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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 998

[Docket No. 220408–0088]

RIN 0648–BL11

Appointment of Officer Candidates and Obligated Service Requirements of Officers of the National Oceanic and Atmospheric Administration Commissioned Officer Corps

AGENCY: Office of Marine and Aviation Operations (OMAO), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce.

ACTION: Final rule.

SUMMARY: On December 23, 2020, the President signed into law the National Oceanic and Atmospheric Administration Commissioned Officer Corps Amendments Act of 2020, which amended statutory authorities relating to the appointment, promotion, benefits, obligations, and separation of commissioned officers of the National Oceanic and Atmospheric Administration Commissioned Officer Corps (NOAA Corps). This final rule provides regulations governing the qualifications, selection, appointment, terms of service, pay of officer candidates, and service obligations of the NOAA Corps.

DATES: This rule is effective June 24, 2022.

FOR FURTHER INFORMATION CONTACT: LCDR Zachary Cress, NOAA Corps, OMAO Strategic Management Division, 301–713–1045.

SUPPLEMENTARY INFORMATION:

Background

The NOAA Corps is one of the Nation's eight uniformed services and was established as the U.S. Coast and Geodetic Survey Corps on May 22, 1917. The NOAA Corps is composed of a cadre of professionals trained in engineering, earth sciences, oceanography, meteorology, fisheries science, and other related disciplines. NOAA Corps officers operate NOAA's fleet of ships, aircraft, and uncrewed systems, conduct diving operations, and serve in staff and leadership positions throughout NOAA. NOAA Corps officers use the same naval commissioned officer ranks as the U.S. Navy and U.S. Coast Guard and receive the same pay and benefits as members of the other uniformed services as authorized by Title 37 of the U.S. Code.

National Oceanic and Atmospheric Administration Commissioned Officer Corps Amendments Act of 2020

The National Oceanic and Atmospheric Administration Commissioned Officer Corps Amendments Act of 2020 (NCAA) revised provisions related to the NOAA Corps. (33 U.S.C. 3001 *et seq.*). The NCAA sets forth new requirements for the NOAA Corps including requirements concerning commissioned grades and operational strength numbers, obligated service, training and physical fitness, education loan assistance, recruitment, appointment and promotions, separation and retirement, sexual harassment and assault prevention, and other workforce issues.

Officer Candidate Appointments and Obligated Service Requirements

The majority of NOAA Corps officers must complete NOAA's Basic Officer Training Class (BOTC), which is administered by the NOAA Corps Officer Training Center and co-located with the U.S. Coast Guard Officer Candidate School, before reporting for their first active duty assignment. Currently, all officer candidates attending BOTC receive a temporary appointment as ensign (pay grade O–1) prior to receiving a permanent appointment as ensign, rather than a temporary officer candidate rank similar to other uniformed services.

33 U.S.C. 3034 authorizes the Secretary to assign a temporary officer candidate rank to individuals enrolled in BOTC and under consideration for an original appointment as an officer upon graduation from BOTC. Each officer candidate would be required to sign an agreement with the Secretary regarding the officer candidate's term of service in the NOAA Corps and agree to accept an appointment after graduating from BOTC, if tendered, and serve for four years immediately after receiving such appointment. Officer candidates who do not fulfill the term of service in the NOAA Corps would be subject to repayment requirements described in 33 U.S.C. 3006. Officer candidates enrolled in BOTC would be entitled to pay at rates equal to the basic pay of an enlisted member in the pay grade of E–5 with less than 2 years of service, rather than the pay grade of O–1, as authorized by 37 U.S.C. 203(f).

33 U.S.C. 3006 authorizes the establishment of obligated service requirements of NOAA Corps officers for appointments, training, promotions, separations, continuations, and retirements of officers not otherwise covered by law, and it requires the Secretary and officers to enter into written agreements describing the officers' obligated service requirements. This section authorizes the Secretary to require an officer who fails to meet the service requirements to reimburse the Secretary in an amount that bears the same ratio of the total costs of training provided to that officer as the unserved portion of active duty bears to the total period of active duty the officer agreed to serve.

33 U.S.C. 3071 applies certain provisions of Title 10 to members of the NOAA Corps. In particular, § 3071(a)(22) applies to NOAA Corps officers the provisions of 10 U.S.C. 2005, relating to advanced education assistance, active duty agreements, and reimbursement requirements, including the repayment provisions of 37 U.S.C. 303(e) and 373.

Pursuant to the requirements of the NCAA, OMAO is promulgating these regulations to govern the process by which officer candidates are selected and appointed. Under these regulations, NOAA Corps personnel boards will review applicants and provide recommendations to the Secretary of Commerce. Selected applicants will sign a written agreement with the Secretary regarding their terms of service, including the requirements to complete BOTC, accept an appointment as ensign upon graduation, if offered, and to then serve in the NOAA Corps for 4 years. Officer candidates or former officer candidates who do not meet these terms of service will be considered to be in

breach of their written agreement with the Secretary and subject to repayment requirements for the cost of their training.

These regulations also govern other obligated service requirements of NOAA Corps officers that are subject to repayment requirements. Under these regulations, NOAA Corps officers will be required to enter into written agreements with the Secretary to continue to serve for specified periods in exchange for training or education. In general, training greater than 60 days in length but less than 1 year will incur an active duty service obligation equal to three times the length of training. These regulations also provide fixed-term active duty service obligations for certain operational training, such as fixed-wing multi-engine pilot training.

Officer candidates, former officer candidates, and active duty NOAA Corps officers who do not meet the terms of their written agreements for BOTC, or other training or education, or who become unqualified for continued service in the NOAA Corps, will be subject to repayment and required to reimburse the government in an amount proportional to the amount of time left on their service obligation, unless waived by the Secretary. Under these regulations, an obligation to reimburse the government is a debt owed to the United States, and a discharge in bankruptcy does not discharge the individual from such debt.

The Secretary may waive service obligations for original appointments, NOAA Corps or officer training, and undergraduate assistance programs if the officer becomes unqualified to serve based on circumstances not within control of the officer, or they become physically disqualified because of a condition that was not the result of misconduct. The Secretary may also waive service obligations for civilian training or education of officers who fail to satisfy their eligibility requirements if the Secretary determines that the required repayment would be contrary to personnel policy, against equity and good conscience, or contrary to the best interest of the United States.

These regulations will take effect June 24, 2022.

Classification

Pursuant to 5 U.S.C. 553(a)(2), the provisions of the Administrative Procedure Act requiring notice of proposed rulemaking and the opportunity for public participation are inapplicable to this final rule because this rule falls within the agency management and personnel exception as it strictly regulates NOAA Corps personnel, addresses internal agency management, and affects only persons outside the agency through the formulation of hiring standards.

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

This regulation is exempt from the notice and comment provisions of the APA. Therefore, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Accordingly, no Regulatory Flexibility Analysis is required and none has been prepared.

This rule does not have any collection of information requirements under the Paperwork Reduction Act.

List of Subjects in 15 CFR Part 998

Government employees, Military personnel, Administrative practice and procedure.

Date: May 4, 2022.

Rear Admiral Nancy Lynn Hann,

Director, NOAA Corps and Office of Marine and Aviation Operations.

For the reasons set forth in the preamble, 15 CFR chapter IX is amended as follows:

■ 1. Add part 998 to read as follows:

PART 998—NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION COMMISSIONED OFFICER CORPS

Sec.

Subpart A—Administrative

Authority: 33 U.S.C. 3001 *et seq.*

§ 998.1 Definitions.

As used in this part:

Administration means the National Oceanic and Atmospheric Administration (NOAA).

Administrator means the Under Secretary of Commerce for Oceans and Atmosphere and NOAA Administrator.

ADSO means active duty service obligation.

Chain of command means the succession of commanding officers from a superior to a subordinate through which command is exercised, and the succession of officers or civilian personnel through whom administrative control is exercised, including supervision and rating of performance.

Civilian training and advanced education means education or training above the secondary school level but does not include technical training (such as maritime and aviation training provided to a member to qualify such member to perform a specified military or operational function), workshops, or short-term training programs.

Director means the Director of NOAA Corps and the Office of Marine and Aviation Operations.

Officer candidate means an individual who is enrolled in the basic officer training program of the Administration and is under consideration for appointment as an officer under the appointment authority for graduates of the basic officer training program of the commissioned officer corps of the Administration (33 U.S.C. 3021(a)(2)(A)).

NOAA Corps means the commissioned officer corps of the National Oceanic and Atmospheric Administration.

Secretary means the Secretary of Commerce.

Written agreement means an agreement entered into between the Secretary and a NOAA Corps officer or officer candidate that describes the officer's obligated service requirements in return for appointments, training, promotions, separations, continuations, and retirements as the Secretary considers appropriate.

Subpart B—Appointment of Officer Candidates of the Commissioned Officer Corps of the National Oceanic and Atmospheric Administration

Authority: 33 U.S.C. 3006, 3021, 3034; 37 U.S.C. 203(f).

§ 998.10 Appointments of officer candidates.

(a) The Secretary shall determine the number of appointments of officer candidates annually.

(b) Applicants for an appointment as an officer candidate shall meet all qualifications described in § 998.11.

(c) Selection and appointment of officer candidates shall be made according to the procedures described in § 998.12.

(d) The Secretary may dismiss any officer candidate from the NOAA Corps Basic Officer Training Class who, during the candidate's term as an officer candidate, the Secretary considers unsatisfactory in either academics or conduct, or not adapted for a career in the NOAA Corps. Officer candidates shall be subject to all rules governing discipline prescribed by the Director.

(e) Each officer candidate shall sign an agreement with the Secretary regarding the officer candidate's term of service in the NOAA Corps, which shall provide that the candidate agrees to:

(1) Complete the course of instruction of the NOAA Corps Basic Officer Training Class;

(2) Upon graduation from the Basic Officer Training Class program, accept an appointment, if tendered, to the grade of ensign; and

(3) Serve on active duty in the NOAA Corps for at least four years immediately after such appointment.

(f) An officer candidate or former officer candidate who is on active duty but who has not yet met their initial service obligation under paragraph (e)(3) of this section shall be considered to be in breach of their written agreement if they do not fulfill the terms of their service.

(g) An individual found to be in breach of their written agreement shall be subject to the repayment provisions of § 998.30.

§ 998.11 Qualifications of officer candidates.

(a) Original appointments to the NOAA Corps are made based on the qualifications of individual applicants and the needs of the NOAA Corps. Each applicant must:

(1) Be a citizen of the United States of good moral character;

(2) Be able to obtain and maintain a security clearance level of Secret;

(3) Meet physical and mental qualifications as the Secretary may direct, such as physical fitness, medical, dental, and mental examinations;

(4) Hold a baccalaureate degree, preferably in a major course of study related to NOAA's scientific or technical activities, awarded from an accredited postsecondary institution. All applicants, regardless of degree(s) awarded, must have completed at least 48 semester (72 quarter) hours in math, science, or engineering coursework pertaining to NOAA's mission unless waived by the Director based on the needs of the NOAA Corps; and

(5) Have not twice failed selection for promotion in another uniformed service.

(b) [Reserved]

§ 998.12 Selection of officer candidates.

(a) The Secretary shall prescribe the number of applicants to be selected for officer candidates and the basic qualifications necessary to fulfill the needs of the NOAA Corps.

(b) A personnel board convened pursuant to 33 U.S.C. 3022 shall review all qualified applicants and make recommendations for appointment to the Secretary and the President. Applicants shall be rated on collegiate record, work experience, references, the report of the interviewing officer, and all other available information.

(c) Upon review of the recommendations of the personnel board, the Secretary shall make those temporary appointments in the grade of officer candidate as deemed appropriate. An original appointment of an officer candidate, upon graduation from the Basic Officer Training Class program of the NOAA Corps, may not be made in any other grade than ensign.

(d) Officer candidates receiving appointments as ensigns upon graduation from the Basic Officer Training Class program shall take rank according to their proficiency as shown by the order of their merit at date of graduation.

Subpart C—Active Duty Service Obligations of NOAA Corps Officers

Authority: 10 U.S.C. 2005; 33 U.S.C. 3006, 3071(a)(22); 37 U.S.C. 303a(e), 373.

§ 998.20 Applicability.

This subpart applies to all active duty NOAA Corps officers and officer candidates.

§ 998.21 Purpose.

(a) This subpart establishes policies and procedures for the receipt, computation, and notice of ADSOs for all commissioned officers on the active duty lineal list. It also describes how multiple ADSOs incurred by the same officer are managed.

(b) The ADSOs are intended to assist the NOAA Corps in:

(1) Effectively managing its resources and workforce;

(2) Accomplishing its assigned missions;

(3) Maintaining an experienced and well-qualified officer force; and

(4) Ensuring a reasonable return to the NOAA Corps following an expenditure of public funds.

(c) Public funds are expended starting with the commissioning phase through the NOAA Corps Basic Officer Training Class and other commissioning programs. It continues when an officer enters active duty and enters training or education programs to qualify for specialized knowledge and skills.

§ 998.22 Policy.

(a) In general, individuals entering active duty in the NOAA Corps must complete at least four years of obligated service upon appointment.

(b) NOAA Corps officers who complete Government-funded or -sponsored formal education and training programs shall incur an ADSO. Officers must fulfill ADSOs before they are eligible for voluntary separation. The Director may grant a waiver of the ADSO as described in § 998.29. Officers will not be further obligated beyond the dates that ADSOs are fulfilled without their written consent. Officers who attend NOAA Corps and officer training programs, or civilian courses of instruction as stated in this Subpart may incur an ADSO for up to six years upon completion or termination from the course(s).

(c) All NOAA Corps officers shall enter into written agreements that describe the officer's obligated service requirements prescribed in this subpart in return for such Government-funded or -sponsored education and training. The written agreement shall document the total cost of training that may be subject to the repayment provisions of § 998.30.

§ 998.23 Service obligations for original appointments.

Officer candidates accepting an original appointment in the NOAA Corps upon graduation from the NOAA Corps Basic Officer Training Class as described in subpart B of this part shall incur an ADSO of 4 years.

§ 998.24 Service obligations for NOAA Corps or officer training and education.

(a) NOAA Corps officers who attend any NOAA Corps or uniformed service officer training or education whose course of instruction is longer than 60 days or produces a duty under instruction officer evaluation report for long term training shall incur an ADSO to begin upon completion of the course or termination of attendance. If the

officer does not complete the NOAA Corps or officer training, the ADSO shall still apply. The ADSO shall be calculated according to § 998.26. For the purpose of determining ADSOs, all aviation and maritime training longer than 60 days, not including the Basic Officer Training Class, shall be considered to be NOAA Corps or officer training. Exceptions to the computation standards in § 998.26 for NOAA Corps and officer training are as follows:

(1) Officers who attend initial fixed-wing multi-engine flight training shall incur a six-year ADSO upon completion of the course or termination of attendance;

(2) Officers who attend heavy aircraft flight training for the first time shall incur a four-year ADSO upon completion of the course or termination of attendance;

(3) Officers who attend heavy aircraft flight training for a second time for the purpose of qualification on new airframes shall incur a three-year ADSO upon completion of the course or termination of attendance;

(4) Officers who attend a test pilot school longer than six months (including the U.S. Naval Test Pilot School and U.S. Air Force Test Pilot School) shall incur a four-year ADSO upon completion of the course or termination of attendance; and

(5) Officers selected as candidates for the National Aeronautics and Space Administration Astronaut Corps shall incur a three-year ADSO upon the conclusion of their detail and return to the NOAA Corps.

(b) *Concurrent obligations.* An ADSO incurred under this section shall be served concurrently with an ADSO previously incurred under any other section of this part, or any other provision of law, except as provided for officers on active duty entering into an agreement for education loan repayment under § 998.27(a). When a newly incurred ADSO under this section is to be served concurrently with an existing ADSO, the obligated period will be equal to the length of the longest remaining obligation. The Commissioned Personnel Center will track each ADSO independently and notify the officer when each is fulfilled.

(c) *Consideration of NOAA Corps and officer training toward fulfillment of other service obligations.* Time spent in NOAA Corps or officer training is considered active duty service and shall be credited toward fulfilling an ADSO previously incurred under any other section of this part, or any other provision of law.

§ 998.25 Service obligations for civilian training and advanced education.

(a) *Full-time courses.* Officers who attend full-time courses at civilian institutions that are fully funded by NOAA for more than 60 days will incur an ADSO to begin upon completion of the course or termination of attendance. One ADSO will be incurred per written agreement for training or education, as provided under § 998.22. If the officer does not complete the course of instruction, the ADSO shall still apply. The ADSO shall be calculated according to § 998.26.

(b) *Part-time courses.* Officers who participate in part-time courses at civilian institutions that are fully funded by NOAA for more than 60 days will incur an ADSO upon completion of the course or termination of attendance. One ADSO will be incurred per written agreement for training or education, as provided under § 998.22. If the officer does not complete the course of instruction, the ADSO shall still apply. The ADSO will equal the length of training or education, computed in days. The length of training or education will be computed from the first day of instruction until the last day, to include breaks, weekends, holidays, and summers, regardless of whether the officer attended classes during those periods.

(c) *NOAA Leadership Competencies Development Program.* NOAA Corps officers who participate in NOAA's Leadership Competencies Development Program shall incur an ADSO of two years upon graduation from the program.

(d) *Voluntary disenrollment or disenrollment for poor performance.* If an officer voluntarily terminates their enrollment or is required to disenroll due to poor performance in a program under this section, the ADSO will be based on what would have been the expected graduation date.

(e) *Disenrollment for mission needs.* Each written agreement for civilian training or advanced education under this subpart shall provide that if an officer terminates enrollment because of a recall to meet urgent mission needs as determined by the Director, no ADSO will be incurred.

(f) *Consecutive obligations.* ADSOs resulting from more than one written agreement for civilian education under this section are to be served consecutively. For example, an officer completing a NOAA-funded graduate certificate course of instruction under one written agreement followed by a NOAA-funded master's degree under a second written agreement will incur multiple ADSOs to be served consecutively. The ADSOs will be calculated separately for each written agreement according to § 998.26. When a newly incurred ADSO is to be served consecutively with another, add the period of the new ADSO to the remaining portion of the existing ADSO. In cases where the compounded period of consecutive ADSOs exceeds six years, it will be capped at 6 years.

(g) *Concurrent obligations.* An ADSO incurred under this section can be served concurrently with an ADSO previously incurred under any other section of this part or any other provision of law. When a newly incurred ADSO under this section is to be served concurrently with an existing ADSO under another section of this part, the officer's total obligated period will be equal to the length of the longest remaining obligation. The Commissioned Personnel Center will track each ADSO independently and notify the officer when each is fulfilled.

(h) *Consideration of civilian education and training toward fulfillment of other service obligations.* Time spent at a civilian education or training program is considered active duty service and shall be credited toward fulfilling an ADSO incurred under any other section of this part or any other provision of law. The time spent attending a civilian education or training program under one written agreement will not be credited toward fulfilling an existing ADSO for a previous civilian education or training program under a previous written agreement incurred under this section.

§ 998.26 Computation of service obligations for NOAA Corps and officer training and civilian training and advanced education.

Service obligations incurred under § 998.24 and § 998.25(a) are computed as shown in this section, with the exception of fixed-period ADSOs as provided under § 998.24(a)(1) through (5). Officers may accumulate more than one ADSO from multiple obligating events. When an officer incurs an ADSO, compute the ADSO using the following rules:

(a) For obligating events that require calculation:

(1) For training greater than 60 days but equal to or fewer than 365 days:

(i) *Step 1.* Count the number of calendar days of the course of instruction using the beginning and end dates of the course, including breaks, weekends, holidays, and summers, regardless of whether the officers attended classes during those periods.

(ii) *Step 2.* Multiply the total found in Step 1 by three to get the total length of the ADSO in days.

(iii) *Step 3.* Add the number of days found in Step 2 to the end date of the training to determine the date that the ADSO will expire.

(iv) *Example.* An officer attends a semester-long civilian course of instruction that begins on January 1, 2021, and ends on May 30, 2021.

(A) *Step 1.* January 1, 2021 to May 30, 2021 = 150 training days.

(B) *Step 2.* 150 training days × 3 = 450 days, or 1 year, 85 days ADSO length.

(C) *Step 3.* May 30, 2021 + 450 days = August 23, 2022 ADSO expiration.

(2) For training greater than 365 days:

(i) *Step 1.* The first 365 days of training automatically incur three years ADSO.

(ii) *Step 2.* Count the number of additional training days from the 366th day to the end date of the course, including breaks, weekends, holidays, and summers, regardless of whether the officers attended classes during those periods.

(iii) *Step 3.* Add the number of days found in Step 2 to three years to determine the total ADSO length.

(iv) *Step 4.* Add the total ADSO length found in Step 3 to the end date of the training to determine the date that the ADSO will expire.

(v) *Example.* An officer attends a full-time civilian postgraduate program that spans three academic years, beginning on September 1, 2021 and graduating on May 31, 2024.

(A) *Step 1.* First year: September 1, 2021 to August 31, 2022 = 3 year ADSO.

(B) *Step 2.* Additional training time: September 1, 2022 to May 31, 2024 = 639 days or 1 year, 274 days.

(C) *Step 3.* 3-year ADSO + 639 days = 4 years, 274 days total ADSO length.

(D) *Step 4.* May 31, 2024 + 4 years, 274 days = March 1, 2029 ADSO expiration.

(b) The officer will ensure that supporting documents for each event are submitted to the NOAA Commissioned Personnel Center for review and verification for accurate calculation of their ADSO. The length of the ADSO shall be identified in the written agreement with the officer described in § 998.22(c).

§ 998.27 Service obligations for undergraduate assistance programs.

(a) *Education Loan Repayment Program.* An individual who enters into a written agreement to serve on active duty in the NOAA Corps as part of an education loan repayment program authorized by 33 U.S.C. 3077 shall serve one year for each maximum annual amount or portion thereof paid on behalf of the individual for qualified loans. If an individual is on active duty when entering into the agreement and has an existing ADSO, the ADSO incurred under this subsection must be served consecutively to any other existing ADSO. If an individual is not on active duty when entering into an agreement, the ADSO under this paragraph (a) may be served concurrently with an ADSO incurred under § 998.23. ADSOs incurred under § 998.24 and § 998.25 after an ADSO is incurred under this paragraph (a) may be served concurrently with the ADSO incurred under this paragraph (a).

(b) *Student Pre-Commissioning Assistance Program.* An individual entering into a written agreement for pre-commissioning education assistance authorized by 33 U.S.C. 3079 shall agree to serve on active duty for:

(1) Three years if the individual received fewer than three years of assistance; and

(2) Five years if the individual received at least three years of assistance.

(c) *Concurrent obligations.* An ADSO incurred under paragraph (b) of this section may be served concurrently with an ADSO incurred under §§ 998.23, 998.24, and 998.25.

§ 998.28 Notification and verification of active duty service obligations.

NOAA Corps officers will be informed of their ADSOs under this part as indicated:

(a) The NOAA Corps Commissioned Personnel Center shall—

(1) Maintain and make available for review to the officer a copy of the written agreement specifying the length of service obligation incurred; and

(2) Verify that officers meet the requirements of their written agreements and determine if a breach has occurred and, if so, notify the officer of such determination in writing.

(b) [Reserved]

§ 998.29 Waivers or suspension of compliance.

(a) The Secretary may waive the service obligations of an officer incurred under § 998.23, § 998.24, and § 998.27 who:

(1) Becomes unqualified to serve on active duty in the NOAA Corps because of a circumstance not within the control of that officer; or

(2) Is:

(i) Not physically qualified for appointment; and

(ii) Determined to be unqualified for service in the NOAA Corps because of a physical or medical condition that was not the result of the officer's own misconduct or grossly negligent conduct.

(b) The Secretary may waive the service obligations of an officer incurred under § 998.25 who fails to satisfy the eligibility requirements if the Secretary determines that the imposition of the repayment requirement and the termination of unpaid amounts of such assistance would be—

(1) Contrary to personnel policy or management objective;

(2) Against equity and good conscience; or

(3) Contrary to the best interest of the United States.

(c) With respect to a service obligation under § 998.27(a), the Secretary may relieve an officer's ADSO and provide an alternative obligation at the discretion of the Secretary, the terms of which will be documented in a new written agreement.

(d) The authorities provided in this part to grant waivers or exceptions will be referenced in all written agreements.

§ 998.30 Repayment for failure to satisfy service requirements.

(a) An officer who fails to satisfy eligibility requirements or to meet the service requirements prescribed in §§ 998.23, 998.24, 998.25, 998.27(a), and 998.27(b) is required to reimburse the Government in an amount that bears the same ratio of the total costs of the training or education provided to that officer as the unserved portion of active duty bears to the total period of active duty the officer agreed to serve, unless waived by the Secretary under § 998.29(a) or (b). Calculation of the total cost of training subject to repayment includes tuition and matriculation fees, library and laboratory services, purchase or rental of books, materials, and supplies, but does not include travel, lodging, salary, or other allowances otherwise entitled to the individual. The total cost shall be calculated by the NOAA Commissioned Personnel Center and included in any written agreement.

(b) An obligation to reimburse the Government under this Section is, for all purposes, a debt owed to the United States.

(c) A discharge in bankruptcy under title 11 of the U.S. Code that is entered less than 5 years after the termination of a written agreement entered into under this part does not discharge the individual signing the agreement from a debt arising under such agreement.

[FR Doc. 2022–10945 Filed 5–24–22; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM20–16–001; Order No. 881–A]

Managing Transmission Line Ratings

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Order addressing arguments raised on rehearing and clarification.

SUMMARY: The Federal Energy Regulatory Commission (Commission) addresses arguments raised on rehearing and clarifies in part Order No. 881, which revised both the *pro forma* Open Access Transmission Tariff and the Commission's regulations under the Federal Power Act to improve the accuracy and transparency of electric transmission line ratings.

DATES: As of May 25, 2022 the effective date of the document published January 13, 2022 at 87 FR 2244 is confirmed as March 14, 2022.

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SUPPLEMENTARY INFORMATION:

I. Introduction

1. On December 16, 2021, the Federal Energy Regulatory Commission (Commission) issued Order No. 881, a final rule that revised both the *pro forma* Open Access Transmission Tariff (OATT) and the Commission's regulations under the Federal Power Act (FPA) [1] to improve the accuracy and transparency of electric transmission line ratings.[2] Specifically, Order No. 881 requires: public utility transmission providers [3] to implement ambient-adjusted ratings (AAR) [4] on the transmission lines over which they provide transmission service; regional transmission organizations and independent system operators (RTO/ISO) to establish and implement the systems and procedures necessary to allow transmission owners to electronically update transmission line ratings at least hourly; public utility transmission providers to use uniquely determined emergency ratings; public utility transmission owners to share transmission line ratings and transmission line rating methodologies with their respective transmission provider(s) and with market monitors in RTOs/ISOs; and public utility transmission providers to maintain a database of transmission owners' transmission line ratings and transmission line rating methodologies on the transmission provider's Open Access Same-Time Information System (OASIS) site or other password-protected website.

2. On January 18, 2022, several entities filed requests for rehearing and/or clarification of Order No. 881.[5]

3. Pursuant to *Allegheny Defense Project* v. *FERC,* [6] the rehearing requests filed in this proceeding may be deemed denied by operation of law. However, as permitted by section 313(a) of the FPA,[7] we are modifying the discussion in Order No. 881, granting clarification in part, and continue to reach the same result in this proceeding, as discussed below.[8]

II. Discussion

4. In this order, we sustain the result of Order No. 881 and continue to find that, because transmission line ratings and the rules by which they are established are practices that directly affect the cost of wholesale energy, capacity, and ancillary services, as well as the rates for the transmission of electric energy in interstate commerce (hereinafter referred to collectively as ''wholesale rates''), inaccurate transmission line ratings result in Commission-jurisdictional rates that are unjust and unreasonable.[9] Below, we first discuss requests for rehearing and/or clarification related to the AAR requirements that the Commission adopted in Order No. 881, specifically: the requirement for transmission providers to implement AARs on all transmission lines; the impact of the AAR requirements on transmission line relays; the use of AARs 10 days forward in transmission service and operations; seasonal line rating floors; the minimum AAR temperature range and AAR granularity; and solar heating in AAR calculations. Second, we discuss requests for rehearing related to the annual recalculation of seasonal line ratings, as required by Order No. 881. Third, we discuss requests for rehearing and/or clarification related to the transparency requirements that the Commission adopted in Order No. 881, including the data sharing burden, OASIS access, and the role of independent market monitors. Lastly, we address requests for rehearing and/or clarification related to compliance and other miscellaneous issues.

A. AAR-Related Requirements of Order No. 881

1. Requirement for Transmission Providers To Implement AARs on All Transmission Lines

a. Final Rule

5. In Order No. 881, the Commission required transmission providers to apply the AAR requirements set forth in *pro forma* OATT Attachment M, as adopted in the final rule, to all transmission lines,[10] subject to certain exceptions.[11] The Commission adopted

[1] 16 U.S.C. 824e.

[2] *Managing Transmission Line Ratings,* Order No. 881, 87 FR 2244 (Jan. 13, 2022, 177 FERC ¶ 61,179 (2021).

[3] In this order, we use transmission provider to mean any public utility that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce. 18 CFR 37.3 (2021). Therefore, unless otherwise noted, ''transmission provider'' refers only to public utility transmission providers. Furthermore, the term ''public utility'' as found in section 201(e) of the FPA means ''any person who owns or operates facilities subject to the jurisdiction of the Commission under this subchapter.'' 16 U.S.C. 824(e).

[4] An ambient-adjusted rating (or AAR) is defined as a transmission line rating that: (1) Applies to a time period of not greater than one hour; (2) reflects an up-to-date forecast of ambient air temperature across the time period to which the rating applies; (3) reflects the absence of solar heating during nighttime periods where the local sunrise/sunset times used to determine daytime and nighttime periods are updated at least monthly, if not more frequently; and (4) is calculated at least each hour, if not more frequently. *See* 18 CFR 35.28(b)(12) (2021); *Pro Forma* OATT attach. M, AAR Definition.

[5] The following entities filed requests for rehearing and/or clarification: American Transmission Company (ATC); Edison Electric Institute (EEI); ITC Holdings Corp., on behalf of its operating subsidiaries, International Transmission Company, Michigan Electric Transmission Company, LLC, ITC Midwest LLC, and ITC Great Plains, LLC (collectively, ITC); MISO Transmission Owners; and Potomac Economics, Ltd., acting in its capacity as MISO's independent market monitor (Potomac Economics).

[6] 964 F.3d 1 (D.C. Cir. 2020) (en banc).

[7] 16 U.S.C. 825*l*(a) (''Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this chapter.'').

[8] *Allegheny Def. Project,* 964 F.3d at 16–17.

[9] Order No. 881, 177 FERC ¶ 61,179 at PP 3, 29.

[10] *Id.* P 83.

[11] Order No. 881 allows exceptions to the AAR and seasonal line rating requirements in instances where the transmission provider determines, consistent with good utility practice, that the transmission line rating of a transmission line is not affected by ambient air temperatures. *Id.* P 227.

these AAR requirements to improve the accuracy of transmission line ratings, which the Commission explained will cause the rates for the transmission of electric energy in interstate commerce and the sale of electric energy at wholesale in interstate commerce to more accurately reflect the cost of the wholesale service being provided (*i.e.,* energy, capacity, ancillary services, or transmission service), thereby helping to ensure that those wholesale rates are just and reasonable.[12]

6. The Commission chose not to adopt the phased-in implementation schedule proposed in the Notice of Proposed Rulemaking (NOPR) in which a transmission provider would initially implement AARs on only historically congested lines.[13] The Commission reasoned that applying the AAR requirements to all transmission lines would both ensure that wholesale rates remain just and reasonable and strike an appropriate balance between benefits and challenges of AAR implementation. The Commission also found that the record indicated that costs are mostly initial investment costs in energy management system (EMS) improvements to accommodate AARs, implementation of a ratings database, and review (and potentially reset) of protective relays settings and that, once these initial investments are made, adding AARs to additional transmission lines appears to have a minimal incremental cost.[14]

b. Request for Rehearing

7. EEI seeks rehearing of the Commission's decision to require that transmission providers implement AARs on all transmission lines on which they provide transmission service rather than prioritize implementation on historically congested transmission lines as proposed in the NOPR. EEI argues that Order No. 881 fails to support assertions that AARs will ensure that wholesale rates more accurately reflect the cost of wholesale service or that, without AARs, wholesale rates are not just and reasonable.[15]

8. EEI asserts that the Commission's primary rationale for requiring AARs on all transmission lines only supports applying the AAR requirements to congested lines.[16] EEI further asserts that the Commission failed to provide quantified support for applying AARs for near-term service outside RTOs/ISOs and that the examples the Commission relied upon to support its actions, *e.g.,* the potential for avoiding overloads, are hypothetical or anecdotal when applied broadly.[17]

9. EEI also argues that the Commission must weigh the benefits of AARs against the costs that will be incurred by requiring AAR adoption on all transmission lines (subject to a few exceptions). EEI further suggests that Order No. 881 cursorily addresses reliability concerns raised by commenters regarding this requirement without sufficiently explaining why the requirement to impose AARs on all transmission lines addresses those concerns.[18]

10. EEI also argues that the final rule does not reconcile its requirement for AARs on all transmission lines with Order No. 890,[19] which requires transmission providers ''to use data and modeling assumptions for the short- and long-term ATC calculations that are consistent with that used for the planning of operations and system planning, respectively, to the maximum extent practicable.'' EEI contends that the Commission's failure to reconcile Order No. 881 and Order No. 890 reinforces limiting the applicability of the AAR requirements to only congested transmission lines and in real-time operations or day-ahead markets.[20]

11. Finally, EEI contends that, while the exceptions to the AAR requirements are needed, they highlight why AARs should not be required on all transmission lines. For example, EEI states that Order No. 881 allows the ''temporary use of a transmission line rating different than would otherwise be required under *pro forma* OATT Attachment M [if it] is necessary to ensure safety and reliability.'' [21] EEI argues that ''reliable operation should not be addressed by exception'' and that transmission owners and transmission providers ''should be allowed the flexibility to implement AARs in a reliable manner on the specific circuits where congestion/transfer capability benefits are derived.'' [22]

c. Commission Determination

12. Having considered EEI's request for rehearing on this matter, we continue to find that requiring transmission providers to apply the AAR requirements set forth in *pro forma* OATT Attachment M to all transmission lines on which they provide transmission service, subject to certain exceptions, is just and reasonable.

13. First, in response to EEI's statement that ''the Commission assumes, without support, that AARs will ensure that wholesale rates more accurately reflect the cost of the wholesale service being provided,'' [23] we disagree. In Order No. 881, to conclude that the AAR requirements will ensure that wholesale rates are just and reasonable, the Commission relied on the ''inextricabl[e] link[ ]'' between transmission line ratings and wholesale rates.[24] That inextricable link reflects the basic economics of the transmission system; that is, the relationship between the physical system and economic fundamentals, a relationship described in detail by the Commission.[25] Consistent with those economics, the Commission explained how inaccurate transmission line ratings—both the understating of transmission capability and the overstating of transmission capability—can affect congestion and resulting wholesale rates.[26] These economic fundamentals apply to all transmission lines, not only those that have historically been congested. The Commission explained the benefit of applying the AAR requirements to all transmission lines particularly ''[g]iven the difficulty in predicting unexpected congestion before it happens.'' [27] Changes in the transmission flow will arise due to short-term and long-term changes in the physical transmission system (*e.g.,* outages and transmission line upgrades),[28] due to changes to the location and amount of generation and load, or due to unexpected events, such as extreme weather. Because such

[12] *Id.* P 83.

[13] *Id.* P 84. The Commission had proposed to define a historically congested transmission line as ''a transmission line that was congested at any time in the five years prior to the effective date of [this final rule].'' *Managing Transmission Line Ratings,* 85 FR 6420 (Jan. 21, 2021), 173 FERC ¶ 61,165, at P 92 (2020) (NOPR.)

[14] Order No. 881, 177 FERC ¶ 61,179 at P 85.

[15] EEI Request for Rehearing at 4.

[16] *Id.* at 5.

[17] *Id.*

[18] *Id.* (citing Order No. 881, 177 FERC ¶ 61,179 at PP 128–133).

[19] *Preventing Undue Discrimination and Preference in Transmission Service,* Order No. 890, 72 FR 12266 (Mar. 15, 2007), 118 FERC ¶ 61,119, *order on reh'g,* Order No. 890–A, 73 FR 2984 (Jan. 16, 2008), 121 FERC ¶ 61,297 (2007), *order on reh'g,* Order No. 890–B, 123 FERC ¶ 61,299 (2008), *order on reh'g,* Order No. 890–C, 74 FR 12540 (Mar. 25, 2009), 126 FERC ¶ 61,228, *order on clarification,* Order No. 890–D, 129 FERC ¶ 61,126 (2009).

[20] EEI Request for Rehearing at 6 (quoting Order No. 890, 118 FERC ¶ 61,119 at P 292).

[21] *Id.* at 6–7 (citing Order No. 881, 177 FERC ¶ 61,179 at P 232).

[22] *Id.*

[23] *Id.* at 4.

[24] Order No. 881, 177 FERC ¶ 61,179 at P 30.

[25] *Id.*

[26] *Id.* PP 34–35.

[27] *Id.* P 94.

[28] *Id.* (stating ''the AAR requirements adopted in this final rule are beneficial in mitigating the impact of transient congestion, *i.e.,* temporary or short-term congestion that does not occur on a regular basis, such as congestion caused by unexpected equipment outages or other unusual conditions.'').

changes may affect all transmission lines, the economic logic underlying the AAR requirements applies to all transmission lines. By establishing and relying on the basic economic logic underlying the relationship between more accurate transmission line ratings and wholesale rates,[29] the Commission had ample support to conclude that applying the AAR requirements to all transmission lines will lead to just and reasonable wholesale rates.[30]

14. As for the decision to apply the AAR requirements to all transmission lines, EEI is correct that the Commission must weigh the benefits against the burdens of applying the AAR requirements to all transmission lines. The Commission did just that. As explained in Order No. 881, the incremental cost to implement AARs on additional transmission lines—beyond those that are historically congested—once the initial costs have been incurred, is minimal.[31] EEI does not dispute this fact. By contrast, as the Commission explained in Order No. 881, extending the AAR requirements to apply to those additional transmission lines is expected to have significant value. As the Commission explained in Order No. 881 and we reiterate here, we expect that, over time, the additional congestion costs that will be alleviated through AAR implementation on all transmission lines (compared to only on historically congested transmission lines) will exceed the additional, primarily one-time, costs to implement AARs on those additional transmission lines.[32]

15. As the Commission explained in Order No. 881, AARs can help alleviate congestion costs. While the greatest initial benefit may come from implementing AARs on historically congested transmission lines, limiting implementation to such lines, would likely fail to alleviate considerable congestion costs. Generally, patterns of congestion across different transmission lines are difficult to predict. This difficulty is particularly notable during unanticipated system events, such as sudden forced outages and extreme weather, when flows may change considerably from normal operations. During such events, any increased transfer capability provided through AARs may prove valuable even on transmission lines that have not been historically congested.[33]

16. Additionally, AAR implementation itself will affect congestion patterns, as changes to transmission line ratings may change generation dispatch patterns and, by extension, congestion patterns.[34] Moreover, as the generation mix continues to evolve and new generation comes online in new locations, congestion patterns will also evolve.[35] By design, limiting AARs to only historically congested transmission lines would not address evolving transmission congestion patterns until after potentially costly congestion occurs on previously uncongested lines. For the above reasons, applying the AAR requirements to only historically congested transmission lines would not strike the right balance between the benefits and burdens of AAR implementation.

17. Indeed, the Commission provided the example in Order No. 881 of congestion costs during extreme events as compared to potential congestion cost savings due to AAR implementation. During certain single extreme events, the congestion cost savings of AAR implementation would have been substantial enough from that event alone to justify applying the AAR requirements to all transmission lines, instead of just to historically congested transmission lines. For example, in the February 2021 cold weather event, MISO, which primarily implements seasonal and static line ratings, experienced unprecedented east-to-west flows throughout its service footprint and accrued $773 million in congestion charges in just a few days, significantly in congestion patterns that were neither predicted nor typical in MISO.[36]

18. With respect to EEI's claim that the Commission provided inadequate support for applying the AAR requirements for near-term transmission service outside RTOs/ISOs,[37] we disagree. As explained above, Order No. 881 established a clear linkage between transmission line ratings and wholesale rates.[38] The Commission's reasoning applies equally in both RTOs/ISOs and non-RTO/ISO regions. While EEI criticizes the Commission's support for its determination as ''largely hypothetical,'' we note that EEI offers no additional arguments or evidence on rehearing that suggests the Commission's use of basic economic theory to support its conclusions was not reasonable.[39] Moreover, despite EEI's characterization of the supporting evidence as ''anecdotal'' and lacking ''quantified support,'' the Commission based its conclusions on substantial evidence in the record that transmission line ratings, *not transmission line ratings in RTOs/ISOs,* are practices that directly affect wholesale rates.[40]

19. We also disagree with EEI's assertion that Order No. 881 was arbitrary and capricious because it addressed reliability concerns in only a ''cursory manner,'' and that it provided for reliability ''by exception.'' [41] In Order No. 881, the Commission adopted the System Reliability section of *pro forma* OATT Attachment M, which permits a transmission provider to use a temporary alternate rating (in place of what would be otherwise required in Attachment M) if the transmission provider reasonably determines such an alternate rating is necessary to ensure the safety and reliability of the transmission system.[42] Contrary to arguments from EEI, the Commission carefully considered the impacts of the AAR requirements and established the necessary mechanisms to provide transmission owners with the flexibility to ensure safety and reliability.[43] While EEI may have preferred that the Commission adopt a more limited application of the AAR requirements, nothing in its rehearing request suggests

[29] *Sacramento Mun. Util. Dist.* v. *FERC,* 616 F.3d 520, 531 (D.C. Cir. 2010) (recognizing that it is ''perfectly legitimate for the Commission to base its findings . . . on basic economic theory''); *Assoc. Gas Distributors* v. *FERC,* 824 F.2d 981, 1008 (D.C. Cir. 1987) (''Agencies do not need to conduct experiments in order to rely on the prediction that an unsupported stone will fall.'').

[30] Order No. 881, 177 FERC ¶ 61,179 at P 29.

[31] *Id.* P 85 (citing Exelon Corporation (Exelon) Comments at 8; Indicated PJM Transmission Owner Comments at 5–6; AEP Post-Technical Conference Comments at 2–3; September 2019 Technical Conference, Day 1 Tr. at 181:4–9).

[32] *Id.* PP 93–95.

[33] *Id.* P 95.

[34] *Id.*

[35] *See, e.g.,* American Clean Power Association (ACPA) and Solar Energy Industries Association (SEIA) Joint Comments at 8, 11; Electric Power Supply Association (EPSA) Comments at 4; New England State Agencies Comments at 6.

[36] Order No. 881, 177 FERC ¶ 61,179 at P 95; Organization of MISO States, Inc. (OMS) Comments at 10; OMS Reply Comments at 7; *see* FERC, NERC and Regional Entity Staff Report, *The February 2021 Cold Weather Outages in Texas and the South Central United States* (Nov. 16, 2021), *https://www.ferc.gov/media/february-2021-cold-weather-outages-texas-and-south-central-united-states-ferc-nerc-and.*

[37] EEI Request for Rehearing at 5.

[38] Order No. 881, 177 FERC ¶ 61,179 at PP 29–34.

[39] *See supra* note 31.

[40] Order No. 881, 177 FERC ¶ 61,179 at P 31 (citing AEP Comments at 3; Ohio FEA Comments at 6; New England State Agencies Comments at 8; OMS Comments at 6; Potomac Economics Comments at 5; CAISO DMM Comments at 4; SPP MMU Comments at 1–2; R Street Institute Comments at 2; Industrial Customer Organizations Comments at 11–12; TAPS Comments at 5–6; WATT Comments at 3–5; Certain TDU Comments at 4–5; Clean Energy Parties Comments at 2–3; EDFR Comments at 3).

[41] EEI Request for Rehearing at 5–6.

[42] Order No. 881, 177 FERC ¶ 61,179 at P 228.

[43] *Id.*

that Attachment M is insufficient to protect safety and reliability.

