]**

## Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Permit Certain Series of Tracking Fund Shares Issued by Fidelity Covington Trust, Which Are Listed and Traded on the Exchange Pursuant to Rule 14.11(m), To Use Custom Baskets

March 11, 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 March 9, 2022, Cboe BZX Exchange, Inc. filed with the Securities and Exchange Commission (''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

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') proposes to permit the Fidelity Blue Chip Growth ETF, Fidelity Blue Chip Value ETF, Fidelity New Millennium ETF, Fidelity Growth Opportunities ETF, Fidelity Magellan ETF, Fidelity Real Estate Investment ETF, and Fidelity Small-Mid Cap Opportunities ETF (collectively referred to as the ''Funds''), shares of which are listed and traded on the Exchange pursuant to BZX Rule 14.11(m), to use Custom Baskets.

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 Exchange adopted BZX Rule 14.11(m) for the purpose of permitting the listing and trading, or pursuant to unlisted trading privileges (''UTP''), of Tracking Fund Shares, which are securities issued by an actively managed open-end management investment company.[3] Exchange Rule 14.11(m)(2)(A) requires the Exchange to file separate proposals under Section 19(b) of the Act before listing and trading any series of Tracking Fund Shares on the Exchange. Pursuant to this provision, the Exchange submitted proposals to list and trade shares (''Shares'') of Tracking Fund Shares of the Fidelity Blue Chip Growth ETF, Fidelity Blue Chip Value ETF, Fidelity New Millennium ETF,[4] Fidelity Growth

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Rule 14.11(m)(3)(A) provides that ''[t]he term ''Tracking Fund Share'' means a security that (i) represents an interest in an investment company registered under the Investment Company Act of 1940 (''Investment Company'') organized as an open-end management investment company, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (ii) is issued in a specified aggregate minimum number in return for a deposit of a specified Tracking Basket and/or a cash amount with a value equal to the next determined net asset value; (iii) when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified Tracking Basket and/or a cash amount with a value equal to the next determined net asset value; and (iv) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter. Rule 14.11(m)(3)(E) provides that ''[t]he term ''Tracking Basket'' means the identities and quantities of the securities and other assets included in a basket that is designed to closely track the daily performance of the Fund Portfolio, as provided in the exemptive relief under the Investment Company Act of 1940 applicable to a series of Tracking Fund Shares.''

[4] *See* Securities Exchange Act No. 88887 (May 15, 2020) 85 FR 30990 (May 21, 2020) (SR–CboeBZX–2019–107) (Order Granting Approval of Proposed Rule change, as Modified by Amendment No. 5, to Adopt Rule 14.11(m) and to List and Trade Shares of the Fidelity Blue Chip Growth ETF, Fidelity Blue Chip Value ETF, and Fidelity New Millennium ETF) (the ''Original Order''). *See also* Securities Exchange Act No. 92946 (September 13, 2021) 86 FR 51941 (September 17, 2021) (SR–CboeBZX–2021–060) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Reflect an Amendment to the Application and Exemptive Order Governing the Following Funds, Shares of Which Are Listed and Traded on the Exchange Under BZX Rule 14.11(m): Fidelity Growth Opportunities ETF, Fidelity Magellan ETF, Fidelity Real Estate Investment ETF, Fidelity Small-Mid Cap Opportunities ETF, Fidelity Blue Chip Value ETF,

Opportunities ETF, Fidelity Magellan ETF, Fidelity Real Estate Investment ETF, and Fidelity Small-Mid Cap Opportunities ETF (collectively referred to as the ''Funds'').[5]

The Funds are actively-managed exchange-traded funds for which Fidelity Covington Trust (the ''Issuer''), among others, submitted an application for exemptive relief (the ''Application'') which was granted under an exemptive order (the ''Exemptive Order'', and the Exemptive Order together with the Application the ''Exemptive Relief'') issued on December 10, 2019.[6] Pursuant to the Exemptive Order, the Funds create shares in return for a deposit by the purchaser of, and redeem shares at a holder's request in return for, a Tracking Basket or cash. Furthermore, the Original Notice and Original Order to list and trade shares of the Funds provided that each of the Funds would create and redeem their shares using the Tracking Basket or cash.

On August 5, 2021, the Exemptive Order was amended to, among other things, permit the Issuer to allow the Funds to create and redeem their shares using cash, a Tracking Basket or a ''Custom Basket'', which is a creation or redemption unit that differs from a fund's Tracking Basket.[7] Additionally, on September 28, 2021 the Commission approved the Exchange's proposal to amend Exchange Rule 14.11(m) to provide for the use of Custom Baskets consistent with the Funds amended Exemptive Order.[8]

Now, the Exchange is submitting this proposal to modify representations made in the Original Notice and Original Order of each Fund that provided that creation and redemption units will occur using the Tracking Basket or cash. Specifically, the proposal permits the Funds to use a Custom Basket, in addition to a Tracking Basket or cash, to create or redeem their shares in accordance with their amended Exemptive Relief and amended Exchange Rule 14.11(m). Accordingly, the Issuer represents that it and any person acting on behalf of such fund will comply with Regulation Fair Disclosure under the Act,[9] including with respect to any Custom Basket. The Issuer also represents that for each Custom Basket utilized by each Fund, each business day, before the opening of trading in Regular Trading Hours (as defined in Rule 1.5(w)), the investment company shall make publicly available on its website the composition of any Custom Basket transacted on the previous business day, except a Custom Basket that differs from the applicable Tracking Basket only with respect to cash. Finally, the adviser and sub-adviser to each of the Funds each represent that a fire wall exists and will be maintained between the respective personnel at each of (i) the adviser and sub-adviser, and (ii) their respective affiliated broker-dealers with respect to access to information concerning the composition and/or changes to the applicable fund's portfolio, Tracking Basket, and/or the Custom Basket, as applicable. Specifically, the adviser and the sub-adviser each represent that the personnel who make decisions on the applicable fund's portfolio composition, Tracking Basket, and/or Custom Basket or who have access to nonpublic information regarding the Fund Portfolio,[10] Tracking Basket, and/or Creation Basket or changes thereto are subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio, Tracking Basket, and/or Creation Basket. In the event that (a) the adviser or a sub-adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer; or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes newly affiliated with a broker-dealer; it will implement and maintain a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the Fund Portfolio, Tracking Basket, and/or Creation Basket, and will be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding such portfolio, Tracking Basket, and/or Creation Basket. Any person or entity, including any service provider for any of the Funds, who has access to nonpublic information regarding the Fund Portfolio, Tracking Basket, and/or Creation Basket or changes thereto for the Custom Basket Fund will be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund Portfolio, Tracking Basket or Creation Basket or changes thereto. Further, any such person or entity that is registered as a broker-dealer or affiliated with a broker-dealer, must have erected and will maintain a ''fire wall'' between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Fund Portfolio, Tracking Basket, or Creation Basket.

Each of the Funds will comply with the above-described conditions as well as the conditions of the Exemptive Order, as amended, and the Exchange is updating the listing rule for the Shares accordingly. Except for the changes noted above, all other representations made in the Prior Filings for each of the Funds[11] remain unchanged and will continue to constitute continued listing requirements for each of the Shares. The Funds will also continue to comply with the requirements of Rule 14.11(m).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[12] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[13] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and

Fidelity Blue Chip Growth ETF, and Fidelity New Millennium ETF) (the ''Subsequent Notice'').