20. In making its determination in Order No. 881, the Commission relied on the record to find that accounting for ambient air temperatures in transmission line ratings can result ''in significant *reliability,* operational, and economic benefits'' by, for example, increasing transmission line ratings and thereby affording transmission providers more options to manage load.[44] AARs correct existing occasional overestimations of transmission line ratings during periods when the actual ambient air temperature is greater than the temperature assumed when the rating was calculated.[45] As a result, implementation of AARs will lower transmission line ratings when extreme high temperature events occur, reducing the likelihood of inadvertently overloading a transmission line.[46] Moreover, consistent with PJM's and Potomac Economics' post-technical conference comments, the Commission explained that, because AARs typically increase transmission line ratings when actual temperatures are lower than long-term assumptions, the resulting increased transmission capability will provide operators additional flexibility during many hours, which promotes reliability.[47] Specifically, by increasing the ATC, system operators would have more options available to manage congestion, and potentially ameliorate system conditions during an emergency. This is consistent with the 2019 FERC and North American Electric Reliability Corporation (NERC) Staff Report on the January 2018 South Central cold weather event, which recommended adoption of transmission line ratings that better consider ambient temperature conditions.[48]

21. Finally, we disagree with EEI's contention that Order No. 881 failed to reconcile the requirements outlined in *pro forma* OATT Attachment M with the provisions adopted in Order No. 890 [49] that require transmission providers ''to use data and modeling assumptions for the short- and long-term ATC calculations that are consistent with that used for the planning of operations and system planning, respectively, to the maximum extent practicable.'' [50] In Order No. 881, the Commission acknowledged that AARs used in near-term operations will deviate from those transmission line ratings used in various planning functions.[51] However, Order No. 890 found that requirements for consistency would ''remedy the potential for undue discrimination by eliminating discretion and ensuring comparability in the manner in which a transmission provider operates and plans its system to serve *native load* and the manner in which it calculates ATC for service to *third parties.*'' [52] Since Order No. 881 imposes requirements to change the calculation of ATC by all transmission providers on all transmission lines, any resulting deviation between near-term ATC calculations and those used in modeling assumptions for various ''planning of operation and system expansion'' does not create the potential for undue discrimination and therefore does not conflict with the requirements of Order No. 890. In any event, we note that the requirement in Order No. 890 for consistent assumptions was ''to the maximum extent practicable,'' and clarify that none of the requirements in Order No. 881 require revisions to the assumptions used in the transmission planning and development contexts.[53]

2. Transmission Line Relays

a. Final Rule

22. In Order No. 881, when discussing its decision to apply the AAR requirements to all transmission lines, the Commission noted that ''any facility can become the most limiting element as the transmission system changes, and in certain circumstances flows may change considerably from normal operations.'' [54] The Commission further noted that Reliability Standard PRC–023–4 requires setting transmission line relays at values at or above 115% to 170% of various maximum values for current or power carrying capability, *e.g.,* 115% of the highest seasonal 15-minute facility rating of a circuit or 150% of the highest seasonal four-hour Facility Rating of a circuit.[55]

b. Request for Clarification

23. EEI requests clarification that compliance with the AAR requirements of Order No. 881 will require all transmission owners and transmission providers to evaluate or reevaluate all their transmission protective relay settings to ensure these new worst-case transmission line ratings will not limit transmission loadability under Reliability Standard PRC–023–4 and, wherever necessary, develop and apply new protective relay settings.[56] Specifically, EEI explains that the AAR requirements adopted in Order No. 881 are beyond PJM's current practice, despite the Commission's reliance on PJM as an example, and will require companies to conduct considerable analysis of new maximum transmission line ratings. According to EEI, that analysis of new maximum transmission line ratings, in turn, will require companies to evaluate or reevaluate all of their transmission protective relay settings to ensure compliance with Reliability Standard PRC–023–4.[57]

c. Commission Determination

24. We clarify two aspects of the AAR requirements related to transmission providers' transmission protection relay settings. First, if a transmission provider establishes higher transmission line ratings, it will have to evaluate or reevaluate its applicable protection systems for that facility. Second, we clarify that in a majority of situations the relay setting should exceed AAR values.

25. As an initial matter, we disagree with EEI that Order No. 881 requires transmission providers to evaluate or reevaluate ''*all* transmission protective relay settings to ensure worse case line ratings will not limit transmission loadability under Reliability Standard PRC–023–4.'' [58] Rather, because compliance with Reliability Standard PRC–023–4 is only applicable to a subset of protection systems, *i.e.,* phase protection systems,[59] not all transmission protection relay settings will be implicated by the requirements adopted in Order No. 881. Additionally, some transmission line ratings will qualify for an exception to the AAR

[44] *Id.* P 85 (emphasis added).

[45] *Id.* P 35.

[46] *Id.;* NOPR, 173 FERC ¶ 61,165 at P 106; Exelon Post-Technical Conference Comments at 9.

[47] *See* PJM Post-Technical Conference Comments at 2; Potomac Economics Post-Technical Conference Comments at 8.

[48] 2019 FERC and NERC Staff Report, *The South Central United States Cold Weather Bulk Electric System Event of January 17, 2018,* at 96–97 (July 2019) (2019 FERC and NERC Staff Report), *https://www.ferc.gov/sites/default/files/2020-05/07-18-19-ferc-nerc-report_0.pdf.*

[49] Order No. 890, 118 FERC ¶ 61,119.

[50] EEI Request for Rehearing at 6 (citing Order No. 890, 118 FERC ¶ 61,119 at P 292).

[51] Order No. 881, 177 FERC ¶ 61,179 at P 131.

[52] Order No. 890, 118 FERC ¶ 61,119 at P 292 (emphasis added).

[53] *Id.* P 347.

[54] Order No. 881, 177 FERC ¶ 61,179 at P 48.

[55] *Id.* P 99.

[56] EEI Request for Rehearing at 12–13.

[57] *Id.*

[58] *Id.* at 13 (emphasis added).

[59] NERC Reliability Standard PRC–023–4 only applies to transmission owners, generator owners, and distribution providers, with load-responsive phase protection systems as described in Attachment A of the Reliability Standard, for certain transmission lines and transformers (*i.e.,* those with low-voltage terminals operated or connected at 200 kV and above and between 100 kV and 200 kV as identified by the planning coordinator as critical to the reliability of the bulk electric system (BES)). Reliability Standard PRC–023–4, at 1–2, *https://www.nerc.com/pa/Stand/Reliability%20Standards/PRC-023-4.pdf.*

requirements,[60] and some transmission lines may already have implemented the AAR requirements.[61] Finally, some transmission providers have already calculated and implemented AARs for the range of local historical temperatures (over the entire period for which records are available) plus-or-minus a margin of 10 degrees Fahrenheit,[62] and thus already have relay settings evaluated or reevaluated for compliance with Order No. 881.

26. That said, outside the circumstances identified above, we clarify that, if, as a result of favorable ambient conditions, a transmission provider establishes a higher transfer capability than the currently determined maximum facility ratings, the transmission provider must evaluate its applicable protection systems for that facility in order to comply with Reliability Standard PRC–023–4 and prevent protection settings from limiting transmission loadability. In those instances, some relay settings might require changes to maintain reliability and to accommodate the additional power transfer capability based on AARs. However, relays are set to operate during abnormal conditions such as fault conditions that result in currents that are many factors higher than the maximum continuous facility rating, without limiting power/current flow under any system configuration or interfering with system operators' ability to take remedial action to protect system reliability and thus are not expected to conflict with AARs. As the Commission explained in Order No. 881, relays are set based on practical limitations (*e.g.,* 115% of the highest seasonal 15-minute Facility Rating of a circuit or 150% of the highest seasonal four-hour Facility Rating of a circuit).[63] While 115% of the highest seasonal 15-minute Facility Rating of a circuit or 150% of the highest seasonal four-hour Facility Rating of a circuit defines minimum relay settings, because relays are set to detect abnormal conditions such as fault currents that are many factors higher than the maximum rating of the facility and include a margin to account for minor system changes, transmission providers generally set relay settings above the minimum requirement. Therefore, relay settings should already exceed the minimum requirements even when accounting for new AAR values and thus, in those circumstances, should not merit new protection settings. However, we note that, in Order No. 881, the Commission inadvertently stated that relay settings ''in the majority of cases should not exceed AAR values.'' [64] We clarify that this was in error. On the contrary, relay settings in the majority of cases should exceed AAR values, meaning, as explained above, that the requirements adopted in Order No. 881 will only require new protective settings of existing relay settings where the transmission line rating increases on compliance with the final rule and that increase results in the relay setting dropping below the minimum required by Reliability Standard PRC–023–4.[65]

3. Use of AARs 10-Days Forward in Transmission Service and Operations

a. Final Rule

27. In Order No. 881, the Commission required transmission providers to use AARs as the relevant transmission line rating for transmission service that starts or ends within 10 days of the date of the request, for the curtailment or interruption of point-to-point transmission service anticipated to occur (start and end) within the next 10 days, and for the curtailment of network transmission service or secondary service or redispatch network transmission service or secondary transmission service anticipated to occur (start and end) within 10 days.[66] The Commission justified this requirement based on:

(1) the additional benefits gained by adopting a threshold that permits weekly point-to-point transmission service requests to be evaluated using AARs; (2) the additional benefits gained by the use of daytime/nighttime ratings . . . within the 10-day threshold; (3) the adequate accuracy of ambient air temperature forecasts combined with the ability to implement appropriate forecast margins to alleviate operational concerns associated with persistently decreasing real-time transmission line ratings; and (4) the low relative cost difference between a shorter forward threshold and the proposed 10-day threshold.[67]

b. Request for Rehearing

28. MISO Transmission Owners contend that the Commission ignored or failed to meaningfully respond to MISO Transmission Owners' arguments that requiring the use of AARs for a 10-day forward period could adversely impact reliability and request rehearing on this point.

29. MISO Transmission Owners argue that transmission system reliability could be jeopardized in situations where actual ambient air temperatures are higher than forecast and that, as forecasts approach 10 days, the accuracy of forecasts decreases, which in turn increases the uncertainty and accompanying risk. Specifically, MISO Transmission Owners contend that, due to the imprecise nature of weather forecasting, requiring the use of AARs for a 10-day forward period will result in RTOs/ISOs granting near-term transmission service based on inaccurate calculations of transfer capability, resulting in less accurate calculations of ATC.[68] For support, MISO Transmission Owners cite evidence from the American Meteorological Society website on the accuracy of medium range forecasts.[69] Finally, MISO Transmission Owners suggest that, by adopting this provision, the Commission ''fail[ed] the requirements of reasoned decision-making.'' [70] They contend that, when coupled with the 10-degree temperature margin requirement and the hourly AAR update requirement, this provision will be burdensome, requiring transmission owners to develop millions of data points and ratings across their systems and incorporate voluminous data into all of their market and transmission processes.[71]

c. Commission Determination

30. We sustain the determination in Order No. 881 to require the use of AARs for a 10-day forward period. As the Commission acknowledged in Order No. 881, relying on ambient air temperature forecasts necessitates

[60] Order No. 881, 177 FERC ¶ 61,179 at PP 227–228.

[61] We note that, while Order No. 881 requires more AAR calculations than are currently implemented in the PJM look-up tables, there remains the possibility that many of the transmission owners may have calculated transmission line ratings, and calibrated relay settings accordingly, for a wider range of ambient air temperatures. For example, Entergy calculates AARs for every degree of temperature change. *See* September 2019 Technical Conference, Docket No. AD19–15, Day One Tr. 157:7–15 (filed Oct. 8, 2019) (September 2019 Technical Conference, Day 1 Tr.).

[62] As described in Order No. 881, transmission facilities in this case includes overhead conductors and other transmission equipment. Specifically, the Commission defined a transmission line rating in the *pro forma* OATT Attachment M as ''the maximum transfer capability of a transmission line, computed in accordance with a written transmission line rating methodology and consistent with good utility practice, considering the technical limitations on conductors and relevant transmission equipment (such as thermal flow limits), as well as technical limitations of the transmission system (such as system voltage and stability limits). Relevant transmission equipment may include, but is not limited to, circuit breakers, line traps, and transformers.'' Order No. 881, 177 FERC ¶ 61,179 at P 44.

[63] *Id.* P 99.

[64] *Id.*

[65] *Id.*

[66] *Id.* P 104.

[67] *Id.* P 121.

[68] MISO Transmission Owners Request for Rehearing at 15–16.

[69] *Id.* at 17 & n.53.

[70] *Id.* at 13–14.

[71] *Id.* at 13.

accepting some degree of forecast error; however, we disagree that this error will jeopardize system reliability. First, recognizing that ambient air temperature forecast error exists, the Commission required in Order No. 881 that, no matter how accurate the forecast temperatures that underlie transmission providers' calculations of AARs, transmission providers must implement forecast margins to ensure sufficient confidence that actual temperatures will not be greater than the forecast temperatures.[72] Next, the Commission further established that transmission providers should re-evaluate and adjust such forecast margins if they turn out to be insufficiently or overly conservative.[73] Finally, we disagree that the potential error in temperature estimates is significant. A published analysis of the National Oceanic and Atmospheric Administration (NOAA) National Blend of Models (NBM) forecast—one of the publicly available NOAA forecasts that looks out at least 10 days—indicates that the mean absolute error for 240 hour (10 day) forward continental United States surface temperature forecasts was approximately four to six degrees Fahrenheit in July to November 2016.[74]

31. Because transmission providers must implement forecast margins, we disagree with MISO Transmission Owners that inaccurate ambient air temperature forecasts will create reliability concerns. Specifically, by incorporating forecast margins and reevaluating overly conservative forecast margins into their AAR calculations, transmission providers will account for any such forecast inaccuracies in a manner necessary to maintain system reliability. Thus, because transmission providers must use forecast margins that will account for potential inaccurate forecasts, inaccurate forecasts will *not,* as MISO Transmission Owners suggest, cause excessive real-time service curtailments. Indeed, the Commission found in Order No. 881—and we reiterate here—that although transmission providers will continue to curtail transmission at times due to unrealized ambient air temperature assumptions (just as they do today), the need for such curtailments should be *decreased* as a result of the new AAR requirements.[75]

32. Moreover, as the Commission acknowledged in Order No. 881, next day and further forward transmission scheduling already rely heavily upon weather forecasts to inform next-day load and intermittent generation availability.[76] Transmission providers have the tools to manage any congestion or potential reliability events that could arise from errors in weather forecasts. These include the ability to curtail or interrupt point-to-point transmission service under sections 13.6 and 14.7 of the *pro forma* OATT, the ability to curtail network service under section 33 of the *pro forma* OATT, and the ability to redispatch network service under sections 30.5 and 33 of the *pro forma* OATT.

33. We also disagree with MISO Transmission Owners' argument that the 10-day threshold for AARs is unduly burdensome. As the Commission found in Order No. 881, and we continue to find here, the cost associated with requiring AARs for additional days forward is essentially the cost of accessing, storing, and processing the additional forecast data, and the cost of calculating, storing, and incorporating into transmission service the additional hours of AARs.[77] As this process will likely be largely automated, we do not anticipate that the cost and implementation burden of the 10-day threshold, as opposed to a shorter threshold, will be significantly higher.[78] Additionally, we reiterate that, for RTOs/ISOs, the 10-day threshold applies only to the movement of electricity into/out of their service territories, which is generally point-to-point transmission service. As stated in Order No. 881, because energy transactions in RTOs/ISOs take place within the real-time and day-ahead markets, the 10-day threshold will provide very little additional benefits within existing RTO/ISO markets. Accordingly, Order No. 881 stated that the 10-day threshold does not apply to internal transactions or internal flows associated with through-and-out transactions in RTOs/ISOs.[79] Instead, the 10-day threshold requirement applies only to RTOs/ISOs' evaluation or determination of availability of transmission service at the seams of RTO/ISO service territories.[80]

34. Turning to MISO Transmission Owners' citation to information on the American Meteorological Society website about the accuracy of forecasts beyond eight days,[81] we reject the introduction of such new evidence as out of time.[82] In any event, we find such evidence unpersuasive. First, we note that the statement regarding the accuracy of medium range forecasts cited by MISO Transmission Owners was approved by the American Meteorological Association in 2015. As the Commission noted in Order No. 881, one type of forecast that transmission providers might use to comply with the AAR requirement is the NBM forecast provided by NOAA.[83] The NBM forecast did not even exist in 2015, and has gone through at least four complete iterations since its introduction in 2016 (from Version 1.0 to Version 4.0).[84] The Commission noted in Order No. 881 the tendency for weather forecast accuracy to steadily improve.[85] As such, statements about weather forecast accuracy from 2015 are likely to under-report accuracy of forecasts in 2025 (when implementation of AARs is required). Furthermore, the Commission in Order No. 881 found that available data on 10-day ambient air temperature forecast accuracy indicated that such forecasts were not so inaccurate that they cannot provide any benefits when used as part of AARs, even when adjusted with appropriate forecast margins.[86] Indeed, the Commission found that the reported levels of error would likely allow for a meaningful number of hours in any season where a 10-day forward AAR would provide benefits relative to the seasonal line rating.[87]

35. The Commission also noted that the adoption of a 10-day forward AAR provided other benefits, beyond any direct benefits of additional transmission line capacity due to ambient air temperature considerations. Specifically, the Commission found that the adopted 10-day threshold would permit weekly point-to-point transmission service requests to be evaluated using AARs, and would provide additional benefits in forward nighttime hours where the newly required AARs would consider the lack of solar heating in those hours.[88] We continue to find that these additional benefits will accrue, even in the unlikely event that the use of AARs 10 days forward results in no hours where daytime AARs are greater than seasonal line ratings.

[72] Order No. 881, 177 FERC ¶ 61,179 at P 126.

[73] *Id.* PP 127–128.

[74] *Id.* PP 122–123.

[75] *Id.* P 127.

[76] *Id.* P 129.

[77] *Id.* P 125.

[78] *Id.*

[79] *Id.* P 134.

[80] *Id.; see also id.* P 106.

[81] MISO Transmission Owners Request for Rehearing at 17 n.53.

[82] *See* 18 CFR 385.713(c) (2021).

[83] Order No. 881, 177 FERC ¶ 61,179 at P 123.

[84] *See NOAA, National Blend of Models—NBM Versions, https://vlab.noaa.gov/web/mdl/nbm-versions* (last visited April 21, 2022).

[85] Order No. 881, 177 FERC ¶ 61,179 at P 122.

[86] *Id.* P 123.

[87] *Id.*

[88] *Id.* PP 121–122.

4. Seasonal Line Rating Floors

a. Final Rule

36. In Order No. 881, the Commission declined to require the use of a transmission line rating ''floor'' whereby no AAR would fall below the lowest seasonal line rating. In doing so, the Commission reasoned that, while seasonal line ratings are generally already calculated to reflect worst-case weather conditions, to the extent that a transmission provider experiences extreme temperatures that exceed seasonal assumptions, the resulting transmission line ratings will be more accurate than seasonal line ratings and will send important price signals to market participants. The Commission concluded that, in such circumstances, transmission providers should be able to plan for such extreme temperatures given current temperature forecasting capabilities.[89]

b. Request for Clarification

37. MISO Transmission Owners request that the Commission clarify that individual transmission owners and transmission providers may use a seasonal line rating ''floor'' (which would ensure that no AAR falls below the lowest seasonal line rating) if they reasonably determine, consistent with good utility practice, that use of such a floor is appropriate.[90] ITC makes a similar request and, to the extent the Commission denies clarification on this point, ITC seeks rehearing.[91]

38. MISO Transmission Owners contend that many transmission owners have developed seasonal line ratings using a combination of assumptions that include ambient air temperature, wind speed, and other variables, that take into consideration the relationship between them as each variable changes. MISO Transmission Owners further suggest that this is contrary to the Commission's suggestion that transmission owners use ''worst case'' assumptions in their transmission line ratings. MISO Transmission Owners argue that denying transmission owners the ability to use a floor when justified would compel transmission owners to use ratings that are inconsistent with their planning criteria.[92]

39. ITC states that its transmission line ratings do not represent worst-case conditions but rather use a combination of assumptions that include ambient air temperature, wind speed, wind direction, and solar irradiation and that their transmission line ratings take into consideration the relationship between the variables as each variable changes. ITC suggests that implementation of AARs across the range of historically observed temperatures, plus-or-minus a 10-degree margin, presumes less risk, which could cause divergence in the transmission line ratings used for planning and operational purposes. ITC contends that allowing for the use of a seasonal line ratings floor would help mitigate operational risk and reliability planning risk, which should be of paramount importance given how infrequently AARs are likely to exceed the long-term planning assumptions used to establish the lowest seasonal line rating.[93]

c. Commission Determination

40. We deny the requested clarification and rehearing on this issue. In Order No. 881, the Commission adopted the AAR requirements in order to ensure that transmission line ratings are more accurate and, therefore, that wholesale rates are just and reasonable.[94] In contrast, imposing a seasonal line rating floor would fail to produce transmission line ratings that reflect the actual capabilities of the transmission lines. A transmission line rating limited by a seasonal line rating floor could result in wholesale rates that do not accurately reflect costs and could result in overloaded conductors or equipment. We recognize that not imposing a seasonal line rating floor means that there will be times in which transmission line ratings fall below the seasonal line rating, for example, because extreme weather events may result in ambient air temperatures above even those used to calculate the seasonal line ratings. However, in such situations, the lower AARs as required by this rule would be the more accurate ratings. The transmission line ratings resulting from a seasonal line rating floor would be inaccurate and thus would not reflect true system limitations and could create reliability concerns.

5. Minimum AAR Temperature Range and AAR Granularity

a. Final Rule

41. In Order No. 881, the Commission required that any methods used to determine AARs be valid for at least the range of local historical temperatures (over the entire period for which records are available) plus-or-minus a margin of 10 degrees Fahrenheit (10-degree margin requirement). The Commission further required that, where a transmission provider uses pre-calculated AARs within a look-up table or similar database, such values must be calculated for all temperatures within such a valid range. Similarly, where a transmission provider uses a formula or computer program to calculate AARs based on forecasted temperatures, such a formula/program must be accurate across such a valid range. The Commission also required transmission providers to have procedures in place to handle a situation where forecast temperatures fall outside of the valid range of temperatures, to ensure that safe and reliable transmission line ratings are used. The Commission required transmission providers to revise their look-up tables or similar databases or formulas/programs in the event that actual temperatures set new high or low records to maintain the 10-degree Fahrenheit margin.[95]

42. The Commission, in Order No. 881, also required transmission providers to implement AARs that update at least with every five-degree Fahrenheit increment of temperature change (five-degree requirement), in order to meet the *pro forma* OATT Attachment M requirement that an AAR reflect an up-to-date forecast of ambient air temperature. The Commission explained that greater temperature increments might introduce inaccuracies into transmission line ratings, resulting in wholesale rates that are unjust and unreasonable, and that a minimum amount of AAR temperature granularity is necessary to ensure that transmission line ratings sufficiently reflect changes in ambient air temperatures.[96]

b. Request for Rehearing

43. MISO Transmission Owners contend that the Commission failed to satisfy its burden of supporting the five-degree requirement as just and reasonable and request rehearing on this point. MISO Transmission Owners state that the specific use of five-degree Fahrenheit increments was not discussed or proposed in the NOPR, which inhibited parties' opportunity to comment.[97]

44. MISO Transmission Owners contend that the Commission's only evidentiary support for the five-degree requirement is that the Electric Reliability Council of Texas (ERCOT) uses this increment. According to MISO

[89] *Id.* P 125.

[90] MISO Transmission Owners Request for Rehearing at 18.

[91] ITC Request for Rehearing at 3 n.4, 11.

[92] MISO Transmission Owners Request for Rehearing at 18–19.

[93] ITC Request for Rehearing at 10.

[94] Order No. 881, 177 FERC ¶ 61,179 at P 83.

[95] *Id.* P 185.

[96] *Id.* P 187.

[97] MISO Transmission Owners Request for Rehearing at 11.

Transmission Owners, the Commission fails to demonstrate how this provision might be appropriate in a multi-state region like MISO.[98] MISO Transmission Owners also argue that the Commission supplied no evidence to support its conclusion that transmission line rating increments of greater than five degrees might introduce inaccuracies into transmission line ratings, resulting in wholesale rates that are unjust and unreasonable.[99]

45. MISO Transmission Owners further contend that the Commission failed to take into account the compliance burdens that the five-degree requirement will impose, especially when coupled with the 10-degree margin requirement and the requirement to update AARs hourly for every hour over the course of a rolling 10-day period.[100] EEI claims that requiring entities to use a five-degree Fahrenheit temperature increment will be a significant and costly effort that will not yield improvements to the ATC of affected transmission lines.[101] ITC asserts that the extensive increase in the volume of transmission line ratings calculations required by Order No. 881 was not contemplated in the NOPR [102] and requests that the Commission provide transmission owners and transmission providers greater flexibility regarding the implementation of additional data points to support AAR calculations.[103] MISO Transmission Owners and ITC contend that, at least partially due to the plus-or-minus 10-degree range and five degree maximum increment requirements, transmission owners will be required to develop or maintain millions of data points and transmission line ratings across their systems.[104] ITC further argues that the Commission has not shown that the benefits of maintaining these records or the potential use of this data will outweigh the associated burdens.[105] MISO Transmission Owners and ITC contend that, by failing to take this balancing into account, the Commission's decision to impose this requirement fails to constitute reasoned decision-making.[106]

46. MISO Transmission Owners also argue that, because the Commission acknowledged in Order No. 881 that the mean absolute error for continental United States surface temperature forecasts was approximately four to six degrees Fahrenheit in July to November of 2016,[107] it belies any Commission conclusion that the use of five-degree increments, which are within this margin of error, is just and reasonable. MISO Transmission Owners suggest that this demonstrates that the use of a five-degree increment is likely to produce inaccurate ATC determinations and that Order No. 881 is internally inconsistent and contrary to the record.[108]

47. EEI contends that Order No. 881 fails to consider the significant weather differences between various regions of the country and lacks substantial evidence to support the five-degree requirement when slightly larger increments would have no meaningful impact on ratings of affected transmission lines.[109] EEI therefore requests that the Commission allow flexibility for governing entities to determine what temperature increments might work best in their region.[110] Similarly, MISO Transmission Owners argue that, if the Commission determines that a temperature increment is necessary, the Commission should allow transmission owners and transmission providers to work collaboratively to develop appropriate temperature increments for AARs that are tailored to their regions, climates, and transmission systems, consistent with good utility practice and reasonable deference to engineering judgment.[111]

c. Commission Determination

48. On rehearing, MISO Transmission Owners, EEI, and ITC argue that the Commission failed to support the five-degree requirement, to appropriately balance the burdens of the five-degree requirement (particularly combined with other requirements adopted in the final rule) with the benefits, and to consider the considerable weather differences across the country. For the reasons explained below, we disagree. We continue to find that the five-degree requirement is just and reasonable and will result in more accurate transmission line ratings, and, in turn, just and reasonable wholesale rates, by ensuring that AARs reflect up-to-date forecasts of ambient air temperatures.

49. As an initial matter, in Order No. 881, the Commission reasoned that remedying inaccurate transmission line ratings requires a minimum amount of AAR temperature granularity.[112] We disagree that the Commission failed to adequately support its finding that five degrees is the appropriate increment for such granularity. In its comments, Vistra Corp. (Vistra) argued that absent some guidance on the maximum increment of ambient air temperature change beyond which AARs must be updated, a transmission provider would be able to use temperature increments so large that it would undermine the Commission's AAR requirement.[113] The Commission agreed, explaining that, absent guidance, some implementations of AARs may not result in an AAR change despite substantial changes in forecasted temperature and therefore could not be considered an ''up-to-date forecast of ambient air temperature.'' [114]

50. Having established that a minimum amount of temperature granularity was needed for the AAR requirements adopted in Order No. 881 to yield just and reasonable wholesale rates, the Commission took the step of establishing a five-degree Fahrenheit maximum increment—the five-degree requirement.[115] The Commission reasoned that an increment greater than five degrees might introduce inaccuracies into transmission line ratings that would result in wholesale rates that are unjust and unreasonable.[116] The Commission also found that the five-degree requirement was a necessary corollary of the requirement that an AAR reflect an *up-to-date* forecast of ambient air temperature.[117]

51. Contrary to the claim that the Commission reached this conclusion without evidence—or based only on the example of ERCOT—the Commission considered, as reference points, a range of AAR implementation examples, including PJM, ERCOT, and Entergy Services, LLC (Entergy). PJM provides updated AARs every nine degrees Fahrenheit; [118] ERCOT provides updated AARs every five degrees Fahrenheit; [119] and Entergy calculates AARs for every one degree Fahrenheit of temperature change.[120] Based on this

[98] *Id.* at 12.

[99] *Id.* at 13.

[100] *Id.*

[101] EEI Request for Rehearing at 11.

[102] ITC Request for Rehearing at 6.

[103] *Id.* at 7.

[104] *Id.* at 8; MISO Transmission Owners Request for Rehearing at 13.

[105] ITC Request for Rehearing at 8.

[106] *Id.;* MISO Transmission Owners Request for Rehearing at 14.

[107] MISO Transmission Owners Request for Rehearing at 14 (citing Order No. 881, 177 FERC ¶ 61,179 at P 123).

[108] *Id.*

[109] EEI Request for Rehearing at 11.

[110] *Id.* at 11–12.

[111] MISO Transmission Owners Request for Rehearing at 14–15.

[112] Order No. 881, 177 FERC ¶ 61,179 at P 187.

[113] Vistra Comments at 6.

[114] Order No. 881, 177 FERC ¶ 61,179 at P 187.

[115] *Id.*

[116] *Id.*

[117] *Id.*

[118] *Id.* P 138.

[119] *Id.* P 187.

[120] September 2019 Technical Conference, Day One Tr. at 157:7–15.

record evidence, the Commission adopted a requirement that balances the need for accuracy, and the benefits thereof, with the burdens imposed by a more onerous requirement, such as the one Entergy voluntarily uses for its own AAR calculations. MISO Transmission Owners are correct that, in adopting the five-degree requirement, the Commission partially based its finding on ERCOT's experience. But the Commission did so with good reason: ERCOT has successfully implemented AARs since 2005,[121] and attests to have benefited considerably from its AAR implementation, which specifically includes the five-degree increment.[122] We are not persuaded by MISO Transmission Owners' claim that because ERCOT is a single-state transmission operator, the Commission inappropriately relied on ERCOT's practices to support imposing requirements on RTOs such as MISO. It is unclear what relevance the number of states within a transmission provider's territory has on the probative value of its experience implementing AARs. To the extent the argument is related to the range of potential temperatures experienced within a transmission provider's territory, and whether that should justify different AAR requirements, we address similar assertions below.

52. In addition to basing its findings on actual AAR implementation by several transmission providers, the Commission relied on statistics describing the value of transmission line rating changes with each degree of temperature change. Specifically, the record from the September 2019 technical conference demonstrates that the difference in transmission line rating accuracy between the five-degree requirement adopted in the final rule and larger temperature increments, *e.g.,* PJM's nine-degree increment, is meaningful. A change in temperature of 1 degree Celsius (1.8 degrees Fahrenheit) can change transmission capacity by 1%.[123] Given the sensitivity of wholesale rates to changes in transmission line ratings, as the Commission explained in Order No. 881,[124] we believe that even a 1% increase in transmission capacity could present considerable savings for ratepayers. In other words, the Commission had substantial evidence to support the five-degree requirement, both from transmission providers' experience implementing AARs and statistics on the value of additional accuracy of transmission line ratings.

53. The Commission balanced the evidence of the benefits of this granularity in AAR calculations with the burdens imposed by increasing precision. Specifically, the Commission considered record evidence that AAR implementation will likely be primarily automated and that implementation costs will primarily be one-time expenses.[125]

54. We acknowledge that the AAR requirements, including the five-degree requirement, will impose implementation costs on every transmission provider, including those that already implement AARs. But we sustain the Commission's finding that the benefits of the requirements adopted in Order No. 881, on balance, outweigh the burdens. For those transmission providers that already implement AARs, we note that they will be required to revise their transmission line rating look-up tables or similar databases to implement AARs as required by Order No. 881 (including expanding the range of temperatures included in such look-up tables or similar databases to at least the range of local historical temperatures plus-or-minus a margin of 10 degrees Fahrenheit), regardless of whether their temperature increment is five degrees or another increment. In other words, we find that the burden of requiring a five-degree temperature increment versus the burden of requiring a larger than five-degree temperature increment is likely minimal.

55. In response to MISO Transmission Owners' and ITC's contention that the five-degree requirement, particularly when combined with the 10-degree temperature margin requirement, imposes an undue data reporting burden, we disagree. These requirements will materially affect the size of the *look-up tables or similar databases* from which transmission line ratings will be looked-up each hour (for transmission providers that voluntarily use such look-up tables or similar databases), but such requirements will not have any effect on the amount of data that must be stored in the *line ratings database* under the adopted recordkeeping requirements. This is because, as discussed further below, we expect the total data storage in such look-up tables or similar databases to remain small, that transmission line ratings, once recalculated to comply with Order No. 881, will change only infrequently, the expectation that implementation will be automated, and that there is no requirement for transmission providers to implement look-up tables at all. Specifically, with respect to the effect on the size of the look-up tables or similar databases, we expect that the five-degree requirement and the 10-degree margin requirement may increase by three to five times the amount of data in such databases/tables for some transmission providers that currently use look-up tables or similar databases with narrow temperature ranges or large temperature step-sizes, but that such databases/tables will nonetheless continue to store a very small amount of data,[126] and that for any particular transmission line such data would usually remain unchanged for months or years. Given that computers will mainly generate and interact with such look-up tables or similar databases, the burden associated with any such increase in the amount of data is not significant. Furthermore, we reiterate that there is no requirement that transmission providers implement such look-up tables or similar databases *at all.* Transmission providers are free to implement formulas or computer programs that will compute line ratings, rather than implementing a line ratings approach that requires looking-up ratings from a database/table.[127]

56. As for arguments for regional flexibility, we are not persuaded that significant weather differences across the country justify the use of different temperature increments for calculating AARs in different regions. The Commission adopted the five-degree requirement as a minimum accuracy threshold that the Commission believes—and we sustain—is necessary to ensure just and reasonable wholesale

[121] *Id.* at 79:6–10.

[122] *Id.* at 80:9–19.

[123] *See id.* at 52:4–9 (Hudson Gilmer, Line Vision, Inc.) (The benefit of AARs is generally ''1% additional capacity for each degree Celsius of reduced temperature below the static assumption.''); September 2019 Technical Conference, Speaker Comments—Jake Gentle (Forecasts for Dynamic Line Rating), Docket No. AD19–15–000, at slide 14 (Sept. 10, 2019).

[124] Order No. 881, 177 FERC ¶ 61,179 at PP 30, 34, 35.

[125] *See* Order No. 881, 177 FERC ¶ 61,179 at PP 94, 125; September 2019 Technical Conference, Day One Tr. at 154:25–157:15; September 2019 Technical Conference, Day One Tr. at 142:14–18; September 2019 Technical Conference, Day Two Tr. at 295:4–7.

[126] For example, for a transmission line for which the range of historically observed local temperatures was −25 to +115 degrees Fahrenheit, and which had four types of ratings (one normal and three emergency ratings), a look-up table or similar database would need to contain at least 264 data points for each transmission line (33 data points for each of the four rating types, computed for both daytime and nighttime). For comparison, PJM's current transmission line rating database computes 64 data points for each transmission line (eight data points for each of four data types, computed for both daytime and nighttime). PJM Ratings Information, *https://www.pjm.com/markets-and-operations/etools/oasis/system-information/ratings-information.*

[127] Order No. 881, 177 FERC ¶ 61,179 at P 185.

rates. While we agree that certain transmission provider regions, such as MISO's, cover a large geographic area and may experience considerable temperature differences as compared to other regions, it is unclear why these differences should merit different transmission line rating accuracy requirements. In other words, we have no reason to conclude that a larger or smaller geographic footprint or wider or narrower range of temperatures across a year justify treating transmission providers disparately with regard to the AAR requirements.

57. We also disagree with MISO Transmission Owners' suggestion that the NOPR gave commenters inadequate notice of the final rule's five-degree requirement. In the NOPR, the Commission proposed AAR requirements that would ensure that transmission line ratings ''reflect an up-to-date forecast of ambient temperature,'' [128] which reasonably includes consideration of what minimum degree of granularity might be required to meet this standard.

58. As explained above, different transmission providers that have voluntarily implemented AARs use look-up tables or similar databases with different temperature increments as a means of ensuring the AARs reflect an up-to-date forecast of ambient temperature. In response to the NOPR, Vistra argued that, absent some guidance on the maximum increment of ambient air temperature change beyond which AARs must be updated, a transmission provider would be able to use temperature increments so large as to undermine the effectiveness of the Commission's AAR requirements.[129] In Order No. 881, the Commission refined its proposal based on stakeholder comments, which is the very purpose of the notice and comment requirements under the Administrative Procedures Act.[130] The courts have made clear that an ''agency 'is not required to adopt a final rule that is identical to the proposed rule.' On the contrary, '[a]gencies are free—indeed, they are encouraged—to modify proposed rules as a result of the comments they receive.' '' [131] That is exactly what the Commission did. The fact that commenters in response to the NOPR raised this issue and asked the Commission to address it reinforces this fact.

59. As for MISO Transmission Owners' contention that the mean absolute error of 10-day temperature forecasts being approximately four to six degrees suggests that the five-degree requirement is inappropriate, we find no merit to the argument. The mean absolute error of a particular forecast and the maximum temperature increment for updating AARs are wholly separate concepts. The mean absolute error of a forecast represents the historical average difference between forecasted value and actual value. By contrast, the maximum temperature increment for updating AARs represents the maximum temperature degree change which might occur before necessitating different AAR values. As such, we find that no inaccuracies or internal inconsistencies are introduced if a maximum temperature increment is smaller than a forecast's mean absolute error.

60. We also further clarify the relationship between the five-degree granularity requirement and the requirement to recalculate AARs hourly. In Order No. 881, the Commission responded to Vistra's comments discussed above that, absent certain minimum requirements for the method to calculate AARs hourly, the Commission's AAR requirements could be undermined. To address this concern, the Commission clarified that ''a transmission provider must implement AARs that update at least with every five-degree Fahrenheit increment of temperature change, in order to meet the *pro forma* OATT Attachment M requirement that an AAR reflect an up-to-date forecast of ambient air temperature,'' [132] which is the five-degree granularity requirement. The five-degree granularity requirement does not affect the required timing of a transmission provider's recalculation of AARs. We reiterate that a transmission provider must recalculate AARs at least every hour.[133] When the transmission provider undertakes that hourly calculation, it must do so using a method that incorporates the five-degree granularity requirement. That method may be based on a formula or a look-up table or similar database which contains pre-calculated AARs as a function of temperature (*e.g.,* from –10 to 110 degrees Fahrenheit). To the extent a transmission provider uses the latter method such look-up table or similar database must have no more than five degrees between temperature ''steps.''

6. Solar Heating in AAR Calculations

a. Final Rule

61. Order No. 881 requires transmission providers to incorporate solar heating into AARs by implementing separate AARs for daytime and nighttime periods.[134] It further requires transmission providers to update the sunrise and sunset times used to calculate their AARs at least monthly, if not more frequently.[135] The Commission found that this requirement will produce benefits in forward nighttime hours that would not be realized if the AAR requirements were imposed over a timeframe shorter than 10 days forward and that the accuracy benefits that result from applying daytime/nighttime ratings to weekly point-to-point transmission service and to shorter duration transmission service up to 10 days forward are significant.[136]

b. Requests for Rehearing

62. Both EEI and ITC request rehearing on the daytime/nighttime ratings requirement and argue that this requirement constitutes a substantial departure from the proposal contained in the NOPR. EEI asserts that the scope of benefits that flow from this daytime/nighttime ratings requirement is unclear, particularly given that transmission providers will still rely on industry standards to maintain compliance.[137] ITC adds that the Commission did not demonstrate that any potential market efficiencies that flow from this and other requirements outweigh the burden on transmission owners to gather the significant amount of data required to calculate AARs for the average system.[138]

c. Commission Determination

63. We sustain the result of Order No. 881 regarding the Commission's requirement that transmission providers incorporate solar heating into AARs by implementing separate AARs for daytime and nighttime periods, and to update the sunrise and sunset times used to calculate their AARs at least monthly, if not more frequently (daytime/nighttime ratings requirement).

64. In Order No. 881, the Commission required implementation of daytime/nighttime ratings based on evidence in the record that such a requirement

[128] NOPR, 173 FERC ¶ 61,165 at P 3 n.3.

[129] Vistra Comments at 6–7.

[130] 5 U.S.C. 553.

[131] *Earthworks* v. *U.S. Dept. of the Interior,* 496 F. Supp. 3d 472, 498–99 (D.D.C. 2020) (quoting *Ne. Md. Waste Disposal Auth.* v. *EPA,* 358 F.3d 936, 951 (D.C. Cir. 2004) (per curiam)); *see also id.* (citing *Int'l Union, United Mine Workers of Am.* v. *Mine Safety & Health Admin.,* 407 F.3d 1250, 1259 (D.C. Cir. 2005)) (''Public input is, after all, one of the purposes of the APA's notice-and-comment scheme.'').

[132] Order No. 881, 177 FERC ¶ 61,179 at P 187.

[133] *Id.* PP 47, 162.

[134] *Id.* P 147.

[135] *Id.* P 149.

[136] *Id.* P 122.

[137] EEI Request for Rehearing at 10.

[138] ITC Request for Rehearing at 5.

would enhance the accuracy of transmission line ratings, and therefore result in just and reasonable wholesale rates.[139] None of the arguments contained in the requests for rehearing persuade us to alter that view.

65. In response to the NOPR, several commenters supported incorporating predictable daytime/nighttime ratings into AARs.[140] As the Commission explained in Order No. 881, solar heating is an important input consideration for calculating thermal transmission line ratings.[141] By removing solar heating assumptions from transmission line ratings during nighttime periods, transmission providers increase the accuracy of transmission line ratings and thereby enable wholesale rates to better reflect the true cost to serve load. According to several commenters, incorporating daytime/nighttime ratings, subject to the exceptions adopted in Order No. 881,[142] will provide important increases in transfer capability. This, in turn, will lower wholesale rates. Specifically, commenters explained that daytime/nighttime ratings would, on average, increase nighttime transfer capability by anywhere from 5% to 14%.[143] Potomac Economics found that such transfer capability increase would decrease wholesale rates in MISO by approximately $30 million per year.[144] Importantly, such increases in transfer capability due to calculating transmission line ratings for nighttime periods can support operators during potentially challenging intervals, such as before sunrise during the morning ramp or after sunset during the evening ramp. Contrary to EEI's assertions, this evidence demonstrates the significant economic benefits of the daytime/nighttime ratings requirement.

66. Further, we continue to find that the daytime/nighttime requirement can yield these benefits at minimal cost,[145] contrary to ITC's contention. Incorporating daytime/nighttime ratings into AAR calculations can be done at minimal costs, as explained by several commenters.[146] As noted earlier, we expect the costs to implement daytime/nighttime ratings to primarily be one-time automation costs. Once automated, we do not expect the addition of daytime/nighttime ratings to materially increase the cost and complexity of implementing the AAR requirements.

67. Finally, we disagree that stakeholders lacked adequate notice. In the NOPR, the Commission noted that AARs could incorporate other forecasted inputs and, as an example, pointed to PJM's implementation of ''day and night ambient air temperature tables, where the night ambient air temperature table assumes zero solar irradiance.'' [147] Further, the Commission sought comment on whether to require the implementation of dynamic line ratings,[148] which the Commission expressly defined as a transmission line rating that reflects inputs including solar irradiance forecasts and of which daytime/nighttime ratings are the most basic and obvious example.[149] Moreover, the objective of the NOPR—and the final rule—was to improve the accuracy of transmission line ratings, with solar irradiance forecasts repeatedly discussed as one tool for doing so, including multiple mentions of PJM's use of daytime/nighttime AARs.[150] Finally, several commenters in response to the NOPR either noted the benefits of, or voiced support for, incorporating predictable daytime/nighttime solar irradiance forecasts into AARs.[151]

B. Seasonal Line Ratings—Annual Recalculation Requirement

1. Final Rule

68. In Order No. 881, the Commission required that seasonal line ratings be calculated at least annually, if not more frequently.[152] While the NOPR proposed requiring seasonal line ratings to be updated on a monthly basis, the final rule revised that requirement in response to stakeholder comments. Specifically, the Commission acknowledged that calculating monthly updates to seasonal line ratings would be burdensome and that the weather assumptions underlying seasonal line ratings are unlikely to change on a month-to-month basis.[153]

2. Request for Rehearing

69. ITC seeks rehearing of the annual update requirement for seasonal line ratings; it requests greater flexibility for transmission owners and transmission providers to update seasonal line ratings as warranted, consistent with good utility practice.[154] ITC asserts that it used recognized industry technical standards to support a multi-year study of its transmission system, which included the collection and analysis of a number of different data sets related to weather, temperature, conductor parameters, and historical inputs, among other things. ITC contends that its use of a multi-year study increases the accuracy of seasonal line ratings and meets the intent of Order No. 881.[155]

70. ITC also claims that there is no technical or market-driven justification to require ITC to update its seasonal line ratings annually. Rather, ITC contends that, given its reliance on its multi-year study, it would not be possible for ITC to update its seasonal line ratings annually and that this provision would result in a continuous weather study operation that would be burdensome and unnecessary. Finally, because transmission planning processes partially rely on seasonal line ratings, ITC asserts that changing these ratings on an annual basis would unnecessarily inject complexity and uncertainty into the multi-year transmission planning processes.[156]

3. Commission Determination

71. Regarding ITC's request for rehearing on the annual update requirement for seasonal line ratings, we sustain the result in Order No. 881. We disagree with ITC that there is no justification for the annual update requirement for seasonal line ratings. On the contrary, transmission system conditions, including relevant climate and weather data, are frequently changing, especially as extreme weather events are increasing in frequency and duration.[157] To the extent that a

[139] For example, the Commission cited to comments from R Street Institute, Pacific Gas and Electric (PG&E), Indicated PJM Transmission Owners, Dominion Energy Services, Inc. (Dominion), Potomac Economics, and Vistra. Order No. 881, 177 FERC ¶ 61,179 at PP 147–48.

[140] R Street Institute Comments at 3; PG&E Comments at 11–12; Indicated PJM Transmission Owner Comments at 8–9; Dominion Comments at 8; Potomac Economics Comments at 14–15; Vistra Comments at 4–5.

[141] Order No. 881, 177 FERC ¶ 61,179 at PP 147–149; PG&E Comments at 11–12; Vistra Comments at 4–5; Potomac Economics Comments at 15.

[142] Order No. 881, 177 FERC ¶ 61,179 at PP 227–28.

[143] PG&E Comments at 11; Entergy Comments at 8; Potomac Economics Comments at 15.

[144] Potomac Economics Comments at 15.

[145] Order No. 881, 177 FERC ¶ 61,179 at P 148.

[146] Potomac Economics Comments at 15; Vistra Comments at 4–5.