[5] *See* Securities Exchange Act No. 90530 (November 30, 2020) 85 FR 78366 (December 4, 2020) (SR–CboeBZX–2020–085) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to List and Trade Shares of the Fidelity Growth Opportunities ETF, Fidelity Magellan ETF, Fidelity Real Estate Investment ETF, and Fidelity Small-Mid Cap Opportunities ETF Under Rule 14.11(m)) (the ''Original Notice'', and together with the Original Order and Subsequent Notice the ''Prior Filings''). *See also* Securities Exchange Act No. 51943 (September 13, 2021) 86 FR 51941 (September 17, 2021) (SR–CboeBZX–2021–060) (the Subsequent Notice).

[6] *See also* Investment Company Act Release No. 33683 (November 14, 2019), 84 FR 64140 (November 20, 2019) (the Application) and 33712 (December 10, 2019) (the Exemptive Order) (File No. 812–14364).

[7] *See* Investment Company Act Release No. 34326 (July 9, 2021) 86 FR 37391 (July 15, 2021) (the notice of application to amend the Exemptive Order) and 34350 (August 5, 2021) (the order granting the amendment to the Exemptive Order) (File No. 812–15175).

[8] *See* Securities and Exchange Act No. 93147 (September 28, 2021) 86 FR 54772 (October 4, 2021) (SR–CboeBZX–2021–053) (Order granting approval of a proposed rule to change to amend Rule 14.11(m) (Tracking Fund Shares) to provide the use of Custom Baskets consistent with the exemptive relief issued pursuant to the Investment Company Act of 1940 applicable to a series of Tracking Fund Shares).

[9] 17 CFR 243.100–243.103. Regulation Fair Disclosure provides that whenever an issuer, or any person acting on its behalf, discloses material nonpublic information regarding that issuer or its securities to certain individuals or entities—generally, securities market professionals, such as stock analysts, or holders of the issuer's securities who may well trade on the basis of the information—the issuer must make public disclosure of that information.

[10] As defined in Rule 14.11(m)(3)(B), the term ''Fund Portfolio'' means the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company's calculation of net asset value at the end of the business day.

[11] *Supra* notes 4 and 5.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The proposed amendment would permit each of the Funds the use of Custom Baskets, as provided in the amended Exemptive Order. The Exchange believes the proposal to permit the Funds the use of Custom Baskets is consistent with and contemplated by Rule 14.11(m), as amended, which the Commission found to be consistent with the Act.[14]

Except for the changes noted above, all other representations made in the prior proposed rule changes [15] remain unchanged and, as noted, will continue to constitute continuing listing requirements for the Funds.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. As noted, the proposed amendment is intended to permit each of the Funds the use of Custom Baskets, as provided in the amended Exemptive Order. The Exchange believes that these changes will not impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [16] and Rule 19b–4(f)(6) [17] thereunder.[18]

A proposed rule change filed under Rule 19b–4(f)(6) [19] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[20] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may take effect upon filing. The Exchange represents that the Funds will continue to comply with the requirements of BZX Rule 14.11(m). The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change does not raise any new or novel issues.[21] Accordingly, the Commission waives the 30-day operative delay and designates the proposal operative upon filing.[22]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CboeBZX–2022–018 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–2022–018. 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–2022–018 and should be submitted on or before April 7, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

**Eduardo Aleman,**

*Assistant Secretary.*

[FR Doc. 2022–05599 Filed 3–16–22; 8:45 am]

**BILLING CODE 8011–01–P**

[14] *Supra* note 8. *See also* SR–CboeBZX–2022–016 (filed March 4, 2022) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to allow certain series of Tracking Fund shares to include select securities from the universe from which a Fund's investments are selected in the Fund's Tracking Basket and utilize Custom Baskets).

[15] *Supra* notes 4 and 5.

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange satisfied this requirement.

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 240.19b–4(f)(6)(iii).

[21] *See* Securities Exchange Act Release No. 93147, *supra* note 8.

[22] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 17 CFR 200.30–3(a)(12).

## DEPARTMENT OF STATE

**[Public Notice: 11682]**

### Determination Under Section 506(A)(1) of the Foreign Assistance Act of 1961 To Provide Immediate Military Assistance to the Lebanese Armed Forces

Pursuant to the authority vested in me by section 506(a)(1) of the Foreign Assistance Act of 1961 (FAA) (22 U.S.C. 2318(a)(1)) and Presidential Delegation of Authority dated September 7, 2021, I hereby determine that an unforeseen emergency exists which requires immediate military assistance to the Lebanese Armed Forces. I further determine that these requirements cannot be met under the authority of the Arms Export Control Act or any other provision of law.

I, therefore, direct the drawdown of up to $22 million in defense articles and services of the Department of Defense under the authority of section 506(a)(1) of the FAA to provide immediate assistance to the Lebanese Armed Forces. The Department of State will coordinate implementation of this drawdown.

This determination shall be reported to Congress and published in the **Federal Register**.

Dated: September 22, 2021.

**Antony J. Blinken,**

*Secretary of State.*

**Editorial Note:** This document was received for publication by the Office of the Federal Register on March 11, 2022.

[FR Doc. 2022–05593 Filed 3–16–22; 8:45 am]

**BILLING CODE 4710–25–P**

## DEPARTMENT OF STATE

**[Public Notice: 11681]**

### Determination Under Section 552(C)(2) of the Foreign Assistance Act of 1961 To Provide Commodities and Services for Assistance to the Lebanese Armed Forces

Pursuant to the authority vested in me by section 552(c)(2) of the Foreign Assistance Act of 1961 (FAA) (22 U.S.C. 2348a(c)(2)) and Presidential Delegation of Authority dated September 7, 2021, I hereby determine that, as the result of an unforeseen emergency, the immediate provision of assistance under chapter 6 of part II of the FAA in amounts in excess of funds otherwise available for such assistance is important to the national interests of the United States.

I, therefore, direct the drawdown of up to $25 million in commodities and services from the inventory and resources of any agency of the U.S. government under the authority of section 552(c)(2) of the FAA to provide immediate assistance to the Lebanese Armed Forces. The Department of State will coordinate implementation of this drawdown. This determination shall be reported to Congress and published in the **Federal Register**.

Dated: September 22, 2021.

**Antony J. Blinken,**

*Secretary of State.*

**Editorial note:** This document was received for publication by the Office of the Federal Register on March 11, 2022.

[FR Doc. 2022–05592 Filed 3–16–22; 8:45 am]

**BILLING CODE 4710–25–P**

## DEPARTMENT OF STATE

**[Public Notice: 11680]**

### Update on Report to Congress Pursuant to Section 353(d)(1)(A) of the United States—Northern Triangle Enhanced Engagement Act

**ACTION:** Notice of report.

**SUMMARY:** This document, submitted to the Congress on March 9, 2022, provides an update to the State Department's report to Congress regarding persons in El Salvador, Guatemala, Honduras, and Nicaragua: Foreign persons determined to have knowingly engaged in actions that undermine democratic processes or institutions; foreign persons determined to have knowingly engaged in significant corruption; and foreign persons determined to have knowingly engaged in obstruction of investigations into such acts of corruption, including the following: Corruption related to government contracts; bribery and extortion; the facilitation or transfer of the proceeds of corruption, including through money laundering; and acts of violence, harassment, or intimidation directed at governmental and nongovernmental corruption investigators. On November 10, 2021, the President signed the Reinforcing Nicaragua's Adherence to Conditions for Electoral Reform (RENACER) Act adding Nicaragua to the countries whose citizens are subject to the Section 353 Corrupt and Undemocratic Actors list.

**SUPPLEMENTARY INFORMATION:**

Update to Report to Congress on Foreign Persons who have Knowingly Engaged in Actions that Undermine Democratic Processes or Institutions, Significant Corruption, or Obstruction of Such Corruption in El Salvador, Guatemala, Honduras, and Nicaragua, Pursuant to Section 353(b) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2021 (Div. FF, Pub. L. 116–260, as amended) Consistent with Section 353(b) of the United States—Northern Triangle Enhanced Engagement Act (Div. FF, Pub. L. 116–260) (the Act), as amended, this report update is being submitted to the House Foreign Affairs Committee, Senate Foreign Relations Committee, House Committee on the Judiciary, and the Senate Committee on the Judiciary.

Section 353(b) requires the submission of a report that identifies the following persons in El Salvador, Guatemala, Honduras, and Nicaragua: (1) Foreign persons determined to have knowingly engaged in actions that undermine democratic processes or institutions; (2) foreign persons determined to have knowingly engaged in significant corruption; and (3) foreign persons determined to have knowingly engaged in obstruction of investigations into such acts of corruption, including the following: Corruption related to government contracts; bribery and extortion; the facilitation or transfer of the proceeds of corruption, including through money laundering; and acts of violence, harassment, or intimidation directed at governmental and nongovernmental corruption investigators. On November 10, 2021, the President signed the Reinforcing Nicaragua's Adherence to Conditions for Electoral Reform (RENACER) Act, adding Nicaragua to the countries whose citizens are subject to Section 353.

Under Section 353, foreign persons identified under the Act are generally ineligible for visas and admission to the United States. Section 353 further requires that foreign persons identified under the Act shall have their visas revoked immediately and any other valid visa or entry documentation cancelled. Consistent with Section 353(g), this report update will be published in the **Federal Register**.

This report update includes individuals for whom the Department is aware of credible information or allegations of the conduct at issue, from media reporting and other sources. The Department will continue to review the individuals listed in the report and consider all available tools to deter and disrupt corrupt and undemocratic activity in El Salvador, Guatemala, Honduras, and Nicaragua. The Department also continues to actively review additional credible information and allegations concerning corruption or undemocratic activity and to utilize

all applicable authorities, as appropriate, to ensure corrupt or undemocratic officials are denied safe haven in the United States. In light of the new statutory authority provided by RENACER, this update to the report identifies individuals in Nicaragua specifically who have knowingly engaged in actions that undermine democratic processes or institutions.

**Nicaragua**

Cairo Melvin Amador, current Vice President of the Supreme Electoral Council (CSE), undermined democratic processes or institutions by conspiring with the Ortega-Murillo regime to undermine Nicaragua's political institutions and subvert the November 2021 national election by disqualifying legitimate opposition parties and candidates on spurious grounds.

Lumberto Ignacio Campbell Hooker, current member of CSE and Acting President of the CSE from 2018 until May 2021, undermined democratic processes or institutions by conspiring with the Ortega-Murillo regime to undermine Nicaragua's political institutions and subvert the November 2021 national election by disqualifying legitimate opposition parties and candidates on spurious grounds.

Edwin Ramon Castro Rivera, member of the Nicaraguan National Assembly since 1997 and head of the FSLN caucus since 2007, undermined democratic processes or institutions by ensuring Ortega-Murillo loyalists won all magistrate positions in the CSE and ensuring the passage of extremely broad legislation that the Ortega-Murillo regime used to exclude opposition candidates and parties and harass and jail political opponents.

Karen Vanessa Chavarria Morales, current judge in the ninth district in Managua, undermined democratic processes or institutions by abusing her authority and subverting legal processes to take action against political opponents of the Ortega-Murillo regime and disqualify opposition candidates from the November 2021 election.

Walmaro Antonio Gutierrez Mercado, current member of the Nicaraguan National Assembly, undermined democratic processes or institutions by giving the Ortega-Murillo regime the tools to conduct its brazen assault on democracy by stacking the CSE with FSLN members loyal to Ortega and by helping ensure the passage of extremely broad legislation that the regime used to exclude opposition candidates and parties and harass and jail political opponents.

Carlos Wilfredo Navarro Moreira, current member of the Nicaraguan National Assembly, undermined democratic processes or institutions by giving the Ortega-Murillo regime the tools to conduct a brazen assault on democracy by stacking the CSE with FSLN members loyal to Ortega and by helping ensure the passage of extremely broad legislation that the regime has used to exclude opposition candidates and parties and harass and jail political opponents.

Maria Haydee Osuna Ruiz, current member of the Nicaraguan National Assembly, undermined democratic processes or institutions by conspiring with the Ortega-Murillo regime to subvert the November 2021 Nicaraguan national elections by signing a spurious complaint that served as pretext for the government to disqualify the last remaining legitimate opposition party and hound its leader into exile.

Gustavo Eduardo Porras Cortes, current President of the Nicaraguan National Assembly, undermined democratic processes or institutions by giving the Ortega-Murillo regime the tools to conduct its brazen assault on democracy by stacking the CSE with Sandinista members loyal to Ortega and by helping ensure the passage of extremely broad legislation that the Ortega-Murillo regime used to exclude opposition candidates and parties and harass and jail political opponents.

Brenda Isabel Rocha Chacon, current President of the CSE, undermined democratic processes or institutions by conspiring with the Ortega-Murillo regime to undermine Nicaragua's political institutions and subvert the November 2021 national election by disqualifying legitimate opposition parties and candidates on spurious grounds.

Dated: March 8, 2022.

**Brian P. McKeon,**

*Deputy Secretary of State for Management and Resources.*

[FR Doc. 2022–05589 Filed 3–16–22; 8:45 am]

**BILLING CODE 4710–29–P**

## TENNESSEE VALLEY AUTHORITY

### Agency Information Collection Activities: Information Collection Renewal; Comment Request

**AGENCY:** Tennessee Valley Authority.

**ACTION:** 60-Day notice of submission of information collection renewal approval and request for comments.

**SUMMARY:** The proposed information collection renewal described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995. The Tennessee Valley Authority is soliciting public comments on this proposed collection renewal.

**ADDRESSES:** Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Public Information Collection Clearance Officer: Jennifer A. Wilds, Specialist, Records Compliance, Tennessee Valley Authority, 400 W Summit Hill Dr., CLK–320, Knoxville, TN 37902–1401; telephone (865) 632–6580 or by email *pra@tva.gov.*

**DATES:** Comments should be sent to the Public Information Collection Clearance Officer no later than May 16, 2022.

**SUPPLEMENTARY INFORMATION:**

*Type of Request:* Renewal with minor modification.

*Title of Information Collection:* Section 26a Permit Application.

*OMB Control Number:* 3316–0060.

*Current Expiration Date:* June 30, 2022.

*Frequency of Use:* On occasion.

*Type of Affected Public:* Individuals or households, state or local governments, farms, businesses, or other for-profit, Federal agencies or employees, non-profit institutions, small businesses or organizations.

*Small Businesses or Organizations Affected:* Yes.

*Federal Budget Functional Category Code:* 455.

*Estimated Number of Annual Responses:* 2,600.

*Estimated Total Annual Burden Hours:* 5,200.

*Estimated Average Burden Hours per Response:* 2.0.

*Need For and Use of Information:* TVA Land Management activities and Section 26a of the Tennessee Valley Authority Act of 1933, as amended, require TVA to collect information relevant to projects that will impact TVA land and land rights and review and approve plans for the construction, operation, and maintenance of any dam, appurtenant works, or other obstruction affecting navigation, flood control, or public lands or reservations across, along, or in the Tennessee River or any of its tributaries. The information is collected via paper forms and/or electronic submissions (*e.g.,* Joint Application Form (TVA Form 17423), Section 26a Permit and Land Use Application: Applicant Disclosure Form (TVA Form 17423A), Tennessee Valley Authority Floating Cabin Registration Form (TVA Form 21158), Tennessee Valley Authority Floating Cabin Electrical Inspection Form (TVA Form 21382), and Tennessee Valley Authority

Floating Cabin Wastewater Discharge Certification Form (TVA Form 21383) and/or electronic submissions. The information is used to assess the impact of the proposed project on TVA land or land rights and statutory TVA programs to determine if the project can be approved. Rules for implementation of TVA's Section 26a responsibilities are published in 18 CFR part 1304.