[147] Order No. 881, 177 FERC ¶ 61,179 at P 144 (citing NOPR, 173 FERC ¶ 61,165 at P 23).

[148] NOPR, 173 FERC ¶ 61,165 at P 100.

[149] *Id.* P 5 n.5.

[150] *Id.* P 23 n.40.

[151] *See, e.g., Small Refiner Lead Phase-Down Task Force* v. *EPA,* 705 F.2d 506, 549 (D.C. Cir. 1983) (finding that a final provision is permitted if an entity participating in a rulemaking ''ex ante, should have anticipated that such a requirement might be imposed.'').

[152] Order No. 881, 177 FERC ¶ 61,179 at P 215.

[153] *Id.*

[154] ITC Request for Rehearing at 9.

[155] *Id.*

[156] *Id.*

[157] Order No. 881, 177 FERC ¶ 61,179 at P 215 (citing ACPA/SEIA Comments at 8, 11; EPSA Comments at 4; New England State Agencies Comments at 6); NOAA, National Centers for Environmental Information, *U.S. Billion-Dollar Weather and Climate Disasters* (2021), *https://www.ncdc.noaa.gov/billions/;* Quadrennial Energy Review, *Transforming the Nation's Electricity*

transmission provider continues to implement seasonal line ratings for years without reviewing and updating those ratings, transmission system conditions are likely to have changed to such a degree as to render the ratings inaccurate and associated wholesale rates unjust and unreasonable. As the Commission stated in Order No. 881, seasonal line ratings, once established, should be reviewed when equipment changes are made, climate or weather data necessitates, or when otherwise prudent.[158] While the Commission proposed in the NOPR to require such recalculations on a monthly basis, the Commission concluded in Order No. 881 that an annual update requirement for seasonal line ratings strikes an appropriate balance between ensuring accurate seasonal line ratings as weather patterns continue to change and the costs associated with updating such transmission line ratings on a regular basis.[159] We continue to believe that the Commission struck the proper balance.

72. Nevertheless, we clarify that the Commission did not prescribe the procedure for recalculating seasonal line ratings, including determining which inputs have changed in a year. For instance, a transmission provider could comply with the annual update requirement for seasonal line ratings by recalculating its seasonal line ratings annually to adjust seasonable temperature assumptions, but then also perform a more detailed recalculation every few years using multi-year temperature data to consider temperature patterns that are harder to identify with only a single year of new temperature data.

73. Moreover, we clarify that the requirement to engage in an annual recalculation does not require transmission owners to undertake unnecessary change from year to year. To the extent that relevant inputs have not changed from one year to the next, the annual recalculation may simply result in continuing to use transmission owner's existing facility ratings.

C. Transparency

1. Data Sharing Burden

a. Final Rule

74. In Order No. 881, the Commission required each transmission provider to maintain a database of its transmission line ratings and methodologies on the transmission provider's OASIS site or other password-protected website.[160] The Commission required that this database be in such a form that can be accessed by all parties with OASIS access or access to the password-protected website. The Commission stated that the database should archive and allow for querying of all current transmission line ratings and all transmission line ratings used in the past five years.[161]

75. The Commission further required that transmission line ratings stored in the required database must include a full record of all transmission line ratings, both as used in real-time operations, and as used for all future market periods for which transmission service is offered.[162] The Commission provided a specific example of the implications of the final rule for data storage requirements. Further, while the Commission did not require implementation of DLRs when issuing Order No. 881, it noted that if a transmission provider implements DLRs on any of its transmission lines, then under this requirement it would document the DLRs on such transmission lines in the same way that it documents its AARs. The Commission noted that transmission providers may determine that a variety of approaches to storing this data may be acceptable as long as users of the database can readily identify which such ratings (including for the operational hour and any forward hours) were in effect for which transmission lines at which times.[163] The Commission did not specify exactly how records of seasonal or static line ratings should be stored in the transmission line rating database. However, the Commission explained that such longer-term transmission line ratings do not necessarily need to be stored on an hourly basis, so long as users of the database can readily identify which ratings were in effect for which transmission lines at which times. The Commission noted that some transmission lines may not have any AARs at all, where permitted under *pro forma* OATT Attachment M, and so may only have ratings such as seasonal or static line ratings.[164]

b. Requests for Rehearing

76. EEI and ITC request rehearing of the data requirements of Order No. 881. EEI argues that the Commission erred in requiring transmission owners to store in the required database a full record of all transmission line ratings, both as used in real-time operations and as used for all future market periods for which transmission service is offered, without a showing of substantial need.[165] ITC similarly asserts that the Commission erred by requiring transmission owners to comply with unduly burdensome data storage and maintenance requirements.[166]

77. EEI and ITC allege that the data requirements impose a significant burden on transmission owners for which the Commission has failed to articulate corresponding and substantially greater benefits.[167] EEI reports that one member utility estimates that it will send several million transmission line ratings per hour to its transmission provider.[168] ITC calculates that implementing Order No. 881's requirements on its own transmission system would result in 3.4 million ratings calculated and stored every hour and that the total number of ratings calculated and stored would ''quickly become astronomical.'' [169] EEI notes that even its member utilities who have been using AARs for years do not maintain the kind of data required by Order No. 881.[170] Rather, EEI states that member utilities using AARs commonly embed algorithms into the transmission owner's EMS that allow power flow analyses to make use of AAR curves for each circuit. EEI also contends that the volume of data required is a significant departure from the NOPR and significantly more burdensome.[171] EEI alleges that ''[t]he requirements in the Final Rule are significantly more burdensome than providing data upon request'' and that the Commission's decision to impose such requirements is ''arbitrary and capricious.'' [172]

c. Commission Determination

78. In response to requests for rehearing regarding the data storage and sharing requirements of Order No. 881, we continue to find that the benefits outweigh the burdens and that these requirements will help ensure just and reasonable wholesale rates. As the Commission found in Order No. 881, making transmission line ratings and methodologies available to a broader range of stakeholders will amplify the expected benefits of the proposal included in the NOPR, further facilitate more accurate transmission line ratings,

System: The Second Installment of the QER, at 4–2 (Jan. 2017).

[158] Order No. 881, 177 FERC ¶ 61,179 at P 215; MISO Comments at 21.

[159] Order No. 881, 177 FERC ¶ 61,179 at P 215.

[160] *Id.* P 330.

[161] *Id.*

[162] *Id.* P 339.

[163] *Id.* P 339 n.819.

[164] *Id.* P 339 n.820.

[165] EEI Request for Rehearing at 3.

[166] ITC Request for Rehearing at 5.

[167] *Id.* at 8; EEI Request for Rehearing at 10.

[168] EEI Request for Rehearing at 9–10.

[169] ITC Request for Rehearing at 8.

[170] EEI Request for Rehearing at 10–11.

[171] *Id.* at 9–11.

[172] *Id.* at 11.

and facilitate more cost-effective decisions by market participants and state agencies.[173] For example, these requirements will help potential interconnection customers more easily identify optimal interconnection locations and understand or reproduce congestion analyses.[174] These requirements will also enable transmission customers to better understand what is driving the prices that they are required to pay.[175] In addition, as noted in Order No. 881,[176] transparency with transmission line ratings and methodologies will be particularly beneficial to wholesale market participants trying to manage uncertainty. With respect to FTR market participants, for example, because FTR payouts are based on congestion costs that change with transmission line ratings, sharing transmission line ratings and methodologies with a wider range of stakeholders will help establish efficient FTR market price discovery by improving FTR market participants' understanding of certain drivers of congestion, and allow such market participants to build such understanding into their FTR bids and offers.[177] Commenters also suggest that these requirements may assist transmission providers in considering public policy driven transmission needs as part of their regional transmission planning processes.[178] We reiterate the Commission's finding in Order No. 881 that the benefits of increased transparency, such as those just described, are likely to outweigh the burden on transmission providers.[179]

79. We also find that these requirements reasonably follow from the NOPR, which proposed to require transmission owners to share transmission line ratings for each period for which transmission line ratings are calculated and emphasized the value of such transparency to verify the resulting transmission line ratings and to identify potential errors.[180] The NOPR then explicitly sought comment on ''whether to require transmission owners to make their transmission line ratings and rating methodologies available to other interested stakeholders, including posting information on their OASIS pages or other password protected online forum.'' [181] Commenters extensively discussed the benefits and burdens of the proposed transparency requirements, including responding to this request for comment.[182] In addition to the explicit language in the NOPR, storing transmission line ratings and methodologies on OASIS or a similar website should be an expected means of achieving the data-sharing contemplated by the NOPR. In fact, the Commission has similarly required the use of OASIS or a similar website to ensure transparency in other contexts.[183]

80. Further, we continue to find that Order No. 881's requirements follow from existing regulations surrounding transmission line rating data sharing and retention. As noted in Order No. 881,[184] the requirement that transmission providers must archive the data for five years of history follows reasonably from the Commission's regulations for document retention periods that apply to OASIS postings.[185] In addition, as noted in Order No. 881,[186] § 37.6 of the Commission's regulations already requires transmission providers, upon customer request, to make all data used to calculate ATC for any constrained posted path publicly available on OASIS. This includes the limiting elements and the cause of the limit (*e.g.,* thermal, voltage, stability), as well as load forecast assumptions.[187] Similarly, § 37.7of the Commission's regulations also requires historical data to be available for 90 days or, upon request, five years. We note again that the durations for document retention in Order No. 881 are consistent with these existing requirements.

81. Finally, we also find unpersuasive arguments that the transparency requirements are unduly burdensome. In response to comments that the total number of transmission line ratings required to be stored would ''quickly become astronomical,'' [188] we find the implementation and operation of a database of this type to be well within the normal business scope of a data-intensive entity like a transmission provider. For example, the 3.4 million transmission line rating records that ITC explains it would have to calculate and store every hour would total only about 1.8 terabytes over the entire five-year line rating retention period required in Order No. 881,[189] although the overall storage requirements would be several times that, considering memory for back-ups and data management. As a pure matter of quantity of data stored (*i.e.,* ''hard drive size''), this is a de minimis amount of storage. We note that ITC might be arguing that this is a significant number of *individual records* to store, even if they require a small data storage footprint. While we recognize that there will be significant numbers of line rating records, we have also explained that we expect that transmission providers will use automated processes to calculate these line ratings,[190] and we similarly expect that transmission providers will use automated processes to populate the ratings databases. As such, we disagree that the storage of the line rating data will have a meaningful burden.

2. OASIS Access

a. Final Rule

82. In Order No. 881, the Commission required each transmission provider to maintain a database of its transmission owners' transmission line ratings and methodologies on the password-protected section of the transmission provider's OASIS site or other

[173] Order No. 881, 177 FERC ¶ 61,179 at P 336.

[174] *See, e.g.,* ACPA/SEIA Comments at 18–20.

[175] *See, e.g.,* TAPS Comments at 24.

[176] Order No. 881, 177 FERC ¶ 61,179 at P 337.

[177] DC Energy Comments at 3. While different RTOs/ISOs have different names for these financial products, such as financial transmission rights, transmission congestion rights, congestion revenue rights, etc., for simplicity here we will use FTRs to refer to any such financial product in the RTOs/ISOs.

[178] *See, e.g.,* New England State Agencies Comments at 20.

[179] Order No. 881, 177 FERC ¶ 61,179 at P 336.

[180] NOPR, 173 FERC ¶ 61,165 at PP 125–130.

[181] *Id.* P 129.

[182] *See* Order No. 881, 177 FERC ¶ 61,179 at PP 316–320, 336–340 (summarizing relevant comments).

[183] *See, e.g., Reform of Generator Interconnection Procedures and Agreements,* Order No. 845, 83 FR 21342 (May 9, 2018), 163 FERC ¶ 61,043 at PP 236–238 (2018), *errata notice,* 167 FERC ¶ 61,123, *order on reh'g,* Order No. 845–A, 84 FR 8156 (Mar. 6, 2019), 166 FERC ¶ 61,137 (2019), *errata notice,* 167 FERC ¶ 61,124, *order on reh'g,* Order No. 845–B, 168 FERC ¶ 61,092 (2019).

[184] Order No. 881, 177 FERC ¶ 61,179 at P 340.

[185] 18 CFR 37.7 (2021) (Information to be posted on the OASIS).

[186] Order No. 881, 177 FERC ¶ 61,179 at P 338.

[187] *See* 18 CFR 37.6 (2021).

[188] ITC Request for Rehearing at 8.

[189] We estimated this storage space requirement based on the following assumptions: First, we assume that the 3.4 million hourly line ratings reflect each of the 240 forecasted line ratings for each of the relevant transmission lines and transmission line rating types (normal and emergency), as required by Order No. 881. Second, we assume the rating records are stored in a table with each row having line ID, rating day and hour, rating type, 240 forecast ratings and 240 forecast hours, and 2 extra variable character columns in case of other information requirements. Thereby, the 3.4 million hourly line ratings is reduced to 14,167 hourly records (that is, (3.4 million hourly line ratings)/(240 forecasted ratings)). The hourly storage requirements are then estimated to be 41 megabytes/hour. That is, (2,998 bytes per row) * (14,167 rows/hour)/(1,048,576 bytes/megabyte). We estimate the bytes per row to be 2,998 bytes as follows: (8 bytes for line ID) + (8 bytes for rating day and hour) + (2 bytes for rating type) + (4 bytes per forecast rating * 240 forecast ratings) + (8 bytes per forecast rating hour * 240 forecast hours) + (50 bytes each for the 2 variable character columns). The entire five years of transmission line ratings data that are required to be stored is then calculated as (41 megabytes/hour) * (24 hours/day) * (365 days/year) * (5 years)/(1,000,000 megabytes/terabyte) = 1.8 terabytes.

[190] Order No. 881, 177 FERC ¶ 61,179 at PP 125, 149, 163, 169, 362.

password-protected website. The Commission found that allowing other entities (beyond transmission providers and market monitors) to access the password-protected section of the transmission provider's OASIS site or other password-protected website containing the database of transmission line ratings and methodologies will further facilitate more accurate transmission line ratings and more cost-effective decisions by market participants.[191]

b. Request for Clarification

83. EEI requests that the Commission clarify that those seeking to access the data on their OASIS site be required to show a ''business need'' for the information.[192] EEI further suggests that the requirements in Order No. 881 might not be sufficient to maintain confidentiality.[193] EEI characterizes the requirements of Order No. 881 as mandating that transmission owners share information on their transmission line rating methodology with market participants that may not have signed non-disclosure agreements, which EEI claims significantly deviates from past practice and infringes on the rights of transmission providers to rate their own equipment. EEI requests that the Commission clarify that the transmission owner may limit access to those with a business need and may require execution of non-disclosure agreements prior to accessing the information.[194]

84. EEI also requests that the Commission clarify that the data might be subject to protections for Critical Energy Infrastructure Information (CEII). EEI claims that the use of AARs will, in many instances, establish the maximum limiting factor for transmission lines and that such information might be argued to constitute CEII.[195]

c. Commission Determination

85. As a preliminary matter, we clarify that, contrary to statements in EEI's request for clarification,[196] Order No. 881 requires transmission providers to post transmission line ratings and methodologies-related data to a password-protected section of their OASIS site *or* another password-protected website. Therefore, transmission providers have the discretion to post the required data to their OASIS site or an alternative password-protected website. We note, however, that the data posted to either a transmission provider's website or OASIS must be maintained such that users can view, download, and query data in standard formats, using standard protocols.[197] If the transmission provider chooses to post the data to its own website instead of OASIS, we clarify that users must be able to access the data in a manner that is comparable to if it were posted to OASIS and subject to OASIS access requirements.[198]

86. Consistent with these clarifications, we decline to establish further requirements regarding access to OASIS or to a password-protected website the transmission provider uses for compliance with Order No. 881 that would require demonstration of a business need or signing of a non-disclosure agreement. EEI has not explained why transmission providers should be able to restrict access to transmission line ratings and methodology data only to parties who have a ''business need'' and have executed a non-disclosure agreement. EEI's support for such restrictions is only a vague assertion that Order No. 881's requirements might not ''be sufficient to maintain confidentiality.'' [199] We find this vague assertion inadequate for imposing the restrictions EEI describes, particularly since accessing much of the other transmission-related information on OASIS requires no such demonstration or signing of a non-disclosure agreement under the Commission's rules governing OASIS.

87. Conversely, we find that avoiding such restrictions maintains the benefits of transparency into transmission line ratings and methodologies that the Commission articulated in Order No. 881 and elsewhere in this order. In other words, we are not persuaded that any confidentiality benefits that would come from allowing the kind of restrictions EEI requests would outweigh the loss of transparency benefits gained by the Commission's requirements. Thus, we uphold Order No. 881's finding that requiring transmission line ratings and methodologies to be shared via OASIS or other password-protected website creates a measure of transparency needed to ensure just and reasonable wholesale rates.[200]

88. We deny EEI's request for clarification that transmission line ratings and methodologies constitute CEII, and clarify that Order No. 881 did not revise the Commission's existing CEII requirements.[201] The Commission's CEII regulations govern only ''the procedures for submitting, designating, handling, sharing, and disseminating [CEII] *submitted to or generated by the Commission*.'' [202] Because the transmission line ratings and methodologies are neither generated by the Commission nor filed with the Commission—either under current rules or under the requirements of Order No. 881—such information would not be considered CEII under the Commission's CEII regulations.

3. The Role of Independent Market Monitors

a. Final Rule

89. In Order No. 881, the Commission required transmission owners to share their transmission line ratings for each period for which they are calculated and transmission line rating methodologies with their transmission providers and with market monitors in RTOs/ISOs.[203] The Commission found that requiring transmission owners to share transmission line ratings and methodologies with their transmission providers and, in RTOs/ISOs, market monitors, will help remedy unjust and unreasonable wholesale rates caused by

[191] *Id.* P 336.

[192] EEI Request for Rehearing at 4.

[193] *Id.* at 15.

[194] *Id.*

[195] *Id.*

[196] *Id.*

[197] *See* 18 CFR 35.28(b)(12); *Pro Forma* OATT, attach. M, AAR Definition; *see also Pro Forma* OATT, attach. M, Obligations of the Transmission Provider (''Postings to OASIS or another password-protected website: The Transmission Provider must maintain on the password-protected section of its OASIS page or on another password-protected website a database of Transmission Line Ratings and Transmission Line Rating methodologies. . . . The database must be maintained such that users can view, download, and query data in standard formats, using standard protocols.'').

[198] *Open Access Same-Time Information System and Standards of Conduct,* Order No. 889, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs. ¶ 31,035, at attach. § V.3 ''Information Access Requirements (1996) (cross-referenced at 75 FERC ¶ 61,078), *order on reh'g,* Order No. 889–A, 61 FR 21737 (Mar. 14, 1997), FERC Stats & Regs. ¶ 31,049 (cross-referenced at 78 FERC ¶ 61,221), *reh'g denied,* Order No. 889–B, 81 FERC ¶ 61,253 (1997), *aff'd in relevant part sub nom. Transmission Access Policy Study Grp.* v. *FERC,* 225 F.3d 667 (DC Cir. 2000).

[199] EEI Comments at 15.

[200] *See, e.g.,* Order No. 881, 177 FERC ¶ 61,179 at PP 11 (finding that the transparency reforms adopted in Order No. 881 ''will ensure that prices reflect the true cost of the wholesale service being provided and thereby are necessary to ensure just and reasonable wholesale rates''), 39 (finding existing wholesale rates unjust and unreasonable due to lack of transparency, specifically the failure to ''provide market participants information important to making cost-effective decisions'' and the possibility for ''transmission owners to submit inaccurate near-term transmission line ratings'' that ''do not accurately reflect the cost of the wholesale service being provided'').

[201] Under the Commission's CEII regulations, an entity may submit information to the Commission requesting that it be treated as CEII. 18 CFR 388.113 (2021).

[202] *Id.* (emphasis added).

[203] Order No. 881, 177 FERC ¶ 61,179 at P 330.

inaccurate transmission line ratings.[204] The Commission reiterated that it will continue to conduct reviews of transmission line ratings as a component of broader tariff compliance audits and that Order No. 881 does not change the auditing requirements or authorities of any entity.[205] The Commission noted that many commenters used the term ''audit'' to describe activities by market monitors and other entities that the Commission's rules do not define as auditing and noted that the Commission retains its authority to formally audit for compliance with OATTs and other Commission-jurisdictional rules.[206]

b. Request for Clarification

90. EEI requests that the Commission clarify that the role of the independent market monitor is not to ''second guess'' the information provided by the transmission provider.[207] EEI requests clarification that any review of transmission line ratings and/or methodologies does not expand the market monitor's audit authority over this information provided by the transmission owner.[208] EEI requests clarification that the market monitor's role is limited to ''verifying the accurate mechanical implementation of transmission line ratings calculations (*e.g.,* detecting corrupt data) and not related to the line ratings formulations or inputs thereto.'' [209] EEI claims that the role of market monitors is to identify noncompetitive outcomes resulting from market power or manipulative behavior. EEI argues that the market monitor should be independent of interests in market outcomes, should not interfere with market participants' management of their assets, and should not interfere with RTOs/ISOs' and transmission owners' operations of the bulk electric system.[210] EEI requests that the Commission clarify that the market monitor has no audit or enforcement authority related to the use of transmission line ratings and any impacts on reliable operations or market outcomes.[211]

c. Commission Determination

91. We grant EEI's request for clarification in part and deny in part. We clarify that nothing in Order No. 881 changes or expands the role or authority of market monitors or the auditing responsibilities of any entity.[212] However, we deny EEI's request for clarification on other matters. We expect that market monitors may use the transmission line rating information available to them in furtherance of their existing responsibilities, which are set forth in the Commission's regulations and the relevant tariffs of each RTO/ISO.[213]

D. Compliance

1. Final Rule

92. In Order No. 881, the Commission adopted a modified implementation schedule from that proposed in the NOPR. In particular, in the NOPR, the Commission proposed requiring AAR implementation on congested transmission lines within one year from the date of the compliance filing and, for all other transmission lines, implementation within two years from the date of the compliance filing.[214] In the final rule, the Commission required implementation of the requirements adopted in Order No. 881 no later than three years from the compliance filing due date. Based on comments submitted in response to the NOPR, [215] the Commission found that three years is consistent with the implementation schedule most commonly suggested by transmission owners for AAR implementation on priority transmission lines, and that three years should be sufficient time for transmission owners and transmission providers to implement changes to their processes and systems to comply with the requirements of Order No 881.[216]

2. Request for Rehearing

93. EEI seeks rehearing, arguing that the implementation schedule set forth in Order No. 881 was made without any evaluation of the number and types of transmission lines that would be implicated by the final rule.[217] EEI claims that, while some commenters may have opined that three years would be a sufficient amount of time to implement AARs, these comments were based on the NOPR proposal that would have required that AARs be implemented on historically congested transmission lines, not on all transmission lines.[218] EEI argues that the three-year implementation period does not consider the substantial increase in the number of transmission line ratings that the final rule requires transmission providers to compute as compared to the NOPR. In addition, EEI argues that the implementation timeframe does not consider or provide information on whether third-party vendors have the database infrastructure or the ability to develop the database infrastructure necessary to support the data requirements in the final rule. EEI contends that a longer implementation period would provide additional time for coordination, which would benefit transmission owners that have facilities in multiple states.[219]

94. Potomac Economics also requests rehearing, but argues that the Commission should require implementation of AARs and emergency ratings as soon as practicable rather than permitting transmission providers and transmission owners to wait three years to comply with these requirements.[220] Specifically, Potomac Economics contends that the Commission made a well-reasoned finding that failing to adjust transmission line ratings for changes in ambient air temperature and failing to utilize emergency ratings can lead to wholesale rates that are unjust and unreasonable, and should only be done if it were infeasible to require AARs more quickly than the three-year deadline established in the final rule. In particular, Potomac Economics requests that the Commission modify its proposed implementation schedule to require that AARs be implemented within one year of the final rule on a designated number of the most congested constraints that are not currently being adjusted.[221]

95. Potomac Economics also requests rehearing of the Commission's determination to require the use of emergency ratings on the same implementation timeframe as AARs. Potomac Economics states that, while there may be ''challenges'' for resources required to implement AARs, this is not generally true of emergency ratings, as they can be provided under most RTOs/ISOs' current systems with no significant modifications, arguing that emergency ratings are particularly important because the vast majority of real-time constraints are first-contingency constraints where emergency ratings are presumptively appropriate.[222] Potomac Economics argues that it is unreasonable for the

[204] *Id.* P 331.
[205] *Id.* P 334.
[206] *Id.* P 334 n.813.
[207] EEI Request for Rehearing at 3.
[208] *Id.* at 14.
[209] *Id.*
[210] *Id.*
[211] *Id.* at 14–15.
[212] Order No. 881, 177 FERC ¶ 61,179 at PP 333–34.
[213] 18 CFR 35.28(g)(3).
[214] NOPR, 173 FERC ¶ 61,165 at P 81.
[215] Order No. 881, 177 FERC ¶ 61,179 at P 361 n.870.
[216] *Id.* PP 360–361.
[217] EEI Request for Rehearing at 7–8.
[218] *Id.* at 8.
[219] *Id.*
[220] Potomac Economics Request for Rehearing at 5.
[221] *Id.* at 6–7.
[222] *Id.* at 7–8.

Commission not to require near-term implementation of fixed emergency ratings pending the implementation of AARs given that: (1) The failure to utilize emergency ratings on contingency constraints is a major contributor to unjust and unreasonable wholesale rates; (2) the information needed to provide unadjusted emergency ratings is readily available for most constraints; and (3) there are no dependencies between providing fixed seasonal emergency ratings and later adjusting such ratings for changes in ambient air temperatures. Potomac Economics contends that allowing the emergency ratings requirements to be suspended for up to three years will result in inflated congestion and curtailments of low-cost generation and is indisputably unreasonable, is unsupported by the record, and has not been reasonably justified or explained by the Commission. Potomac Economics requests that the Commission revise its implementation schedule to require near-term implementation of reliable emergency ratings in the real-time markets, day-ahead markets, and forward markets and in planning studies.[223]

3. Commission Determination

96. We sustain the Commission's determinations in Order No. 881 on this issue. As an initial matter, EEI mischaracterizes the NOPR proposal as one in which ''AARs would be implemented on congested lines, not all lines.'' [224] In fact, the NOPR proposed a staggered approach that would prioritize implementation on congested transmission lines (within one year from the date of the compliance filing for implementation of the proposed reforms to become effective) and require a longer timeline for implementation of AARs on all other transmission lines (within two years of the date of the compliance filing for implementation of the proposed reforms to become effective).[225] EEI acknowledged this in comments in response to the NOPR, that it ''agrees with a staggered approach, similar to the Commission's proposal'' but suggested that the Commission ''not require that companies deploy AARs on all transmission facilities.'' [226]

97. EEI suggests that the three-year implementation period does not consider the ''substantial increase in the number of ratings that the final rule requires to be computed,'' as compared to the NOPR, nor whether third-party vendors will be able to support the data requirements of Order No. 881.[227] Contrary to EEI's argument, the Commission did consider the requirements adopted in the final rule—as opposed to those in the NOPR—in setting the implementation timeline. The Commission determined that three years was a reasonable implementation timeline by considering the comments filed in response to the NOPR. Multiple commenters noted that one of the largest impediments to the NOPR's proposed two-year implementation timeline was the time needed to develop necessary software changes, which are largely one-time upgrades applicable to both congested and non-congested transmission lines.[228] In giving transmission providers more time to implement the requirements adopted in Order No. 881 than proposed in the NOPR, the Commission responded to commenters' justification for additional time to develop the software but balanced that with the fact that once the software is in place, the calculations are largely automated. Thus, the Commission's determination in setting the three-year implementation timeline accounted for potential implementation challenges of the more broadly applicable transmission line ratings requirements of the final rule.

98. As for third-party vendor availability, the Commission considered comments that raised these concerns in response to the NOPR.[229] Specifically, in the NOPR, the Commission proposed AAR requirements similar to those adopted in the final rule, and similarly explained that those requirements would necessitate that transmission providers implement an automated system in setting the implementation timeline.[230] For example, Arizona Public Service Company (APS) argued that ''adequate time is needed to develop the business requirements for the software vendors and that APS will have to work with multiple software vendors to comply'' [231] and then indicated that it agreed with EEI's assertion that ''between two to three years'' is needed to implement AARs on priority transmission lines.[232] As explained in Order No. 881 and above, we expect that the implementation burden is predominantly a one-time investment and that the burden of applying AARs to additional transmission lines is minimal.[233] Thus, in considering comments like APS's, the Commission determined that a three-year implementation timeline for all transmission lines—as opposed to just priority transmission lines—balances the need to implement the requirements adopted in Order No. 881 as soon as practicable to address unjust and unreasonable wholesale rates with the burden on transmission providers of complying with those requirements. In short, EEI fails to support the claims it makes about the potential for the data storage and sharing requirements to require additional time due to the need for third-party vendors beyond the extended three-year timeline adopted in the final rule. Thus, we are not persuaded that the additional requirements adopted in the final rule, as compared to the NOPR, necessitate further implementation delay.

99. Nor are we persuaded to adopt an earlier implementation, as requested by Potomac Economics. We find that a three-year implementation schedule provides a reasonable amount of time for transmission providers to implement the requirements of Order No. 881. As noted above, commenters raised concerns with the NOPR's proposed timeline, which was shorter than that adopted in the final rule. For example, MISO Transmission Owners, EEI, Southern Company, SCE, PacifiCorp, APS, ITC, and other commenters expressed concerns that it would be difficult to implement AARs on *any* transmission line within one year due to required operating and data system upgrades.[234] On the other hand, as the Commission explained in Order No. 881 and as we note above, three years is consistent with the implementation schedule most commonly suggested by transmission owners for AAR implementation on priority

[223] *Id.* at 8.

[224] EEI Request for Rehearing at 7.

[225] NOPR, 173 FERC ¶ 61,165 at P 81.

[226] EEI Comments at 6–7.

[227] EEI Request for Rehearing at 8.

[228] *See, e.g.,* Industrial Customers Comments at 22 (suggesting an implementation timeline of six months for congested transmission lines and one year for all others); PG&E Comments at 6 (suggesting a three-phase, five-year implementation timeline).

[229] *Compare* Order No. 881, 177 FERC ¶ 61,179 at P 119 (summarizing NYISO's comments that vendor availability for the software buildout necessary for calculating AARs for up to 10 days forward is unknown) *with id.* P 351 (explaining that NYISO requests flexibility for implementation and argues that the NOPR proposal does not give enough time for software changes to be developed). *Compare id.* P 354 (summarizing ITC's argument that the NOPR's proposed implementation timeline does not give enough time for software development or purchase from a vendor and analysis of the impact of the requirements on ITC's internal transmission line ratings database) *with id.* P 351 (stating that ITC argues that three years is needed to implement AARs on priority transmission lines).

[230] NOPR, 173 FERC ¶ 61,165 at P 95.

[231] APS Comments at 6.

[232] *Id.;* EEI Comments at 8; Order No. 881, 177 FERC ¶ 61,179 at PP 351, 353.

[233] Order No. 881, 177 FERC ¶ 61,179 at P 94.

[234] *Id.* PP 351–354.

transmission lines.[235] Potomac Economics addresses neither these operational and software concerns, nor the level of support for the three-year implementation schedule.

100. With regard to Potomac Economics' argument that the Commission should require implementation of fixed emergency ratings as soon as practicable, we find that the three-year implementation schedule is consistent with the implementation schedule most commonly suggested by transmission owners for AAR implementation on priority transmission lines,[236] and both the Commission and commenters explained that the availability of emergency ratings will need to be factored into ATC calculations.[237] Potomac Economics has not demonstrated that the implementation of emergency ratings on a faster timeline is feasible, particularly in the non-RTO/ISO regions and particularly in light of the challenges associated with updating ATC calculations articulated by commenters.[238] Moreover, as a matter of policy, there are administrative efficiencies to requiring implementation of all the requirements adopted in Order No. 881 on the same timeline. Specifically, by maintaining a single implementation timeline, the implementation burdens are lessened in that all transmission line rating recalculations must only be done once. In contrast, Potomac Economics' suggestion would require the calculation of seasonal emergency ratings followed by a separate calculation of emergency ratings to comply with the AAR requirements for the same transmission line. Thus, requiring implementation of all the requirements adopted in Order No. 881 on the same timeline is appropriate given the interrelationship between the AAR requirements, the emergency ratings requirements, and the requirement that AARs also be calculated for ''uniquely determined emergency ratings.'' [239] Therefore, as explained above, we sustain the findings in the final rule that justify a three-year implementation timeline for the other requirements of Order No. 881 and believe it appropriate to include the emergency ratings requirements in the same timeline.

E. Other Issues

101. ATC requests clarification that its current seasonal line ratings methodology meets the intent of Order No. 881 by providing what it characterizes as ''four seasons of accurate, science-based weather parameters'' and that its current AAR approach satisfies the requirements of Order No. 881.[240]

102. In response to ATC's request for clarification, we find that the appropriate proceeding for the Commission to make such a determination is through transmission providers' Order No. 881 compliance filings. As explained in Order No. 881, each transmission provider must submit a compliance filing within 120 days of the effective date of the final rule revising their OATT to incorporate *pro forma* OATT Attachment M.[241] The Commission acknowledged that ''some public utility transmission providers may have provisions in their existing *pro forma* OATTs or other document(s) subject to the Commission's jurisdiction that the Commission has deemed to be consistent with or superior to the *pro forma* OATT.'' [242] Where Order No. 881 modifies these provisions, ''transmission providers must either comply with the requirements adopted in this final rule or demonstrate that these previously approved variations continue to be consistent with or superior to the *pro forma* OATT, as modified by this final rule.'' [243] The compliance filing required by Order No. 881 is the proper vehicle for presenting this evidence to the Commission.

III. Information Collection Statement

103. The burden estimates have not changed from the final rule.

IV. Regulatory Flexibility Act Certification

104. The Regulatory Flexibility Act of 1980 (RFA) [244] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. Pursuant to section 605(b) of the RFA, we still conclude that the final rule will not have a significant economic impact on a substantial number of small entities.

V. Document Availability

105. 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 FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE, Room 2A, Washington DC 20426.

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

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

VI. Effective Date

108. The effective date of the document published on January 13, 2022 (87 FR 2244), is confirmed: March 14, 2022.

By the Commission.

Issued: May 19, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–11233 Filed 5–24–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 375

[Docket No. RM22–15–000; Order No. 883]

Certification of Uncontested Settlements by Settlement Judges

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is revising its delegation of authority regulations to authorize the Chief

[235] *Id.* P 361 (citing comments in support of a three-year implementation schedule).

[236] *Id.* P 361 (citing EEI Comments at 18; NRECA/LPPC Comments at 28–29; MISO Transmission Owners Comments at 22–23; SCE Comments at 2; SDG&E Comments at 1–2; APS Comments at 10; WFEC Comments at 1; Southern Company Comments at 6–7; ITC Comments at 5; LADWP Comments at 8–9).

[237] *Id.* PP 293, 296.

[238] *Id.* P 59 (citing BPA Comments at 3–4; PacifiCorp Comments at 2; Imperial Irrigation District Comments at 5–6; EEI Comments at 10–11; CAISO Comments at 10).

[239] *Id.* P 305.

[240] ATC Request for Clarification at 1.

[241] Order No. 881, 177 FERC ¶ 61,179 at P 12.

[242] *Id.* P 363; *see* 18 CFR 35.28(c)(1)(vi).

[243] Order No. 881, 177 FERC ¶ 61,179 at 363.

[244] 5 U.S.C. 601–612.

Administrative Law Judge and the Administrative Law Judge designated by the Chief Administrative Law Judge to serve as a settlement judge for a proceeding to certify to the Commission uncontested offers of settlement.

DATES: This rule is effective June 24, 2022.

FOR FURTHER INFORMATION CONTACT: Lawrence R. Greenfield, Ofice of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6415, *lawrence.greenfield@ferc.gov.*

SUPPLEMENTARY INFORMATION: 1. In this instant final rule, the Commission codifies its precedent, revising its delegation of authority regulations to authorize the Chief Administrative Law Judge and the Administrative Law Judge designated by the Chief Administrative Law Judge to serve as a settlement judge (collectively, ''settlement judge'') for a proceeding to certify to the Commission uncontested offers of settlement.

I. Discussion

2. The Commission has long recognized the importance of settlements among the participants to litigated proceedings as a tool to efficiently and expeditiously resolve those contested proceedings set for trial-type evidentiary hearing, as well as other contested proceedings.[1] Settlement judges are particularly crucial to helping participants resolve such proceedings. The Commission's Rules of Practice and Procedure have thus long provided for the appointment of settlement judges by the Chief Administrative Law Judge.[2] While the settlement judge is authorized to convene and preside over conferences and negotiations by the participants to a proceeding, and then to assess the practicalities of potential settlement, and then to report to the Chief Administrative Law Judge or the Commission, as appropriate, recommending continuation or termination of settlement negotiations, the Commission's regulations do not expressly authorize the settlement judge to certify uncontested settlements to the Commission.[3]

3. Recognizing that the Commission's regulations did not expressly authorize settlement judges to certify uncontested settlements to the Commission, in 2002 the Commission sought to clarify this matter (and others not relevant here).[4] The Commission noted that, in fact, at that time settlement judges were already typically certifying uncontested settlements, and the Commission went on to conclude that settlement judges' doing so was ''appropriate and not inconsistent with [the] regulations.'' [5] That is, the Commission expressly authorized settlement judges henceforth to do what they had been doing previously without express authorization, *i.e.,* certify uncontested settlements. The Commission had not changed its delegation of authority regulations, however. We now do so, and we in this document codify in our delegation of authority regulations express authorization for settlement judges to certify uncontested settlements.

II. Information Collection Statement

4. The Office of Management Budget's regulations require approval of certain information collection requirements imposed by agency rules.[6] This final rule, however, results in no new, additional, or different reporting burdens. This final rule does not require public utilities or natural gas companies, or indeed any participant in a Commission proceeding, to file new, additional, or different information, and it does not change the frequency with which they must file information.

III. Environmental Analysis

5. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[7] Issuance of this final rule does not represent a major Federal action having a significant adverse effect on the human environment under the Commission's regulations implementing the National Environmental Policy Act of 1969. Part 380 of the Commission's regulations lists exemptions to the requirement to draft an Environmental Analysis or Environmental Impact Statement. Included is an exemption for rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[8] This final rule, codifying the ability of settlement judges to certify uncontested settlements, is clarifying and procedural and thus is exempt under that provision.

IV. Regulatory Flexibility Act

6. The Regulatory Flexibility Act of 1980 (RFA) [9] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. This final rule changes the Commission's delegations of authority to authorize settlement judges to certify uncontested settlements and does not create any additional requirements for participants. Indeed, by expressly delegating such authority, the Commission provides clarity concerning settlement judges' authority to certify participants' uncontested settlements, and that will benefit the participants in Commission proceedings. The Commission thus certifies that this final rule will not have a significant economic impact upon participants in Commission proceedings. An analysis under the RFA is therefore not required.

V. Document Availability

7. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*). At this time, the Commission has suspended access to the Commission's Public Reference Room due to the President's March 13, 2020 proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19).

8. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of

[1] *E.g., Ariz. Pub. Serv. Co.,* 97 FERC ¶ 61,315, at 62,449 (2001) (''it has been Commission policy to promote voluntary settlements as an important tool in the administration of our jurisdictional responsibilities''); *Tex. Gas Transmission Corp.,* 28 FERC ¶ 61,372, at 61,665–66 (1984) (encouraging settlements, as they can play an important part in resolving issues without prolonged and contentious litigation); *cf. Tex. E. Transmission Corp.* v. *FPC,* 306 F.2d 345, 347–48 (5th Cir. 1962) (''For Commission approved voluntary settlements are an important and desirable mechanism as the Commission undertakes the staggering burden of dealing with the ceaseless flow of the ever-more complicated problems. . . . Consequently settlements should be encouraged, not discouraged.'' (footnotes omitted)).

[2] 18 CFR 385.603 (2021).

[3] *Compare* 18 CFR 385.603 *with* 18 CFR 385.602 (2021). The Rules of Practice and Procedure authorize ''presiding officers'' to certify uncontested settlements, *see* 18 CFR 385.602(g)(1), and presiding officers are defined to include the Commissioner or administrative law judge designated to preside at the hearing, the Chief Administrative Law Judge, or with respect to proceedings not set for trial-type hearing the Commission employee designated to conduct such proceeding. 18 CFR 385.102(e) (2021). Settlement judges are not mentioned. The Commission's delegation of authority regulations similarly do not expressly authorize settlement judges to certify uncontested settlements. 18 CFR 375.304 (2021).

[4] *Cities of Anaheim* v. *Cal. Indep. Sys. Operator Corp.,* 101 FERC ¶ 61,392 (2002).

[5] *Id.* P 12 & n.8.

[6] 5 CFR 1320.13 (2021).

[7] *Reguls. Implementing the Nat'l Envt'l Pol'y Act,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. 30,783 (1987) (cross-referenced at 41 FERC ¶ 61,284).

[8] 18 CFR 380.4(a)(2)(ii) (2021).

[9] 5 U.S.C. 601–12.

this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

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

VI. Effective Date and Congressional Notification

10. These regulations are effective June 24, 2022. The Commission is issuing this rule as a final rule without a period for public comment. Under 5 U.S.C. 553(b)(3)(A), notice and comment procedures are unnecessary for ''rules of agency organization, procedure, or practice.'' This rule is such a rule, and, by codifying in the regulations the delegation of authority to settlement judges to certify uncontested settlements to the Commission, this rule is directed at improving the efficient and effective operations of the Commission, not toward a determination of the rights, interests, or obligations of any affected participants. Notice and comment procedures are thus not required.

11. The Congressional Review Act provides for Congressional notification of certain rules, but essentially exempts ''any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.'' [10] This rule is such a rule, and, by codifying in the regulations the delegation of authority to settlement judges to certify uncontested settlements to the Commission, this rule is directed at improving the efficient and effective operations of the Commission, not toward a determination of the rights, interests, or obligations of any affected participants. Congressional notification is thus not required.

List of Subjects in 18 CFR Part 375

Authority delegations.

By the Commission.

[10] 5 U.S.C. 804(3)(C).

Issued: May 19, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

In consideration of the foregoing, the Commission amends part 375, chapter I, title 18, *Code of Federal Regulations,* as follows:

PART 375—THE COMMISSION

■ 1. The authority citation for part 375 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 42 U.S.C. 7101–7352.

■ 2. In § 375.304, paragraph (c) is added to read as follows:

§ 375.304 Delegations to the Chief Administrative Law Judge.

* * * * *

(c) The Commission authorizes the Chief Administrative Law Judge, and the Administrative Law Judge designated by the Chief Administrative Law Judge to serve as a settlement judge for a proceeding, to certify to the Commission uncontested offers of settlement.

[FR Doc. 2022–11242 Filed 5–24–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2022–0339]

RIN 1625–AA08

Special Local Regulation; Escape From Alcatraz Triathlon, 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 local regulation for the navigable waters on the San Francisco Bay. The special local regulation is needed to protect personnel, vessels, and the marine environment from potential hazards created by the Escape from Alcatraz Triathlon marine event. This special local regulation will temporarily prohibit persons and vessels from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port San Francisco or a designated representative. This regulation is necessary to provide safety of life on the navigable waters during the event, which will be held on June 5, 2022.

DATES: This rule is effective on June 5, 2022, from 6:30 a.m. until 10 a.m.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0339 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 MST1 Shannon Curtaz-Milian, U.S. Coast Guard District 11, Sector San Francisco, at 415–399–3585, *SFWaterways@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because we must establish this regulation by June 5, 2022, and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing this rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because immediate action is needed to ensure the safety of the participants and vessels during the Escape from Alcatraz Triathlon on June 5, 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 Sector San Francisco

(COTP) has determined that potential hazards associated with the Escape from Alcatraz Triathlon marine event on June 5, 2022, will be a safety concern from Alcatraz Island to St. Francis Yacht Club for three and a half hours. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the special local regulation while the event is taking place.

IV. Discussion of the Rule

This rule establishes a special local regulation from 6:30 a.m. until 10 a.m. on June 5, 2022. The special local regulation will cover all navigable waters in the vicninity of the marine event, Escape from Alcatraz Triathon, taking place near Alcatraz Island to St. Francis Yacht Club. The duration of the special local regulation is intended to protect personnel, vessels, and the marine environment in these navigable waters while the event is taking place. No vessel or person will be permitted to enter the regulated area without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and the time-of-day of the special local regulation. This special local regulation would impact a small designated area of the San Francisco Bay for a short duration and vessel traffic will be able to transit after the time of the event. Moreover the Coast Guard will issue a Broadcast the Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

When the special local regulation is in effect, vessel traffic can pass safely around the regulated area. The maritime public will 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 lasting only 3 and a half hours that will prohibit entry within a marine event in the area of Alcatraz Island to Saint Francis Yacht Club. 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. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 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.T11–095 to read as follows:

§ 100.T11–095 Special Local Regulation; Escape from Alcatraz Triathlon, San Francisco Bay, San Francisco, CA.

(a) *Regulated area.* The regulations in this section apply to the following area: All waters of the San Francisco Bay From Alcatraz Island to Saint Francis Yacht Club.

(b) *Definitions.* As used in this section—

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port San Francisco (COTP) in the enforcement of the regulations in this section.

Participant means all persons and vessels registered with the event sponsor as a participants in the marine event.

(c) *Regulations.* (1) All non-participants are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area described in paragraph (a) of this section unless authorized by the Captain of the Port Sector San Francisco or their designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by phone at 1–415–399–3547. Those in the regulated area must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(3) The COTP will provide notice of the regulated area through advanced notice via broadcast notice to mariners.