**Rebecca L. Coffey,**

*Agency Records Officer.*

[FR Doc. 2022–05647 Filed 3–16–22; 8:45 am]

**BILLING CODE 8120–08–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

**[Docket No. FHWA–2022–0003]**

### Agency Information Collection Activities: Request for Comments for a New Information Collection

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under Supplementary Information. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

**DATES:** Please submit comments by May 16, 2022.

**ADDRESSES:** You may submit comments identified by DOT Docket ID FHWA 2022–0003 by any of the following methods:

*Website:* For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

*Fax:* 1–202–493–2251.

*Mail:* Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

*Hand Delivery or Courier:* U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Petty, Office of Planning (HEPP–1), 202–366–6654, and Spencer Stevens, Office of Planning (HEPP–20), 202–366–6221, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

*Title:* Survey of Metropolitan Planning Organizations and State Departments of Transportation Regarding Practices for Incorporating Equity and Meaningful Public Involvement in Transportation Planning and Project Decision-Making.

*Background:* The U.S. Department of Transportation (DOT, or ''the Department'') is committed to pursuing a comprehensive approach to advancing equity for all. In response to Executive Order 13985: Advancing Racial Equity and Support for Underserved Communities through the Federal Government (86 FR 7009), DOT is working to expand access and opportunity to all communities while focusing on underserved, overburdened, and disadvantaged communities.

One focus area for DOT relates to the Department's programmatic enforcement of Title VI of the Civil Rights Act (DOT Order 1000.12C), including emphasizing agency review of the potential discriminatory impacts of plans, investment programs, and projects to prevent disparate impacts on protected classes, and empower communities, including limited English proficient communities, in transportation decision-making (49 CFR 21.5, 21.7, 21.9 and 28 CFR 406).

FHWA plans to conduct a survey of all State departments of transportation (State DOTs) and metropolitan planning organizations (MPOs) to better understand how these agencies consider equity and comply with Title VI in transportation planning and programming activities. This will include questions about how each State DOT or MPO is using quantitative data or tools to analyze equity factors for transportation plans and investment programs, as well as how each agency provides a meaningful and representative role to members of all communities, including underserved and limited English proficient communities, in shaping these plans and programs (28 CFR 407).

Information from the survey will be used to inform future research products and capacity-building activities for State DOTs and MPOs, to help them improve practices related to equity and meaningful public involvement in transportation planning and programming. Survey responses may also inform future revisions to existing guidance, or the development of new guidance, to DOT funding recipients on meeting the requirements of Title VI of the Civil Rights Act, the National Environmental Policy Act, transportation planning and programming, or other legal or regulatory requirements that relate to transportation equity and public involvement.

FHWA plans to conduct the survey on a voluntary-response basis, utilizing an electronic survey platform. This is planned as a one-time information collection, and FHWA estimates that the survey will take approximately one hour to complete. The survey will consist of both multiple-choice and short-answer question formats.

*Respondents:* 52 State DOTs and approximately 405 MPOs.

*Frequency:* Once.

*Estimated Average Burden per Response:* Approximately 60 minutes per respondent.

*Estimated Total Annual Burden Hours:* Approximately 457 hours.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; 23 U.S.C. 134 and 135; and 23 CFR chapter 1, subchapter E, part 450.)

Issued On: March 11, 2022.

**Michael Howell,**

*Information Collection Officer.*

[FR Doc. 2022–05575 Filed 3–16–22; 8:45 am]

**BILLING CODE 4910–22–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2021–0058]**

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Event Data Recorders

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Notice and request for comments on an existing collection in use without an OMB Control Number.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) abstracted below will be submitted to the Office of Management and Budget (OMB) for review and approval. The ICR describes the nature of the information collection and its expected burden. This ICR is for approval of an existing collection in use without an OMB Control Number on event data recorders (EDRs). A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on August 26, 2021. Four comments were received in response to the notice.

**DATES:** Comments must be submitted on or before April 18, 2022.

**ADDRESSES:** Written comments and recommendations for the proposed information collection, including suggestions for reducing burden, should be submitted to the Office of Management and Budget at *www.reginfo.gov/public/do/PRAMain.* To find this particular information collection, select ''Currently under Review—Open for Public Comment'' or use the search function.

**FOR FURTHER INFORMATION CONTACT:** For additional information or access to background documents, contact Carla Rush, U.S. Department of Transportation, NHTSA, 202–366–4583, 1200 New Jersey Avenue SE, West Building, Room W43–417, NRM–100, Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501 *et seq.*), a Federal agency must receive approval from the Office of Management and Budget (OMB) before it can collect certain information from the public, it and a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. In compliance with these requirements, this notice announces that the following information collection request will be submitted to OMB.

*Title:* Event Data Recorders.

*OMB Control Number:* New.

*Type of Request:* Approval of an existing collection in use without an OMB Control Number.

*Type of Review Requested:* Regular.

*Length of Approval Requested:* Three years.

*Summary of the Collection of Information:* 49 CFR part 563, Event data recorders, specifies uniform, national requirements for vehicles voluntarily equipped with EDRs concerning the collection, storage, and retrievability of onboard motor vehicle crash event data. More specifically it requires voluntarily installed EDRs in vehicles with a gross vehicle weight rating (GVWR) of 3,855 kilograms (8,500 pounds) or less to:

- Record 15 essential data elements;
- Record up to 30 additional data elements if the vehicle is equipped to record these elements;
- Record these data elements in a standardized format, with specifications for range, accuracy, resolution, sampling rate, recording duration, and filter class;
- Function after full-scale vehicle crash tests specified in FMVSS Nos. 208 and 214; and
- Have the capacity to record two events in a multi-event crash.

In addition, part 563 requires vehicle manufacturers to make a retrieval tool for the EDR information commercially available, and include a standardized statement in the owner's manual indicating that the vehicle is equipped with an EDR and describing its purpose. Part 563 helps ensure that EDRs record, in a readily usable manner, data valuable for effective crash investigations and for analysis of safety equipment performance (*e.g.,* advanced restraint systems).

*Description of the Need for the Information and Proposed Use of the Information:* Under 49 U.S.C. 322(a), the Secretary of Transportation (the ''Secretary'') is authorized to prescribe regulations to carry out the duties and powers of the Secretary. One of the duties of the Secretary is to administer the National Traffic and Motor Vehicle Safety Act, as amended. The Secretary has delegated the responsibility for carrying out the National Traffic and Motor Vehicle Safety Act to NHTSA.[1] Two statutory provisions, 49 U.S.C. 30182 and 23 U.S.C. 403, authorize NHTSA to collect motor vehicle crash data to support its safety mission. NHTSA collects motor vehicle crash information under these authorities to support its statutory mandate to establish motor vehicle safety standards and reduce the occurrence and cost of traffic crashes.[2] NHTSA also utilizes crash data in the enforcement of motor vehicle safety recalls and other motor vehicle highway safety programs that reduce fatalities, injuries, and property damage caused by motor vehicle crashes. In 2006, NHTSA exercised its general authority to issue such rules and regulations as deemed necessary to carry out Chapter 301 of Title 49, United States Code to promulgate 49 CFR part 563.[3]

NHTSA issued part 563 to improve crash data collection by standardizing data recorded on EDRs to help provide a better understanding of the circumstances in which crashes and injuries occur, which will in turn lead to the development of safer vehicle designs. EDR data are used to improve the quality of crash data collection to assist safety researchers, vehicle manufacturers, and the agency in crash investigations to understand vehicle crashes better and more precisely. Similarly, vehicle manufacturers are able to utilize EDRs in improving vehicle designs and developing more effective vehicle safety countermeasures, and EDR data may be used by Advanced Automatic Crash Notification (AACN) systems to aid emergency response teams in assessing the severity of a crash and estimating the probability of serious injury.

Additionally, the agency's experience in handling unintended acceleration and pedal entrapment allegations has demonstrated that, if a vehicle is equipped with an EDR, the data from that EDR can improve the ability of both the agency and the vehicle's manufacturer to identify and address safety concerns associated with possible defects in the design or performance of the vehicle.

*60-Day Notice:* A **Federal Register** notice with a 60-day comment period soliciting public comments on the following information collection was published on August 26, 2021 (86 FR 47719). Four comments were submitted in response to the notice. The commenters were the Insurance Institute for Highway Safety and Highway Loss Data Institute, the National Association of Mutual Insurance Companies, Advocates for Highway and Auto Safety, and the Center for Auto Safety. All commenters supported the information collection;

[1] 49 U.S.C. 105 and 322; delegation of authority at 49 CFR 1.95.

[2] See 49 U.S.C. 30101 and 30111.

[3] 71 FR 50997, August 28, 2006.

however, the comments did not address the estimated cost and hour burden of this information collection. The comments instead made recommendations unrelated to this information collection for NHTSA to mandate event data recorders and expand the number of data elements required in part 563 and to make the data available to the public for certain vehicles. These comments, however, cannot be addressed by this process of seeking approval for the information collection for the current part 563. NHTSA also notes that the Driver Privacy Act of 2015 assigns ownership of EDR data to the vehicle owner, provides limitations on data retrieval from EDR data, and generally prohibits access to EDR data with specific exceptions to this general rule.

*Affected Public:* The respondents are manufacturers that voluntarily equip passenger cars, multipurpose passenger vehicles, trucks, and buses having a GVWR of 3,855 kg (8,500 pounds) or less and an unloaded vehicle weight of 2,495 kg (5,500 pounds) with EDRs.

*Estimated Number of Respondents:* The agency estimates that there are approximately 18 manufacturers of vehicles subject to part 563.

*Estimated Total Annual Burden Hours:* NHTSA estimates that there are no annual reporting or recordkeeping burdens associated with part 563, except for the owner's manual statement requirement which will be incorporated into the consolidated owner's manual requirements information collection (OMB Control Number 2127–0541). Vehicle manufacturers are not required to retain or report information gathered by EDRs because the devices themselves continuously monitor vehicle systems and determine when to record, retain, and/or overwrite information. The information is collected automatically by electronic means. Data are only required to be locked and cannot be overwritten when a recordable event occurs (*e.g.,* an air bag deploys in a crash event). When recordable events do occur, EDRs only capture data for a few seconds. NHTSA estimates that there is no annual hourly burden associated with the information standardization requirements of part 563.

*Estimated Total Annual Burden Cost:* In the August 2006 final rule, the agency estimated that the costs associated with the final rule were negligible. Several factors contributed to this determination. First, NHTSA estimated that about 64 percent of new light vehicles in 2005 already added the EDR capability to the vehicles' existing air bag control systems. Thus, the EDRs were simply capturing information that was already being processed by the vehicle. Additionally, in the final rule the agency sought to limit the number of EDR data elements and associated requirements to the minimum necessary to achieve our stated purposes. At that time, NHTSA determined that the industry's current state-of-the-art EDRs largely met the purposes of part 563. Thus, it was unnecessary to specify requirements for additional sensors or other hardware that would increase EDR costs appreciably. NHTSA stated in the final rule that the most significant technology cost could result from the need to upgrade data storage.

The cost of data storage, long-term or short-term, has drastically reduced over the years.[4] Regardless of the storage type, costs are now a fraction of what they were even 10 years ago.[5] A recent study from NHTSA looking at EDR technologies reported that information provided by industry indicated that a typical recorded event requires about 2 kilobytes (Kb) of memory depending on the manufacturer.[6] Information from manufacturers also indicated that the typical microprocessor used in vehicle applications, in approximately the 2013 timeframe, had 32 Kb or 64 Kb of flash data as part of the air bag control module (ACM) and that only a fraction of the memory is dedicated to the EDR data. This study also estimated the total memory usage for all Table I and Table II data elements, listed at 49 CFR 563.7, recorded for the minimum required duration and frequency requirements in part 563. It reported that to record Table I and II data elements would require 0.072 Kb and 0.858 Kb of memory storage, respectively.

In addition, NHTSA now estimates that 99.5 percent of model year 2021 light vehicles have a compliant EDR, meaning manufacturers have largely already incurred the cost of meeting the part 563 requirements. Given that EDRs are installed on nearly all new light vehicles, the large amount of storage that is part of the air bag control module (32 kb or 64 kb), the small fraction required for EDR data (<1 kb), and the negligible costs for data storage, NHTSA continues to believe that there would be no additional costs or negligible costs associated with the part 563 requirements. Therefore, the cost burden for this collection of information is discussed qualitatively.

Part 563 only applies to vehicles voluntarily-equipped with EDRs. Therefore, any burden is based on the differences in cost between a compliant and non-compliant EDR. In considering additional burden for compliant EDRs, NHTSA considered: (1) The additional burden of meeting the 10-day data crash survivability requirement; and (2) the additional burden of meeting the data format requirements. Part 563 requires that an EDR must function during and after the compliance tests specified in FMVSS Nos. 208 and 214. The EDR's stored data is required to be downloadable 10 days after the crash tests. This requirement provides a basic functioning and survivability level for EDRs, but does not ensure that EDRs survive extremely severe crashes, fire, or fluid immersion. The burden for data survivability can include costs for an additional power supply and enhancements for computer area network (CAN) such as wiring, data bus, and harness. However, before part 563 was established the agency had not documented an EDR survivability problem except in rare and extremely severe events such as fire and submergence. Thus, the agency does not believe vehicle manufacturers incur additional costs to comply with the ability to retrieve the essential data elements 10 days after the crash test.

With regard to the memory capacity required to meet the part 563 data requirements, due to proprietary concerns, the adequacy of existing memory capacity of part 563 non-compliant vehicles is not known. However, we believe that the part 563 requirements are comparable to the current industry EDR practices. In terms of the burden associated with software algorithm changes to meet the data format requirements, the agency believes that, in the event a vehicle manufacturer needs to redesign their software algorithm, the redesign would be minor (*e.g.,* changing the specifications in their codes). The agency estimates that the cost of algorithm redesign would be negligible on a per vehicle basis and it would be an upfront cost (*i.e.,* not a recurring burden).

*Public Comments Invited:* You are asked to comment on any aspects of this information collection, including (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

[4] *https://www.computerworld.com/article/3182207/cw50-data-storage-goes-from-1m-to-2-cents-per-gigabyte.html.*

[5] *https://hblok.net/blog/posts/2017/12/17/historical-cost-of-computer-memory-and-storage-4/.*

[6] DOT HS 812 929, *https://www.nhtsa.gov/document/light-vehicle-event-data-recorder-technologies.*

(c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; 49 CFR 1.49; and DOT Order 1351.29.)

**Raymond R. Posten,**

*Associate Administrator for Rulemaking.*

[FR Doc. 2022–05570 Filed 3–16–22; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Covered Savings Associations

**AGENCY:** Office of the Comptroller of the Currency, Treasury (OCC).

**ACTION:** Notice and request for comment.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on an information collection renewal as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning the renewal of its information collection titled ''Covered Savings Associations.'' The OCC also is giving notice that it has sent the collection to OMB for review.

**DATES:** Comments must be received by April 18, 2022.

**ADDRESSES:** Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, 1557–0341, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

*Instructions:* You must include ''OCC'' as the agency name and ''1557–0341'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Written comments and recommendations for the proposed information collection should also 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.