(d) *Enforcement period.* This section will be enforced on June 5, 2022, from 6:30 a.m. to 10 a.m.

Dated: May 18, 2022.

Taylor Q. Lam,

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

[FR Doc. 2022–11170 Filed 5–24–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2022–0310]

RIN 1625–AA08

Special Local Regulation; Dogwood Masters Classic Regatta; Clinch River, Oak Ridge, TN

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation for for the Clinch River between mile marker 49.5 to 52 on May 29, 2022 for the Dogwood Masters Classic Regatta. The special local regulation is needed to protect personnel, vessels, and the marine environment from potential hazards created by the rowers associated with the event. Entry of vessels or persons into the special local regulation is prohibited unless specifically authorized by the Captain of the Port Sector Ohio Valley.

DATES: This rule is effective from 6 a.m. to 6:30 p.m. on May 29, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0310 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 MST3 Joshua Rehl, U.S. Coast Guard; telephone 615–736–5421, email *Joshua.M.Rehl@uscg.mil*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. The Coast Guard was notified of the event without ample time to allow for a reasonable comment period and then consider those comments because we must establish this special local regulation by May 29, 2022.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because action is needed on May 29, 2022 to ensure the safety of the participants in the Dogwood Masters Classic Regatta.

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 Sector Ohio Valley (COTP) has determined that potential hazards associated with the regatta, will be a safety concern for anyone within mile markers 49.5 to 52 on the Clinch River. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the special local regulation during the duration of the event.

IV. Discussion of the Rule

This rule establishes a temporary special local regulation on the Clinch River from mile markers 49.5 to 52, from 6:00 a.m. until 6:30 p.m. on May 29, 2022 for the Dogwood Masters Classic Regatta. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the regatta is taking place. No non-participant vessels or persons will be permitted to enter the special local regulation without obtaining permission from the COTP or a designated representative. Vessels and persons transiting the area must comply with all orders or directions given to them by the COTP or their designated representative. The COTP will provide notice of the regulated area through advanced notice via broadcast notice to mariners and by on-scene designated representatives.

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, duration, and time-of-day of the special local regulation. Vessel traffic will be able to safely transit around this special local regulation which would impact a small designated area of the Clinch River for 12.5 hours during the day when vessel traffic is normally low. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation lasting 12.5 hours that will prohibit entry between mile markers 49.5 to 52 of the Clinch River for the duration of the regatta. 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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 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.T08–0310 to read as follows:

§ 100.T08–0310 Special Local Regulation; Dogwood Masters Classic Regatta; Clinch River, Oak Ridge, TN

(a) *Regulated area:* This section applies to the following area: Clinch River Mile Marker (MM) 49.5—52, extending the entire width of the river.

(b) *Regulations.* (1) All non-participants are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area described in paragraph (a) of this section unless authorized by the Captain of the Port Sector Ohio Valley or their designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by phone at 502–779–5422 Those in the regulated area must comply with all lawful orders or directions given to them by the COTP or the designated representative.

(3) The COTP will provide notice of the regulated area through advanced

notice via broadcast notice to mariners and local notice to mariners.

(c) *Enforcement period.* This section will be enforced from 6 a.m. to 6:30 p.m. on May 29, 2022.

Dated: May 19, 2022.

A.M. Beach,

Captain, U.S. Coast Guard, Captain of the Port Sector Ohio Valley.

[FR Doc. 2022–11228 Filed 5–24–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0332]

RIN 1625–AA00

Safety Zone; SFSU Graduation Fireworks; 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 safety zone on the navigable waters of the San Francisco Bay, outside McCovey Cove, in San Francisco, CA, in support of fireworks displays on both May 26, 2022, and May 27, 2022. The safety zone is necessary to protect personnel, vessels, and the marine environment from potential hazards created by pyrotechnics. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without the permission of the Captain of the Port San Francisco or a designated representative.

DATES: This rule is effective from 10 a.m. on May 26, 2022, until 10:40 p.m. on May 27, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0332 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

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

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. The Coast Guard did not receive final details for this event until April 22, 2022. It is impracticable to go through the full notice and comment rule making process because the Coast Guard must establish this safety zone by May 26, 2022, and lacks sufficient time to provide a reasonable comment period and to consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because action is necessary to protect personnel, vessels, and the marine environment from the potential safety hazards associated with the fireworks display outside McCovey Cove in San Francisco, CA on May 26, 2022, and May 27, 2022.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port San Francisco has determined that potential hazards associated with the scheduled two-day San Francisco State University (SFSU) Graduation Fireworks displays on May 26, 2022, and May 27, 2022, will be a safety concern for anyone within a 100-foot radius of the fireworks vessel during loading and staging, and anyone within a 600-foot radius of the fireworks vessel starting 30 minutes before the fireworks display is scheduled to commence and ending 30 minutes after the conclusion of the fireworks display. For this reason, this temporary safety zone is needed to protect personnel, vessels, and the marine environment in the navigable waters around the fireworks vessel and during the fireworks display.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from 10 a.m. until 10:40 p.m. on May 26, 2022, and 10 a.m. until 10:40 p.m. on May 27, 2022, during the loading, staging, and transit of the fireworks vessel from Westar Marine Service Pier 50, San Francisco, CA, to outside McCovey Cove in the San Francisco Bay, San Francisco, CA, and until 30 minutes after completion of the fireworks display. During the loading, staging, and transit of the fireworks vessel scheduled to take place between 10 a.m. and 8:45 p.m. on May 26, 2022, and May 27, 2022, until 30 minutes prior to the start of the fireworks display, the safety zone will encompass the navigable waters around and under the fireworks vessel, from surface to bottom, within a circle formed by connection of all points 100 feet out from the fireworks vessel. The fireworks displays are scheduled to start at 10 p.m. and end approximately 10:10 p.m. on both May 26, 2022, and May 27, 2022, outside of McCovey Cove within San Francisco Bay in San Francisco, CA.

The fireworks vessel will remain at Westar Marine Service Pier 50, San Francisco, CA, until the start of its transit to the display location. Movement of the vessel from Westar Marine Service Pier 50 to the display location is scheduled to take place from 8:30 p.m. to 8:45 p.m. on both May 26, 2022, and May 27, 2022, where it will remain until the conclusion of the fireworks display.

At 9:30 p.m. on each day of the fireworks displays, 30 minutes prior to the commencement of the 10-minute fireworks display, the safety zone will increase in size and encompass the navigable waters around and under the fireworks vessel, from surface to bottom, within a circle formed by all connecting points 600 feet from the circle center at approximate position 37°46′36″ N, 122°22′56″ W (NAD 83). The safety zone will terminate at 10:40 p.m. on May 26, 2022, and May 27, 2022 or as announced via Broadcast Notice to Mariners.

This regulation is necessary to keep persons and vessels away from the immediate vicinity of the fireworks loading, staging, transit, and display site. Except for persons or vessels authorized by the Captain of the Port San Francisco (COTP) or the COTP's designated representative, no person or vessel may enter or remain in the restricted area. A ''designated representative'' means a Coast Guard Patrol Commander, including a Coast

Guard coxswain, petty officer, or other officer operating a Coast Guard vessel, or a Federal, State, or local officer designated by or assisting the COTP in the enforcement of the safety zone. This regulation is necessary to ensure the safety of participants, spectators, and transiting vessels.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

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

B. Impact on Small Entities

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

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

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary safety zone in the navigable waters around the loading, staging, transit, and display of fireworks at Westar Marine Service Pier 50 and outside McCovey Cove within San Francisco Bay. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5;

Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

■ 2. Add § 165.T11–096 to read as follows:

§ 165.T11–096 Safety Zone; SFSU Graduation Fireworks; San Francisco Bay, San Francisco, CA.

(a) *Location.* The following area is a safety zone: All navigable waters of San Francisco Bay, from surface to bottom, within a circle formed by connecting all points 100 feet out from the fireworks vessel during loading and staging at Westar Marine Service Pier 50 in San Francisco, CA, as well as transit and arrival to the display location outside McCovey Cove, San Francisco Bay in San Francisco, CA. Between 9:30 p.m. and 10:40 p.m. on May 26, 2022, and May 27, 2022, the safety zone will expand to all navigable waters, from surface to bottom, within a circle formed by connection all points 600 feet out from the fireworks vessel in approximate position 37°46′36″ N, 122°22′56″ W (NAD 83) or as announced via Broadcast Notice to Mariners.

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

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

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

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

(d) *Enforcement period.* This section will be enforced each day from 10 a.m. until 10:40 p.m. on both May 26, 2022, and May 27, 2022.

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

Dated: May 18, 2022.

Taylor Q. Lam,

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

[FR Doc. 2022–11169 Filed 5–24–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2022–0419]

Security Zone; Portland Rose Festival on Willamette River

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the security zone for the Portland Rose Festival on the Willamette River in Portland, OR, from noon on June 8, 2022 through noon on June 13, 2022. This action is necessary to ensure the security of vessels participating in the 2022 Portland Rose Festival on the Willamette River during the event. Our regulation for the Portland Rose Festival on the Willamette River designates the regulated area and identifies the approximate dates for this event. The specific dates and times are identified in this document. These regulations prohibit persons and vessels from being in the regulated area unless authorized by the Captain of the Port Sector Columbia River or a designated representative.

DATES: The regulations in 33 CFR 165.1312 will be enforced from noon on June 8, 2022 through noon on June 13, 2022.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email LT Sean Murphy, Waterways Management Division, Marine Safety Unit Portland, U.S. Coast Guard; telephone 503–240–9319, email *D13-SMB-MSUPortlandWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the security zone for the Portland Rose Festival in 33 CFR 165.1312 for the Willamette River regulated area from noon on June 8, 2022 through noon on June 13, 2022. This action is necessary to ensure the security of vessels participating in the 2022 Portland Rose Festival on the Willamette River during the event. Under the Provisions of 33 CFR 165.1312 and subpart D of part 165, no person or vessel may enter or remain in the security zone, consisting of all waters of the Willamette River, from surface to bottom, encompassed by the Hawthorne and Steel Bridges, without permission from the Captain of the Port Columbia River. Persons or vessels wishing to enter the security zone may request permission to do so from the on-scene Captain of the Port representative via VHF Channel 16 or 13. The Coast Guard may be assisted by other Federal, State, or local enforcement agencies in enforcing this regulation.

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

Dated: May 19, 2022.

G.M. Bailey,

Captain, U.S. Coast Guard, Alternate Captain of the Port Columbia River.

[FR Doc. 2022–11191 Filed 5–24–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0269]

RIN 1625–AA00

Safety Zone; Fireworks Display, Willamette River, Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain navigable waters of the Willamette River. This action is necessary to provide for the safety of life on these navigable waters near Portland, OR, during a fireworks display on May 27, 2022. This regulation prohibits persons and vessels from being in the safety zone unless authorized by the Captain of the Port Sector Columbia River or a designated representative.

DATES: This rule is effective from 8:30 p.m. on May 27, 2022, to 12 a.m. on May 28, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0269 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 LT Sean Murphy, Waterways Management Division, Marine Safety Unit Portland, U.S. Coast Guard; telephone 503–240–9319, email *D13-SMB-MSUPortlandWWM@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Columbia River
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

On March 8, 2022, Western Display Fireworks, LTD notified the Coast Guard that it will be conducting a fireworks display from 9:30 to 11 p.m. on May 27, 2022 for the Portland Rose Festival Opening Night. The fireworks are to be launched from a barge in the Willamette River between the Hawthorne and Marquam Bridges, Portland, OR. Hazards from fireworks displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. In response, on April 15, 2022, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Fireworks Display, Willamette River, Portland, OR (87 FR 22496). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this fireworks display. During the comment period that ended May 2, 2022, we received three comments. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with the fireworks display.

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 Sector Columbia River (COTP) has determined that potential hazards associated with the fireworks display would be a safety concern for anyone within the designated area of the safety zone before, during, or after the fireworks display. The purpose of this rule is to ensure the safety of vessels and the navigable waters within the designated area before, during, and after the scheduled event.

IV. Discussion of Comments and the Rule

As noted above, we received three comments on our NPRM published April 14, 2022. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

One comment expressed concerns about citizens or businesss needing access to the river in the vicinity of the safety zone. This concern is mitigated because vessels can contact a COTP representative via radio on UHF–16 to request passage. The second comment was in support of the safety zone, although it erroneously states that the duration of the safety zone is for 3 hours rather than 3 and a half hours. The remaining comment was unrelated to the proposed rulemaking.

This rule establishes a safety zone from 8:30 p.m. on May 27, 2022 to midnight on May 28, 2022. The safety zone will cover all navigable waters of the Columbia River, from surface to bottom, between the Hawthorne and Marquam Bridges. The fireworks barge location will be at the following approximate point: 45°30′37.61″ N/ 122°40′11.81″ W. The safety zone will encompass approximately 500 feet. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 9:30 p.m. to 11 p.m. fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. A designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the COTP to act on his behalf, or a Federal, State, and local officer designated by or assisting the COTP in the enforcement of the safety zone. Vessel operators desiring to enter or operate within the safety zone should contact the COTP's on-scene designated representative by calling (503) 209–2468 or the Sector Columbia River Command Center on Channel 16 VHF–FM.

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 safety zone. The safety zone will impact approximately 500 feet of the Columbia River before, during, and after the fireworks event for 3.5 hours and thus is limited in scope. Moreover, the Coast Guard will issue a Notice to Mariners about the zone, and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting 3.5 hours that will prohibit entry between 2 bridges within approximately 500 yards near a fireworks barge. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T13–0269 to read as follows:

§ 165.T13–0269 Safety Zone; Fireworks Display, Willamette River, Portland, OR.

(a) *Location.* The following area is a safety zone: All navigable waters of the Willamette River, surface to bottom, between the Hawthorne and Marquam Bridges, Portland, OR. The fireworks barge location will be at the approximate point of 45°30′37.61″ N/122°40′11.81″ W.

(b) *Definitions.* As used in this section—

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Columbia River (COTP) in the enforcement of the safety zone.

Participant means all persons and vessels registered with the event sponsor as a participant in the race.

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

(2) To seek permission to enter, contact the COTP or the COTP's representative by calling (503) 209–2468 or the Sector Columbia River Command Center on Channel 16 VHF–FM. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(3) The COTP will provide notice of the regulated area through advanced notice via broadcast notice to mariners and by on-scene designated representatives.

(d) *Enforcement period.* This section will be enforced from 8:30 p.m. on 27 May, 2022 to 12:00 a.m. on May 28, 2022. It will be subject to enforcement this entire period unless the COTP determines it is no longer needed, in which case the Coast Guard will inform mariners via Notice to Mariners.

Dated: May 19, 2022.

G.M. Bailey,

Captain, U.S. Coast Guard, Alternate Captain of the Port Sector Columbia River.

[FR Doc. 2022–11187 Filed 5–24–22; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2021–0339; FRL–9298–02–OCSPP]

Pyridate; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of pyridate in or on lentil, dry, seed and rapeseed subgroup 20A. Belchim Crop Production US Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective May 25, 2022. Objections and requests for hearings must be received on or before July 25, 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–2021–0339, is available online at *https://www.regulations.gov* or in-person 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 and the OPP Docket is (202) 566–1744. Please review the visitor instructions and additional information about the docket available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Marietta Echeverria, Acting Director, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 566–1030; 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 EPA's tolerance regulations at 40 CFR part 180 through the Office of the Federal Register's e-CFR site at *https://www.ecfr.gov/current/title-40.*

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

Under FFDCA section 408(g), 21 U.S.C. 346a, 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–2021–0339 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 July 25, 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–2021–0339, 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. Summary of Petitioned-For Tolerance

In the **Federal Register** of June 28, 2021 (86 FR 33922) (FRL–10025–08), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0F8885) by Belchim Crop Protection N.V./S.A., c/o Belchim Crop Protection US Corporation, 2751 Centreville Rd., Suite 100, Wilmington, DE 19808. The petition requested that 40 CFR 180.462 be amended to establish tolerances for residues of the herbicide pyridate calculated as the stoichiometric equivalent of pyridate, in or on the commodities lentils at 0.40 parts per million (ppm) and Rapeseed Subgroup (Crop Subgroup 20A) at 0.015 ppm. That document referenced a summary of the petitioned prepared by Belchim Crop Protection, the registrant, which is available in the docket, *https://www.regulations.gov.* There were no comments received in response to the Notice of Filing.

Based upon review of the data supporting the petition and in accordance with its authority under FFDCA section 408(d)(4)(A)(i), EPA is establishing the tolerance for rapeseed crop subgroup 20A at a different level than petitioned-for and is revising the commodity definition. The reasons for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), 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 pyridate including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with pyridate follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its 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.

The toxicological database for pyridate is adequate for hazard characterization, toxicity endpoint selection, and Food Quality Protection Act (FQPA) Safety Factor (SF) consideration. The available toxicity database for pyridate indicates that the nervous system is the toxicological target in studies where pyridate was administered via gavage or capsules, with the dog and the rat showing similar levels of sensitivity once bodyweight scaling is considered. The neurotoxic effects were associated with the peak plasma concentrations, occurred within a few hours of treatment, and resolved in less than 24 hours of the bolus dose from gavage or capsule administration. The neurobehavioral effects do not appear to be accumulative or progressive since the effects in the subchronic dog study occurred at approximately the same dose where effects were seen in the chronic dog study and were generally resolved within 6 hours of treatment. No evidence of neurotoxicity was observed in the studies where pyridate was administered via the diet (feed) following subchronic or chronic dietary exposure. Effects observed following dietary (feed) exposure were generally limited to systemic toxicity, primarily reductions in bodyweight. Additionally, there were no effects seen at the limit dose in the dermal toxicity study.

There was no evidence of increased susceptibility to the fetus or offspring in the available developmental and reproduction toxicity studies. Developmental (missing and unossified sternebrae and decreased bodyweight in fetuses) and offspring effects (decreased bodyweights) were seen in the presence of maternal toxicity in rats. An increased incidence of abortions was also noted in the developmental toxicity study in rabbits at the highest dose tested.

Pyridate is classified as ''Not Likely to be Carcinogenic to Humans.''

Specific information on the studies received and the nature of the adverse effects caused by pyridate as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *https://www.regulations.gov* in the document titled ''Pyridate. Human Health Risk Assessment for the Proposed New Section 3 Registration on Lentils, Rapeseed Subgroup 20A, Popcorn, and Seed Corn.'' (hereinafter referred to as ''Pyridate Human Health Risk Assessment'') on pages 25–27 in docket ID number EPA–HQ–OPP–2021–0339.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/standard-operating-procedures-residential-pesticide.*

A summary of the toxicological endpoints for pyridate used for human risk assessment can be found in the Pyridate Human Health Risk Assessment on pages 13–16.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to pyridate, EPA considered exposure under the petitioned-for tolerances as well as all existing pyridate tolerances in 40 CFR 180.462. EPA assessed dietary exposures from pyridate in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Such effects were identified for pyridate.

In conducting the acute dietary exposure assessment, EPA used the 2005–2010 food consumption data from the U.S. Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA). The acute dietary exposure assessment is unrefined, assuming tolerance-level residues, 100% crop treated (100 PCT) for all commodities, and default processing factors.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 2005–2010 food consumption data from the NHANES/WWEIA. The chronic dietary exposure assessment is unrefined, assuming tolerance-level residues, 100 PCT for all commodities, and default processing factors.

iii. *Cancer.* EPA has classified pyridate as ''Not Likely to be Carcinogenic to Humans'' as there was no evidence carcinogenicity in either of the rodent cancer studies; therefore, a cancer dietary assessment was not performed.

2. *Dietary exposure from drinking water.* The Agency used screening-level water exposure models in the dietary exposure analysis and risk assessment for pyridate in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of pyridate. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *https://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-medels-used-pesticide.*

Based on the Pesticides in Water Calculator (PWC; version 1.52), the estimated drinking water concentrations (EDWCs) of pyridate are estimated to be 363 parts per billion (ppb) for acute dietary exposures and 256 ppb for chronic dietary exposures.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Pyridate is not registered for any specific use patterns that would result in residential exposure.

4. *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.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common

mechanism of toxicity finding as to pyridate and any other substances and pyridate does not appear to produce a toxic metabolite produced by other substances. For the purposes of this action, therefore, EPA has not assumed that pyridate has a common mechanism of toxicity with other substances.

D. Safety Factor for Infants and Children

1. In general. Section 408(b)(2)(C) of FFDCA provides that EPA shall apply 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.

2. Prenatal and postnatal sensitivity. There was no evidence of increased susceptibility to the fetus or offspring in the available developmental and reproduction toxicity studies. Developmental (missing and unossified sternebrae and decreased bodyweight in fetuses) and offspring effects (decreased bodyweights) were seen in the presence of maternal toxicity in rats. An increased incidence of abortions was also noted in the developmental toxicity study in rabbits at the highest dose tested. Since these effects occurred in the presence of comparable or more severe maternal toxicity, they were not considered evidence of qualitative susceptibility. Furthermore, the selected points of departure are protective of these effects.

3. Conclusion. EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X for all exposure scenarios. That decision is based on the following findings:

i. The toxicology database for pyridate is complete and includes acceptable developmental and reproductive toxicity studies for evaluating sensitivity for infants and children.

ii. There are adverse neurotoxic effects observed in the database for pyridate both in the acute neurotoxicity (ACN) and in other studies, including the subchronic rat and chronic and subchronic dog, with effects such as emesis, ataxia, salivation, dyspnea, tremors, and prostration in dogs; and hypoactivity and excessive salivation in rats. However, these effects were only observed in studies where the test animals were exposed to a concentrated bolus of the chemical (gavage/capsule) and not in studies in which animals were exposed through the diet. These neurotoxic effects increased rapidly in incidence within 1–3 hours after dosing and gradually resolved over the next 8–12 hours and do not show progression in chronic studies. EPA concluded based upon a weight-of-evidence approach that the subchronic neurotoxicity study was not required for risk assessment at this time. Although there is evidence of neurotoxicity, concern is low since the selected endpoints for this chemical are protective of these effects.

iii. There was no evidence of increased quantitative or qualitative susceptibility in the developmental toxicity studies in rabbits or rats or the reproduction toxicity study in rats.

iv. There is no residual uncertainty in the exposure database. The dietary assessment is based on high-end assumptions such as modeled, high-end estimates of residues in drinking water, assuming 100 PCT and tolerance-level residues. In addition, there are no residential uses proposed for pyridate at this time. These assessments will not underestimate the exposure and risks posed by pyridate.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. Acute risk. An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. Using the exposure estimates from dietary consumption of food and drinking water, EPA has concluded that acute exposure to pyridate from food and water will utilize 33% of the aPAD for all infants less than 1-year old, the most highly exposed population subgroup.

2. Chronic risk. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure of pyridate from food and water will utilize 18% of the cPAD for all infants less than 1-year old, the population group receiving the greatest exposure.

3. Short- and intermediate-term risks. Short- and intermediate-term exposure takes into account short- and intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). A short-term adverse effect and an intermediate-term adverse effect were identified; however, pyridate is not registered for any use patterns that would result in short- or intermediate-term residential exposure. Short- and intermediate-term risk is assessed based on short- and intermediate-term residential exposure plus chronic dietary exposure. Because there is no short- or intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess short-term risk), no further assessment of short-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating short- and intermediate-term risk for pyridate.

4. Aggregate cancer risk for U.S. population. Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, pyridate is not expected to pose a cancer risk to humans.

5. Determination of safety. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to pyridate residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (high-performance liquid chromatography with ultraviolet detection (UV–HPLC)) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

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).

Codex has not established an MRL for pyridate in/on lentils or rapeseed subgroup 20A.

C. Revisions to Petitioned-For Tolerances

For rapeseed subgroup 20A, the registrant proposed a tolerance of 0.015 ppm, which is less than the limit of quantitation (LOQ) of the enforcement method. Therefore, EPA is establishing a tolerance of 0.05 ppm for rapeseed subgroup 20A, which is the LOQ of the method employed in the crop field trials. EPA also adjusted the commodity definition for rapeseed subgroup 20A to use standard terminology. In addition, EPA dropped the trailing zero from the lentil tolerance value to be consistent with current Agency rounding practices.

V. Conclusion

Therefore, tolerances are established for residues of pyridate, in or on lentil, dry, seed at 0.4 ppm and rapeseed subgroup 20A at 0.05 ppm.

VI. Statutory and Executive Order Reviews

This action establishes tolerances 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 tolerances 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).

VII. 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: May 19, 2022.

Marietta Echeverria,

Acting Director, Registration Division, Office of Pesticide Programs.

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

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

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

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

■ 2. In § 180.462, the table in paragraph (a) is amended by:

■ a. Adding a table heading; and

■ b. Adding the commodities ''Lentil, dry, seed'' and ''Rapeseed subgroup 20A'' to the table in alphabetical order.

The additions read as follows:

§ 180.462 Pyridate; tolerances for residues.

(a) * * *

TABLE 1 TO PARAGRAPH (a)

Commodity	Parts per million
* * * * *	
Lentil, dry, seed	0.4
* * * * *	
Rapeseed subgroup 20A	0.05
* * * * *	

* * * * *

[FR Doc. 2022–11173 Filed 5–24–22; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 87, No. 101
Wednesday, May 25, 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 ENERGY

10 CFR Part 431

[EERE–2022–BT–STD–0015]

Energy Conservation Program: Test Procedures and Energy Conservation Standards for Commercial Package Air Conditioners and Heat Pumps

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

ACTION: Request for information.

SUMMARY: The U.S. Department of Energy (''DOE'') is considering potential amendments to the test procedures for air-cooled commercial package air conditioners and heat pumps with a rated cooling capacity greater than or equal to 65,000 Btu/h, evaporatively-cooled commercial package air conditioners, and water-cooled commercial package air conditioners. DOE is also considering whether to amend the current energy conservation standards for air-cooled commercial package air conditioners and heat pumps with a rated cooling capacity greater than or equal to 65,000 Btu/h. Through this request for information (''RFI''), DOE seeks data and information regarding issues pertinent to whether amended test procedures would more accurately or fully comply with the requirement that the test procedure produces results that measure energy use during a representative average use cycle for the equipment without being unduly burdensome to conduct, or reduce testing burden. DOE also welcomes written comments from the public on any subject within the scope of this document (including those topics not specifically raised), as well as the submission of data and other relevant information.

DATES: Written comments and information are requested and will be accepted on or before June 24, 2022.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov,*under docket number EERE–2022–BT–STD–0015. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2022–BT–STD–0015, by any of the following methods:

(1) *Email: CommPkgACHP2022STD andTP0015@ee.doe.gov.* Include the docket number EERE–2022–BT–STD–0015 in the subject line of the message.

(2) *Postal Mail:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1445. If possible, please submit all items on a compact disc (''CD''), in which case it is not necessary to include printed copies.

(3) *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW, 6th Floor, Washington, DC 20024. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies. Include docket number EERE–2022–BT–STD–0015 in the subject line of the message.

No telefacsimiles (''faxes'') will be accepted. For detailed instructions on submitting comments and additional information on this process, see section III of this document.

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

The docket web page can be found at *www.regulations.gov/#!docketDetail;D=EERE-2022-BT-STD-0015.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section III for information on how to submit comments through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Ms. Catherine Rivest, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–7335. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585. Telephone: (202) 586–8145. Email: *Michael.Kido@hq.doe.gov.*

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

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

Commercial package air conditioning and heating equipment is included in the list of ''covered equipment'' for which DOE is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6311(1)(B)–(D)) This equipment includes air-cooled commercial unitary air conditioners with a rated cooling capacity greater than or equal to 65,000 British thermal units per hour (''Btu/h'') (''ACUACs''), air-cooled commercial unitary heat pumps with a rated cooling capacity greater than or equal to 65,000 Btu/h (''ACUHPs''), evaporatively-cooled commercial unitary air conditioners (''ECUACs''), and water-cooled commercial unitary air conditioners (''WCUACs''), which are

all the subject of this RFI.[1] (ACUACs, ACUHPs, ECUACs, and WCUACs are referred to collectively as ''CUACs and CUHPs'' in this document). The current DOE test procedures for CUACs and CUHPs are codified in Table 1 at title 10 of the Code of Federal Regulations (''CFR'') part 431, subpart F, section 96. *See* 10 CFR 431.96. The current Federal energy conservation standards for ACUACs and ACUHPs are established at 10 CFR 431.97(b). The following sections discuss DOE's authority to establish and amend test procedures and energy conservation standards for CUACs and CUHPs, as well as relevant background information regarding DOE's considerations of test procedures and standards for this equipment.

A. Authority

The Energy Policy and Conservation Act, as amended (''EPCA''),[2] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part C [3] of EPCA, added by Public Law 95–619, Title IV, § 441(a), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. This covered equipment includes small, large, and very large commercial package air conditioning and heating equipment. (42 U.S.C. 6311(1)(B)–(D)) Commercial package air conditioning and heating equipment includes CUACs and CUHPs, which are the subject of this NOPR.

The energy conservation program under EPCA consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6311), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), energy conservation standards (42 U.S.C. 6313), and the authority to require information and reports from manufacturers (42 U.S.C. 6316).

The Federal testing requirements consist of test procedures that manufacturers of covered equipment must use as the basis for: (1) Certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(b); 42 U.S.C. 6296), and (2) making representations about the efficiency of that equipment (42 U.S.C. 6314(d)). Similarly, DOE uses these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA.

Federal energy efficiency requirements for covered equipment established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316(a) and (b); 42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6316(b)(2)(D))

Under 42 U.S.C. 6314, EPCA also sets forth the general criteria and procedures DOE is required to follow when prescribing or amending test procedures for covered equipment. EPCA requires that any test procedure prescribed or amended under this section must be reasonably designed to produce test results which reflect energy efficiency, energy use, or estimated operating cost of covered equipment during a representative average use cycle and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

EPCA requires that the test procedures for CUACs and CUHPs be those generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning, Heating, and Refrigeration Institute (''AHRI'') or by the American Society of Heating, Refrigerating and Air-Conditioning Engineers (''ASHRAE''), as referenced in ASHRAE Standard 90.1, ''Energy Standard for Buildings Except Low-Rise Residential Buildings'' (''ASHRAE Standard 90.1''). (42 U.S.C. 6314(a)(4)(A)) If such an industry test procedure is amended, DOE must update its test procedure to be consistent with the amended industry test procedure, unless DOE determines, by rule published in the **Federal Register** and supported by clear and convincing evidence, that the amended test procedure would not meet the requirements in 42 U.S.C. 6314(a)(2) and (3) related to representative use and test burden. (42 U.S.C. 6314(a)(4)(B) and 42 U.S.C. 6314(a)(4)(C))

EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered equipment, including CUACs and CUHPs, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle. (42 U.S.C 6314(a)(1))

In addition, if the Secretary determines that a test procedure amendment is warranted, the Secretary must publish proposed test procedures in the **Federal Register**, and afford interested persons an opportunity (of not less than 45 days' duration) to present oral and written data, views, and arguments on the proposed test procedures. (42 U.S.C 6314(b)) If DOE determines that test procedure revisions are not appropriate, DOE must publish its determination not to amend the test procedures. (42 U.S.C 6314(a)(1))

In EPCA, as amended by the Energy Policy Act of 1992 (''EPAct'') (Pub. L. 102–486), Congress initially set mandatory energy conservation standards for certain types of commercial heating, air-conditioning, and water-heating equipment. (106 Stat. 2776, 2810–2814) Specifically, the statute set standards for small, large, and very large commercial package air conditioning and heating equipment, packaged terminal air conditioners (''PTACs'') and packaged terminal heat pumps (''PTHPs''), warm-air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks. *Id.* In initially establishing Federal energy conservation standards, the EPAct amendments to EPCA prescribed standards at levels that generally corresponded to the levels in ASHRAE Standard 90.1, as in effect on October 24, 1992 (*i.e.,* the 1989 edition of ASHRAE Standard 90.1), for each type of covered equipment listed.

In acknowledgement of technological changes that yield energy efficiency benefits, Congress further directed DOE through EPCA to consider amending the existing Federal energy conservation standard for each type of covered equipment listed, each time ASHRAE amends Standard 90.1 with respect to such equipment. (42 U.S.C. 6313(a)(6)(A)) When triggered in this manner, DOE must undertake and

[1] While ACUACs with a rated cooling capacity less than 65,000 Btu/h are included in the broader category of CUACs, they are not addressed in this RFI. The test procedure and standards for those smaller capacity ACUACs are being addressed in separate rulemakings. *See* Docket Nos. EERE–2017–BT–TP–0031 and EERE–2022–BT–STD–0008, respectively. All references to CUACs and CUHPs made in this document exclude these lower capacity ACUACs.

Additionally, double-duct air conditioners and heat pumps (*i.e.,* double-duct systems) are included in the broader category of ACUACs. While the test procedure for double-duct systems is addressed in this document, the standards for them are not. DOE will address standards for double-duct systems in a future rulemaking. Accordingly, all references to standards for ACUACs and ACUHPs appearing in this document exclude double-duct systems.

[2] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020), which reflect the last statutory amendments that impact Parts A and A–1 of EPCA.

[3] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

publish an analysis of the energy savings potential of amended energy efficiency standards, and amend the Federal standards to establish a uniform national standard at the minimum level specified in the amended ASHRAE Standard 90.1, unless DOE determines that there is clear and convincing evidence to support a determination that a more-stringent standard level as a national standard would produce significant additional energy savings and be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(i)–(ii)) If DOE decides to adopt as a national standard the minimum efficiency levels specified in the amended ASHRAE Standard 90.1, DOE must establish such standard not later than 18 months after publication of the amended industry standard. (42 U.S.C. 6313(a)(6)(A)(ii)(I)) However, if DOE determines, supported by clear and convincing evidence, that a more-stringent uniform national standard would result in significant additional conservation of energy and is technologically feasible and economically justified, then DOE must establish such more-stringent uniform national standard not later than 30 months after publication of the amended ASHRAE Standard 90.1. (42 U.S.C. 6313(a)(6)(A)(ii)(II) and 42 U.S.C. 6313(a)(6)(B))

Although EPCA does not explicitly define the term ''amended'' in the context of what type of revision to ASHRAE Standard 90.1 would trigger DOE's obligation, DOE's longstanding interpretation has been that the statutory trigger is an amendment to the standard applicable to that equipment under ASHRAE Standard 90.1 that increases the energy efficiency level for that equipment. *See* 72 FR 10038, 10042 (March 7, 2007). In other words, if the revised ASHRAE Standard 90.1 leaves the energy efficiency level unchanged (or lowers the energy efficiency level), as compared to the energy efficiency level specified by the uniform national standard adopted pursuant to EPCA, regardless of the other amendments made to the ASHRAE Standard 90.1 requirement (*e.g.,* the inclusion of an additional metric), DOE has stated that it does not have the authority to conduct a rulemaking to consider a higher standard for that equipment pursuant to 42 U.S.C. 6313(a)(6)(A). *See* 74 FR 36312, 36313 (July 22, 2009) and 77 FR 28928, 28937 (May 16, 2012). However, DOE notes that Congress adopted amendments to these provisions related to ASHRAE Standard 90.1 equipment under the American Energy Manufacturing Technical Corrections Act (Pub. L. 112–210 (Dec. 18, 2012)) (''AEMTCA''). In relevant part, DOE is prompted to act whenever ASHRAE Standard 90.1 is amended with respect to ''the standard levels or design requirements applicable under that standard'' to any of the enumerated types of commercial air conditioning, heating, or water heating equipment. (42 U.S.C. 6313(a)(6)(A)(i))

EPCA does not detail the exact type of amendment that serves as a triggering event. However, DOE has considered whether its obligation is triggered in the context of whether the specific ASHRAE Standard 90.1 requirement on which the most current Federal requirement is based is amended (*i.e.,* the regulatory metric or design requirement). For example, if an amendment to ASHRAE Standard 90.1 changed the metric for the standard on which the Federal requirement was based, DOE would perform a crosswalk analysis to determine whether the amended metric under ASHRAE Standard 90.1 resulted in an energy efficiency level that was more stringent than the current DOE standard. Conversely, if an amendment to ASHRAE Standard 90.1 were to add an additional metric by which a class of equipment is to be evaluated, but did not amend the requirement that is in terms of the metric on which the Federal requirement was based, DOE would not consider its obligation triggered.

In those situations where ASHRAE has not acted to amend the levels in Standard 90.1 for the equipment types enumerated in the statute, EPCA also provides for a 6-year-lookback to consider the potential for amending the uniform national standards. (42 U.S.C. 6313(a)(6)(C)) Specifically, pursuant to the amendments to EPCA under AEMTCA, DOE is required to conduct an evaluation of each class of covered equipment in ASHRAE Standard 90.1 ''every 6 years'' to determine whether the applicable energy conservation standards need to be amended. (42 U.S.C. 6313(a)(6)(C)(i)) DOE must publish either a notice of proposed rulemaking (''NOPR'') to propose amended standards or a notification of determination that existing standards do not need to be amended. (42 U.S.C. 6313(a)(6)(C)) In proposing new standards under the 6- year review, DOE must undertake the same considerations as if it were adopting a standard that is more stringent than an amendment to ASHRAE Standard 90.1. (42 U.S.C. 6313(a)(6)(C)(i)(II)) This is a separate statutory review obligation, as differentiated from the obligation triggered by an ASHRAE Standard 90.1 amendment. While the statute continues to defer to ASHRAE's lead on covered equipment subject to Standard 90.1, it does allow for a comprehensive review of all such equipment and the potential for adopting more-stringent standards, where supported by the requisite clear and convincing evidence. That is, DOE interprets ASHRAE's not amending Standard 90.1 with respect to a product or equipment type as ASHRAE's determination that the standard applicable to that product or equipment type is already at an appropriate level of stringency, and DOE will not amend that standard unless there is clear and convincing evidence that a more stringent level is justified. As a preliminary step in the process of reviewing the changes to ASHRAE Standard 90.1, EPCA directs DOE to publish in the **Federal Register** for public comment an analysis of the energy savings potential of amended standards within 180 days after ASHRAE Standard 90.1 is amended with respect to any of the covered equipment specified under 42 U.S.C. 6313(a). (42 U.S.C. 6313(a)(6)(A))

B. Background

1. Test Procedure

DOE's existing test procedure for CUACs and CUHPs appears at 10 CFR 431.96 (''Uniform test method for the measurement of energy efficiency of commercial air conditioners and heat pumps''). The test procedure for ACUACs and ACUHPs specified in 10 CFR 431.96 references appendix A to subpart F of part 431, ''Uniform Test Method for the Measurement of Energy Consumption of Air-Cooled Small (≥65,000 Btu/h), Large, and Very Large Commercial Package Air Conditioning and Heating Equipment'' (''appendix A''). Appendix A references certain sections of ANSI/AHRI Standard 340/360–2007, ''2007 Standard for Performance Rating of Commercial and Industrial Unitary Air-Conditioning and Heat Pump Equipment,'' approved by ANSI on October 27, 2011, and updated by addendum 1 in December 2010 and addendum 2 in June 2011 (''ANSI/AHRI 340/360–2007''); ANSI/ASHRAE Standard 37–2009, ''Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment'' (''ANSI/ASHRAE 37–2009''); and specifies other test procedure requirements related to minimum external static pressure (''ESP''), optional break-in period, refrigerant charging, setting indoor airflow, condenser head pressure controls, tolerance on capacity at part-load test points, and condenser air inlet temperature for part-load tests. The DOE

test procedure for ECUACs and WCUACs with a rated cooling capacity of greater than or equal to 65,000 Btu/h specified in 10 CFR 431.96 incorporates by reference ANSI/AHRI 340/360–2007 (excluding Section 6.3 of ANSI/AHRI 340/360–2007 and including paragraphs (c) and (e) of 10 CFR 431.96). The DOE test procedure for ECUACs and WCUACs with a rated cooling capacity of less than 65,000 Btu/h incorporates by reference ANSI/AHRI Standard 210/240–2008, ''2008 Standard for Performance Rating of Unitary Air-Conditioning & Air-Source Heat Pump Equipment,'' approved by ANSI on October 27, 2011, and updated by addendum 1 in June 2011 and addendum 2 in March 2012 (''ANSI/AHRI 210/240–2008'').

On October 26, 2016, ASHRAE published ASHRAE Standard 90.1–2016, which included updates to the test procedure references for CUACs and CUHPs (excluding ECUACs and WCUACs with a rated cooling capacity less than 65,000 Btu/h) to reference AHRI Standard 340/360–2015, ''2015 Standard for Performance Rating of Commercial and Industrial Unitary Air-Conditioning and Heat Pump Equipment'' (''AHRI 340/360–2015''). On July 25, 2017, DOE published an RFI (''July 2017 TP RFI'') to collect information and data to consider amendments to DOE's test procedures for certain categories of commercial package air conditioning and heating equipment, including CUACs and CUHPs. 82 FR 34427. As part of the July 2017 TP RFI, DOE identified several aspects of the currently applicable Federal test procedures for CUACs and CUHPs that might warrant modifications, in particular: Incorporation by reference of the most recent version of the relevant industry standard(s); efficiency metrics and calculations; and clarification of test methods. 82 FR 34427, 34439–34448. DOE also requested comment on any additional topics that may inform DOE's decisions in a future test procedure rulemaking, including methods to reduce regulatory burden while ensuring the procedures' accuracies. 82 FR 34427, 34448.

On October 24, 2019, ASHRAE published ASHRAE 90.1–2019, which updated the AHRI Standard 340/360 reference to the 2019 edition, ''2019 Standard for Performance Rating of Commercial and Industrial Unitary Air-Conditioning and Heat Pump Equipment'' (''AHRI 340/360–2019''). On January 25, 2022, AHRI approved an updated version of its test method for CUACs and CUHPs, with the publication of AHRI Standard 340/360–2022, ''2022 Standard for Performance Rating of Commercial and Industrial Unitary Air-conditioning and Heat Pump Equipment'' (''AHRI 340/360–2022'').

For ECUACs and WCUACs with a rated cooling capacity less than 65,000 Btu/h, ASHRAE 90.1–2016 references ANSI/AHRI 210/240–2008. After the publication of the July 2017 TP RFI, AHRI published AHRI Standard 210/240–2017, ''2017 Standard for Performance Rating of Unitary Air-conditioning & Air-source Heat Pump Equipment,'' (''AHRI 210/240–2017''). ASHRAE 90.1–2019 references AHRI 210/240–2017 as the test procedure for ECUACs and WCUACs. After the publication of AHRI 210/240–2017, AHRI released two updates to the industry standard: (1) AHRI Standard 210/240–2017 with Addendum 1, ''2017 Standard for Performance Rating of Unitary Air-conditioning & Air-source Heat Pump Equipment,'' (''AHRI 210/240–2017 with Addendum 1''), which was published in April 2019; and (2) AHRI Standard 210/240–2023, ''2023 Standard for Performance Rating of Unitary Air-conditioning & Air-source Heat Pump Equipment,'' (''AHRI 210/240–2023''), which was published in May 2020.

Notably, ECUACs and WCUACs with a rated cooling capacity less than 65,000 Btu/h were removed from the scope of AHRI 210/240–2023. ECUACs and WCUACs with a rated cooling capacity less than 65,000 Btu/h were instead included in the scope of AHRI 340/360–2022.

The updates in AHRI 340/360–2022, AHRI 210/240–2023, as well as comments received in the interim that relate to the CUAC and CUHP test procedure have prompted DOE to publish this RFI to investigate additional aspects of the CUAC and CUHP test procedure. Upon further evaluation, DOE has identified several issues that would benefit from further comment. DOE discusses these topics in section II.A of this document.[4]

2. Standards

In a direct final rule published on January 15, 2016, (''January 2016 direct final rule''), DOE adopted amended standards for ACUACs, and ACUHPs. 81 FR 2420. For ACUACs and ACUHPs, DOE adopted two tiers of amended standards with staggered compliance dates and changed the regulated cooling metric from energy efficiency ratio (''EER'') to integrated energy efficiency ratio (''IEER'').[5] 81 FR 2420, 2531–2532. The first tier of amended standards—with a compliance date of January 1, 2018—are equivalent to the IEER minimum efficiency levels for ACUACs and ACUHPs in ASHRAE 90.1–2016. The second tier of amended standards—with a compliance date of January 1, 2023—are more stringent than the levels in ASHRAE 90.1–2016.

The current energy conservation standards for ACUACs and ACUHPs are codified in DOE's regulations at 10 CFR 431.97.

Since publication of the January 2016 direct final rule, ASHRAE published an updated version of ASHRAE Standard 90.1 (''ASHRAE 90.1–2019''), which updated the minimum efficiency levels for ACUACs and ACUHPs to align with those adopted by DOE in the January 2016 direct final rule (*i.e.,* specifying two tiers of minimum levels for ACUACs and ACUHPs, with a 2023 compliance date for the second tier).

As a preliminary step in the process of reviewing the standards for ACUACs and ACUHPs, DOE published an RFI on May 12, 2020 (''May 2020 ECS RFI'') to request data and information pursuant to its 6-year-lookback review. 85 FR 27941. The May 2020 ECS RFI sought information to help DOE inform its decisions, consistent with its obligations under EPCA. DOE received multiple comments from stakeholders in response to the May 2020 ECS RFI that prompted DOE to publish this RFI to investigate additional aspects of the ACUAC and ACUHP standards. Upon further evaluation, DOE has identified several issues that would benefit from further comment. DOE discusses these topics (including any comments received in response to the May 2020 ECS RFI that are related to these topics) in section II.B of this document. DOE also received comments in response to the May 2020 ECS RFI that relate to the CUAC and CUHP test procedure, which are addressed in section in section II.A of this document.[6]

[4] In this RFI, DOE only summarizes comments received in response to the July 2017 TP RFI that relate to the topics of interest within this document. All other comments, which relate to different topics, will be summarized in a subsequent document that follows this RFI.