On January 5, 2022, the OCC published a 60-day notice for this information collection, 87 FR 538. You may review comments and other related materials that pertain to this information collection following the close of the 30-day comment period for this notice by the method set forth in the next bullet.

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Hover over the ''Information Collection Review'' tab and click on ''Information Collection Review'' drop-down menu. From the ''Currently under Review'' drop-down menu, select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0341'' or ''Covered Savings Associations.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.
- For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

**FOR FURTHER INFORMATION CONTACT:** Shaquita Merritt, OCC Clearance Officer, (202) 649–5490, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. The OCC asks that OMB extend its approval of the information collection requirements in this notice.

*Abstract:* The Home Owners' Loan Act (HOLA), as amended by the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), allows a Federal savings association (FSA) with total consolidated assets of $20 billion or less, as of December 31, 2017, to elect to operate as a covered savings association (CSA). This section of HOLA requires the OCC to issue rules that, among other things, establish streamlined standards and procedures for FSA elections to operate as CSAs and clarify the requirements for the treatment of CSAs. A CSA has the same rights and privileges as a national bank and is subject to the same duties and restrictions as a national bank.

Twelve CFR part 101 allows FSAs to elect national bank powers and operate as CSAs. An FSA seeking to operate as a CSA is required, under 12 CFR 101.3(a), to submit a notice making an election to the OCC that: (1) Is signed by a duly authorized officer of the FSA; and (2) identifies and describes any nonconforming subsidiaries, assets, or activities that the FSA operates, holds, or conducts at the time it submits its notice.

Under 12 CFR 101.5(a), the OCC may require a CSA to submit a plan to divest, conform, or discontinue a nonconforming subsidiary, asset, or activity.

A CSA may submit a notice to terminate its election to operate as a CSA under 12 CFR 101.6 using procedures similar to those for an election. In addition, an FSA that has terminated its election to operate as a CSA may, after a period of five years, submit a notice under 12 CFR 101.7 to reelect using the same procedures used for its original election.

*Title of Collection:* Covered Savings Associations.

*OMB Control No.:* 1557–0341.

*Election, Termination, Reelection:*

*Estimated Number of Respondents:* 267.

*Estimated Burden per Respondent:* 1 hour.

*Estimated Annual Burden:* 267 hours.

*Plan to Divest:*

*Estimated Number of Respondents:* 25.

*Estimated Burden per Respondent:* 2 hours.

*Estimated Annual Burden:* 50 hours.

*Total Annual Burden:* 317 hours.

On January 5, 2022, the OCC published a 60-day notice for this information collection, 87 FR 538. No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimates of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

**Theodore J. Dowd,**

*Deputy Chief Counsel, Office of the Comptroller of the Currency.*

[FR Doc. 2022–05680 Filed 3–16–22; 8:45 am]

**BILLING CODE 4810–33–P**

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## DEPARTMENT OF THE TREASURY

## Office of Foreign Assets Control

## Notice of OFAC Sanctions Actions

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons or property that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them. Additionally, OFAC is publishing updates to the identifying information of two persons currently included on the SDN List and one person on the Non-SDN Menu Based Sanctions List.

**DATES:** See Supplementary Information section for effective date(s).

**FOR FURTHER INFORMATION CONTACT:** OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

**SUPPLEMENTARY INFORMATION:**

### Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

### Notice of OFAC Actions

A. On March 11, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked and also identified the following property as blocked under the relevant sanctions authority listed below.

**BILLING CODE 4810–AL–P**

1. AFONIN, Yuriy Vyacheslavovich (Cyrillic: АФОНИН, Юрий Вячеславович) (a.k.a. AFONIN, Yuri Vyacheslavovich; a.k.a. AFONIN, Yuri Vyacheslavovich; a.k.a. AFONIN, Yury Vyacheslavovich), Russia; DOB 22 Mar 1977; POB Tula, Russia; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(iii)(A) of Executive Order 14024 of April 15, 2021, "Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation," (E.O. 14024) for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

2. BESSONOV, Yevgeniy Ivanovich (Cyrillic: БЕССОНОВ, Евгений Иванович) (a.k.a. BESSONOV, Evgeny Ivanovich), Russia; DOB 26 Nov 1968; POB Rostov-Na-Donu, Russia; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian (individual) [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

3. KALASHNIKOV, Leonid Ivanovich (Cyrillic: КАЛАШНИКОВ, Леонид Иванович), Russia; DOB 06 Aug 1960; POB Stepnoy Dvorets, Russia; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

4. KASHIN, Vladimir Ivanovich (Cyrillic: КАШИН, Владимир Иванович), Russia; DOB 10 Aug 1948; POB Nazarevo, Ryazan Region, Russia; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

5. KOLOMEITSEV, Nikolay Vasilievich (Cyrillic: КОЛОМЕЙЦЕВ, Николай Васильевич) (a.k.a. KOLOMEITSEV, Nikolai Vasilyevich; a.k.a. KOLOMEYTSEV, Nikolay Vasilyevich), Russia; DOB 01 Sep 1956; POB Rostov Region, Russia; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

6. KURINNIY, Aleksey Vladimirovich (Cyrillic: КУРИННЫЙ, Алексей Владимирович) (a.k.a. KURINNY, Alexey Vladimirovich), Russia; DOB 18 Jan 1974; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

7. MELNIKOV, Ivan Ivanovich (Cyrillic: МЕЛЬНИКОВ, Иван Иванович), Russia; DOB 07 Aug 1950; POB Bogoroditsk, Russia; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

8. NOVIKOV, Dmitriy Georgievich (Cyrillic: НОВИКОВ, Дмитрий Георгиевич) (a.k.a. NOVIKOV, Dmitry Georgievich), Russia; DOB 12 Sep 1969; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].
   Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

9. OSADCHIY, Nikolay Ivanovich (Cyrillic: ОСАДЧИЙ, Николай Иванович) (a.k.a. OSADCHII, Nikolay; a.k.a. OSADCHY, Nikolay Ivanovich), Russia; DOB 08 Dec 1957; POB Tuapse, Russia; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

10. TAYSAEV, Kazbek Kutsukovich (a.k.a. TAISAEV, Kazbek Kutsukovich; a.k.a. TAISAYEV, Kazbek), Russia; DOB 12 Feb 1967; POB Chikola, North Ossetia, Russia; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

    Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

11. VOLODIN, Vyacheslav Victorovich (Cyrillic: ВОЛОДИН, Вячеслав Викторович), Russia; DOB 04 Feb 1964; POB Alexeevka, Saratov, Russia; nationality Russia; Gender Male; Speaker of the State Duma of the Federal Assembly of the Russian Federation; Member of Russian Security Council (individual) [UKRAINE-EO13661] [RUSSIA-EO14024].

    Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

12. ZYUGANOV, Gennady Andreyevich (a.k.a. ZYUGANOV, Gennadiy Andreevich), Russia; DOB 26 Jun 1944; POB Mymrino, Oryol, Russia; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

    Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

13. DERGUNOVA, Olga Konstantinovna (Cyrillic: ДЕРГУНОВА, Ольга Константиновна) (a.k.a. DERGUNOVA, Olga), Russia; DOB 15 May 1965; POB Moscow, Russia; nationality Russia; Gender Female; Tax ID No. 1802787483 (Russia) (individual) [RUSSIA-EO14024].

    Designated pursuant to sections 1(a)(i) and 1(a)(iii)(A) and of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy and for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

14. KULIK, Vadim Valerievich (Cyrillic: КУЛИК, Вадим Валерьевич) (a.k.a. KULIK, Vadim), Russia; DOB 14 Aug 1972; POB Nalchik, Russia; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

    Designated pursuant to sections 1(a)(i) and 1(a)(iii)(A) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy and for being or having been a leader, official, senior

executive officer, or member of the board of directors of the Government of the Russian Federation.