[5] The EER metric only accounts for the efficiency of the equipment operating at full load. The IEER metric factors in the efficiency of operating at part loads of 75 percent, 50 percent, and 25 percent of capacity, as well as the efficiency at full load. This is accomplished by weighting the full-load and part-load efficiencies with the average amount of time operating at each loading point. Additionally, IEER incorporates reduced condenser temperatures (*i.e.,* reduced outdoor ambient temperatures) for part-load operation.

[6] In this RFI, DOE only summarizes comments received in response to the May 2020 ECS RFI that relate to the topics of interest within this RFI. All other comments received, which relate to different topics, will be summarized and addressed in a subsequent document that follows this RFI.

C. Standards Rulemaking Process

As discussed, DOE is required to conduct an evaluation of each class of covered equipment in ASHRAE Standard 90.1 every six years. (42 U.S.C. 6313(a)(6)(C)(i)) In making a determination of whether standards for such equipment need to be amended, DOE must follow specific statutory criteria. DOE must evaluate whether amended Federal standards would result in significant additional conservation of energy and are technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(C)(i) (referencing 42 U.S.C. 6313(a)(6)(A))

The significance of energy savings offered by a new or amended energy conservation standard cannot be determined without knowledge of the specific circumstances surrounding a given rulemaking.[7] For example, the United States has now rejoined the Paris Agreement on February 19, 2021. As part of that agreement, the United States has committed to reducing greenhouse gas (''GHG'') emissions in order to limit the rise in mean global temperature.[8] As such, energy savings that reduce GHG emission have taken on greater importance. Additionally, some covered products and equipment have most of their energy consumption occur during periods of peak energy demand. The impacts of these products on the energy infrastructure can be more pronounced than products with relatively constant demand. In evaluating the significance of energy savings, DOE considers differences in primary energy and full-fuel cycle (''FFC'') effects for different covered products and equipment when determining whether energy savings are significant. Primary energy and FFC effects include the energy consumed in electricity production (depending on load shape), in distribution and transmission, and in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and thus present a more complete picture of the impacts of energy conservation standards. Accordingly, DOE evaluates the significance of energy savings on a case-by-case basis. To determine whether a standard is economically justified, EPCA requires that DOE determine whether the benefits of the standard exceed its burdens by considering, to the greatest extent practicable, the following seven factors:

(1) The economic impact of the standard on the manufacturers and consumers of the affected products;

(2) The savings in operating costs throughout the estimated average life of the product compared to any increases in the initial cost, or maintenance expenses;

(3) The total projected amount of energy and water (if applicable) savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the products likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary considers relevant.

(42 U.S.C. 6313(a)(6)(B)(ii)(I)–(VII))

DOE fulfills these and other applicable requirements by conducting a series of analyses throughout the rulemaking process. Table I.1 shows the individual analyses that are performed to satisfy each of the requirements within EPCA.

TABLE I.1—EPCA REQUIREMENTS AND CORRESPONDING DOE ANALYSIS

EPCA requirement	Corresponding DOE analysis
Significant Energy Savings	• Shipments Analysis. • National Impact Analysis. • Energy and Water Use Determination.
Technological Feasibility	• Market and Technology Assessment. • Screening Analysis. • Engineering Analysis.
Economic Justification:	
1. 1. Economic Impact on Manufacturers and Consumers	• Manufacturer Impact Analysis. • Life-Cycle Cost and Payback Period Analysis. • Life-Cycle Cost Subgroup Analysis. • Shipments Analysis.
2. 2. Lifetime Operating Cost Savings Compared to Increased Cost for the Product	• Markups for Product Price Determination. • Energy and Water Use Determination. • Life-Cycle Cost and Payback Period Analysis.
3. 3. Total Projected Energy Savings	• Shipments Analysis. • National Impact Analysis.
4. 4. Impact on Utility or Performance	• Screening Analysis. • Engineering Analysis.
5. 5. Impact of Any Lessening of Competition	• Manufacturer Impact Analysis.
6. 6. Need for National Energy and Water Conservation	• Shipments Analysis. • National Impact Analysis.
7. 7. Other Factors the Secretary Considers Relevant	• Employment Impact Analysis. • Utility Impact Analysis. • Emissions Analysis. • Monetization of Emission Reductions Benefits.[9]

[7] Procedures, Interpretations, and Policies for Consideration in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment, 86 FR 70892, 70901 (Dec. 13, 2021).

[8] *See* Executive Order 14008, 86 FR 7619 (Feb. 1, 2021) (''Tackling the Climate Crisis at Home and Abroad'').

[9] On March 16, 2022, the Fifth Circuit Court of Appeals (No. 22–30087) granted the Federal government's emergency motion for stay pending appeal of the February 11, 2022, preliminary injunction issued in *Louisiana* v. *Biden,* No. 21–cv–1074–JDC–KK (W.D. La.). As a result of the Fifth Circuit's order, the preliminary injunction is no longer in effect, pending resolution of the Federal government's appeal of that injunction or a further court order. Among other things, the preliminary injunction enjoined the defendants in that case from ''adopting, employing, treating as binding, or relying upon'' the interim estimates of the social cost of greenhouse gases—which were issued by the Interagency Working Group on the Social Cost of Greenhouse Gases on February 26, 2021—to monetize the benefits of reducing greenhouse gas emissions. In the absence of further intervening court orders, DOE will revert to its approach prior to the injunction and present monetized benefits where appropriate and permissible by law.

TABLE I.1—EPCA REQUIREMENTS AND CORRESPONDING DOE ANALYSIS—Continued

EPCA requirement	Corresponding DOE analysis
	• Regulatory Impact Analysis.

As detailed throughout this RFI, DOE is publishing this document seeking input and data from interested parties to aid in the development of the technical analyses on which DOE will ultimately rely to determine whether (and if so, how) to amend the standards for ACUACs and ACUHPs.

II. Request for Information and Comments

A. Test Procedure

In the following sections, DOE has identified a variety of issues on which it seeks input to determine whether, and if so how, amended test procedures for CUACs and CUHPs would (1) more accurately or fully comply with the requirements in EPCA that test procedures be reasonably designed to produce test results which reflect energy use during a representative average use cycle, without being unduly burdensome to conduct (42 U.S.C. 6314(a)(2)); or (2) reduce testing burden.

1. External Static Pressure Levels

ESP requirements simulate the resistance that the indoor fan must overcome from the air distribution system when installed in the field. The indoor ESP requirements for CUACs and CUHPs in the current DOE test procedure, through reference to AHRI 210/240–2008 and AHRI 340/360–2007, are shown in Table II.1 of this document. These indoor ESP requirements align with those in Table 7 of AHRI 340/360–2022, the most up to date industry test procedure for CUACs and CUHPs.[10]

TABLE II.1—INDOOR ESP REQUIREMENTS FOR CUACS AND CUHPS PER AHRI 210/240–2008 AND AHRI 340/360–2007

Rated cooling capacity (kBtu/h)	ESP (in H_2O)
0 to 28.8 *	0.10
29 to 42.5 *	0.15
43 to 64.5 *	0.20
65 to 70	0.20
71 to 105	0.25
106 to 134	0.30
135 to 210	0.35

[10] ECUACs and WCUACs with cooling capacities less than 65,000 Btu/h were removed from the scope of the most recent version of AHRI 210/240, AHRI 210/240–2023, and were instead included in AHRI 340/360–2022.

TABLE II.1—INDOOR ESP REQUIREMENTS FOR CUACS AND CUHPS PER AHRI 210/240–2008 AND AHRI 340/360–2007—Continued

Rated cooling capacity (kBtu/h)	ESP (in H_2O)
211 to 280	0.40
281 to 350	0.45
351 to 400	0.55
401 to 500	0.65
501 and greater	0.75

* Only applicable for evaporatively and water-cooled units.

In 2015, the Appliance Standards and Rulemaking Federal Advisory Committee (''ASRAC'') working group for commercial package air conditioners (''Commercial Package Air Conditioners Working Group'') agreed that the energy use analysis conducted for the January 2016 direct final rule should use higher ESPs than those specified in the DOE test procedure to help better simulate field applications. 81 FR 2420, 2470. Specifically, the Commercial Package Air Conditioners Working Group recommended ESPs of 0.75 and 1.25 in H_2O, which corresponded to the ESPs used in modified building simulations of the cooling load. *Id.* The ESP values recommended by the Commercial Package Air Conditioners Working Group did not vary with capacity. The Commercial Package Air Conditioners Working Group also developed a term sheet of recommendations as part of the negotiated rulemaking that led to the January 2016 direct final rule. (EERE–2013–BT–STD–0007–0093) The term sheet included recommendations for DOE to address in a future test procedure rulemaking. Consistent with the Commercial Package Air Conditioners Working Group's acknowledgement that higher ESPs would better represent field applications, Recommendation #2 of the term sheet recommended that DOE amend the test procedure for CUACs and CUHPs to better represent the total fan energy use by considering alternative ESPs. (*Id.* at p. 2) Higher ESPs would result in higher fan power measured during testing and would therefore result in fan energy use comprising a larger fraction of total energy use measured during the test.

In this RFI, DOE is further considering the Commercial Package Air Conditioners Working Group's recommendation to incorporate higher ESPs in the test procedure for CUACs and CUHPs to better represent fan energy use. There are several further indications that higher ESPs might be more representative of field conditions. As described in the following paragraphs, these include comments that DOE has received in response to the July 2017 TP RFI and May 2020 ECS RFI, and ESP values in the most recent version of AHRI 210/240.

In the July 2017 TP RFI, DOE recognized that DOE had previously received comment on the possibility that ESPs as measured in the field may be higher than those found in the industry test standards. 82 FR 34427, 34440. DOE also requested comment on the typical field ESPs for ECUACs and WCUACs, whether field-installed ESPs typically vary with capacity, and whether the field applications of ECUACs and WCUACs are different from ACUACs with regards to the typical ducting installed on the system. *Id.*

In response to the July 2017 TP RFI, DOE received comments from several interested parties asserting that ESPs for ECUACs and WCUACs are the same as those for ACUACs, because ESP is determined by building and ducting types, and not the method for rejecting heat.[11] Goodman commented that ducting does not vary much among ECUACs, WCUACs, and ACUACs, but that variable air volume (''VAV'') ductwork has different ESPs than constant air volume and single-zone ductwork, and that ECUACs are commonly installed with VAV ductwork.[12] (Goodman, EERE–2017–BT–TP–0018–0014 at p. 4) DOE also received comments from Carrier and Goodman indicating that ESP increases

[11] AHRI, EERE–2017–BT–TP–0018–0011 at p. 23; Appliance Standards Awareness Project, Alliance to Save Energy, American Council for an Energy Efficiency Economy, Northwest Energy Efficiency Alliance, and Northwest Power and Conservation Council (referred to collectively as ''Joint Advocates''), EERE–2017–BT–TP–0018–0009 at p. 5; California Investor-owned Utilities (''CA IOUs''), EERE–2017–BT–TP–0018–0007 at p. 3; Carrier Corporation (''Carrier''), EERE–2017–BT–TP–0018–0006 at p. 10.

[12] A VAV HVAC system controls the dry-bulb temperature within a space by varying the volumetric flow of heated or cooled supply air to the space. In contrast, a constant air volume HVAC system always provides the same volumetric flow of air to the space.

with capacity, because larger units serve larger areas, have longer ducts, and have higher airflows. (Carrier, EERE–2017–BT–TP–0018–0006 at p. 10; Goodman, EERE–2017–BT–TP–0018–0014 at p. 4)

DOE received several comments on representative ESP values in response to the July 2017 TP RFI. AHRI and Carrier commented that higher static pressures than prescribed in AHRI 340/360 may exist in field installations due to poor practice of ductwork installation. (AHRI, EERE–2017–BT–TP–0018–0011 at p. 23; Carrier, EERE–2017–BT–TP–0018–0006 at p. 9) Carrier indicated that ASHRAE Standard 90.1 includes overall fan power allowances with ductwork pressure drops and other system losses. (Carrier, EERE–2017–BT–TP–0018–0006 at pp. 9–10) Carrier recommended that DOE conduct a field survey, stating that field ESP values can vary from very low numbers with concentric ducts to values up to 1.5 in H_2O for smaller systems. (*Id.* at p. 9) Carrier also indicated that field ESP values for VAV systems can range from 1 in H_2O to 2.5 in H_2O. (*Id.* at p. 10)

The Joint Advocates stated that the ESP requirements specified for ACUACs and ACUHPs should be no lower than the two values of 0.75 and 1.25 in H_2O that were used in the standards analysis conducted for the January 2016 direct final rule. (Joint Advocates, EERE–2017–BT–TP–0018–0009 at p. 5) The CA IOUs suggested that DOE use Title 24, Part 6 2016 Alternative Calculation Method (''ACM'') Reference Manual as a resource for developing more field-representative ESP requirements, because it contains static pressure set points that were developed based on actual field conditions. (CA IOUs, EERE–2017–BT–TP–0018–0007 at p. 3) DOE reviewed the standard design supply fan static pressures specified on page 5–123 of the Title 24, Part 6 2016 ACM Reference Manual, and the specified values appear to be total static pressure (*i.e.,* the sum of ESP and internal static pressure), although it is not explicitly clear. Further, the values do not appear to be specific to CUACs and CUHPs; rather they apply to various kinds of commercial heating, ventilation, and air-conditioning (''HVAC'') equipment. The values range from 2.5 in H_2O to 4.5 in H_2O, increasing with airflow rate, the number of HVAC zones,[13] and the number of stories in a building.

Additionally, DOE received comments on ESP in response to the May 2020 ECS RFI. Verified stated that the ESPs in AHRI 340/360 are too low, and they referenced a research report in which they tested air conditioners with ESPs more representative of field conditions. (Verified, EERE–2019–BT–STD–0042–0011 at p. 5) That report indicated that typical field ESPs are 0.5 in H_2O for a CUAC with a capacity of 36,000 Btu/h and 1.2 in H_2O for a CUAC with a capacity of 90,000 Btu/h.[14] The CA IOUs reiterated their recommendation that DOE increase the ESP requirements for CUACs and CUHPs, and provided ESP data from two survey studies they conducted. (CA IOUs, EERE–2019–BT–STD–0042–0020 at pp. 3–4) Table II.2 contains the ESP values and number of units for each survey study, sorted by cooling capacity. The test, adjust, balance study used field data from a commissioning agent, and the permit review study used permit documents submitted to an online database. Both of these studies indicate median ESPs considerably higher than the ESPs required in AHRI 340/360–2022.

TABLE II.2—ESP SURVEY RESULTS FROM CA IOUS

Cooling capacity (Btu/hr)	Test, adjust, balance study		Permit review study	
	Number of CUACs	Median ESP (in H_2O)	Number of CUACs	Median ESP (in H_2O)
71,000 to 105,000	26	0.84	59	0.75
106,000 to 134,000	10	1.16	14	0.88
135,000 to 210,000	20	1.705	33	0.80

The discussion in the previous paragraphs has outlined the indications suggesting that ESPs higher than those in AHRI 340/360–2022 might be more representative of CUAC operation. Comments from Carrier indicate that ESPs for CUACs can be as high as 2.5 in H_2O, and survey results from CA IOUs suggest that representative ESPs for units with capacities of 65,000 Btu/h to 210,000 Btu/h might range from 0.75 in H_2O to 1.7 in H_2O. Comments also suggest that ESP varies with building and duct type, but not with the heat rejection mechanism of CUACs, and that ESP might increase with capacity. DOE is considering revisions to the ESP requirements for testing CUACs and CUHPs. While the data on field ESPs that have been provided to DOE are informative, DOE is seeking further comments and data on field ESPs that would inform potential revisions to ESP requirements in the DOE test procedure.

Issue 1: DOE seeks further field data on the ESPs of CUACs and CUHPs with capacities of 65,000 Btu/h to 210,000 Btu/h. DOE is also seeking comment as to the most representative ESP values for these capacities, and whether the ESP values previously mentioned in stakeholder comments would be more representative.

Issue 2: DOE seeks field data on the ESPs of CUACs and CUHPs with sizes greater than 210,000 Btu/h (for which commenters have not yet included ESP data in their comments).

As discussed, the current DOE test procedure for ECUACs and WCUACs with a cooling capacity of less than 65,000 Btu/h references ANSI/AHRI 210/240–2008. Table 11 of ANSI/AHRI 210/240–2008 specifies ESP requirements that depend on capacity and range from 0.10 to 0.20 in H_2O for units with a rated cooling capacity less than 65,000 Btu/h. These ESP requirements align with those specified for ECUACs and WCUACs with a cooling capacity of less than 65,000 Btu/h in Table 7 of AHRI 340/360–2022. However, AHRI 210/240–2023 specifies higher ESP requirements for three-phase ACUACs with a cooling capacity of less

[13] An HVAC zone is a space or group of spaces, within a building with heating, cooling, and ventilating requirements, that are sufficiently similar so that desired conditions (*e.g.,* temperature) can be maintained throughout using a single sensor (*e.g.,* thermostat or temperature sensor).

[14] Page 40 of R. Mowris, E. Jones, R. Eshom, K. Carlson, P. Jacobs, J. Hill. 2016. Laboratory Test Results of Commercial Packaged HVAC Maintenance Faults. Prepared for the California Public Utilities Commission. Prepared by Robert Mowris & Associates, Inc. Available at: *www.calmac.org/publications/RMA_Laboratory_Test_Report_2012–15_v3.pdf.* The report refers to air conditioner sizes using tons of refrigeration, where 1 ton of refrigeration is equivalent to 12,000 Btu/h.

than 65,000 Btu/h. Specifically, Table 10 of AHRI 210/240–2023 specifies an ESP requirement of 0.5 in H_2O for conventional units.[15] These ESP requirements in AHRI 210/240–2023 align with those specified in DOE's updated test procedure for central air conditioners and heat pumps (''CAC/HPs'') at table 4 of appendix M1 to subpart B of 10 CFR part 430 (''appendix M1'').

For WCUACs with a cooling capacity of less than 65,000 Btu/h, DOE's preliminary analysis shows that these units may typically be installed above dropped ceilings in commercial buildings. For ECUACs with a cooling capacity of less than 65,000 Btu/h, DOE's preliminary analysis shows that these units are primarily marketed for residential applications, which suggests that it may be appropriate to align the ESP requirements for ECUACs with a cooling capacity of less than 65,000 Btu/h with those specified for CAC/HPs in appendix M1 (*i.e.,* 0.5 in H_2O for conventional units). Therefore, DOE is considering whether it is appropriate for the same ESP requirements to be applied for both WCUACs and ECUACs with a cooling capacity of less than 65,000 Btu/h.

Issue 3: DOE seeks comment and field data on ESPs for ECUACs and WCUACs with a cooling capacity of less than 65,000 Btu/h, and whether the ESPs typically differ between ECUACs and WCUACs. For both ECUACs and WCUACs with a cooling capacity of less than 65,000 Btu/h, DOE specifically requests feedback on whether representative ESPs would be 0.5 in H2O (from AHRI 210/240–2023), the range of 0.10 to 0.20 in H2O (from AHRI 340/360–2022), or alternate values.

2. Heating Mode

For heating mode tests of CUHPs, Table 6 of AHRI 340/360–2022 includes ''Standard Rating Conditions'' for both a ''High Temperature Steady-state Test for Heating'' and a ''Low Temperature Steady-state Test for Heating'' (conducted at 47 °F and 17 °F outdoor air dry-bulb temperatures, respectively). The relevant conditions for COP testing in the current DOE test procedure are high temperature standard rating conditions (*i.e.,* 47 °F outdoor air dry-bulb temperature). The DOE test procedure does not require CUHPs to be tested at the low temperature standard rating conditions and does not account for performance at conditions lower than 47 °F outdoor air dry-bulb temperature. DOE is considering whether incorporating heating performance at temperatures lower than 47 °F would improve the representativeness of the DOE test procedure for CUHPs by reflecting a wider range of operating conditions. As part of this examination, DOE is further considering how such performance would differ between CUHPs with different types of supplementary heat (*e.g.,* electric resistance heat and furnaces) and the climate regions in which CUHPs are typically installed.

Issue 4: DOE requests data on the shipments of CUHPs by region. In particular, DOE is interested in determining whether CUHPs are predominantly installed in specific regions of the U.S.

Issue 5: DOE requests data on the distribution of supplementary heating types (*e.g.,* furnace, electric resistance, and none) shipped with CUHPs, and if that distribution has changed over time or is expected to change in the future.

Issue 6: DOE seeks comment and data as to the lowest outdoor temperatures at which CUHPs typically operate in mechanical heating mode (*i.e.,* what are typical compressor cut-out temperatures for CUHPs) and the extent to which the cut-out temperatures vary depending on the type of supplementary heating installed with the CUHP (*e.g.,* electric resistance heat or furnace).

3. Potential Revisions to IEER Metric

a. Fan Operation in Modes Other Than Mechanical Cooling

The weighting factors for the IEER metric account for the hours of operation when mechanical cooling[16] is active; this includes mechanical-only cooling and integrated economizer/mechanical cooling operation[17] in climate zones that require economizers to be installed. The IEER metric does not account for economizer-only cooling. The current DOE test procedure also requires that for units that are unable to reduce their capacity at least as low as one of the part load rating points, the EER for that rating point is calculated using a cyclic degradation coefficient. The cyclic degradation equation accounts for supply fan operation continuously running when the compressor is cycling on and off to meet the required load and assumes that the supply fan continues to run at the same speed as it would at the lowest stage of compression.

The Commercial Package Air Conditioners Working Group term sheet included recommendation #2, which recommended that DOE initiate a rulemaking with a primary focus of better representing total fan energy use in the field to better represent the total fan energy use, including consideration of fan operation for operating modes other than mechanical cooling and heating. (EERE–2013–BT–STD–0007–0093 at p. 2) Similarly, the ASRAC Commercial and Industrial Fans and Blowers Working Group[18] (''CIFB Working Group'') term sheet included recommendation #3, which identified a need for DOE's test procedures and related efficiency metrics for CUACs and CUHPs to more fully account for the energy consumption of supply and condenser fans embedded in regulated commercial air-conditioning equipment. (EERE–2013–BT–STD–0006–0179 at pp. 3–4) The CIFB Working Group recommended that in the next round of test procedure rulemakings, DOE should consider revising efficiency metrics that include energy use of supply and condenser fans to include the energy consumption during all relevant operating modes (*e.g.,* auxiliary heating mode, ventilation mode, and part-load operation). (*Id.*)

As part of the July 2017 TP RFI, DOE requested comment and data on the operation of CUAC and CUHP supply fans when there is no demand for heating and cooling, as well as the impact of ancillary functions (*e.g.,* primary heating, auxiliary heating, and economizers) on the use and operation of the supply fan. 82 FR 34427, 34440. DOE received comments in response to this request in the July 2017 TP RFI and also received comments on this topic in response to the May 2020 ECS RFI.

Multiple commenters expressed support for DOE to adopt a test procedure for total fan energy consumption per recommendation #2 of the Commercial Package Air

[15] Table 10 of AHRI 210/240–2023 indicates that conventional units are central air conditioners and heat pumps other than the following categories: Ceiling-mount and wall-mount blower-coil systems, mobile home blower-coil systems, low-static blower-coil systems, mid-static blower-coil systems, small-duct high-velocity, and space-constrained product.

[16] ''Mechanical cooling'' and ''mechanical heating'' refer to a CUAC and CUHP using the refrigeration cycle to cool or heat the indoor space, and do not refer to other forms of unit operation (*e.g.,* economizing, ventilation, or supplemental heating).

[17] Integrated economizer/mechanical cooling operation occurs when the use of economizing provides additional cooling but is not sufficient to meet the cooling load, and simultaneous use of mechanical cooling is also needed.

[18] In 2015, DOE initiated the CIFB Working Group to engage in a negotiated rulemaking effort on the scope, test procedure, and standards for fans and blowers. 80 FR 17359 (April 1, 2015). The CIFB Working Group developed recommendations regarding the energy conservation standards, test procedures, and efficiency metrics for commercial and industrial fans and blowers in a term sheet (EERE–2013–BT–STD–0006–0179).

Conditioners Working Group term sheet. Several commenters recommended evaluating energy use during operating modes other than mechanical cooling and heating (*e.g.,* economizing, ventilation, and supplemental heating), including the frequency in which units operate in modes other than mechanical cooling or heating, in an effort to improve the representativeness of the test procedure. Commenters also indicated that additional data on field installation and use would likely be needed for further consideration of fan use in CUACs and CUHPs beyond that captured in the current DOE test procedure.[19]

Carrier stated that ASHRAE 90.1 and IECC require a minimum of two-speed fan operation so that the fan runs at low speed during ventilation and some of the economizer operation. (Carrier, EERE–2017–BT–TP–0018–0006 at p. 9) Carrier stated that fan power is typically reduced by around 70 percent, as it varies to the cube of the fan speed. (*Id.*) AHRI and Lennox stated that dual- or multi-speed fans are used to reduce energy consumption by operating at low speed during periods of ventilation or air circulation. (AHRI, EERE–2017–BT–TP–0018–0011 at pp. 22–23; Lennox, EERE–2017–BT–TP–0018–0008 at pp. 2–3)

Based on the comments received, DOE recognizes a need to further investigate fan operation during ventilation or air circulation/filtration and economizing. Specifically, while comments received indicate the prevalence of multi-speed fans that reduce fan speed in these operating modes, the commenters did not indicate how the fan speed in these operating modes typically compares to fan speed when operating at the lowest stage of compressor cooling.

Issue 7: DOE seeks feedback on whether the supply airflow or fan power for both variable air volume and staged air volume fans at the lowest stage of compression is typically the same supply airflow or fan power that would be seen during periods of ventilation, air circulation, and economizer-only cooling. If not, DOE seeks feedback on how the airflow or fan power during ventilation, air circulation, and economizer-only cooling modes typically compares to those at the lowest stage of compression.

DOE also recognizes a need to further investigate prevalence and operating hours of economizers. Section 6.5.1 of ASHRAE 90.1–2019 specifies the use of economizers for cooling systems with a cooling capacity greater than or equal to 54,000 Btu/h in all climate zones within the U.S. except for climate zone 1A, which consists of southern Florida, Hawaii, Guam, Puerto Rico, and the U.S. Virgin Islands.[20] However, at the time IEER was developed in 2007, ASHRAE 90.1 did not specify the use of economizers in climate zones 1A, 2A, 3A, and 4A (see ASHRAE 90.1–2007). Climate zones 2A, 3A, and 4A represent 52 percent of new commercial building construction according to a June 2020 report by Pacific Northwest National Laboratory (''June 2020 PNNL report'') that developed updated weighting factors for new construction buildings.[21] Additionally, Carrier stated in response to the July 2017 TP RFI that 80 to 90 percent of CUAC units are built with economizers. (Carrier, EERE–2017–BT–TP–0018–0006 at p. 9) Given the large increase in commercial buildings for which ASHRAE Standard 90.1 specifies the use of economizers, DOE is interested in current data about economizers and ACUACs and CUHPs. DOE is also considering revisions to how economizer operating hours are accounted for in the IEER metric, particularly as DOE considers inclusion of operating hours corresponding to economizer-only cooling.

Issue 8: DOE requests data on the fraction of CUACs and CUHPs installed with economizers for each climate zone.

Issue 9: DOE requests data on the typical annual operating hours of economizer-only cooling (*i.e.,* no mechanical cooling) by building type and climate zone.

Issue 10: DOE requests comments or data on the method that was used to determine operating hours in each cooling mode (*i.e.,* mechanical cooling only mode, integrated economizing mode, and economizer-only cooling mode) during development of the current IEER metric. DOE is particularly interested in any aspects of that method that would be important to incorporate when revising the IEER metric.

b. Building Types

DOE understands that the current IEER metric was developed using the cooling loads for three building types (offices, retail, and schools), the shipment-weighted market shares for those three building types, and weather data from 15 representative cities, which each represented one of the 15 International Energy Conservation Code (''IECC'') climates zones in the United States. These data were used to develop weighting factors at four different load conditions (100, 75, 50, and 25 percent) to represent the average load profile of an ACUAC or CUHP in the U.S. While DOE understands that offices, retail, and schools are large markets for ACUACs and CUHPs, there are other building types that have large volumes of ACUAC and CUHP installations. The DOE commercial reference buildings[22] and the ASHRAE building prototypes[23] assign a packaged rooftop air conditioner as the default HVAC equipment to the prototypes for full-service restaurants, quick-service restaurants, and non-refrigerated warehouses. The updated weighting factors for new construction building prototypes in the June 2020 PNNL report[24] show that full-service restaurants, quick-service restaurants, and non-refrigerated warehouses[25] represent over 14 percent of new construction buildings. Therefore, DOE is considering revisions to the IEER metric to include additional building types beyond offices, retail, and schools.

Issue 11: DOE requests the shipment-weighted market share by building type for CUACs and CUHPs.

Issue 12: DOE requests comment or data on the supporting basis and method used to determine hourly cooling loads (for each building type

[19] AHRI, EERE–2017–BT–TP–0018–0011 at pp. 22–23; Joint Advocates, EERE–2017–BT–TP–0018–0009 at pp. 1 and 5; Appliance Standards Awareness Project, American Council for an Energy Efficiency Economy, California Energy Commission, Natural Resources Defense Council, and Northeast Energy Efficiency Partnerships (collectively referred to as ''Joint Commenters''), EERE–2019–BT–STD–0042–0023 at pp. 2–3; CA IOUs EERE–2017–BT–TP–0018–0007 at p. 3 and EERE–2019–BT–STD–0042–0020 at pp. 2–4; Carrier, EERE–2017–BT–TP–0018–0006 at p. 9; Goodman, EERE–2017–BT–TP–0018–0014 at pp. 3–4; Lennox, EERE–2017–BT–TP–0018–0008 at pp. 2–3; Northwest Energy Efficiency Alliance (''NEEA''), EERE–2019–BT–STD–0042–0024 at pp. 2–3; Verified Inc., EERE–2019–BT–STD–0042–0022 at pp. 13–14.

[20] ASHRAE 90.1–2019 does not require economizers in cooling systems for which the rated efficiency exceeds the minimum cooling efficiency by more than the corresponding factor specified in Table 6.5.1–2 of ASHRAE 90.1–2019, which specifies different factors for each climate zone.

[21] Lei, X., J.B. Butzbaugh, Y. Chen, J. Zhang, and M.I. Rosenberg. 2020. Development of National New Construction Weighting Factors for the Commercial Building Prototype Analyses (2003–2018). PNNL–29787, Pacific Northwest National Laboratory, Richland, WA.

[22] Available at *www.energy.gov/eere/buildings/commercial-reference-buildings.*

[23] Available at *www.energycodes.gov/prototype-building-models.*

[24] Lei, X., J.B. Butzbaugh, Y. Chen, J. Zhang, and M.I. Rosenberg. 2020. Development of National New Construction Weighting Factors for the Commercial Building Prototype Analyses (2003–2018). PNNL–29787, Pacific Northwest National Laboratory, Richland, WA.

[25] DOE notes that a typical warehouse has three zones and not all are conditioned by a CUAC or CUHP, only the fine storage area (*i.e.,* area for storing fine art, antiques, and other items that are temperature-sensitive). The bulk storage area is not air-conditioned. The warehouse office is small enough that it would use a smaller capacity unit than a CUAC or CUHP.

and by building location) in developing the current IEER metric. DOE is particularly interested in any aspects of that method that would be important to incorporate if it should decide to revise the IEER metric.

4. Power Consumption of Heat Rejection Components for WCUACs

WCUACs are typically installed in the field with separate heat rejection components that reject heat from the water loop to outdoor ambient air, but these separate heat rejection components are not included in testing of WCUACs. These heat rejection components typically consist of a circulating water pump (or pumps) and a cooling tower. To account for the power that would be consumed by these components in field installations, Section 6.1.1.7 of AHRI 340/360–2022 specifies that WCUACs with cooling capacities less than 135,000 Btu/h shall add 10.0 W to the total power of the unit for every 1,000 Btu/h of cooling capacity.

The industry test procedure for dedicated outdoor air systems (''DOASes'')—AHRI 920–2020, ''2020 Standard for Performance Rating of Direct Expansion-Dedicated Outdoor Air System Units''—includes a different method to account for the additional power consumption of water pumps, with a pump power adder referred to as the ''water pump effect'' being added to the calculated total unit power. Specifically, Section 6.1.6 of AHRI 920–2020 specifies that the water pump effect is calculated with an equation dependent on the water flow rate and liquid pressure drop across the heat exchanger, including a term that assumes a liquid ESP of 20 feet of water column. DOE is considering whether the AHRI 920–2020 approach would also be representative for WCUACs.

Issue 13: DOE seeks comment on the representativeness of the AHRI 920–2020 approach to account for power consumption of external heat rejection components in WCUACs, as compared to the approach in AHRI 340/360–2022.

Water-cooled air conditioners and heat pumps rely on pumps to circulate the water that transfers heat to or from refrigerant in the water-to-refrigerant coil. Most water-cooled units rely on external circulating water pumps; however, some water-cooled units in other equipment categories (*e.g.,* water-source heat pumps and DOASes) have integral pumps included within the unit that provide this function. For such units with integral pumps, test provisions are warranted to specify how to test with the integral pump—*e.g.,* provisions specifying the liquid ESP at which to operate the integral pump. AHRI 340/360–2022 does not contain provisions specific to testing WCUACs with integral pumps. In contrast, DOE recently proposed to require that water-source DOASes with integral pumps be tested with a liquid ESP of 20 ft of water column (consistent with the liquid ESP assumed in the aforementioned water pump effect calculation specified in AHRI 920–2020 for DOASes). 86 FR 36018, 36060. DOE is not aware of any WCUACs on the market that contain integral pumps, but if such units exist, then additional test provisions may be warranted.

Issue 14: DOE seeks comment on the prevalence of WCUACs with integral pumps. If such units exist, DOE seeks comment on what liquid ESP would be representative for testing.

B. Energy Conservation Standards

In the following sections, DOE has identified several issues on which it seeks input to aid in the development of the technical and economic analyses regarding whether amended standards for ACUACs and ACUHPs may be warranted.

DOE is considering amended energy conservation standards for ACUACs and ACUHPs (excluding double-duct systems). In the May 2020 ECS RFI, DOE sought comment regarding the various analyses that DOE routinely uses to analyze more stringent standards. 85 FR 27941. DOE received feedback from interested parties in response to the May 2020 ECS RFI indicating that it was premature to consider amended standards before the 2023 compliance date for the second tier of amended standards adopted in the January 2016 direct final rule.[26] At the present time, DOE recognizes that the ACUAC and ACUHP market is much closer to the 2023 compliance date than the market observed at the time of the May 2020 ECS RFI. Therefore, DOE welcomes any additional feedback in response to the questions posed in the May 2020 ECS RFI that may have changed since the publication of the May 2020 ECS RFI, particularly to the extent that ACUAC and ACUHP markets and technologies have changed in the last two years.

Additionally, DOE is seeking specific feedback on alternative refrigerants (as raised by interested parties) and shipments in the following subsections.

1. Alternative Refrigerants

In the May 2020 ECS RFI, DOE presented the technology options screened out in the January 2016 direct final rule, which included alternative refrigerants, and requested comment generally on whether these technology options would continue to be screened out. 85 FR 27941, 27947. Several stakeholders provided feedback on the topic of alternative refrigerants.[27]

AHRI and Carrier recommended that DOE not consider alternative refrigerants as a technology option on the bases of technological feasibility and practicability to manufacture, install, and service. (AHRI, EERE–2019–BT–STD–0042–0014 at p. 5; Carrier, EERE–2019–BT–STD–0042–0013 at p. 7) The Joint Commenters suggested that DOE consider alternative refrigerants as a technology option for ACUACs and ACUHPs. (Joint Commenters, EERE–2019–BT–STD–0042–0023 at pp. 3–4) The Joint Commenters referenced testing conducted by Oak Ridge National Laboratory and Trane that found using R–452B as a replacement for R–410A improves efficiency by 5 percent. (*Id.*) NEEA and Trane recommended that DOE consider the effect of new low global warming potential (''GWP'') refrigerants on efficiency, cost, design, and size of the units. (NEEA, EERE–2019–BT–STD–0042–0024 at p. 9; Trane, EERE–2019–BT–STD–0042–0016 at p. 7)

Several commenters stated that the use of low-GWP refrigerants with A2L categorization (*i.e.,* mildly flammable) would require new compressors, additional refrigerant detection sensors, enhanced leak testing for coils, and would result in increased manufacturing and channel distribution complexity. (AHRI, EERE–2019–BT–STD–0042–0014 at p. 6; Carrier, EERE–2019–BT–STD–0042–0013 at p. 5; Goodman, EERE–2019–BT–STD–0042–0017 at p. 3; Trane, EERE–2019–BT–STD–0042–0016 at p. 5) AHRI stated that the combined costs to add sensors, controls, and other components for these new refrigerants and the costs of those refrigerants will increase cost 10 to 15 percent over the minimum designs for the 2018 standards. (AHRI, EERE–2019–BT–STD–0042–0014 at p. 7)

DOE recognizes the transition away from the use of R–410A refrigerant in ACUACs and ACUHPs and the multiple drivers of this transition, including state [28] and ongoing Environmental

[26] AHRI, EERE–2019–BT–STD–0042–0014 at p. 3; Trane, EERE–2019–BT–STD–0042–0016 at p. 2.

[27] AHRI, EERE–2010–BT–STD–0042–0014 at pp. 2, 4–7; Joint Commenters, EERE–2019–BT–STD–0042–0023 at pp. 3–4; CA IOUs, EERE–2019–BT–STD–0042–0020 at p. 5; Carrier, EERE–2019–BT–STD–0042–0013 at pp. 5, 7–8, 10; Goodman, EERE–2019–BT–STD–0042–0017 at p. 3; NEEA, EERE–2019–BT–STD–0042–0024 at p. 9; Trane, EERE–2019–BT–STD–0042–0016 at pp. 4–5, 7, 10.

[28] For example, California has implemented regulations that limit the use of high-GWP

Protection Agency (''EPA'') regulations.[29] DOE understands that the implementation of mildly flammable refrigerants at the quantities that would be typically required for installation in commercial buildings requires an allowance under state and local building codes. Further, DOE is aware that multiple manufacturers of ACUACs and ACUHPs have already announced plans to transition to a specific low-GWP refrigerant for their ACUAC and ACUHP models.

DOE notes that the earliest possible compliance date for amended standards for ACUACs and ACUHPs, barring any amendment of standards by ASHRAE 90.1, would be January 1, 2029. 42 U.S.C. 6313(a)(6)(C)(iv) Given the timelines of both enacted and potential state and Federal regulatory changes regarding the phasedown of high-GWP refrigerants, DOE understands low-GWP refrigerants may be used in ACUACs and ACUHPs in the U.S. by the time potential amended standards could take effect. As such, to inform an engineering analysis to evaluate more stringent standards, DOE is interested in the effects of the implementation of low-GWP refrigerants on efficiency and cost of ACUACs and ACUHPs.

Issue 15: DOE requests data on the impact of low-GWP refrigerants as replacements for R–410A on (1) the cooling and heating capacities and compressor power of ACUACs and ACUHPs at various temperature conditions, including, but not limited to, the temperatures currently included in the IEER metric; and (2) the size and design of heat exchangers and compressors used in ACUACs and ACUHPs.

Issue 16: DOE seeks any additional data and feedback on the cost of implementing low-GWP refrigerants in ACUACs and ACUHPs beyond the comments received in response to the May 2020 ECS RFI.

refrigerants. Beginning January 1, 2025, California will prohibit the use of refrigerants with a GWP greater than 750 in CUACs and CUHPs. *See* California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 10 Climate Change, Article 4, Subarticle 5, section 95374(c).

[29] EPA completed a rulemaking to phase down production and consumption of hydrofluorocarbons (''HFCs'') through an allowance allocation on October 5, 2021 (86 FR 55116) and set allowances for 2022 on October 7, 2021 (86 FR 55841). Additionally, EPA published a notice of its intent to conduct a traditional (*i.e.,* non-negotiated) rulemaking on December 29, 2021, with regard to restricting, fully, partially, or on a graduated schedule, the use of regulated substances, which includes high-GWP refrigerants, in a sector or subsector in which the regulated substance is used. 86 FR 74080.

2. Shipments

DOE develops shipments forecasts of CUACs and CUHPs to calculate the national impacts of potential amended energy conservation standards on energy consumption, net present value, and future manufacturer cash flows. DOE shipments projections are based on available historical data broken out by equipment class and capacity. Current shipments estimates allow for a more accurate model that captures recent trends in the market and inform the no-new-standards case efficiency distribution. The national impact of a higher efficiency level is measured relative to the distribution of efficiency levels in the no-new-standards case. Therefore, the development of a no-new-standards case efficiency distribution has a significant impact on the national energy savings and new present value calculation in the national impact analysis. DOE received shipments data for years 2014 and earlier as part of the rulemaking for the January 2016 direct final rule, but DOE has no shipments data for years 2015 to the present. A time series of shipments is useful for projecting shipments accurately in the future because historical shipments are important for predicting the future market. A time series also enables DOE to better forecast trends in shipments by efficiency level in the national impact analysis.

In the May 2020 ECS RFI, DOE requested shipments data for ACUACs and ACUHPs but received none. 85 FR 27941, 27953. Given the importance of shipments data and the no-new-standards case efficiency distribution to the national impact analysis, DOE is again requesting current data on shipments and efficiency for ACUACs and ACUHPs.

Issue 17: DOE requests current shipments data for ACUACs and ACUHPs by equipment class, capacity, and efficiency level. If available, DOE requests historical shipments data going back to 2015. If disaggregated fractions of annual shipments are not available at the equipment class level by equipment size and efficiency level, DOE requests more aggregated fractions of annual shipments at the equipment category level.

III. Submission of Comments

DOE invites all interested parties to submit in writing by the date specified in the **DATES** section of this document, comments and information on matters addressed in this document and on other matters relevant to DOE's consideration of amended test procedures for CUACs and CUHPs and amended energy conservations standards for ACUACs and ACUHPs (excluding double-duct systems). After the close of the comment period, DOE will review the public comments received and may begin collecting data and conducting the analyses discussed in this document.

Submitting comments via *www.regulations.gov.* The *www.regulations.gov* web page requires you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies Office staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. If this instruction is followed, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (''CBI'')). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or postal mail. Comments and documents submitted via email, hand delivery/courier, or postal mail also will be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No faxes will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: One copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

DOE considers public participation to be a very important part of the process for developing energy conservation standards. DOE actively encourages the participation and interaction of the public during the comment period in this process. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE. Anyone who wishes to be added to the DOE mailing list to receive future notices and information about this process or would like to request a public meeting should contact Appliance and Equipment Standards Program staff at (202) 287–1445 or via email at *ApplianceStandardsQuestions@ee.doe.gov.*

Signing Authority

This document of the Department of Energy was signed on May 16, 2022, by Kelly J. Speakes-Backman, Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on May 17, 2022.

Treena V. Garrett,

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

[FR Doc. 2022–10911 Filed 5–24–22; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL TRADE COMMISSION

16 CFR Part 305

[3084–AB15]

Energy Labeling Rule

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') proposes routine updates to comparability range information on EnergyGuide labels for televisions, refrigerators and freezers, dishwashers, water heaters, room air conditioners (ranges only), clothes washers, furnaces, and pool heaters in the Energy Labeling Rule (''Rule''). The proposed amendments also contain a minor, clarifying change to requirements for determining room air conditioner capacity.

DATES: Comments must be received by July 11, 2022.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Range Updates, Matter No. R611004'' on your comment, and file your comment online at *https://www.regulations.gov/,* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, Mail Stop H–144, 600 Pennsylvania Avenue NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, (202) 326–2889, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission issued the Energy Labeling Rule (''Rule'') in 1979,[1] pursuant to the Energy Policy and Conservation Act of 1975 (''EPCA'').[2] The Rule requires energy labeling for major home appliances and other consumer products to help consumers compare competing models. It also contains labeling requirements for refrigerators, refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners, furnaces, central air conditioners, heat pumps, plumbing products, lighting products, ceiling fans, and televisions.

The Rule requires manufacturers to attach yellow EnergyGuide labels to many covered products and prohibits retailers from removing these labels or rendering them illegible. In addition, it directs sellers, including retailers, to post label information on websites and in paper catalogs from which consumers can order products. EnergyGuide labels for most covered products contain three key disclosures: Estimated annual energy cost, a product's energy consumption or energy efficiency rating

[1] 44 FR 66466 (Nov. 19, 1979).

[2] 42 U.S.C. 6294. EPCA also requires the Department of Energy (DOE) to develop test procedures that measure how much energy appliances use, and to determine the representative average cost a consumer pays for different types of energy.

as determined by DOE test procedures, and a comparability range displaying the highest and lowest energy costs or efficiency ratings for all similar models. For cost calculations, the Rule specifies national average costs for applicable energy sources (*e.g.,* electricity, natural gas, oil) based on DOE estimates. Under the Rule, the Commission periodically updates comparability range and annual energy cost information based on manufacturer data submitted pursuant to the Rule's reporting requirements. The Rule sets a five-year schedule for updating range of comparability and annual energy cost information.[3] Pursuant to that schedule the Commission proposes the following amendments.

II. Proposed Amendments

As discussed below, the Commission proposes to update comparability ranges and national average energy cost figures (Appendix K1 and K2) for several product categories consistent with the Rule's five-year schedule. The proposed amendments also update § 305.10 to clarify that manufacturers must determine capacity for room air conditioners using current DOE requirements.

A. Comparability Range and Energy Cost Revisions

In accordance with the Rule's five-year schedule for comparability range updates (§ 305.12), this Document proposes revisions to the comparability range and energy cost information in the Rule's appendices for televisions, refrigerators and freezers, dishwashers, water heaters, room air conditioners (ranges only), clothes washers, furnaces, and pool heaters.[4] In addition, the Commission proposes updating the average energy cost figures manufacturers must use to calculate a model's estimated energy cost for the label based on national average cost figures published by DOE.[5] Specifically, the proposed amendments update the energy cost tables in Appendix K1 and K2.[6] This document also contains proposed conforming changes to the sample labels in the Rule's appendices to reflect the new range and cost information.

Pursuant to 305.12, manufacturers must begin using this information on new product labels within 90 days after publication of a final notice announcing updated ranges for specific products.[7] Manufacturers do not have to relabel products labeled prior to the effective date of the changes. For room air conditioners, the Commission proposes setting an October 1, 2022 effective date for those ranges because this label must appear on product boxes, and such package changes can require additional planning and coordination. The proposed October date coincides with the annual production cycle (*i.e.,* the cooling season) for those products.

The Commission does not propose amending range and cost information for central air conditioner and portable air conditioner labels because the Commission recently updated those ranges.[8] Additionally, the Commission does not propose changing the cost figure for room air conditioner labels because such a change would make room air conditioner labels inconsistent with cost information on portable air conditioners, a similar product category. Accordingly, the electricity cost figure (¢13/kWh) for those two categories appear in Appendix K2 and has been used to create the room air conditioner ranges (Appendix E) in the proposed amendments.

B. Capacity Determinations for Room Air Conditioners

Finally, the proposed amendments update § 305.10 to clarify that manufacturers must determine capacity for room air conditioners using current DOE requirements. Specifically, the amendment eliminates obsolete text related to rounding and updates references to existing DOE requirements for capacity determinations. The Commission proposes making the change effective on October 1, 2022 to coincide with the effective date of the Commission's previously published requirements for EnergyGuide labels for portable air conditioners.[9]

III. Request for Comment

The Commission seeks comment on the amendments proposed in this document. You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before July 11, 2022. Write ''Range Updates, Matter No. R611004'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the website *https://www.regulations.gov.*

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

If you file your comment on paper, write ''Range Updates, Matter No. R611004'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, Mail Drop H–144, 600 Pennsylvania Avenue NW, Washington, DC 20580.

Because your comment will be placed on the public record, you are solely responsible for making sure your comment does not include any sensitive or confidential information. Your comment should not contain sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential''—as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,''

[3] 16 CFR 305.12.

[4] 16 CFR 305.12. The capacity categories in the Room Air Conditioner table (Appendix E) have been slightly adjusted to reflect changes in the size distribution in DOE current model data.

[5] 87 FR 12681 (March 7, 2022) (DOE publication for ''Representative Average Unit Costs of Energy''). Fuel costs in the FTC tables in Appendix K1 and K2 are rounded to the nearest cent.

[6] Applicable energy cost figures for televisions appear in section 305.25.

[7] Under EPCA (42 U.S.C. 6294(c)(1)(B)), manufacturers must use updated range data beginning 60 days after final ranges are published unless the Commission provides for a later date. Section 305.12(b) has a period of 90 days.

[8] See 86 FR 9274 (Feb. 12, 2021) (portable air conditioners); 86 FR 57985 (Oct. 20, 2021) (central air conditioners). Because the amendments in those documents are scheduled to become effective on October 1, 2022 and January 1, 2023—after the likely effective date for the amendments proposed in this document—the Commission will make technical, conforming changes to the instructions in those documents as necessary to ensure consistency (*e.g.,* Appendices E and K).

[9] 86 FR 9274 (Feb. 12, 2022).

and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at *www.regulations.gov*—as legally required by FTC Rule 4.9(b), 16 CFR 4.9(b)—we cannot redact or remove your comment, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website to read this document and the news release describing it. The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments it receives on or before July 11, 2022. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/siteinformation/privacypolicy*.

Because written comments appear adequate to present the views of all interested parties, the Commission has not scheduled an opportunity for presentation of oral comments regarding these proposed amendments. Interested parties may request an opportunity to present views orally. If such a request is made, the Commission will publish a document in the **Federal Register** stating the time and place for such oral presentation(s) and describing the procedures that will be followed. Interested parties who wish to present oral views must submit a request, on or before July 11, 2022, in the form of a written comment that describes the issues on which the party wishes to speak. If no oral presentations are scheduled, the Commission will base its decision on the written rulemaking record.

IV. Paperwork Reduction Act

The current Rule contains recordkeeping, disclosure, testing, and reporting requirements that constitute information collection requirements as defined by 5 CFR 1320.3(c), the definitional provision within the Office of Management and Budget (OMB) regulations that implement the Paperwork Reduction Act (PRA). OMB has approved the Rule's existing information collection requirements through February 29, 2024 (OMB Control No. 3084–0069). The proposed amendments do not change the substance or frequency of the recordkeeping, disclosure, or reporting requirements and, therefore, do not require further OMB clearance.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–612, requires that the Commission conduct an analysis of the anticipated economic impact of the proposed amendment on small entities. The RFA requires that the Commission provide an Initial Regulatory Flexibility Analysis (''IRFA'') with a rule unless the Commission certifies that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605. The proposed amendments merely implements routine updates to comparability range information and other minor clarifications. The proposed amendments do not significantly change the substance or frequency of the Rule's recordkeeping, disclosure, or reporting requirements. Thus, the amendments will not have a ''significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605. The Commission has concluded, therefore, that a regulatory flexibility analysis is not necessary, and certifies, under Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the proposed amendments will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

For the reasons stated above, the Commission proposes to amend part 305 of title 16 of the Code of Federal Regulations as follows:

PART 305—ENERGY AND WATER USE LABELING FOR CONSUMER PRODUCTS UNDER THE ENERGY POLICY AND CONSERVATION ACT (''ENERGY LABELING RULE'')

■ 1. The authority citation for part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

■ 2. In § 305.10, revise paragraph (f) to read as follows:

§ 305.10 Determinations of capacity.

* * * * *

(f) *Room air conditioners and portable air conditioners.* The capacity for room air conditioners and portable air conditioners shall be determined according to 10 CFR part 430, subpart B, with rounding determined in accordance with 10 CFR part 430.

* * * * *

■ 3. In § 305.25, revise paragraphs (f)(4) and (5) to read as follows:

§ 305.25 Television labeling.

* * * * *

(f) * * *

(4) Estimated annual energy costs determined in accordance with this part and based on a usage rate of 5 hours in on mode and 19 hours in standby (sleep) mode per day and an electricity cost rate of 14 cents per kWh.

(5) The applicable ranges of comparability for estimated annual energy costs based on the labeled product's diagonal screen size, according to the following table:

Screen size (diagonal)	Annual energy cost ranges for televisions	
	Low	High
16–20″ (16.0 to 20.49″)	$5	$6
21–23″ (20.5 to 23.49″)	4	9
24–29″ (23.5 to 29.49″)	3	10
30–34″ (29.5 to 34.49″)	5	16
35–39″ (34.5 to 39.49″)	9	17
40–44″ (39.5 to 44.49″)	7	28
45–49″ (44.5 to 49.49″)	8	34
50–54″ (49.5 to 54.49″)	10	37
55–59″ (54.5 to 59.49″)	9	47
60–64″ (59.5 to 64.49″)	13	37

Screen size (diagonal)	Annual energy cost ranges for televisions	
	Low	High
65–69″ (64.5 to 69.49″)	13	101
69.5″ or greater	7	160

* * * * *

■ 4. Revise appendices A1 through A9 to Part 305 to read as follows:

Appendix A1 to Part 305—Refrigerators With Automatic Defrost

RANGE INFORMATION

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
Less than 10.5	$20	$45
10.5 to 12.4	28	40
12.5 to 14.4	33	47
14.5 to 16.4	33	46
16.5 to 18.4	38	52
18.5 to 20.4	42	50
20.5 to 22.4	35	57
22.5 to 24.4	51	59
24.5 to 26.4	(*)	(*)
26.5 to 28.4	(*)	(*)
28.5 and over	(*)	(*)

Appendix A2 to Part 305—Refrigerators and Refrigerator-Freezers With Manual Defrost

RANGE INFORMATION

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
Less than 10.5	$11	$46
10.5 to 12.4	(*)	(*)
12.5 to 14.4	(*)	(*)
14.5 to 16.4	(*)	(*)
16.5 to 18.4	(*)	(*)
18.5 to 20.4	(*)	(*)
20.5 to 22.4	(*)	(*)
22.5 to 24.4	(*)	(*)
24.5 to 26.4	(*)	(*)
26.5 to 28.4	(*)	(*)
28.5 and over	(*)	(*)

Appendix A3 to Part 305—Refrigerator-Freezers With Partial Automatic Defrost

RANGE INFORMATION

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
Less than 10.5	27	55
10.5 to 12.4	(*)	(*)
12.5 to 14.4	(*)	(*)

RANGE INFORMATION—Continued

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
14.5 to 16.4	(*)	(*)
16.5 to 18.4	53	53
18.5 to 20.4	48	55
20.5 to 22.4	(*)	(*)
22.5 to 24.4	(*)	(*)
24.5 to 26.4	(*)	(*)
26.5 to 28.4	(*)	(*)
28.5 and over	(*)	(*)

Appendix A4 to Part 305—Refrigerator-Freezers With Automatic Defrost With Top-Mounted Freezer No Through-the-Door Ice

RANGE INFORMATION

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
Less than 10.5	$40	$62
10.5 to 12.4	43	61
12.5 to 14.4	44	64
14.5 to 16.4	45	66
16.5 to 18.4	49	70
18.5 to 20.4	48	72
20.5 to 22.4	51	76
22.5 to 24.4	58	78
24.5 to 26.4	66	81
26.5 to 28.4	(*)	(*)
28.5 and over	(*)	(*)

Appendix A5 to Part 305—Refrigerator-Freezers With Automated Defrost With Side-Mounted Freezer No Through-the-Door Ice

RANGE INFORMATION

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
Less than 10.5	$54	$82
10.5 to 12.4	(*)	(*)
12.5 to 14.4	39	40
14.5 to 16.4	49	65
16.5 to 18.4	69	70
18.5 to 20.4	66	70
20.5 to 22.4	70	101
22.5 to 24.4	78	105
24.5 to 26.4	80	109
26.5 to 28.4	91	113
28.5 and over	84	118

Appendix A6 to Part 305—Refrigerator-Freezers With Automatic Defrost With Bottom-Mounted Freezer Without No Through-the-Door Ice

RANGE INFORMATION

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
Less than 10.5	$42	$73
10.5 to 12.4	47	79
12.5 to 14.4	50	77
14.5 to 16.4	53	85
16.5 to 18.4	60	86
18.5 to 20.4	60	91
20.5 to 22.4	62	94
22.5 to 24.4	65	98
24.5 to 26.4	74	96
26.5 to 28.4	67	95
28.5 and over	91	101

Appendix A7 to Part 305—Refrigerator-Freezers With Automatic Defrost With Bottom-Mounted Freezer With Through-the-Door Ice Service

RANGE INFORMATION

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
Less than 10.5	(*)	(*)
10.5 to 12.4	(*)	(*)
12.5 to 14.4	(*)	(*)
14.5 to 16.4	(*)	(*)
16.5 to 18.4	$80	$90
18.5 to 20.4	83	98
20.5 to 22.4	91	103
22.5 to 24.4	77	106
24.5 to 26.4	89	109
26.5 to 28.4	83	112
28.5 and over	90	113

Appendix A8 to Part 305—Refrigerator-Freezers With Automatic Defrost With Side-Mounted Freezer With Through-the-Door Ice Service

RANGE INFORMATION

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
Less than 10.5	(*)	(*)
10.5 to 12.4	(*)	(*)
12.5 to 14.4	(*)	(*)
14.5 to 16.4	(*)	(*)
16.5 to 18.4	$87	$88
18.5 to 20.4	78	110
20.5 to 22.4	72	109
22.5 to 24.4	76	115
24.5 to 26.4	81	116

RANGE INFORMATION—Continued

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
26.5 to 28.4	89	122
28.5 and over	104	124

Appendix A9 to Part 305—All Refrigerators and Refrigerator-Freezers

RANGE INFORMATION

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
Less than 10.5	$11	$82
10.5 to 12.4	28	79
12.5 to 14.4	33	77
14.5 to 16.4	33	84
16.5 to 18.4	38	90
18.5 to 20.4	42	110
20.5 to 22.4	35	109
22.5 to 24.4	51	115
24.5 to 26.4	66	116
26.5 to 28.4	67	122
28.5 and over	84	124

■ 5. Revise appendices B1 through B3 to Part 305 to read as follows:

Appendix B1 to Part 305—Upright Freezers With Manual Defrost

RANGE INFORMATION

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
Less than 5.5	$18	$43
5.5 to 7.4	35	47
7.5 to 9.4	34	40
9.5 to 11.4	36	36
11.5 to 13.4	(*)	(*)
13.5 to 15.4	42	47
15.5 to 17.4	49	51
17.5 to 19.4	(*)	(*)
19.5 to 21.4	49	56
21.5 to 23.4	(*)	(*)
23.5 to 25.4	(*)	(*)
25.5 to 27.4	(*)	(*)
27.5 to 29.4	(*)	(*)
29.5 and over	(*)	(*)

Appendix B2 to Part 305—Upright Freezers With Automatic Defrost

RANGE INFORMATION

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
Less than 5.5	$37	$63
5.5 to 7.4	(*)	(*)
7.5 to 9.4	44	69
9.5 to 11.4	44	67.20
11.5 to 13.4	54	79
13.5 to 15.4	54	85
15.5 to 17.4	58	89
17.5 to 19.4	62	84
19.5 to 21.4	63	91
21.5 to 23.4	101	104
23.5 to 25.4	(*)	(*)
25.5 to 27.4	(*)	(*)
27.5 to 29.4	(*)	(*)
29.5 and over	(*)	(*)

Appendix B3 to Part 305—Chest Freezers and All Other Freezers

RANGE INFORMATION

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
Less than 5.5	$19	$32
5.5 to 7.4	31	36
7.5 to 9.4	27	37
9.5 to 11.4	28	35
11.5 to 13.4	35	38
13.5 to 15.4	39	42
15.5 to 17.4	38	46
17.5 to 19.4	46	47
19.5 to 21.4	50	53
21.5 to 23.4	48	55
23.5 to 25.4	59	59
25.5 to 27.4	(*)	(*)
27.5 to 29.4	(*)	(*)
29.5 and over	(*)	(*)

■ 6. Revise appendices C1 and C2 to Part 305 to read as follows:

Appendix C1 to Part 305—Compact Dishwashers

Range Information

''Compact'' includes countertop dishwasher models with a capacity of fewer than eight (8) place settings. Place settings shall be in accordance with Appendix C to 10 CFR part 430, subpart B. Load patterns shall conform to the operating normal for the model being tested.

Capacity	Range of estimated annual energy costs (dollars/year)	
	Low	High
Compact	$14	$32

Appendix C2 to Part 305—Standard Dishwashers

Range Information

''Standard'' includes dishwasher models with a capacity of eight (8) or more place settings. Place settings shall be in accordance with Appendix C to 10 CFR part 430, subpart B. Load patterns shall conform to the operating normal for the model being tested.

Capacity	Range of estimated annual energy costs (dollars/year)	
	Low	High
Standard	$28	$43

■ 7. Revise appendices D1 through D5 to Part 305 to read as follows:

Appendix D1 to Part 305—Water Heaters—Gas

RANGE INFORMATION

Capacity (first hour rating in gallons)	Range of estimated annual energy costs (dollars/year)			
	Natural gas ($/year)		Propane ($/year)	
	Low	High	Low	High
''Very Small''—less than 18	(*)	(*)	(*)	(*)
''Low''—18 to 50.9	$162	$172	(*)	(*)
''Medium''—51 to 74.9	227	300	$460	$606
''High''—over 75	227	336	460	679

Appendix D2 to Part 305—Water Heaters Electric

RANGE INFORMATION

Capacity	Range of estimated annual energy costs (dollars/year)	
First hour rating		
	Low	High
''Very Small''—less than 18	(*)	(*)
''Low''—18 to 50.9	$90	$357
''Medium''—51 to 74.9	154	630
''High''—over 75	173	747

Appendix D3 to Part 305—Water Heaters—Oil

RANGE INFORMATION

Capacity	Range of estimated annual energy costs (dollars/year)	
First hour rating		
	Low	High
''Very Small''—less than 18	(*)	(*)
''Low''—18 to 50.9	(*)	(*)
''Medium''—51 to 74.9	(*)	(*)
''High''—over 75	$625	$686

Appendix D4 to Part 305—Water Heaters—Instantaneous—Gas

RANGE INFORMATION

Capacity	Range of estimated annual energy costs (dollars/year)			
Capacity (maximum flow rate); gallons per minute (gpm)	Natural Gas ($/year)		Propane ($/year)	
	Low	High	Low	High
"Very Small"—less than 1.6	$24	$30	$50	$61
"Low"—1.7 to 2.7	(*)	(*)	(*)	(*)
"Medium"—2.8 to 3.9	183	216	370	437
"High"—over 4.0	210	253	427	511

Appendix D5 to Part 305—Water Heaters—Instantaneous—Electric

RANGE INFORMATION

Capacity	Range of estimated annual energy costs (dollars/year)	
Capacity (maximum flow rate); gallons per minute (gpm)	Low	High
"Very Small"—less than 1.6	$82	$90
"Low"—1.7 to 2.7	(*)	(*)
"Medium"—2.8 to 3.9	(*)	(*)
"High"—over 4.0	(*)	(*)

■ 8. Appendix E to Part 305 is revised to read as follows:

Appendix E1 to Part 305—Room Air Conditioners

RANGE INFORMATION

Manufacturer's rated cooling capacity in Btu's/hr	Range of estimated annual energy costs (dollars/year)	
	Low	High
Without Reverse Cycle and with Louvered Sides:		
Less than 6,000 Btu	$40	$46
6,000 to 7,999 Btu	47	69
8,000 to 13,999 Btu	49	121
14,000 to 19,999 Btu	91	169
20,000 to 27,999 Btu	147	287
28,000 and more Btu	275	380
Without Reverse Cycle and without Louvered Sides:		
Less than 8,000 Btu	(*)	(*)
8,000 to 10,999 Btu	73	102
11,000 to 13,999 Btu	107	140
14,000 to 19,999 Btu	144	162
20,000 and more Btu	(*)	(*)
With Reverse Cycle and with Louvered Sides	79	230
With Reverse Cycle, without Louvered Sides	81	117

■ 9. Revise appendices F1 and F2 to Part 305 to read as follows:

Appendix F1 to Part 305—Standard Clothes Washers

''Standard'' includes all household clothes washers with a tub capacity of 1.6 cu. ft. or more.

RANGE INFORMATION

Capacity	Range of estimated annual operating costs (dollars/year)	
	Low	High
Standard	$33	$137

Appendix F2 to Part 305—Compact Clothes Washers

''Compact'' includes all household clothes washers with a tub capacity of less than 1.6 cu. ft.

RANGE INFORMATION

Capacity	Range of estimated annual operating costs (dollars/year)	
	Low	High
Compact	$25	$47

■ 10. Revise appendices G1 through G8 to Part 305 to read as follows:

Appendix G1 to Part 305—Furnaces—Gas

Furnace type	Range of annual fuel utilization efficiencies (AFUEs)	
	Low	High
Non-Weatherized Gas Furnaces—All Capacities	80.0	99.0
Weatherized Gas Furnaces—All Capacities	81.0	95.0

Appendix G2 to Part 305—Furnaces—Electric

Furnace type	Range of annual fuel utilization efficiencies (AFUEs)	
	Low	High
Electric Furnaces—All Capacities	100.0	100.0

Appendix G3 to Part 305—Furnaces—Oil

Type	Range of annual fuel utilization efficiencies (AFUEs)	
	Low	High
Non-Weatherized Oil Furnaces—All Capacities	83.0	96.7
Weatherized Oil Furnaces—All Capacities	(*)	(*)

Appendix G4 to Part 305—Mobile Home Furnaces—Gas

Type	Range of annual fuel utilization efficiencies (AFUEs)	
	Low	High
Mobile Home Gas Furnaces—All Capacities	80.0	97.3

Appendix G5 to Part 305—Mobile Home Furnaces—Oil

Type	Range of annual fuel utilization efficiencies (AFUEs)	
	Low	High
Mobile Home Oil Furnaces—All Capacities	80.0	87.0

Appendix G6 to Part 305—Boilers—(Gas)

Type	Range of annual fuel utilization efficiencies (AFUEs)	
	Low	High
Gas Boilers (except steam)—All Capacities	84.0	96.4
Gas Boilers (steam)—All Capacities	82	83.4

Appendix G7 to Part 305—Boilers—(Oil)

Type	Range of annual fuel utilization efficiencies (AFUEs)	
	Low	High
Oil Boilers—All Capacities	85	88.2

Appendix G8 to Part 305—Boilers—(Electric)

Type	Range of annual fuel utilization efficiencies (AFUEs)	
	Low	High
Electric Boilers—All Capacities	100	100

■ 11. Revise appendices J1 and J2 to read as follows:

Appendix J1 to Part 305—Pool Heaters—Gas

RANGE INFORMATION

Manufacturer's rated heating capacities	Range of thermal efficiencies (percent)			
	Natural Gas		Propane	
	Low	High	Low	High
All capacities	82.0	95.0	82.0	95.0

Appendix J2 to Part 305—Pool Heaters—Oil

RANGE INFORMATION

Manufacturer's rated heating capacities	Range of thermal efficiencies (percent)	
	Low	High
All capacities	(*)	(*)

■ 12. Revise appendices K1 and K2 to read as follows:

Appendix K1 to Part 305—Representative Average Unit Energy Costs for Refrigerators, Refrigerator-Freezers, Freezers, Clothes Washers, Dishwashers, and Water Heater Labels

This Table contains the representative unit energy costs that must be utilized to calculate estimated annual energy cost disclosures required under this Part for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, and water heaters. This Table is based on information published by the U.S. Department of Energy in 2022.

Type of energy	In commonly used terms	As required by DOE test procedure
Electricity	¢14/kWh [1] [2]	$.1400/kWh
Natural Gas	$1.21/therm [3], $12.6/MCF [5] [6]	$0.00001209/Btu [4]
No. 2 heating oil	$3.45/gallon [7]	$0.00002511/Btu
Propane	$223/gallon [8]	$0.00002446/Btu
Kerosene	$4.01/gallon [9]	$0.00002973/Btu

[1] kWh stands for kiloWatt hour.
[2] 1 kWh = 3,412 Btu.
[3] 1 therm = 100,000 Btu. Natural gas prices include taxes.
[4] Btu stands for British thermal unit.
[5] MCF stands for 1,000 cubic feet.
[6] For the purposes of this table, 1 cubic foot of natural gas has an energy equivalence of 1,039 Btu.
[7] For the purposes of this table, one gallon of No. 2 heating oil has an energy equivalence of 13,738 Btu.
[8] For the purposes of this table, one gallon of liquid propane has an energy equivalence of 91,333 Btu.
[9] For the purposes of this table, one gallon of kerosene has an energy equivalence of 135,000 Btu.

Appendix K2 to Part 305—Representative Average Unit Energy Costs for Room Air Conditioner and Portable Air Conditioner Labels

This Table contains the representative unit energy costs that must be utilized to calculate estimated annual energy cost disclosures required under this Part for room air conditioners and portable air conditioners. This Table is based on information published by the U.S. Department of Energy in 2017.

Type of energy	In commonly used terms	As required by DOE test procedure
Electricity	¢13/kWh [1]	$.1300/kWh

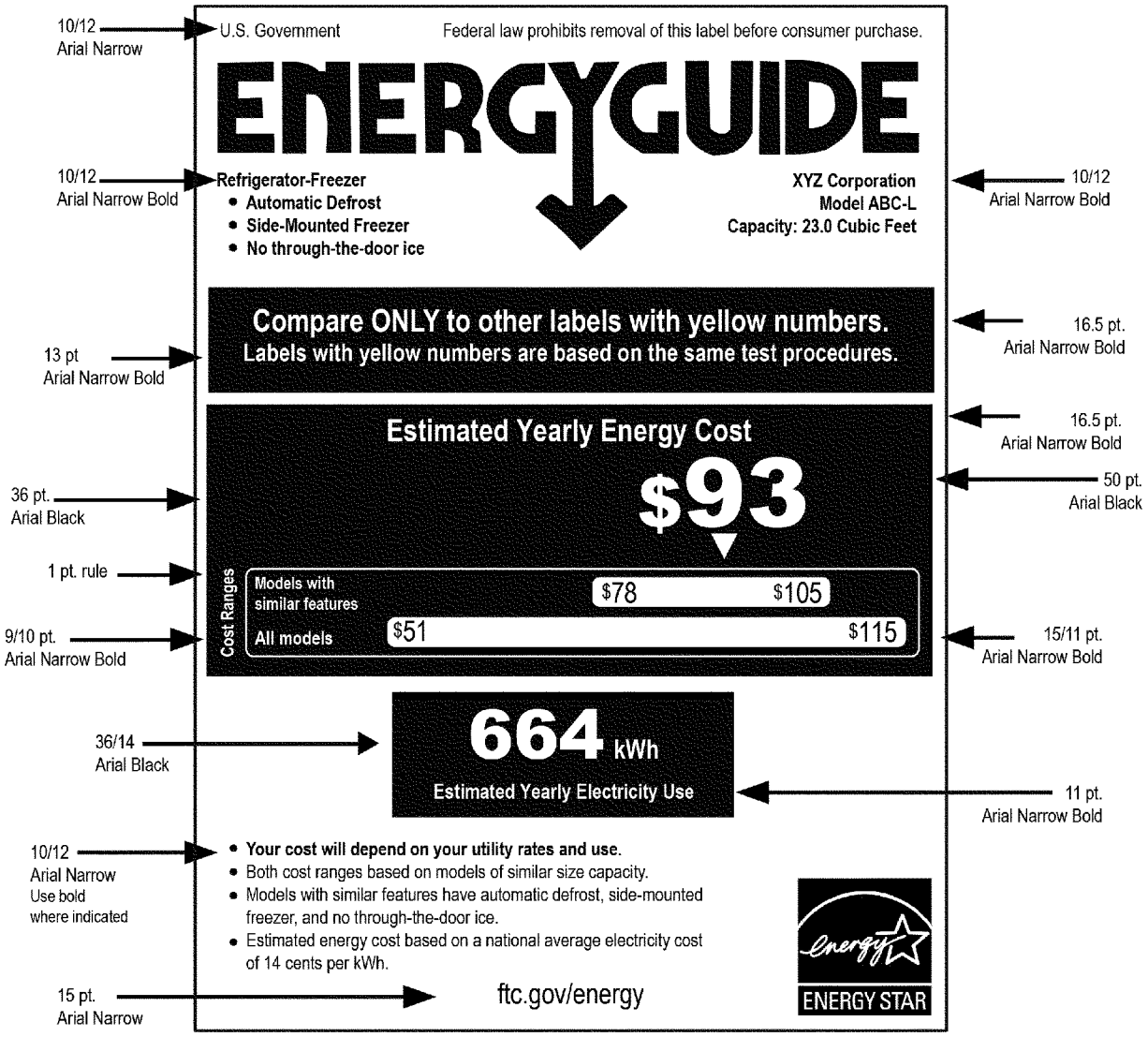
[1] kWh stands for kilowatt hour.

* * * * *

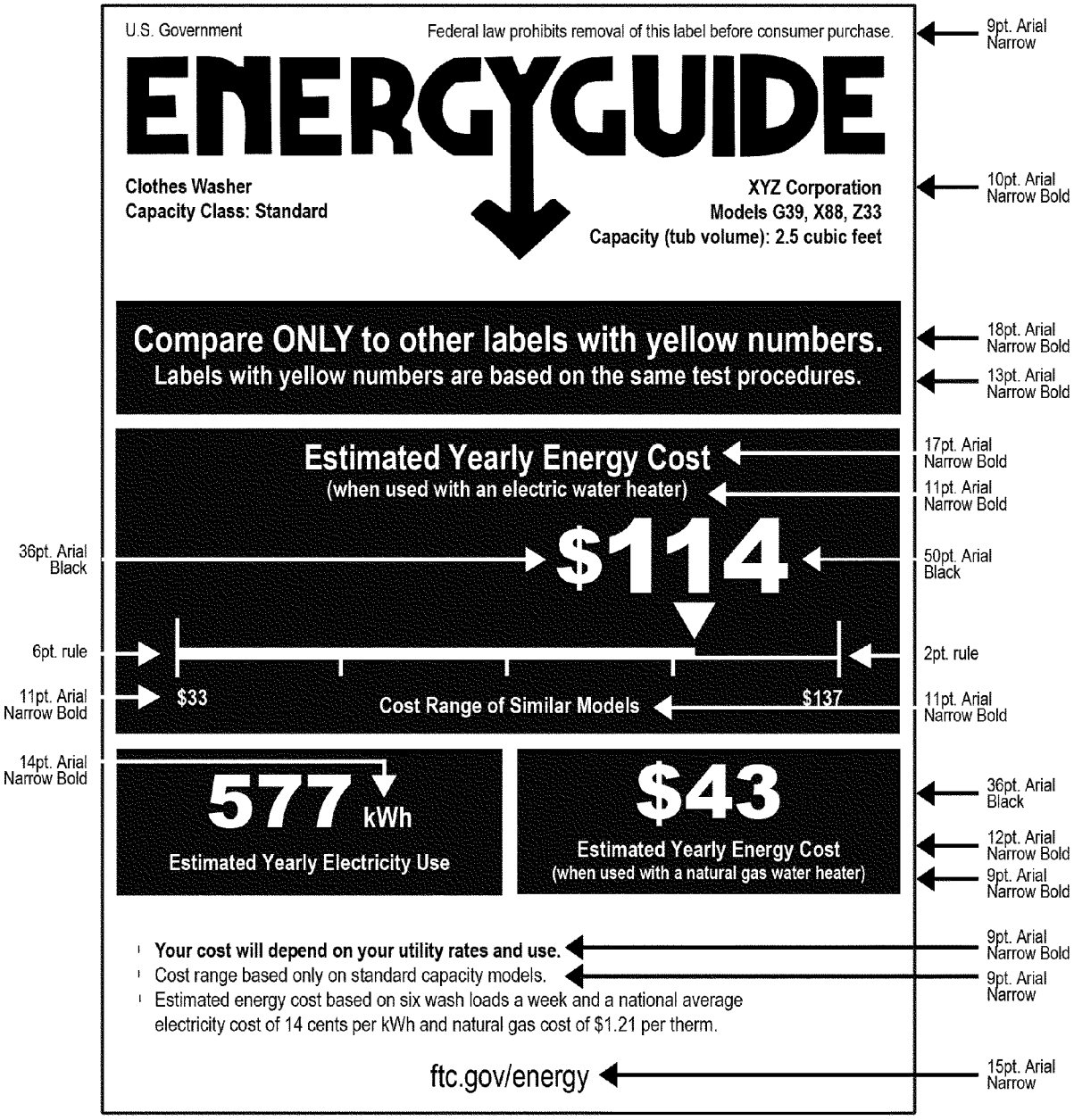
■ 15. In appendix L, revise prototype labels 1, 2, 8, 9, 10, and sample labels 1, 2, 3, 4, 5, 6, 9, 9A, 14, 15, and 16 to read as follows

* * * * *

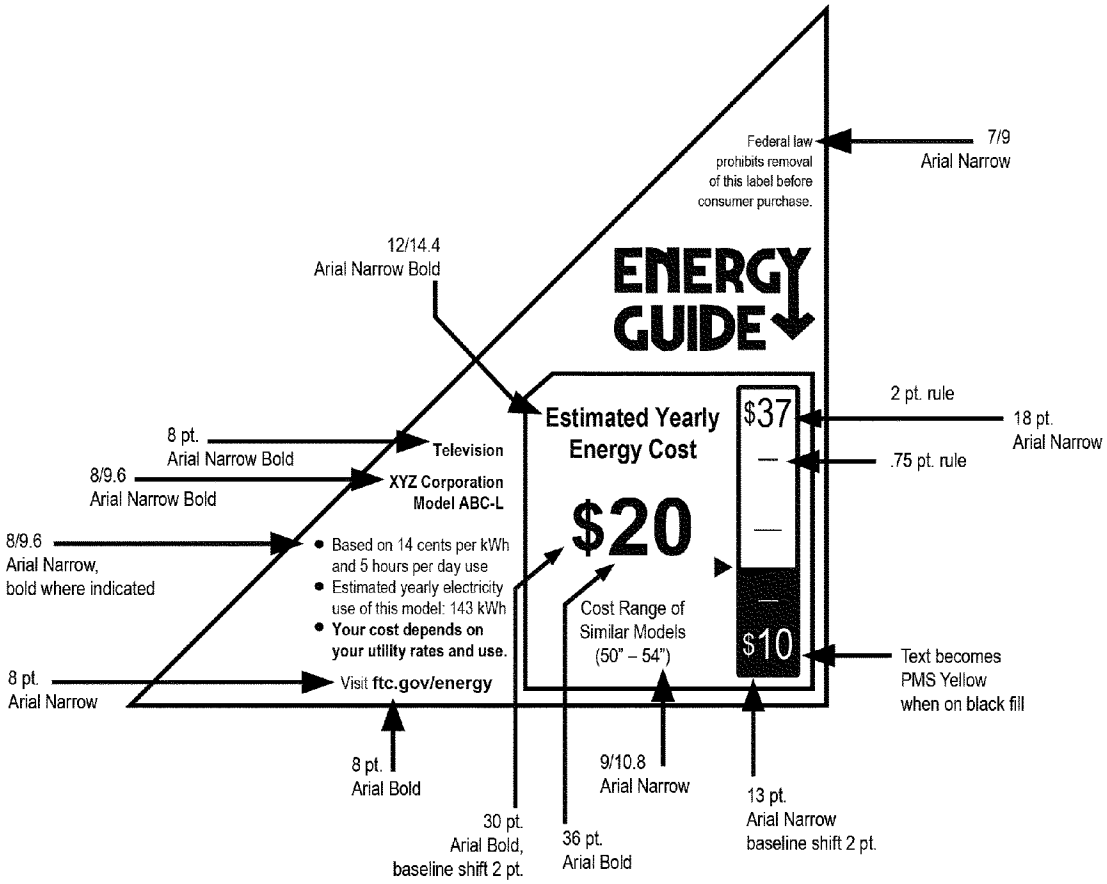
BILLING CODE 6750–01–P



Prototype Label 1 – Refrigerator-Freezer



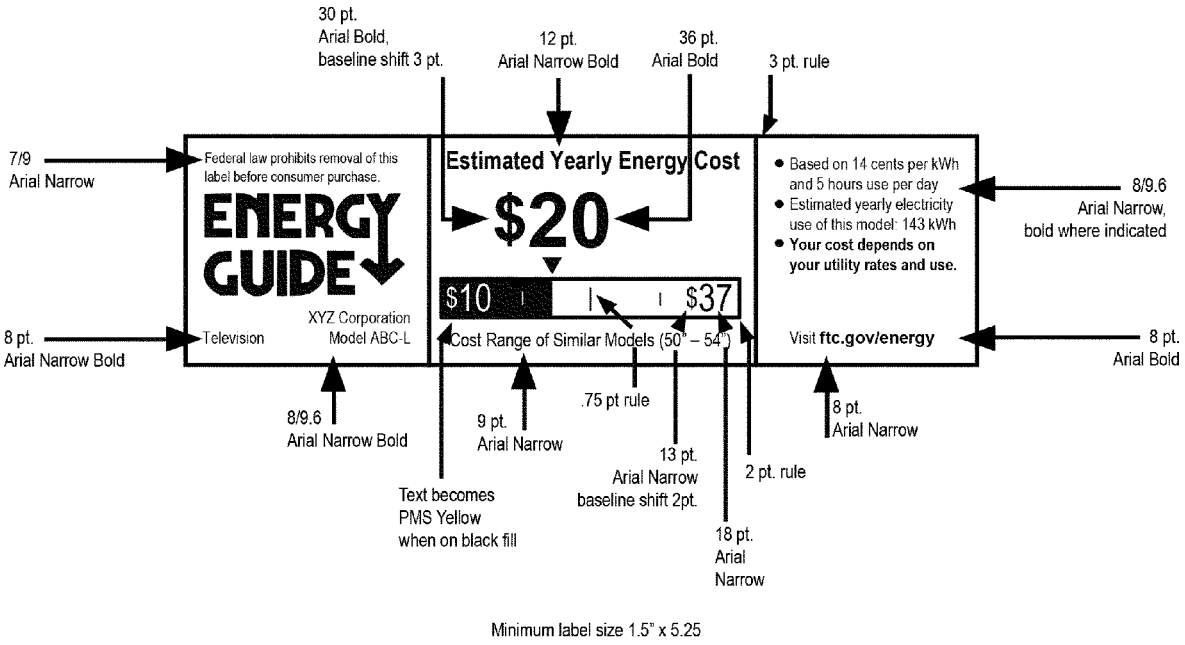
Prototype Label 2 – Clothes Washer



Minimum label size right angle triangle 4.5" x 4.5"

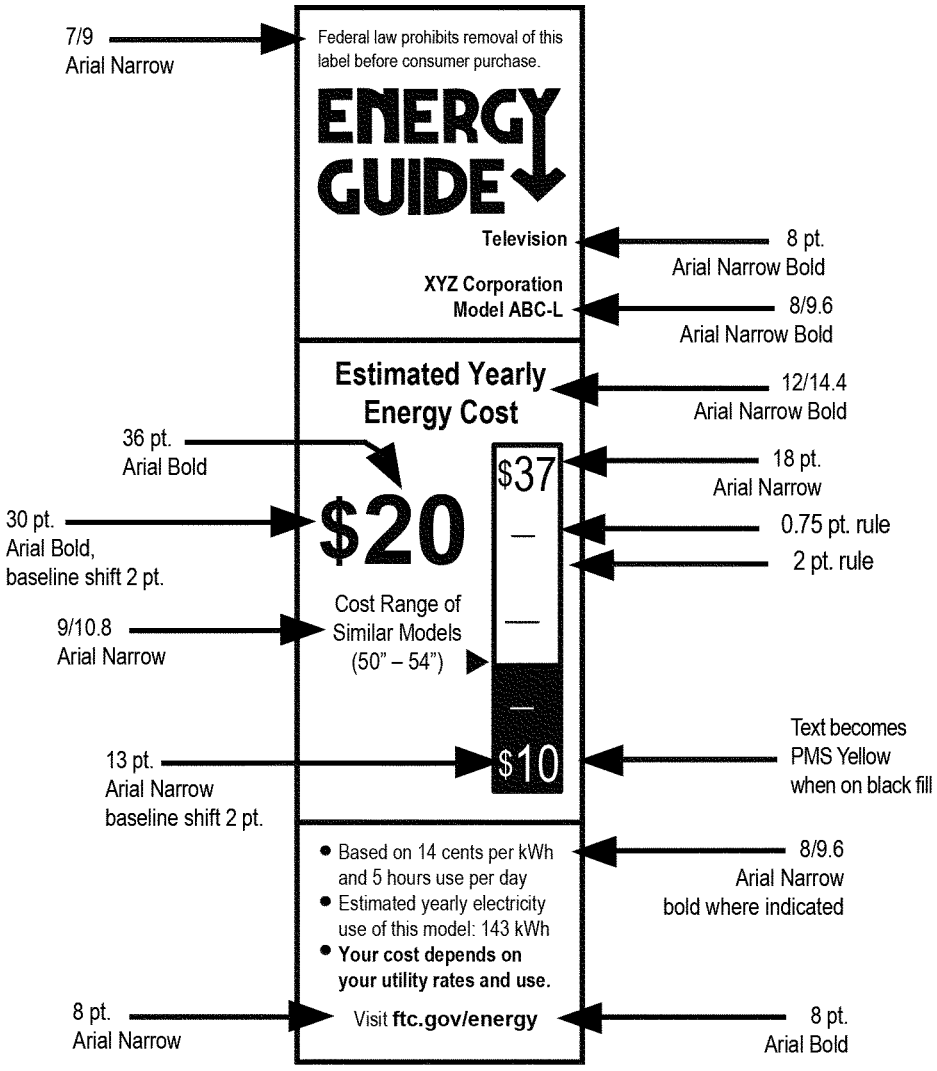
* Typeface is Arial Narrow and Arial or equivalent type style. Type sizes shown are minumum allowable. Use bold or heavy typeface where indicated. Type is black printed on process yellow or equivalent color background. Energy Star logo, if applicable, must be at least 0.36" wide.

Prototype Label 8 – Triangular Television Label



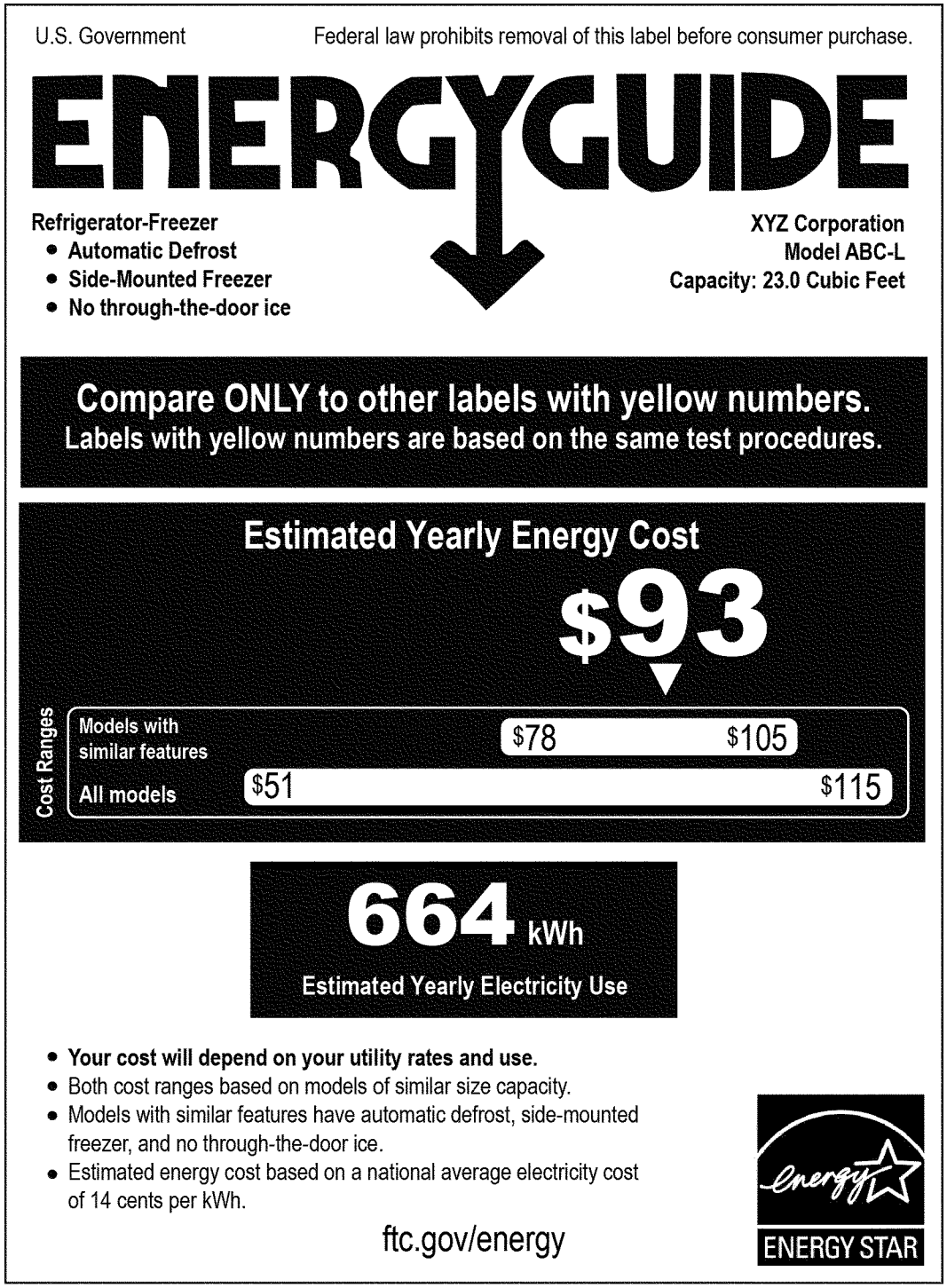
* Typeface is Arial Narrow and Arial or equivalent type style. Type sizes shown are minumum allowable. Use bold or heavy typeface where indicated. Type is black printed on process yellow or equivalent color background. Energy Star logo, if applicable, must be at least 0.36" wide.