15. LUKYANENKO, Valerii Vasilyevich (Cyrillic: ЛУКЬЯНЕНКО, Валерий Васильевич) (a.k.a. LUKYANENKO, Valery), Russia; DOB 1955; POB Novosibirsk Oblast, Russia; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

    Designated pursuant to sections 1(a)(i) and 1(a)(iii)(A) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy and for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

16. PECHATNIKOV, Anatolii Yuryevich (Cyrillic: ПЕЧАТНИКОВ, Анатолий Юрьевич) (a.k.a. PECHATNIKOV, Anatoly), Russia; DOB 18 Aug 1969; POB Moscow, Russia; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

    Designated pursuant to sections 1(a)(i) and 1(a)(iii)(A) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy and for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

17. ANDRESOV, Yuriy Nikolaevich (Cyrillic: АНДРЕСОВ, Юрий Николаевич), Russia; DOB 1969; POB Bashkortostan, Russia; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

    Designated pursuant to sections 1(a)(i) and 1(a)(iii)(A) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy and for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

18. DIRKS, Natalia Germanova (Cyrillic: ДИРКС, Наталья Германовна) (a.k.a. DIRKS, Natalya Germanovna), Russia; DOB 17 Sep 1961; nationality Russia; Gender Female (individual) [RUSSIA-EO14024].

    Designated pursuant to sections 1(a)(i) and 1(a)(iii)(A) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy and for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

19. KONDRATENKO, Maxim Dmitrievich, Russia; DOB 31 Jul 1973; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

    Designated pursuant to sections 1(a)(i) and 1(a)(iii)(A) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy and for being or having been a leader, official, senior

executive officer, or member of the board of directors of the Government of the Russian Federation.

20. NOROV, Erkin Rakhmatovich (Cyrillic: НОРОВ, Эркин Рахматович), Russia; DOB 1954; POB Moscow, Russia; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

    Designated pursuant to sections 1(a)(i) and 1(a)(iii)(A) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy and for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

21. OSTROVSKY, Svyatoslav Evgenievich (Cyrillic: ОСТРОВСКИЙ, Святослав Евгеньевич) (a.k.a. OSTROVSKIY, Svyatoslav Yevgenievich), Russia; DOB 09 Mar 1979; POB Krasnodar Region, Russia; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

    Designated pursuant to sections 1(a)(i) and 1(a)(iii)(A) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy and for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

22. PYANOV, Dmitrii Vasilyevich (Cyrillic: ПЬЯНОВ, Дмитрий Васильевич) (a.k.a. PYANOV, Dmitrii Vasilevich), Russia; DOB 07 Dec 1977; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

    Designated pursuant to sections 1(a)(i) and 1(a)(iii)(A) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy and for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

23. NAVKA, Tatiana Aleksandrovna (a.k.a. NAVKA, Tatyana), 13-3-22 Bolshaya Yakimanka, Moscow 119180, Russia; Polyanka, Russia; Tretya Okhota, Russia; Rublyovka, Russia; Yalta, Crimea, Ukraine; DOB 13 Apr 1975; POB Dnipropetrovsk, Ukraine; nationality Russia; Gender Female (individual) [RUSSIA-EO14024] (Linked To: PESKOV, Dmitriy Sergeevich).

    Designated pursuant to sections 1(a)(v) of E.O. 14024 for being the spouse or adult child of Dmitriy Sergeevich Peskov, a person whose property and interests in property are blocked pursuant to section 1(a)(ii) or (iii) of E.O. 14024.

24. PESKOV, Nikolay (a.k.a. CHOLES, Nikolai; a.k.a. CHOULZ, Nikolay Dmitrievich; a.k.a. CHOULZ, Nikolay Dmitriyevich), B. Dorogomilovskaia, 7 81, Moscow 127473, Russia; DOB 03 Feb 1990; POB Moscow, Russia; nationality Russia; Gender Male; Passport 721123760 (Russia) issued 12 Sep 2012 expires 12 Sep 2022; National ID No. 4516913332 (Russia) (individual) [RUSSIA-EO14024] (Linked To: PESKOV, Dmitriy Sergeevich).

Designated pursuant to sections 1(a)(v) of E.O. 14024 for being the spouse or adult child of Dmitriy Sergeevich Peskov, a person whose property and interests in property are blocked pursuant to section 1(a)(ii) or (iii) of E.O. 14024.

25. PESKOVA, Elizaveta Dmitriyevna (a.k.a. PESKOV, Liza; a.k.a. PESKOVA, Elizaveta Dmitrievna; a.k.a. PESKOVA, Liza; a.k.a. PESKOVA, Yelizaveta), Moscow, Russia; Paris, France; Brussels, Belgium; DOB 09 Jan 1998; POB Ankara, Turkey; nationality Russia; Gender Female (individual) [RUSSIA-EO14024] (Linked To: PESKOV, Dmitriy Sergeevich).

    Designated pursuant to sections 1(a)(v) of E.O. 14024 for being the spouse or adult child of Dmitriy Sergeevich Peskov, a person whose property and interests in property are blocked pursuant to section 1(a)(ii) or (iii) of E.O. 14024.

26. VEKSELBERG, Viktor Feliksovich (Cyrillic: ВЕКСЕЛЬБЕРГ, Виктор Феликсович) (a.k.a. VEKSELBERG, Victor (Cyrillic: ВЕКСЕЛЬБЕРГ, Виктор)), Russia; DOB 14 Apr 1957; POB Drogobych, Lviv region, Ukraine; Gender Male (individual) [UKRAINE-EO13662] [RUSSIA-EO14024].

    Designated pursuant to sections 1(a)(i) and 1(a)(vii) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy and for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, the Government of the Russian Federation.

**Vessel**

1. TANGO (E5U3540) Yacht 2,083GRT Cook Islands flag; Vessel Registration Identification IMO 1010703; MMSI 518100626 (vessel) [RUSSIA-EO14024] (Linked To: VEKSELBERG, Viktor Feliksovich).

    Identified as property in which Viktor Feliksovich Vekselberg, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

**Aircraft**

1. P4-MIS; Aircraft Manufacture Date 31 May 2007; Aircraft Model Airbus A319-115; Aircraft Manufacturer's Serial Number (MSN) 3133; Aircraft Tail Number P4-MIS (aircraft) [RUSSIA-EO14024] (Linked To: VEKSELBERG, Viktor Feliksovich).

    Identified as property in which Viktor Feliksovich Vekselberg, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

B. On March 11, 2021, OFAC updated the entries on the SDN List for the following persons, whose property and interests in property subject to U.S. jurisdiction continue to be blocked under the relevant sanctions authorities listed below.

**Individual:**

1. DMITRY, Pantus Aleksandrovich (a.k.a. PANTUS, Dmitriy (Cyrillic: ПАНТУС, Дмитрий); a.k.a. PANTUS, Dzmitry), Minsk, Belarus; DOB 06 Sep 1982; POB Beryozovka, Lida District, Grodno Region, Belarus; nationality Belarus; Gender Male (individual) [BELARUS-EO14038].

-to-

PANTUS, Dmitry Aleksandrovich (a.k.a. PANTUS, Dmitriy (Cyrillic: ПАНТУС, Дмитрий); a.k.a. PANTUS, Dzmitry), Minsk, Belarus; DOB 06 Sep 1982; POB Beryozovka, Lida District, Grodno Region, Belarus; nationality Belarus; Gender Male (individual) [BELARUS-EO14038].