Prototype Label 9 – Horizontal Rectangular Television Label

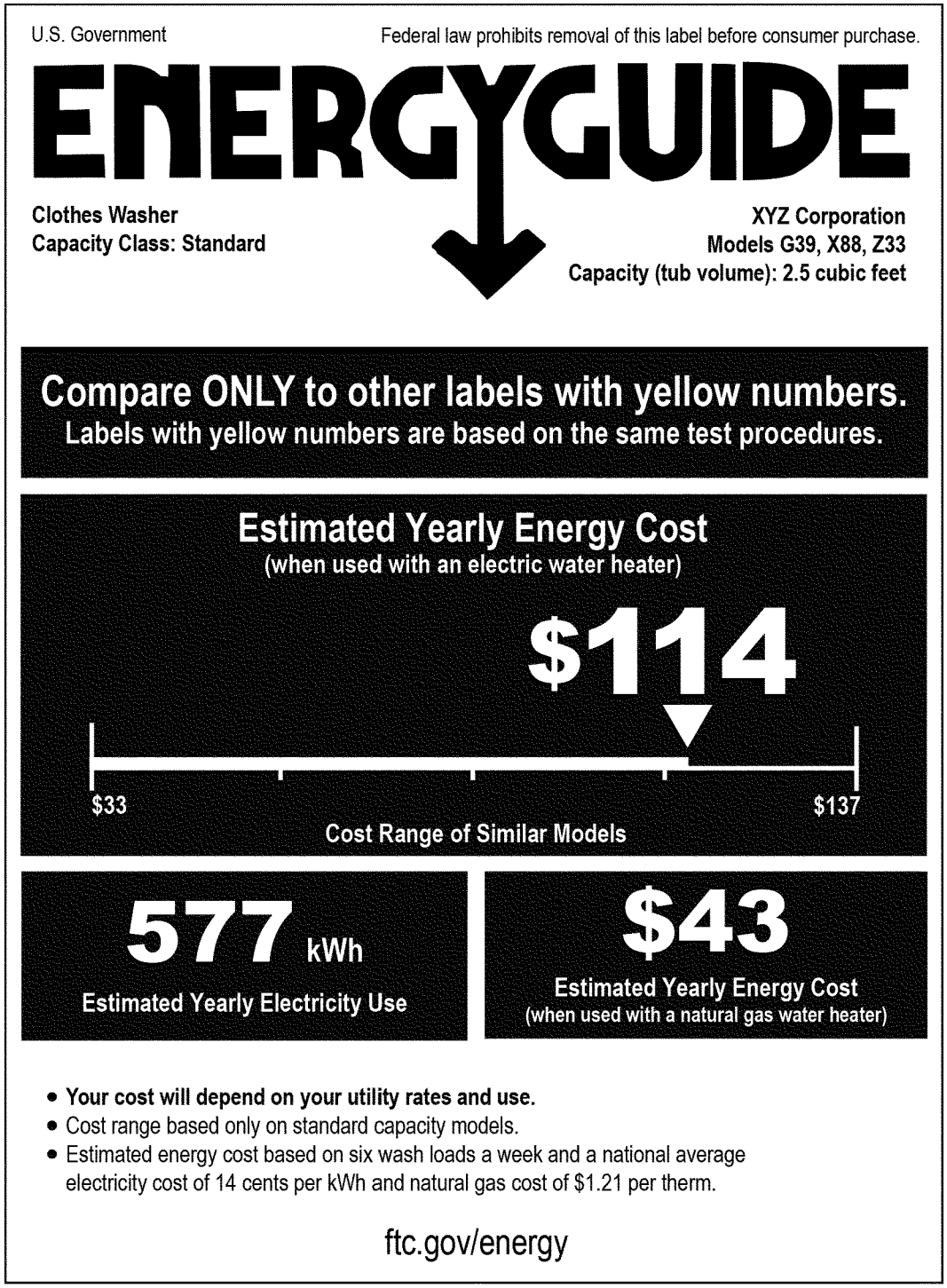


* Typeface is Arial Narrow and Arial or equivalent type style. Type sizes shown are minumum allowable. Use bold or heavy typeface where indicated. Type is black printed on process yellow or equivalent color background. Energy Star logo, if applicable, must be at least 0.36" wide.

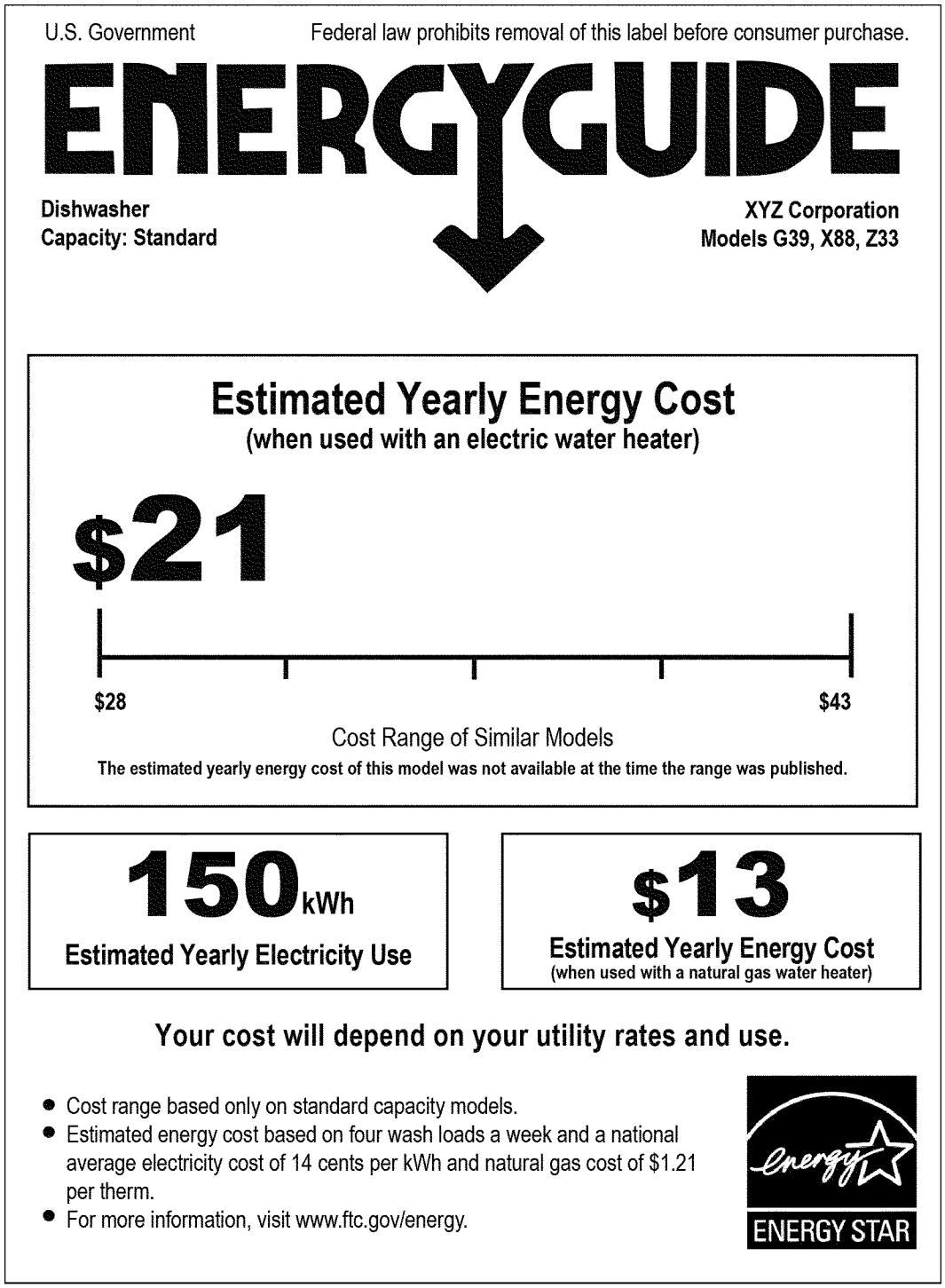
Prototype Label 10 – Vertical Rectangular Television Label



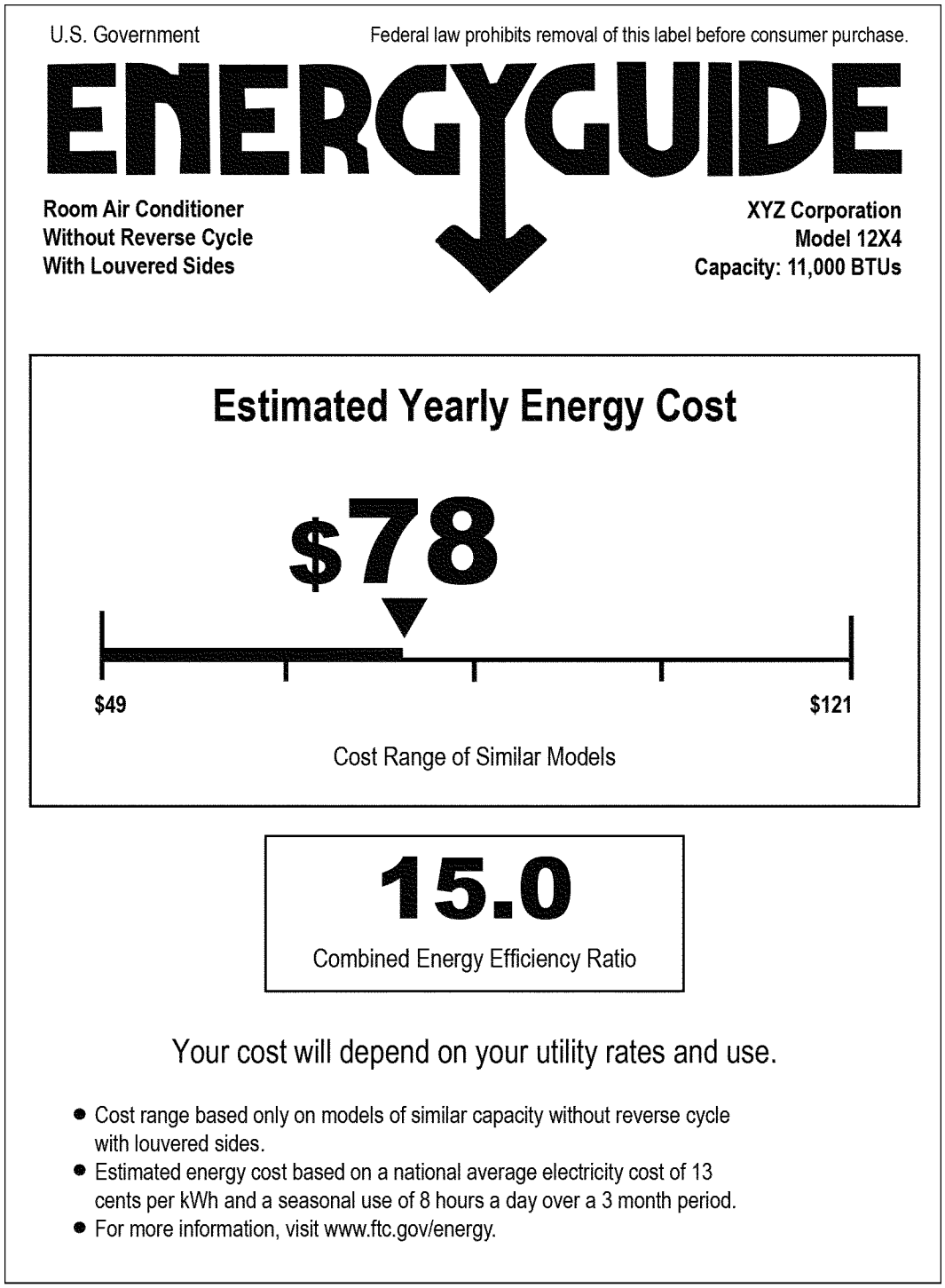
Sample Label 1 – Refrigerator-Freezer



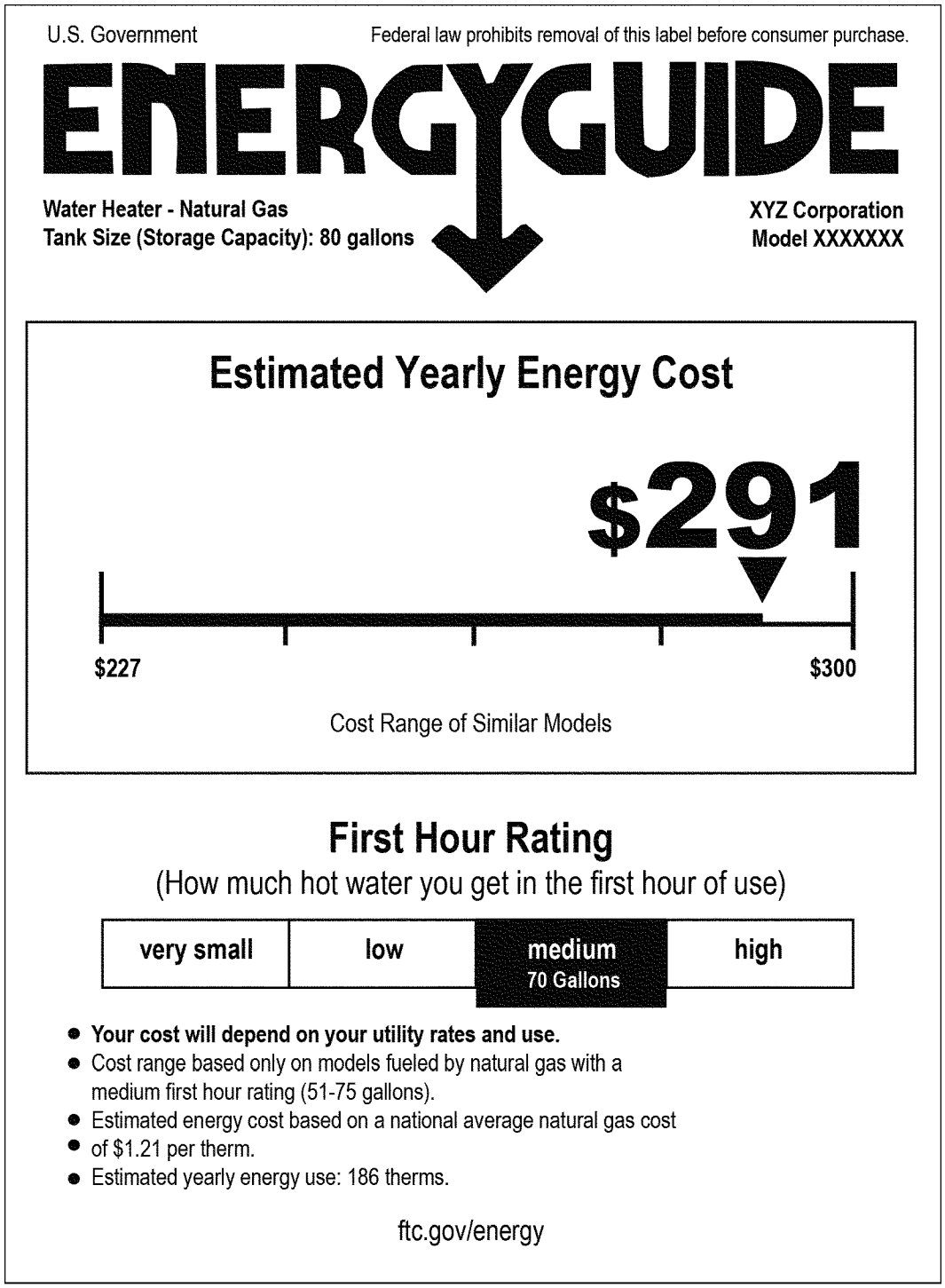
Sample Label 2 – Clothes Washer



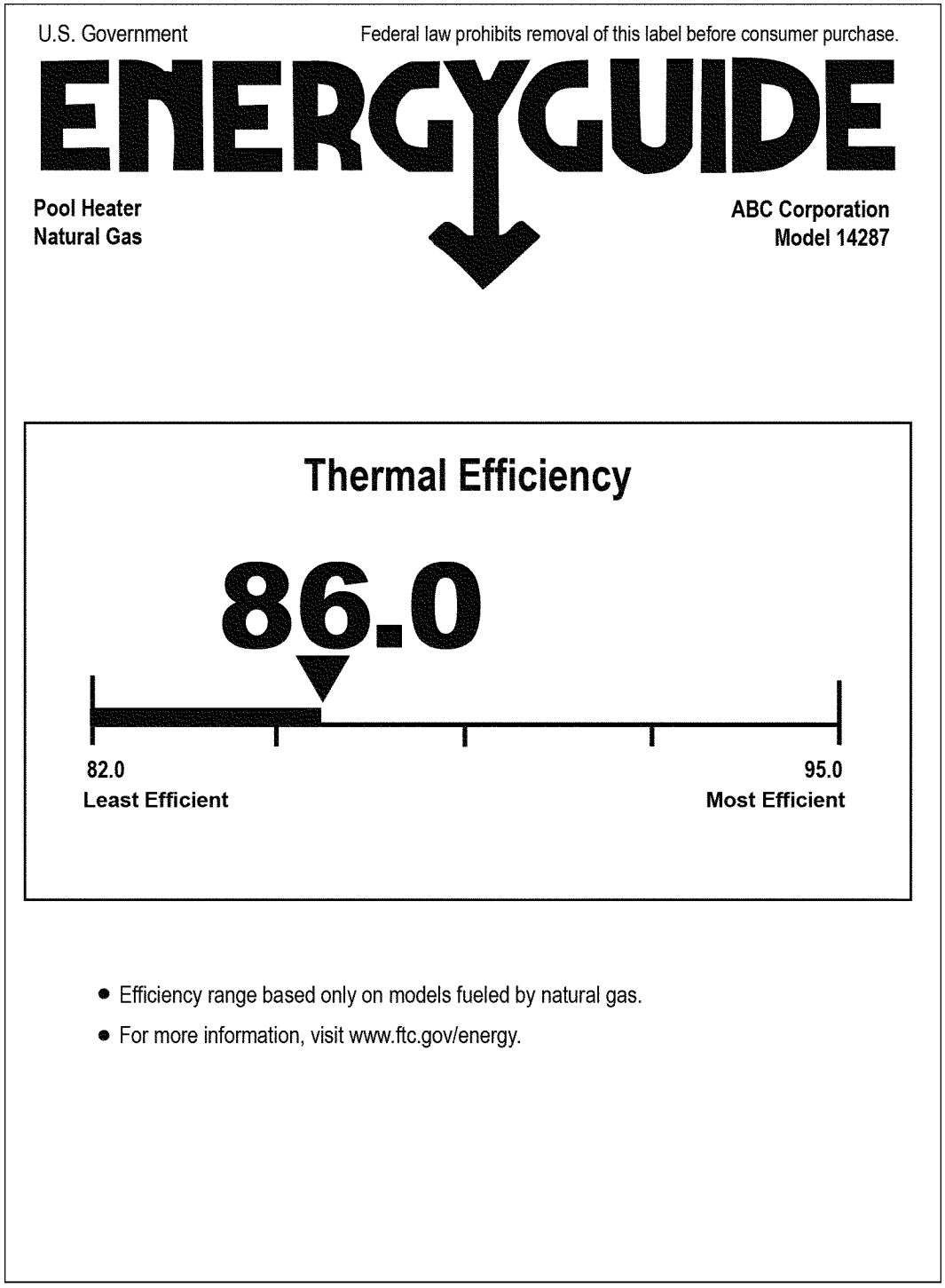
Sample Label 3 – Dishwasher



Sample Label 4 – Room Air Conditioner

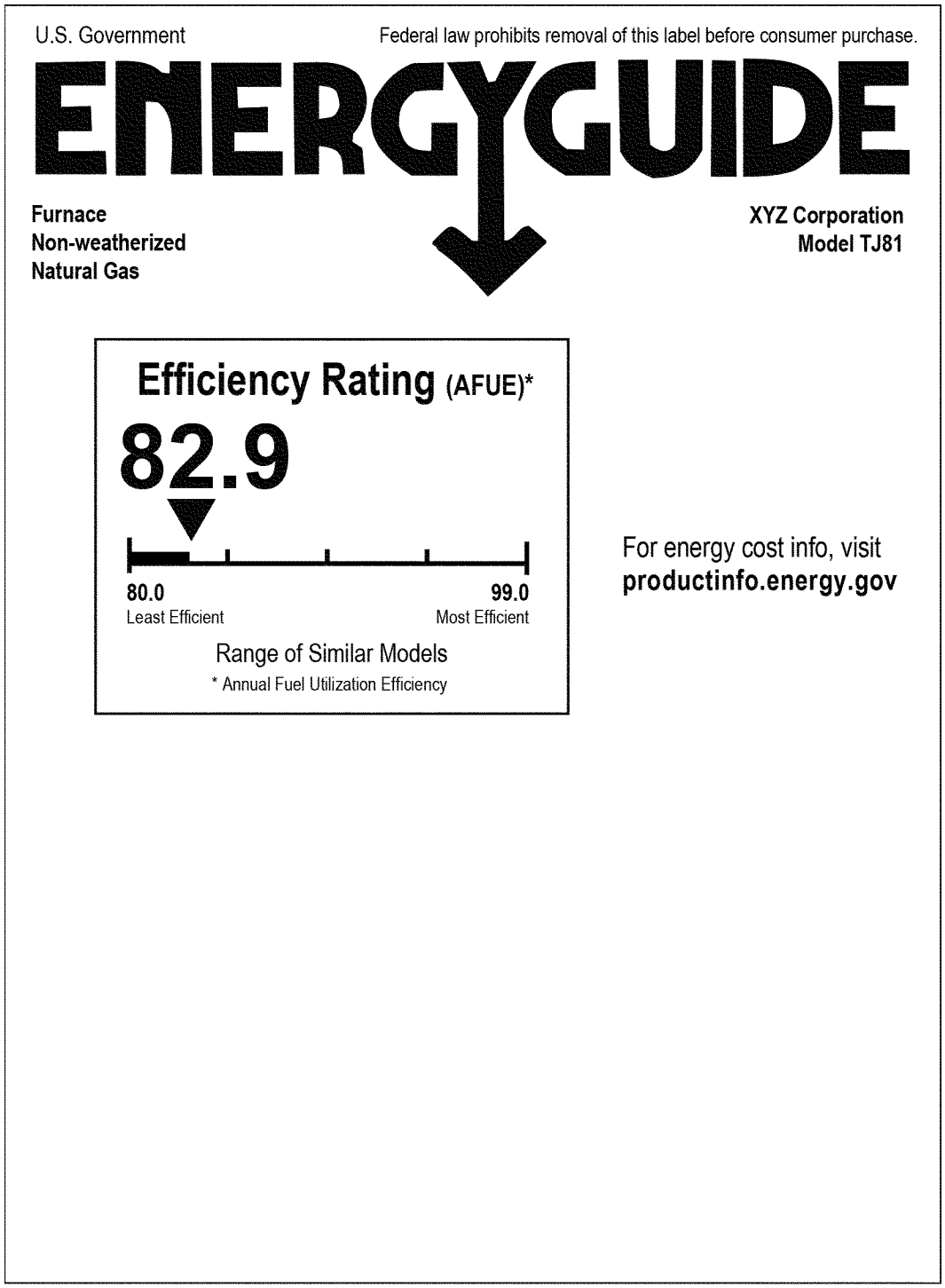


Sample Label 5 – Water Heater

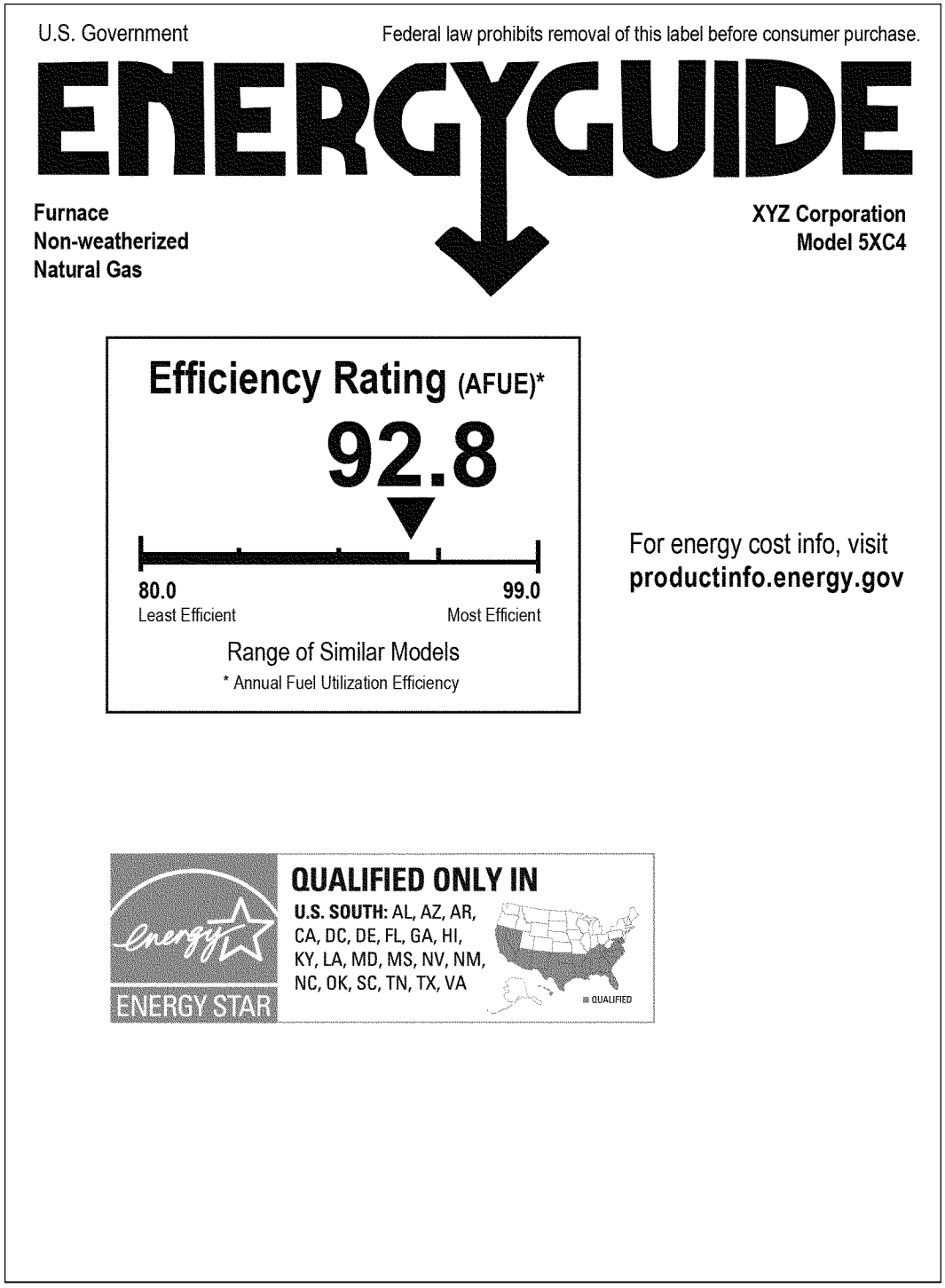


Sample Label 6 – Pool Heater

* * * * *

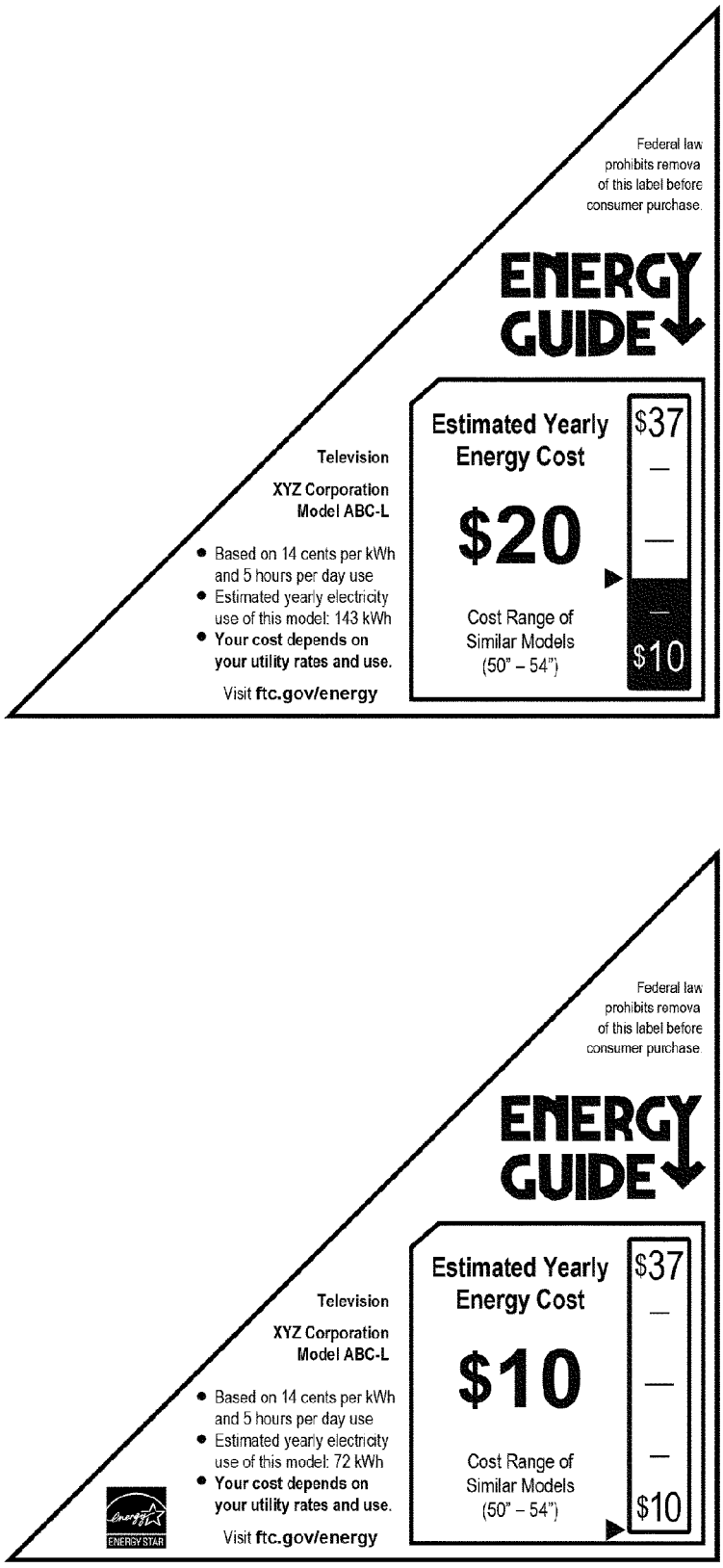


Sample Label 9 – Non-weatherized Gas Furnace

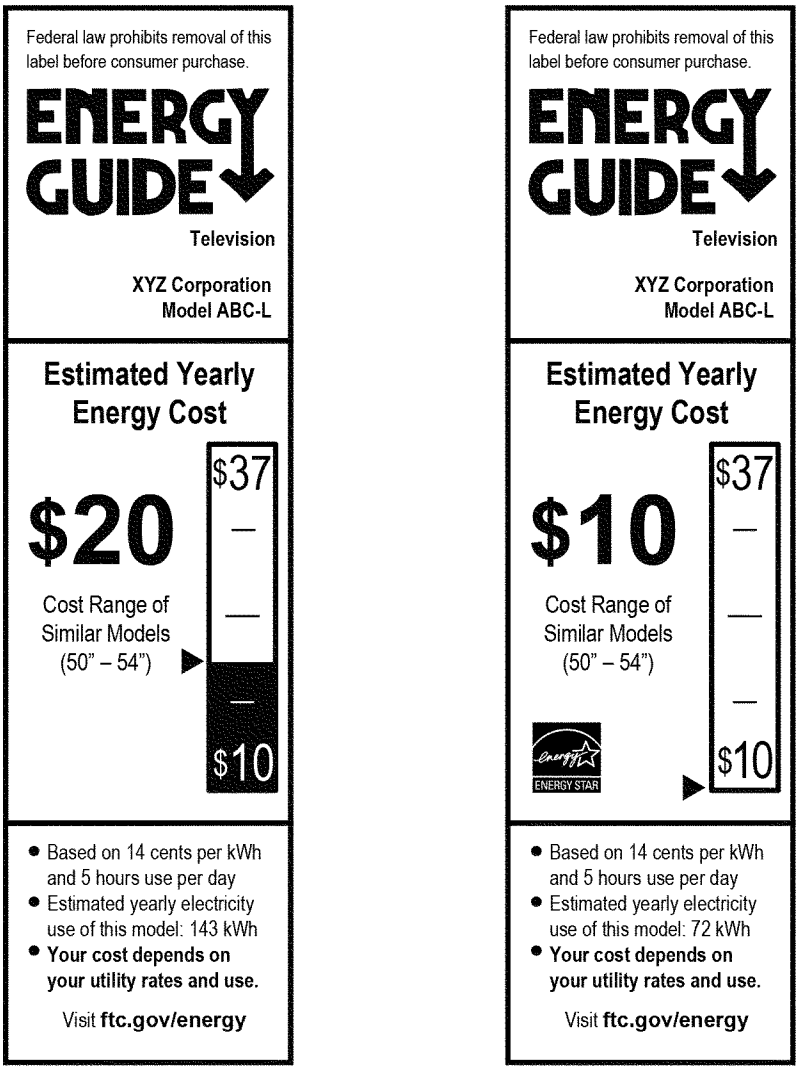


Sample Label 9A – Non-weatherized Gas Furnace (ENERGY STAR certified)

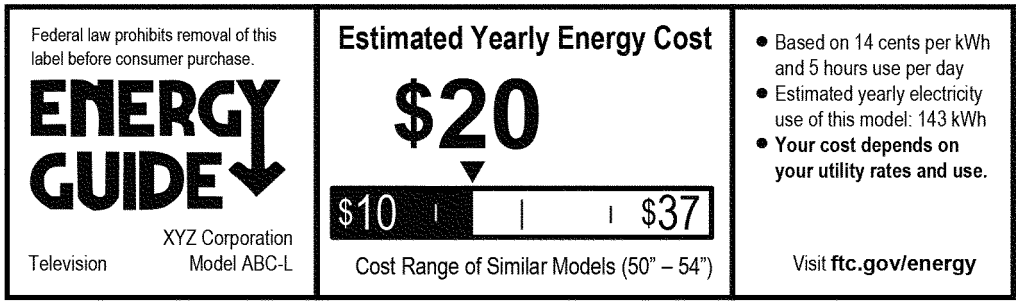
* * * * *

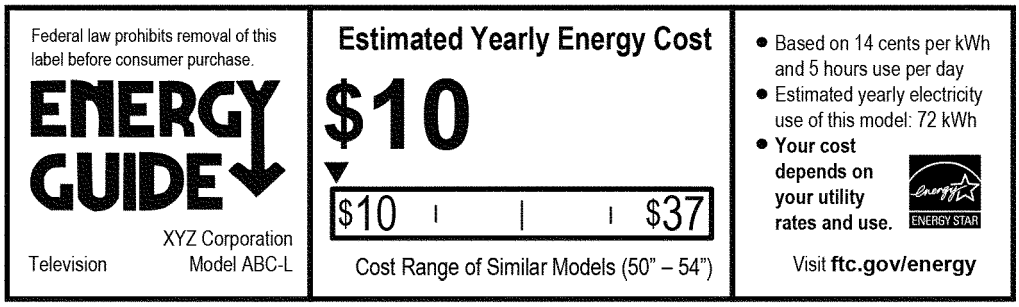


Sample Label 14 – Triangular Television Labels



Sample Label 15 – Vertical Television Labels





Sample Label 16 – Horizontal Television Labels

* * * * *

By direction of the Commission.

April J. Tabor,

Secretary.

Dissenting Statement of Commissioner Christine S. Wilson

Today the Commission announces proposed required updates to the compatibility ranges in the Energy Labeling Rule. Since 2015, the Commission has sought comment on provisions of this Rule on several occasions and has made numerous amendments to the Rule.[1] On each occasion, I have urged the Commission to seek comment on the more prescriptive aspects of this Rule. My concerns about the highly prescriptive nature of this Rule are detailed in my prior dissents.[2]

In March 2020, we sought comment on some of the more prescriptive provisions of the Energy Labeling Rule [3] and received many interesting and thoughtful comments.[4] Rather than act on these comments or proposals, though, the Commission chose to finalize only proposals necessary to conform to Department of Energy changes.[5]

Today, we again make necessary changes to the Rule but fail to take the opportunity to revisit the Rule's highly prescriptive requirements. I acknowledge that the FTC is required to publish an Energy Labeling Rule, that manufacturers are required to post an Energy Label on their products and that consumers likely benefit from some uniformity of information in these labels. But it is unnecessary for our labeling guidance to include highly prescriptive requirements that detail the

[1] *See* 81 FR 62861 (Sept. 12, 2016) (seeking comment on proposed amendments regarding portable air conditioners, ceiling fans, and electric water heaters); 84 FR 9261 (Mar. 14, 2019) (proposing amendments to organize the Rule's product descriptions); 85 FR 20218 (Apr. 10, 2020) (seeking comment on proposed amendments regarding central and portable air conditioners).

[2] *See* Dissenting Statement of Commissioner Christine S. Wilson on the Notice of Proposed Rulemaking: Energy Labeling Rule (Dec. 10, 2018) (expressing my view that the Commission should seek comment on the prescriptive labeling requirements), *https://www.ftc.gov/public-statements/2018/12/dissenting-statement-commissioner-christine-s-wilson-notice-proposed;* Dissenting Statement of Commissioner Christine S. Wilson on the Notice of Proposed Rulemaking: Energy Labeling Rule (Oct. 22, 2019) (urging the Commission to seek comment on the labeling requirements), *https://www.ftc.gov/system/files/documents/public_statements/1551786/r611004_wilson_dissent_energy_labeling_rule.pdf;* Dissenting Statement of Commissioner Christine S. Wilson on the Notice of Proposed Rulemaking: Energy Labeling Rule (Dec. 22, 2020), *https://www.ftc.gov/system/files/documents/public_statements/1585242/commission_wilson_dissenting_statement_energy_labeling_rule_final12-22-2020revd2.pdf;* Dissenting Statement of Commissioner Christine S. Wilson on the Notice of Amendments to the Energy Labeling Rule (Oct. 6, 2021), *https://www.ftc.gov/system/files/documents/public_statements/1597166/commission_wilson_dissenting_statement_energy_labeling_rule_2021-10-04_final.pdf.*

[3] *See* Concurring Statement of Commissioner Christine S. Wilson on the Notice of Proposed Rulemaking: Energy Labeling Rule (Mar. 20, 2020), *https://www.ftc.gov/system/files/documents/public_statements/1569815/r611004_wilson_statement_energy_labeling.pdf.*

[4] *See, e.g.,* Air-Conditioning, Heating and Refrigeration Institute (AHRI) Comment (#33–09), available at: *https://www.regulations.gov/document?D=FTC-2020-0033-0009;* Association of Home Appliance Manufacturers (AHAM) Comment (#33–04), available at: *https://www.regulations.gov/document?D=FTC-2020-0033-0004;* Goodman Manufacturing Comment (#33–08), available at: *https://www.regulations.gov/document?D=FTC-2020-0033-0008.*

[5] *See* Dissenting Statement of Commissioner Christine S. Wilson on Notice of Proposed Rulemaking: Energy Label Rule (Dec. 22, 2020), *https://www.ftc.gov/system/files/documents/public_statements/1585242/commission_wilson_dissenting_statement_energy_labeling_rule_final12-22-2020revd2.pdf.*

trim size dimensions for labels, including the precise width (between 5 ¼″ to 5 ½″) and length (between 7 ⅜″ and 7 ⅝″); the number of picas for the copy set (between 27 and 29); the type style (Arial) and setting; the weight of the paper stock on which the labels are printed (not less than 58 pounds per 500 sheets or equivalent); and a suggested minimum peel adhesive capacity of 12 ounces per square inch.[6]

The Notice we issue today includes 13 pages of prototype labels, complete with the array of requirements described above. For example, Prototype Label 10 for Vertical Rectangular Television Labels specifies not only the categories of information to be displayed, but also the precise font and size in which that information is to be printed. The Estimated Yearly Energy Cost must appear in 12/14.4 Arial Narrow Bold. And while the phrase ''US Government'' at the top of the label must be printed in ⅞ pt Arial Narrow, ''*visitftc.gov/energy*'' at the bottom must be printed in 8 pt Arial Narrow. As I have indicated on previous occasions, we could identify the categories of information to be disclosed clearly and conspicuously, and then allow companies to create appropriate labels.

Once again, I urge the Commission to act on the comments we received in 2020, eliminate the more prescriptive aspects of the Rule, and maximize the positive impact of this Rule for consumers. As long as we are statutorily mandated to maintain this Rule, we should endeavor to make it beneficial for consumers and competition.

Regrettably, the Commission once again has chosen to forego this route, instead making only minor changes to the Rule necessary for conformity. Accordingly, I dissent.

[FR Doc. 2022–11126 Filed 5–24–22; 8:45 am]

BILLING CODE 6750–01–C

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154, 260, and 284

[Docket No. RM21–18–000]

Revised Filing and Reporting Requirements for Interstate Natural Gas Company Rate Schedules and Tariffs

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission proposes to establish a rule to require natural gas pipelines to submit all supporting statements, schedules and workpapers in native format (*e.g.,* Microsoft Excel) with all links and formulas intact when filing a Natural Gas Act section 4 rate case.

DATES: Comments are due June 24, 2022.

ADDRESSES: Comments, identified by Docket No. RM21–18–000, may be filed in the following ways. 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:* Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

The Comment Procedures Section of this document contains more detailed filing procedures.

FOR FURTHER INFORMATION CONTACT:

Tehseen Rana (Technical Information), Office of Energy Market Regulation, 888 First Street NE, Washington, DC 20426, (202) 502–8639, *Tehseen.Rana@ferc.gov.*

Caitlin Tweed (Legal Information), Office of the General Counsel, 888 First Street NE, Washington, DC 20426, (202) 502–8073, *Caitlin.Tweed@ferc.gov.*

SUPPLEMENTARY INFORMATION:

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I. Introduction

1. On June 24, 2021, American Gas Association, American Public Gas Association, American Forest & Paper Association, Industrial Energy Consumers of America, Process Gas Consumers Group and Natural Gas Supply Association (collectively, Petitioners) filed a petition requesting that the Commission institute a rulemaking to revise its regulations, or at the minimum, issue an order revising and updating the *FERC Implementation Guide for Electronic Filing of Parts 35, 154, 284, 300 and 341 Tariff Filings* (FERC Implementation Guide) to require natural gas pipelines to submit all supporting statements, schedules and workpapers in native format [1] with all links and formulas intact when filing a general Natural Gas Act (NGA) section 4 [2] rate case (Petition). Petitioners state that the Commission's current policy does not ensure that Commission staff and stakeholders have access to all the information needed to perform routine rate analyses.

2. CenterPoint Energy Resources Corporation (CenterPoint), National Grid Gas Delivery Companies (National

[6] *See e.g.,* 16 CFR 305.13, 305.20 (specifying such requirements for refrigerators, refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters, room air conditioners, and pool heaters (305.13) and for central air conditioners, heat pumps, and furnaces (305.20)).

[1] As stated in the FERC Implementation Guide, native format, or native application format, ''refers to the software used to create the file. When a file is submitted in native application format it is submitted in the format of the software used to create the file. For example, if the file is created in Microsoft Excel 2010, submit the file in an Excel format, generally denoted by an extension of XLSX. All files submitted in native application format must be saved and filed using one of the Commission's accepted electronic document file formats. The list of FERC Acceptable File Formats is available on *www.ferc.gov.*'' *FERC Implementation Guide for Electronic Filing of Parts 35, 154, 284, 300 and 341 Tariff Filings* (2016).

[2] 15 U.S.C. 717c.

Grid),[3] and Exelon Corporation, Exelon Generation Company, LLC, and affiliates (collectively, Exelon) filed general comments in support of the Petition. In its comments, CenterPoint states that the changes proposed in the Petition may expedite proceedings by removing the additional step where intervenors must submit separate requests for supporting statements, schedules and workpapers in native format, in effect reducing time and expense for all stakeholders. National Grid states that when a natural gas pipeline does not file in native format, a party's only recourse is either the time-consuming process of raising the matter in protests and waiting for the Commission to direct the filer to provide all statements, schedules and workpapers in native format and subsequently the pipeline's compliance with those directives or pursuing this necessary information even later in the process through discovery. National Grid further states that these recourses are not only inefficient but cost parties time waiting on workpapers that allow for a complete and thorough assessment of the rate filing. Exelon maintains that supporting statements, schedules and workpapers should be provided in native format for stakeholders to review and determine whether a natural gas pipeline's proposed rate increase is just and reasonable and in conformance with Commission policies. Exelon argues that it is difficult to conduct a thorough analysis of a rate case if supporting statements, schedules and workpapers are submitted in Adobe PDF format.

II. Background

3. As required by § 284.10 of the Commission's regulations,[4] interstate natural gas pipelines generally have stated rates for their services, which are approved in a rate proceeding under NGA sections 4 or 5 and remain in effect until changed in a subsequent section 4 or 5 proceeding. When a natural gas pipeline files under NGA section 4 to change its rates, the Commission requires the pipeline to provide detailed support for all the components of its cost of service.[5] Further, section 4(c) of the NGA requires that a natural gas pipeline file proposed changes in rates with the Commission 30 days prior to the proposed effective date.[6]

4. Commission regulations require that natural gas pipelines filing general section 4 rate cases provide certain statements (Statements A through P).[7] In 1995, the Commission issued its *Filing and Reporting Requirements for Interstate Natural Gas Company Rate Schedules and Tariffs* (Order No. 582), stating that Statements I, J and a portion of H (containing state tax formulations) must be received in spreadsheet format with formulas included, as the data provided in these statements are essential to understanding a natural gas pipeline's position with regard to cost allocation and rate design.[8] The Commission found that although these spreadsheets could be obtained through discovery, that process is burdensome, often redundant of the initial filing and inhibits better-informed protests.[9] Subsequently, the FERC Implementation Guide stated that the ''submission of spreadsheets in native file format is preferred for Statements A through M, including related schedules. Statements O and P may use any electronic format that renders text, graphics, spreadsheets or data bases that the Commission accepts (the list of FERC Acceptable File Formats is available on *http://www.ferc.gov*).'' [10] Furthermore, for Statements I, J and a portion of H, the FERC Implementation Guide stated that if spreadsheets in native format (*e.g.,* Microsoft Excel) are not available that the natural gas pipeline may submit using any of the aforementioned acceptable electronic formats which the Commission accepts.[11]

III. Discussion

5. Pursuant to NGA section 4, we propose to establish a rule to require natural gas pipelines to submit all statements, schedules and workpapers in native format with formulas and links intact [12] when filing a general NGA section 4 rate case.