Designated pursuant to section 1(a)(iii) of Executive Order 14038 of August 9, 2021, "Blocking Property of Additional Persons Contributing to the Situation in Belarus," for being or having been a leader or official of the Government of Belarus.

**Entity:**

1. JOINT STOCK COMPANY MANAGEMENT COMPANY OF THE RUSSIAN DIRECT INVESTMENT FUND (Cyrillic: АКЦИОНЕРНОЕ ОБЩЕСТВО УПРАВЛЯЮЩАЯ КОМПАНИЯ РОССИЙСКОГО ФОНДА ПРЯМЫХ ИНВЕСТИЦИЙ) (a.k.a. AKTSIONERNOE OBSHCHESTVO UPRAVLYAYUSHCHAYA KOMPANIYA ROSSISKOGO FONDA PRYAMYKH INVESTITSI; a.k.a. AKTSIONERNOYE OBSHCHESTVO UPRAVLYAYUSHCHAYA KOMPANIYA ROSSIYSKOGO FONDA PRYAMYKH INVESTITSIY; f.k.a. LIMITED LIABILITY COMPANY MANAGEMENT COMPANY OF RDIF; f.k.a. OBSHCHESTVO S OGRANICHENNOY OTVETSTVENNOSTYU UPRAVLYAYUSHCHAYA KOMPANIYA RFPI (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ); a.k.a. "AO UK RFPI" (Cyrillic: "АО УК РФПИ"); a.k.a. "JSC MC RDIF"), Naberezhnaya Presnenskaya, Dom 8 Stroyeniye 1, Etaj 7, Moscow 123112, Russia (Cyrillic: Набережная Пресненская, Дом 8, Строение 1, Этаж 7, Москва 123112, Russia); Website www.rdif.ru; alt. Website www.investinrussia.com; Organization Established Date 11 Apr 2017; Organization Type: Trusts, funds and similar financial entities; Target Type Financial Institution; alt. Target Type State-Owned Enterprise; Tax ID No. 7703425673 (Russia); Government Gazette Number 15110384 (Russia); Registration Number 1177746367017 (Russia) [RUSSIA-EO14024].

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JOINT STOCK COMPANY MANAGEMENT COMPANY OF THE RUSSIAN DIRECT INVESTMENT FUND (Cyrillic: АКЦИОНЕРНОЕ ОБЩЕСТВО УПРАВЛЯЮЩАЯ КОМПАНИЯ РОССИЙСКОГО ФОНДА ПРЯМЫХ ИНВЕСТИЦИЙ) (a.k.a. AKTSIONERNOE OBSHCHESTVO

UPRAVLYAYUSHCHAYA KOMPANIYA ROSSISKOGO FONDA PRYAMYKH INVESTITSI; a.k.a. AKTSIONERNOYE OBSHCHESTVO UPRAVLYAYUSHCHAYA KOMPANIYA ROSSIYSKOGO FONDA PRYAMYKH INVESTITSIY; f.k.a. LIMITED LIABILITY COMPANY MANAGEMENT COMPANY OF RDIF; f.k.a. OBSHCHESTVO S OGRANICHENNOY OTVETSTVENNOSTYU UPRAVLYAYUSHCHAYA KOMPANIYA RFPI (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ УПРАВЛЯЮЩАЯ КОМПАНИЯ РФПИ); a.k.a. "AO UK RFPI" (Cyrillic: "АО УК РФПИ"); a.k.a. "JSC MC RDIF"), Naberezhnaya Presnenskaya, Dom 8 Stroyeniye 1, Etaj 7, Moscow 123112, Russia (Cyrillic: Набережная Пресненская, Дом 8, Строение 1, Этаж 7, Москва 123112, Russia); Website www.rdif.ru; alt. Website www.investinrussia.com; Organization Established Date 11 Apr 2017; Organization Type: Trusts, funds and similar financial entities; Target Type Financial Institution; alt. Target Type State-Owned Enterprise; Tax ID No. 7703425673 (Russia); Government Gazette Number 15110384 (Russia); Registration Number 1177746367017 (Russia) [RUSSIA-EO14024].

Designated pursuant to sections 1(a)(i) and 1(a)(vii) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy and for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, the Government of the Russian Federation.

C. On March 11, 2021, OFAC updated the entry on the Non-SDN Menu Based Sanctions List for the following entity, which remains subject to the prohibitions of Directive 3 under E.O. 14024, ''Prohibitions Related to New Debt and Equity of Certain Russia-related Entities,'' for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, the Government of the Russian Federation.

**Entity:**

1. OPEN JOINT STOCK COMPANY RUSSIAN RAILWAYS (Cyrillic: ОТРЫТОЕ АКЦИОНЕРНОЕ ОБЩЕСТВО РОССИЙСКИЕ ЖЕЛЕЗНЫЕ ДОРОГИ) (a.k.a. JSC RUSSIAN RAILWAYS (Cyrillic: ОАО РОССИЙСКИЕ ЖЕЛЕЗНЫЕ ДОРОГИ); a.k.a. RUSSIAN RAILWAYS; a.k.a. RUSSIAN RAILWAYS JSC; a.k.a. "JSC RZD"; a.k.a. "RZHD" (Cyrillic: "ОАО РЖД")), Novaya Basmannaya Street, 2, Moscow 107174, Russia (Cyrillic: ул. Новая Басманная.д.2, Москва 107174, Russia); Website www.rzd.ru; Organization Established Date 18 Sep 2003; Target Type Government Entity; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Executive Order 14024 Directive Information Subject to Directive 3 - All transactions in, provision of financing for, and other dealings in new debt of longer than 14 days maturity or new equity where such new debt or new equity is issued on or after the 'Effective Date (EO 14024 Directive)' associated with this name are prohibited.; Listing Date (EO 14024 Directive 3): 24 Feb 2022; Effective Date (EO 14024 Directive 3): 26 Mar 2022; Tax ID No. 7708503727 (Russia); Legal Entity Number 253400XX5U3XALBF5728 (Russia); Registration Number 1037739877295 (Russia) [RUSSIA-EO14024].

-to-

OPEN JOINT STOCK COMPANY RUSSIAN RAILWAYS (Cyrillic: ОТКРЫТОЕ АКЦИОНЕРНОЕ ОБЩЕСТВО РОССИЙСКИЕ ЖЕЛЕЗНЫЕ ДОРОГИ) (a.k.a. JSC RUSSIAN RAILWAYS (Cyrillic: ОАО РОССИЙСКИЕ ЖЕЛЕЗНЫЕ ДОРОГИ); a.k.a. RUSSIAN RAILWAYS; a.k.a. RUSSIAN RAILWAYS JSC; a.k.a. "JSC RZD"; a.k.a. "RZHD" (Cyrillic: "ОАО РЖД")), Novaya Basmannaya Street, 2, Moscow 107174, Russia (Cyrillic: ул. Новая Басманная.д.2, Москва 107174, Russia); Website www.rzd.ru; Organization Established Date 18 Sep 2003; Target Type Government Entity; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Executive Order 14024 Directive Information Subject to Directive 3 - All transactions in, provision of financing for, and other dealings in new debt of longer than 14 days maturity or new equity where such new debt or new equity is issued on or after the 'Effective Date (EO 14024 Directive)' associated with this name are prohibited.; Listing Date (EO 14024 Directive 3): 24 Feb 2022; Effective Date (EO 14024 Directive 3): 26 Mar 2022; Tax ID No. 7708503727 (Russia); Legal Entity Number 253400XX5U3XALBF5728 (Russia); Registration Number 1037739877295 (Russia) [RUSSIA-EO14024].

Dated: March 11, 2022.

**Andrea M. Gacki,**

*Director, Office of Foreign Assets Control, U.S. Department of the Treasury.*

[FR Doc. 2022–05619 Filed 3–16–22; 8:45 am]

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