6. First, requiring all statements, schedules and workpapers to be filed in native format will reconcile any ambiguity in the current requirements with a formal requirement for all natural gas pipelines to file accordingly. For example, in the Order on Clarification of Order No. 582, the Commission states that if there are no underlying links used to develop a spreadsheet (*i.e.,* the spreadsheets are prepared separately from each other) then links do not need to be created. Currently, when a natural gas pipeline submits a section 4 rate case filing, the Commission often cannot verify whether there were underlying links used to develop a spreadsheet or whether a pipeline severed those links before filing its rate case. We seek to address this information gap and require natural gas pipelines to file statements and schedules linking progressive calculations regardless of how the statements and schedules were created. Furthermore, requiring spreadsheets with links and formulas intact will enable rate case participants to manipulate the cost-of-service components (including billing determinants) to evaluate different rate outcomes without the need to create their own rate models. This will expedite settlement negotiations and will allow all rate case participants to evaluate the filing on equal footing with the natural gas pipeline and without the need to hire experts or rely on other parties to recreate a pipeline's rate model.

7. Second, submitting all statements, schedules and workpapers in native format will provide for a timely and comprehensive analysis of a rate case filing. If natural gas pipelines are required to submit all statements, schedules and workpapers in native format with links and formulas intact in the initial filing, stakeholders will be provided with pertinent information to analyze the rates and determine if they are just and reasonable. Parties can begin examining the entire filing during the typical 12-day comment period and thus file more informed protests. Furthermore, if natural gas pipelines are required to file all statements and schedules with formulas and links intact, all rate case participants will be able to evaluate the filing and any settlement offers from the same baseline, as opposed to all parties creating their own rate models. This will streamline the rate case process, including settlement discussions, and

[3] The Brooklyn Union Gas Company d/b/a National Grid NY; KeySpan Gas East Corporation d/b/a National Grid; Boston Gas Company d/b/a National Grid; The Narragansett Electric Company d/b/a National Grid; and Niagara Mohawk Power Corporation
d/b/a National Grid, all subsidiaries of National Grid USA, Inc. (collectively, the National Grid Gas Delivery Companies).

[4] 18 CFR 284.10 (2021).

[5] 18 CFR 154.312 & 154.313 (2021).

[6] 15 U.S.C. 717c(d).

[7] 18 CFR 154.312.

[8] *Filing and Reporting Requirements for Interstate Nat. Gas Co. Rate Schedules & Tariffs,* Order No. 582, 60 FR 52,960, 52,994 (Oct. 11, 1995), FERC Stats. & Regs. ¶ 31,025 (1995), *order on clarification,* 76 FERC ¶ 61,077 (1996) (Order on Clarification).

[9] In Order No. 703, the Commission confirmed this requirement that pipelines submit spreadsheets in native format for Statements I, J and a portion of H, including intact formulas. *Filing Via the Internet,* Order No. 703, 72 FR 65659 (Nov. 23, 2007), 121 FERC ¶ 61,171 at P 26 (2007).

[10] *FERC Implementation Guide for Electronic Filing of Parts 35, 154, 284, 300 and 341 Tariff Filings* (2016).

[11] *Id.*

[12] ''Formulas and links intact'' includes formulas and links within individual spreadsheets and between spreadsheets. For example, the proposal will require that formulas and links within Schedule I–2 be intact within Schedule I–2, and intact for any progressive calculations that flow data from Schedule I–2.

avoid parties exchanging multiple rounds of discovery and testimony merely to understand the rate model's underlying calculations. The Commission acknowledged this in the Order on Clarification of Order No. 582, stating: ''Requiring parties, including staff, to input all the figures from the rate case and spend weeks and rounds of discovery to recreate the pipeline's computations is grossly inefficient and unduly burdensome. Receiving the rate case in a manipulable format is critical given the 12-day period for comment and protest.'' [13]

8. Third, the current regulations are outdated. Order No. 582 was issued in 1995. Since then, information technology has significantly improved. Section 4 rate cases are now generally developed using Microsoft Excel and submitted electronically. The concerns raised in the comments submitted in the rulemaking underlying Order No. 582 no longer exist (*e.g.,* outdated software programs, or submitting numerous diskettes). With this rulemaking, we seek to update the filing requirements to reflect current information technology capabilities. We recognize that a final rule adopting these proposals could increase the burden on natural gas pipelines associated with submitting section 4 rate case filings. Currently, natural gas pipelines are only required to submit Statements I, J and the state income taxes portion of Schedule H–3 in native format with formulas and links intact. One specific burden mentioned in the Order on Clarification of Order No. 582 is the need to create links in files where they do not naturally occur when the spreadsheet is developed. As stated above, the Commission cannot verify whether underlying links exist or not but to the extent natural gas pipelines will need to create links among multiple spreadsheets that did not naturally occur when the spreadsheets were generated, their filing burden will increase. However, we do not anticipate that this requirement will be excessively burdensome on natural gas pipelines, as any entity that wants to calculate rates, including the pipeline, needs a linked rate model, and must create one if it is not provided in the original rate case filing.

IV. Information Collection Statement

9. The information collection requirements contained in this NOPR are subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995.[14] OMB's regulations require approval of certain information collection requirements imposed by agency rules.[15] Upon approval of a collection of information, OMB will assign an OMB control number and expiration date. Respondents subject to the filing requirements of this proposed rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

10. This NOPR will modify the currently approved information collection associated with FERC–545, Gas Pipeline Rates: Rate Change (Non-Formal) (OMB Control No. 1902–0154) (FERC–545) by updating the requirements for submitting a rate case under section 4 of the NGA.

11. Interested persons may obtain information on the reporting requirements by contacting Ellen Brown, Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 via email (*DataClearance@ferc.gov*) or telephone ((202) 502–8663).

12. The Commission solicits comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected or retained, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques.

13. Please send comments concerning the collection of information and the associated burden estimates to: Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission]. Due to security concerns, comments should be sent electronically to the following email address: *oira_submission@omb.eop.gov.* Comments submitted to OMB should refer to OMB Control No. 1902–0154.

14. Please submit a copy of your comments on the information collection to the Commission via the eFiling link on the Commission's website at *http://www.ferc.gov.* If you are not able to file comments electronically, please send a copy of your comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426. Comments on the information collection that are sent to FERC should refer to RM21–18–000.

15. *Title:* Gas Pipeline Rates: Rate Change (Non-Formal).

16. *Action:* Proposed modification of collection of information in accordance with RM21–18–000.

17. *OMB Control No.:* 1902–0154.

18. *Respondents for this Rulemaking:* Gas pipelines filing an NGA section 4 rate case.

19. *Frequency of Information Collection:* As needed for section 4 rate cases.

20. *Necessity of Information:* The proposed rule will require all statements, schedules and workpapers submitted during a section 4 rate case to be submitted in native format with all links and formulas intact. The modification to this collection is intended to reduce the overall burden for all parties involved in a section 4 rate case.

21. *Internal Review:* The Commission has reviewed the changes and has determined that such changes are necessary. These requirements conform to the Commission's need for efficient information collection, communication, and management within the energy industry. The Commission has specific, objective support for the burden estimates associated with the information collection requirements.

22. The Commission estimates that the NOPR will affect the burden [16] and cost [17] as follows:

[13] Order on Clarification, 76 FERC at 61,455.

[14] 44 U.S.C. 3507(d).

[15] 5 CFR 1320.11 (2021).

[16] ''Burden'' is the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 CFR 1320.3.

[17] The estimated hourly cost (salary plus benefits) provided in this section is based on the salary figures for May 2021 posted by the Bureau of Labor Statistics for the Utilities sector (available at *https://www.bls.gov/oes/current/naics3_221000.htm*) and scaled to reflect benefits using the relative importance of employer costs for employee compensation from June 2021 (available at *https://www.bls.gov/news.release/ecec.nr0.htm*). The hourly estimates for salary plus benefits are: Computer and Information Systems Manager (Occupation Code: 11–3021), $103.61; Computer and Information Analysts (Occupation Code: 15–1120(1221), $67.99; Electrical Engineer (Occupation Code: 7–2071), $72.15; Legal (Occupation Code: 23–0000), $142.25. The average hourly cost (salary plus benefits) weighting all of the above skill sets evenly, is $96.50. We round it to $97/hour.

PROPOSED MODIFICATIONS TO FERC 545 FROM NOPR IN DOCKET NO. RM21–18–000

A.	B.	C.	D.	E.	F.
Area of modification	Number of respondents	Annual estimated number of responses per respondent	Annual estimated number of responses (Column B × Column C)	Average burden hours & cost per response	Total estimated burden hours & total estimated cost (Column D × Column E)
Section 4 Rate Case					
FERC 545: Annual Section 4 Rate Cases.	8	1	8	100 hours; $9,700	800 hours; $77,600.

23. For the purposes of estimating burden in this NOPR, in the table above, we conservatively estimate the annual total of general section 4 rate cases to be eight. This number is higher than the Commission's average number of section 4 rate cases, but we created our estimate to allow for additional rate case submissions.

24. FERC–545 is required to implement rates pursuant to sections 4, 5, and 16 of NGA, (15 U.S.C. 717 & 717o, Pub. L. 75–688, 52 Stat. 822 and 830). NGA sections 4, 5, and 16 authorize the Commission to inquire into rate structures and methodologies and to set rates at a just and reasonable level. Specifically, a natural gas pipeline must obtain Commission authorization for all rates and charges made, demanded, or received in connection with the transportation or sale of natural gas in interstate commerce. The proposed modification as described in this NOPR in Docket No. RM21–18–000 only impacts filings under section 4 of the NGA. The collections associated with sections 5 and 16 remain unchanged.

V. Environmental Analysis

25. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[18] The actions proposed to be taken here fall within categorical exclusions in the Commission's regulations for rules regarding information gathering, analysis, and dissemination, and for rules regarding sales, exchange, and transportation of natural gas that require no construction of facilities.[19] Therefore, an environmental review is unnecessary and has not been prepared in this rulemaking.

VI. Regulatory Flexibility Act

26. The Regulatory Flexibility Act of 1980 (RFA)[20] requires the Commission to determine the effect of the NOPR on small entities. The Commission intends to pose the least possible burden on all entities both large and small.

27. The NOPR only applies to natural gas pipelines who file a section 4 rate case. There are a total of 145 entities that may file a rate change and may be impacted by the NOPR. The Small Business Administration (SBA) defines a small entity in the category of, ''Pipeline Transportation of Natural Gas'' [21] by entities with fewer than $30 million of annual receipts. Out of the total number of entities, only five are small entities (~3% of the total population). We estimate the annual additional costs of filing a section 4 rate case to be $9,700. We further estimate an average of eight responses per year and conservatively estimates that one may be a small entity. Therefore, this proposed rule does not pose a significant change to small entities.

VII. Comment Procedures

28. The Commission invites interested persons to submit comments on the matters and issues proposed in this rulemaking to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due June 24, 2022. Comments must refer to Docket No. RM21–18–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

29. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's website at *http://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word processing software must be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

30. Commenters that are not able to file comments electronically may file an original of their comment by USPS mail or by courier or other delivery services. For submission sent via USPS only, filings should be mailed to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE, Washington, DC 20426. Submission of filings other than by USPS should be delivered to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

VIII. Document Availability

31. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*). At this time, the Commission has suspended access to the Commission's Public Reference Room due to the President's March 13, 2020 proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19).

32. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the

[18] *Reguls. Implementing the Nat'l Envt'l Pol'y Act,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987) (cross-referenced at 41 FERC ¶ 61,284).

[19] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5) & 380.4(a)(27) (2021).

[20] 5 U.S.C. 601–612.

[21] Small Business Administration NAICS Category 486210, ''Pipeline Transportation of Natural Gas'' under 13 CFR chapter 1 part 121.

last three digits of this document in the docket number field.

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

By direction of the Commission.

Issued: May 19, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–11243 Filed 5–24–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 4, 5, 19, 24, 26, and 27

[Docket No. TTB–2022–0004; Notice No. 210]

RIN 1513–AC86

Standards of Fill for Wine and Distilled Spirits

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

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to amend the regulations governing wine and distilled spirits containers. TTB is proposing to add 10 additional authorized standards of fill for wine, along with related technical and other harmonizing changes. TTB also is considering, as an alternative, eliminating all but a minimum standard of fill for wine containers and all but a minimum and maximum for distilled spirits containers, thus potentially eliminating unnecessary regulatory requirements, reducing barriers to competition, and providing consumers broader purchasing options.

DATES: Comments must be received on or before July 25, 2022.

ADDRESSES: You may electronically submit comments to TTB on this proposal, and view copies of this document, its supporting materials, and any comments TTB receives on it within Docket No. TTB–2022–0004 as posted at *https://www.regulations.gov.* A direct link to that docket is available on the TTB website at *https://www.ttb.gov/laws-and-regulations/all-rulemaking* under Notice No. 210. Alternatively, you may submit comments via postal mail to the Director, Regulations and Ruling Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005. Please see the Public Participation section of this document for further information on the comments requested regarding this proposal and on the submission, confidentiality, and public disclosure of comments.

FOR FURTHER INFORMATION CONTACT: Caroline Hermann, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Rulings Division; telephone 202–453–1039, ext. 256.

SUPPLEMENTARY INFORMATION:

Background

TTB Authority

The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers regulations setting forth standards of fill for containers of beverage distilled spirits and wine products distributed within the United States.

The authority to establish these standards is based on two provisions of law: (1) Section 5301(a) of the Internal Revenue Code of 1986 (IRC), codified at 26 U.S.C. 5301(a) in the case of distilled spirits, and (2) section 105(e) of the Federal Alcohol Administration Act (FAA Act), codified at 27 U.S.C. 205(e), for both distilled spirits and wine. Section 5301(a) of the IRC authorizes the Secretary of the Treasury to prescribe regulations ''to regulate the kind, size, branding, marking, sale, resale, possession, use, and reuse of containers (of a capacity of not more than 5 wine gallons) designed or intended for use for the sale of distilled spirits . . .'' when the Secretary determines that such action is necessary to protect the revenue. Section 105(e) of the FAA Act authorizes the Secretary of the Treasury to prescribe regulations relating to the ''packaging, marking, branding, and labeling and size and fill'' of alcohol beverage containers ''as will prohibit deception of the consumer with respect to such products or the quantity thereof . . . .''

TTB administers regulations setting forth the tax tolerance for containers of wine products based on sections 5041(e) and 5368 of the IRC. TTB administers the IRC and FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, as codified at 6 U.S.C. 531(d). In addition, the Secretary of the Treasury has delegated certain administrative and enforcement authorities to TTB through Treasury Department Order 120–01.

Current Standards of Fill for Wine

The standards of fill for wine are contained in subpart H of part 4 of the TTB regulations (27 CFR part 4). The term ''standard of fill'' is used in the TTB regulations and in this document to refer to the authorized amount of liquid in the container, rather than the size or capacity of the container itself. For better readability, however, this document sometimes uses the terms ''size'' or ''container size'' and ''standards of fill'' interchangeably. Within subpart H, paragraph (a) of § 4.72 (27 CFR 4.72(a)) authorizes the use of the following metric standards of fill for containers, in addition to those described in paragraph (b) which are discussed further below:

- 3 liters;
- 1.5 liters;
- 1 liter;
- 750 milliliters;
- 500 milliliters;
- 375 milliliters;
- 355 milliliters;
- 250 milliliters;
- 200 milliliters;
- 187 milliliters;
- 100 milliliters; and
- 50 milliliters.

Paragraph (b) of § 4.72 states that wine may be bottled or packed in containers of 4 liters or larger if the containers are filled and labeled in quantities of even liters (4 liters, 5 liters, 6 liters, etc.).

Current Standards of Fill for Distilled Spirits

The standards of fill for distilled spirits are contained in subpart K of part 5 of the TTB regulations (27 CFR part 5). Note that these standards of fill were contained in subpart E of part 5 until March 11, 2022, when the reorganization of part 5 went into effect pursuant to TTB's recent final rule, Modernization of the Labeling and Advertising Regulations for Distilled Spirits and Malt Beverages (T.D. TTB–176, February 9, 2022, 87 FR 7526).

Within subpart K, paragraph (a)(1) of § 5.203 (27 CFR 5.203(a)(1)) specifies the following metric standards of fill for containers other than those described in paragraph (a)(2) of that section:

- 1.8 Liters.
- 1.75 Liters.
- 1 Liter.
- 900 mL.
- 750 mL.
- 720 mL.
- 700 mL.
- 375 mL.
- 200 mL.
- 100 mL.
- 50 mL.

In the case of distilled spirits in metal containers that have the general shape

and design of a can, that have a closure which is an integral part of the container, and that cannot be readily reclosed after opening, paragraph (a)(2) of § 5.203 authorizes the use of the following metric standards of fill:

- 355 mL.
- 200 mL.
- 100 mL.
- 50 mL.

In addition to the metric standards specified above, § 5.203 contains provisions regarding tolerances (discrepancies between actual and stated fill), unreasonable shortages in fill, and distilled spirits bottled or imported before January 1, 1980, and marketed or released from customs custody on or after that date (the date on which the U.S. volumetric standards were replaced by the § 5.203 metric standards).

Notice Nos. 182 and 183

On July 1, 2019, TTB published in the **Federal Register** Notice No. 182, Elimination of Certain Standards of Fill for Wine, and Notice No. 183, Elimination of Certain Standards of Fill for Distilled Spirits; Amendment of Malt Beverage Net Content Labeling Regulation (84 FR 31257 and 84 FR 31264). The two documents proposed to eliminate most standards of fill for wine and distilled spirits. Both documents proposed to maintain a minimum standard of fill of 50 milliliters to ensure sufficient space on the container for required labeling. Notice No. 183 also proposed a maximum standard of fill of 3.785 liters (one gallon) for distilled spirits, which corresponds to the FAA Act definition of a bulk container for distilled spirits, codified at 27 U.S.C. 206(c). In addition, the documents also sought comments on the relative merits of alternatives, such as adding new authorized standards of fill.

Notice No. 182 described a number of petitions and inquiries that TTB had received over the course of several years requesting the approval of new standards of fill for wine. TTB requested comments on adding the requested sizes. TTB addressed the comments it had received and added certain of the proposed standards of fill to the TTB regulations through publication of a final rule, T.D. TTB–165, on December 29, 2020 (85 FR 85514).

In the final rule, TTB also described an agreement between the United States and Japan that included a commitment for the United States to engage in rulemaking on certain standards of fill, described more fully below. TTB stated in the final rule that TTB would conduct additional rulemaking to propose the addition of new standards of fill for wine, including the 180, 300, 360, 550, and 720 milliliters and 1.8 liters sizes. Japanese government entities and Japanese industry associations requested the addition of those sizes during the comment period for Notice No. 182, and they were included in a Side Letter signed as part of the U.S.-Japan Trade Agreement.

Given that TTB is requesting comment on additional wine sizes pursuant to a Side Letter to the U.S.-Japan Trade Agreement, this document provides a new opportunity for commenters to provide information on three wine standards of fill that TTB proposed in Notice No. 182, but did not incorporate into the regulations in the final rule. TTB received only two, one, and zero comments on the 620 milliliters, 700 milliliters, and 2.25 liters sizes, respectively. TTB found that these comments did not provide sufficient information to make a determination on these sizes, and therefore TTB did not incorporate these sizes into the regulations at that time. TTB summarizes the petition and inquiries for those sizes below.

620 Milliliters

TTB has received several inquiries over the years regarding the importation of the French product known as ''vin jaune'' (''yellow wine'' in English). Vin jaune is made in the Jura region of France, using a technique similar to that used for making sherry. In accordance with French and European Union regulations, it must be sold in a 620-milliliter bottle. Since 620 milliliters is not an authorized size in § 4.72, vin jaune cannot be imported into the United States in a container with a 620 milliliter standard of fill. The two commenters to Notice No. 182 who specifically addressed this size stated generally that the 620 milliliters size is available internationally and its approval would facilitate trade. After the completion of Notice No. 182, a number of U.S. importers submitted petitions for the 620 milliliters size to TTB. The petitions state that vin jaune is historically and currently bottled in the 620 milliliters size and request the change so that U.S. importers can legally import the wine in the traditional 620 milliliter size.

700 Milliliters

TTB has received inquiries from foreign governments regarding the 700 milliliter size for wine. Among them was a 2007 request from the Government of Moldova asking that TTB waive the standards of fill requirements for importations of Moldovan wine. At the time, Moldova reported that it had over a million bottles of aged wine in its National Treasury of Wine that could not be sold in the United States due to the U.S. bottle size limitations. Also in 2007, the Government of Georgia requested that TTB add the 700-milliliter bottle to the authorized standards of fill. It stated that the 700-milliliter bottle was a standard size in the former Soviet Union, and the addition of the 700-milliliter standard of fill in the TTB regulations would eliminate a restriction on the sale of Georgian wines in the United States. A commenter to Notice No. 182 recommended approval of the 700 milliliters size because it is consistent with containers available internationally.

2.25 Liters

TTB received a petition from an importer of boxed wine requesting that the agency authorize a standard of fill of 2.25 liters for wine containers. The importer stated that such a container would significantly reduce the environmental impact of wine packaging because it holds as much as three 750-milliliter wine bottles at half the weight of such bottles. TTB received no comments on Notice No. 182 specifically addressing the 2.25 liters size.

New Petition for 330 Milliliters

After the publication of T.D. TTB–165, TTB received a petition from a South African wine exporter requesting the approval of 330 milliliters as a standard of fill for wine. The petitioner stated that 330 milliliters is the standard can size for beer and soda products in South Africa and in most European countries, unlike in the U.S. where the standard size is 355 milliliters. The petitioner states they would like to export to the United States but cannot procure cans in the 355 milliliters size in South Africa.

U.S.-Japan Trade Agreement

On October 7, 2019, the United States and Japan reached an agreement (the Agreement) on market access for certain agriculture and industrial goods. On December 30, 2019, the U.S. published a document in the **Federal Register** (84 FR 72187) to implement the Agreement, effective January 1, 2020. As part of the Agreement, the United States Government reached a Side Letter agreement with Japan dated October 7, 2019, which addresses issues related to alcohol beverages, including standards of fill (''Side Letter''). See *https://ustr.gov/sites/default/files/files/agreements/japan/Letter_Exchange_on_Alcoholic_Beverages.pdf.* The Side

Letter states that the U.S. Department of the Treasury will take final action on Notice Nos. 182 and 183. If the final action does not address certain sizes—180, 300, 360, 550, and 720 milliliters and 1.8 liters for wine, and 700, 720, and 900 milliliters and 1.8 liters for distilled spirits—then the U.S. Department of the Treasury shall undertake new rulemaking proposing those sizes, and take final action in respect to that rulemaking. The Side Letter took effect with the U.S.–Japan Trade Agreement, which entered into force on January 1, 2020.

The distilled spirits sizes listed in the Side Letter were all referenced in Notice No. 183, and TTB described in that document the petitions from three Japanese trade associations and a Japanese government agency for those sizes. The same entities submitted comments that supported the elimination of standards of fill generally, but further stated that if the standards are not eliminated they support the approval of their petitioned-for sizes. The wine sizes listed in the Side Letter were not referenced in Notice No. 182, as TTB had not previously received petitions for those sizes. TTB did receive comments from a Japanese trade association and a Japanese government agency proposing the approval of those sizes. The two comments supported the elimination of the standards of fill, but requested the approval of the 180, 300, 360, 550, and 720 milliliters and 1.8 liters sizes for wine if the standards of fill for wine were not eliminated. The two commenters did not provide any reasons that TTB should approve these specific sizes, though the Japanese government agency generally referenced its ''proactive efforts for the sound development'' of Japan's liquor industry.

Because the requested wine sizes—180, 300, 360, 550, and 720 milliliters, and 1.8 liters—were not referenced in Notice No. 182, TTB is proposing the addition of those sizes to § 4.72 in this notification to ensure that the public is given ample opportunity to provide comment on the sizes.

Competition Report

On February 9, 2022, the Department of the Treasury released a report, ''Competition in the Markets for Beer, Wine, and Spirits,'' that recommended rulemaking to ''again consider eliminating the standards of fill requirements.'' See Treasury Report on Competition in the Markets for Beer, Wine, and Spirits (February 9, 2022), available at *https://home.treasury.gov/system/files/136/Competition-Report.pdf*. That report, produced in response to Executive Order 14036, ''Promoting Competition in the American Economy'' (published July 9, 2022, at 86 FR 36987), noted that ''[c]ontainer size requirements can be a barrier to innovation and competition, insofar as producers must conform their packaging to the Treasury-mandated sizes.'' TTB has received questions regarding standards of fill from industry members struggling to source compliant containers in the current market.

TTB Proposals

Proposed Standards of Fill (Alternative 1)

For the reasons described above, TTB is proposing to add the six standards of fill for wine listed in the Side Letter discussed above—180, 300, 360, 550, and 720 milliliters, and 1.8 liters—to § 4.72 as authorized standards of fill for wine. TTB is also proposing to add the 330, 620, and 700 milliliters and 2.25 liters sizes to § 4.72 as authorized standards of fill for wine. TTB is specifically interested in comments that address whether the proposed sizes would result in consumer confusion regarding the quantity of wine in the container.

Eliminating the Standards of Fill (Alternative 2)

TTB also seeks comment on an alternative of eliminating the existing standards of fill for wine and distilled spirits, except to maintain in the regulations a minimum standard of 50 milliliters for both wine and distilled spirits and a maximum standard of fill of 3.785 liters for distilled spirits. Conforming edits would also be required in 27 CFR parts 19, 26, and 27.

TTB believes a minimum container size is needed to ensure sufficient space on the container for required labeling. TTB believes a maximum container size also is needed to maintain the distinction between bottled and bulk distilled spirits products. See also 27 U.S.C. 206(c). However, TTB is considering eliminating the standards of fill within those limits for many of the same reasons it described in previous notices of proposed rulemaking, ''Elimination of Certain Standards of Fill for Wine'' (Notice No. 182, July 1, 2019, 84 FR 31257) and ''Elimination of Certain Standards of Fill for Distilled Spirits; Amendment of Malt Beverage Net Contents Labeling Regulation'' (Notice No. 183, July 1, 2019, 84 FR 31264):

1. Elimination of the existing standards of fill would address the recent petitions on this issue, would eliminate the need for industry members to petition for additional authorizations if marketplace conditions favor different standards in the future, and would eliminate requirements that restrict competition and the movement of goods in domestic and international commerce.

2. It would address concerns that the current standards of fill unnecessarily limit manufacturing options and consumer purchasing options, particularly where consumers may seek smaller containers to target a specific amount of consumption.

3. TTB believes that current labeling requirements regarding net contents (see 27 CFR 4.32(b)(2),4.37, 5.63(b)(3), and 5.70) and those regarding the design and fill of containers (see 27 CFR 4.71 and 5.202) may provide consumers with adequate information about container contents.

4. Limiting standards of fill is no longer necessary to ensure accurate calculation of tax liabilities or to protect the revenue. TTB verifies tax liability on the basis of a producer's production and removal records, and TTB believes that allowing additional standards of fill would not undermine its efforts in this regard. TTB's predecessor agency, the Bureau of Alcohol, Tobacco and Firearms (ATF), and TTB previously took the position that limiting the number of bottle sizes protected the revenue by facilitating accurate tax computations. In *Goldstein* v. *Miller,* 488 F.Supp. 156, 171 (D. Md. 1980), aff'd 649 F.2d 863 (4th Cir. 1981), the court reviewed that position and concluded that limiting standards of fill was reasonably related to the collection of the revenue, though it also noted that ATF had the discretionary power to withdraw or amend the requirements. The litigation arose shortly after the enactment of the all-in-bond system of tax payment for distilled spirits under the Distilled Spirits Tax Revision Act of 1979, Title VIII of Public Law 96–39, 96th Cong., 1st Sess. Under this system, the tax was calculated at the time of the removal of the bottled distilled spirits from the distilled spirits plant rather than at the early bulk stages before bottling. Due to the implementation of the system, ATF was especially concerned about maintaining standards of fill at that time, as a back-up to the then new all-in-bond system, whose efficacy was untested. The all-in-bond system has now been in place for over 40 years. Audit experience since implementation of the all-in-bond system and since the Goldstein litigation leads TTB to believe that the limitations on standards of fill are no

longer necessary for revenue protection purposes.

In the subsequent final rule, T.D. TTB–165 (December 29, 2020, 85 FR 85514), TTB authorized seven new standards of fill for wine, four new standards of fill for distilled spirits, and did not eliminate the standards of fill. Some commenters contended that eliminating the standards of fill would cause consumer confusion and potentially lead to a proliferation of differing State container size requirements that could cause further consumer confusion. Commenters also expressed concern about significant market disruption. Based on these comments, TTB declined at that time to eliminate all standards of fill but instead authorized additional specific sizes.

However, in light of the several additional requests for yet more sizes in the short time since additional sizes were last adopted, as well as heightened concern that standards of fill can impose barriers to competition, TTB is again considering eliminating the standards of fill. Although TTB acknowledges that some commenters suggested there would be consumer confusion, TTB is not aware of consumer confusion related to container sizes of malt beverages, for which there is no standard of fill requirement. Moreover, with the addition of the eleven new standards of fill authorized with the final rules published in December 2020, and the potential of ten more new standards to address international agreements and petitions described in this document, the value of the defined standards may be of increasingly fleeting utility to consumers. Any potential for confusion may also be mitigated or eliminated by the net contents labeling that is mandatory. Moreover, concerns regarding confusion should be weighed against other concerns, including the possibility that container size requirements can be a barrier to innovation and competition. TTB again seeks comments on this matter generally, and also specifically with regard to whether the potential impact on competition of continuing to restrict standards of fill outweighs potential consumer confusion.

Statement of U.S. Equivalent Net Contents

Under the TTB regulations, wine labels must bear a statement of net contents. The regulations at 27 CFR 4.37(b) provide that the mandatory net contents statement may include, in addition to the required metric measure, the equivalent volume in United States measure. If the U.S. measure is shown on the label, it must appear as stated in § 4.37(b) for each standard of fill authorized in § 4.72.

When TTB published T.D. TTB–165, it did not amend § 4.37(b) to add the equivalent U.S. measures for the newly approved standards of fill of 355 milliliters, 250 milliliters, and 200 milliliters. TTB therefore plans to correct this oversight in this document by including in the proposed regulations the U.S. measures for each of the three new standards of fill. The U.S. measures will be shown as follows, in the format currently required by § 4.37(b): 355 ml (12.0 fl. oz.); 250 ml (8.5 fl. oz.); and 200 ml (6.8 fl. oz.).

The proposed regulations also include the addition to § 4.37(b) of U.S. equivalents for each standard of fill that is proposed in this document. For readability, the proposed regulatory text will list the sizes in a table format. The proposed sizes and their U.S. equivalents are as follows:

- 2.25 liters (76.1 fl. oz.);
- 1.8 liters (60.9 fl. oz.);
- 720 milliliters (24.3 fl. oz.);
- 700 milliliters (23.7 fl. oz.);
- 620 milliliters (21.0 fl. oz.);
- 550 milliliters (18.6 fl. oz.);
- 360 milliliters (12.2 fl. oz.);
- 330 milliliters (11.2 fl. oz.);
- 300 milliliters (10.1 fl. oz.); and
- 180 milliliters (6.1 fl. oz.).

Wine Container Fill Tolerances

Section 5041(e) of the IRC authorizes the Secretary of the Treasury to prescribe by regulation tolerances for wine containers. TTB regulations at 27 CFR 24.255(b) require that wine proprietors fill bottles or other containers as nearly as possible to the amount shown on the container. TTB regulations at 27 CFR 24.255(c) require that ''[t]he net contents of bottles or other containers of untaxpaid wine in the same tax class filled during six consecutive tax return periods . . . shall not vary by more than 0.5 percent from the net contents as stated on the bottles or other containers.'' TTB regulations at § 24.255(b) clarify that in no event may the amount of wine in any one specific container exceed the fill tolerances listed in the regulation based on the container's size. Note that 27 CFR part 4 contains further clarification on fill tolerance.

When TTB published T.D. TTB–165, it did not amend § 24.255(b) to add fill tolerances for the newly approved standards of fill of 355 milliliters, 250 milliliters, and 200 milliliters. Additionally, when ATF published T.D. ATF–303 on October 23, 1990 (55 FR 42710), it did not amend § 24.255(b) to add a fill tolerance for the newly approved standard of fill of 500 milliliters. TTB therefore plans to correct these oversights in this document by adding fill tolerances for these sizes to § 24.255(b). Based on the existing tolerances, TTB is proposing the following tolerances for these sizes:

- 2.5 percent for 500 milliliters;
- 3 percent for 355 milliliters;
- 4 percent for 250 milliliters; and
- 4 percent for 200 milliliters.

TTB is also proposing the addition of tolerances to § 24.255(b) for most of the standards of fill that are proposed in this document. TTB does not need to add additional tolerances for the proposed sizes of 2.25 liters and 1.8 liters, as the current tolerance of 1.5 percent for containers that are 1.0 liter to 14.9 liters covers those sizes. For the remaining sizes proposed in this document, TTB is proposing the following tolerances:

- 2 percent for 720 milliliters;
- 2 percent for 700 milliliters;
- 2 percent for 620 milliliters;
- 2 percent for 550 milliliters;
- 3 percent for 360 milliliters;
- 3 percent for 330 milliliters;
- 3 percent for 300 milliliters; and
- 4.5 percent for 180 milliliters.

For readability, the proposed regulatory text will include ranges of sizes, rather than listing most of the sizes individually, as the regulation currently does. The proposed regulatory text also includes some additional minor edits for readability.

Conforming Edits

TTB is also proposing a number of conforming edits to parts 19, 26, and 27 of the TTB regulations (27 CFR parts 19, 26, and 27) to reflect the changes proposed in this rulemaking and the reorganization of parts 5 and 7 (27 CFR parts 5 and 7) that went into effect pursuant to TTB's recent final rule, Modernization of the Labeling and Advertising Regulations for Distilled Spirits and Malt Beverages (T.D. TTB–176, February 9, 2022, 87 FR 7526). TTB also is making additional, nonsubstantive amendments to conform the regulations described in this document to the current regulatory authority citation requirements of the Office of the Federal Register.

Public Participation

Comments Sought

TTB requests comments on the proposal to add some or all of the additional standards of fill for wine described in this document, and the alternative of eliminating all but a minimum standard of fill for wine. TTB also requests comments on the proposal

to eliminate all but a minimum and maximum standard of fill for distilled spirits. In particular, TTB requests comments on whether it should authorize the proposed sizes (or eliminate the standards of fill altogether) based on the considerations relevant to the FAA Act, such as whether the proposed sizes would result in consumer confusion. TTB also welcomes comments on the proposed container fill tolerances for wine. TTB further welcomes comments on the appropriate number of bottles per case to list in the table at 27 CFR 24.300(a)(1) for the proposed new container sizes, and the existing container sizes not currently listed there. Any person submitting comments may present such data, views, or arguments as he or she desires. Comments that provide the factual basis supporting the views or suggestions presented will be particularly helpful in developing a reasoned regulatory decision on this matter.

Submitting Comments

You may submit comments on this proposal as an individual or on behalf of a business or other organization via the *Regulations.gov* website or via postal mail, as described in the **ADDRESSES** section of this document. Your comment must reference Notice No. 210 and must be submitted or postmarked by the closing date shown in the **DATES** section of this document. You may upload or include attachments with your comment. You also may submit a comment requesting a public hearing on this proposal. The TTB Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality and Disclosure of Comments

All submitted comments and attachments are part of the rulemaking record and are subject to public disclosure. Do not enclose any material in your comments that you consider confidential or that is inappropriate for disclosure.

TTB will post, and you may view, copies of this document, selected supporting materials, and any comments TTB receives about this proposal within the related *Regulations.gov* docket. In general, TTB will post comments as submitted, and it will not redact any identifying or contact information from the body of a comment or attachment.

Please contact TTB's Regulations and Rulings division by email using the web form available at *https://www.ttb.gov/contact-rrd,* or by telephone at 202–453–2265, if you have any questions regarding how to comment on this proposal or to request copies of this document, its supporting materials, or the comments received in response.

Regulatory Analysis and Notices

Regulatory Flexibility Act

TTB certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. If adopted, the amendments would provide bottlers and importers of wine and distilled spirits with additional flexibility to use new bottle sizes if they so choose. The proposed regulation would impose no new reporting, recordkeeping, or other administrative requirement. Therefore, no regulatory flexibility analysis is required.

Paperwork Reduction Act

The collection of information in this rule has been previously approved by the Office of Management and Budget (OMB) under the title ''Labeling and Advertising Requirements Under the Federal Alcohol Administration Act,'' and assigned control number 1513–0087. This proposed regulation would not result in a substantive or material change in the previously approved collection action, since the nature of the mandatory information that must appear on labels affixed to the container remains unchanged.

Executive Order 12866

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

Drafting Information

Jennifer Berry of the Regulations and Rulings Division drafted this document.

List of Subjects

27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers.

27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers.

27 CFR Part 19

Alcohol and alcoholic beverages, Alcohol fuel plants, Alternation, Application procedures, Distilled spirits plants, Permit requirements, Registration requirements, Reporting and recordkeeping requirements, Security requirements, Trade names, Vinegar plants.

27 CFR Part 24

Administrative practice and procedure, Claims, Electronic funds transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Vinegar, Warehouses, Wine.

27 CFR Part 26

Alcohol and alcoholic beverages, Caribbean basin initiative, Claims, Customs duties and inspection, Electronic funds transfers, Excise taxes, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds, Virgin Islands, Warehouses.

27 CFR Part 27

Alcohol and alcoholic beverages, Beer, Cosmetics, Customs duties and inspection, Electronic funds transfers, Excise taxes, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Wine.

Proposed Amendments to the Regulations

[Alternative 1]

For the reasons discussed in the preamble, TTB proposes to amend 27 CFR parts 4 and 24 as follows:

PART 4—LABELING AND ADVERTISING OF WINE

■ 1. The authority citation for part 4 continues to read as follows:

Authority: 27 U.S.C. 205, unless otherwise noted.

■ 2. In § 4.37, revise paragraph (b)(1) to read as follows:

§ 4.37 Net contents.

* * * * *

(b) * * *

(1) For the metric standards of fill shown in the following table, the equivalent U.S. measures are:

TABLE 1 TO PARAGRAPH (b)(1)

Metric measure	Equivalent U.S. measure
3 liters (L)	101 fluid ounces (fl. oz.).
2.25 L	76.1 fl. oz.
1.8 L	60.9 fl. oz.
1.5 L	50.7 fl. oz.
1 L	33.8 fl. oz.
750 milliliters (mL)	25.4 fl. oz.
720 mL	24.3 fl. oz.

TABLE 1 TO PARAGRAPH (b)(1)—Continued

Metric measure	Equivalent U.S. measure
700 mL	23.7 fl. oz.
620 mL	21.0 fl. oz.
550 mL	18.6 fl. oz.
500 mL	16.9 fl. oz.
375 mL	12.7 fl. oz.
360 mL	12.2 fl. oz.
355 mL	12.0 fl. oz.
330 mL	11.2 fl. oz.
300 mL	10.1 fl. oz.
250 mL	8.5 fl. oz.
200 mL	6.8 fl. oz.
187 mL	6.3 fl. oz.
180 mL	6.1 fl. oz.
100 mL	3.4 fl. oz.
50 mL	1.7 fl. oz.

* * * * *

■ 3. In § 4.72, revise paragraph (a) to read as follows:

§ 4.72 Metric standards of fill.

(a) *Authorized standards of fill.* The standards of fill for wine are the following:

TABLE 1 TO PARAGRAPH (a)

3 liters	375 milliliters.
2.25 liters	360 milliliters.
1.8 liters	355 milliliters.
1.5 liters	330 milliliters.
1 liter	300 milliliters.
750 milliliters	250 milliliters.
720 milliliters	200 milliliters.
700 milliliters	187 milliliters.
620 milliliters	180 milliliters.
550 milliliters	100 milliliters.
500 milliliters	50 milliliters.

* * * * *

PART 24—WINE

■ 4. The authority citation for part 24 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5121, 5122–5124, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

■ 5. In § 24.255:
■ a. Revise paragraph (b); and
■ b. Remove the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 24.255 Bottling or packing wine.

* * * * *

(b) *Bottle or other container fill.* (1) Proprietors of bonded wine premises and taxpaid wine bottling house premises must fill bottles or other containers as nearly as possible to conform to the amount shown on the label or blown in the bottle or marked on any container other than a bottle. However, in no event may the amount of wine contained in any individual bottle, due to lack of bottle uniformity, vary from the amount stated more than plus or minus:

(i) 1.0 percent for 15.0 liters and above;

(ii) 1.5 percent for 14.9 liters to 1.0 liter;

(iii) 2.0 percent for 750 mL to 550 mL;

(iv) 2.5 percent for 500 mL;

(v) 3.0 percent for 375 mL to 300 mL;

(vi) 4 percent for 250 mL and 200 mL;

(vii) 4.5 percent for 187 mL to 100 mL; and

(viii) 9.0 percent for 50 mL.

(2) In such case, there will be substantially as many bottles overfilled as there are bottles underfilled for each lot of wine bottled. Short-filled bottles or other containers of wine which are sold or otherwise disposed of by the proprietor to employees for personal consumption need not be labeled, but, if labeled, need not show an accurate statement of net contents.

* * * * *

[Alternative 2]

For the reasons discussed in the preamble, TTB proposes to amend 27 CFR parts 5, 19, 26, and 27 as follows:

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

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

Authority: 26 U.S.C. 5301, 7805, 27 U.S.C. 205 and 207.

■ 2. In § 5.203, revise paragraph (a) to read as follows:

§ 5.203 Standards of fill (container sizes).

(a) *Authorized standards of fill.* Subject to the tolerances allowed under paragraph (b) of this section and the headspace prescribed in § 5.202(b), distilled spirits containers, other than bulk, may not contain more than 3.785 liters or less than 50 milliliters.

* * * * *

PART 19—DISTILLED SPIRITS PLANTS

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

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5010, 5041, 5061, 5062, 5066, 5081, 5101, 5111–5114, 5121–5124, 5142, 5143, 5146, 5148, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206, 5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6806, 7011, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 19.116 [Amended]

■ 4. In § 19.116:
■ a. Amend paragraph (a)(2)(iii) by removing the text ''§§ 5.28'' and adding, in its place, the text ''§§ 5.194''; and
■ b. Remove the parenthetical authority citation at the end of the section.

§ 19.132 [Amended]

■ 5. In § 19.132:
■ a. Amend paragraph (a)(2)(iii) by removing the text ''§§ 5.28'' and adding, in its place, the text ''§§ 5.194''; and
■ b. Remove the parenthetical authority citation at the end of the section.

§ 19.314 [Amended]

■ 6. In § 19.314,
■ a. Amend the last sentence by removing the text ''§§ 5.26 and 5.27'' and adding, in its place, the text ''§§ 5.192 and 5.193''.; and
■ b. Remove the parenthetical authority citation at the end of the section.

§ 19.348 [Amended]

■ 7. In § 19.348:
■ a. Amend the introductory text by removing the text ''§§ 5.26 and 5.27'' and adding, in its place, the text ''§§ 5.192 and 5.193''; and
■ b. Remove the parenthetical authority citation at the end of the section.

§ 19.511 [Amended]

■ 8. In § 19.511,
■ a. Amend the first sentence by removing the text ''subpart E'' and adding, in its place, the text ''subpart K''; and
■ b. Remove the parenthetical authority citation at the end of the section.

§ 19.512 [Amended]

■ 9. In § 19.512,
■ a. Amend the first sentence by removing the text ''§ 5.46'' and adding, in its place, the text ''§ 5.202''; and
■ b. Remove the parenthetical authority citation at the end of the section.

§ 19.517 [Amended]

■ 10. In § 19.517,
■ a. Amend paragraph (a) by removing the text ''§ 5.34'' and adding, in its place, the text ''§ 5.64'';
■ b. Amend paragraph (b) by removing the text ''§ 5.35'' and adding, in its place, the text ''§§ 5.143 and 5.156'';
■ c. Amend paragraph (c) by removing the text ''§ 5.37(a)'' and adding, in its place, the text ''§ 5.65'';
■ d. Amend paragraph (d) by removing the text ''§ 5.36(d)'' and adding, in its place, the text ''§ 5.66(f)'';
■ e. Amend paragraphs (g) and (h) by removing the text ''§ 5.40'' wherever it

appears and adding, in its place, the text ''§ 5.74'';
■ f. Amend paragraph (j) by removing the text ''§ 5.39'' and adding, in its place, the text ''§ 5.72''; and
■ g. Remove the parenthetical authority citation at the end of the section.

§ 19.519 [Amended]

■ 11. In § 19.519,
■ a. Amend the second sentence of paragraph (d) by removing the text ''§ 5.22'' and adding, in its place, the text ''subparts F and I of part 5''; and
■ b. Remove the parenthetical authority citation at the end of the section.

PART 26—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

■ 12. The authority citation for part 26 continues to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5061, 5111–5114, 5121, 5122–5124, 5131–5132, 5207, 5232, 5271, 5275, 5301, 5314, 5555, 6001, 6109, 6301, 6302, 6804, 7101, 7102, 7651, 7652, 7805; 27 U.S.C. 203, 205; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 26.40 [Amended]

■ 13. In § 26.40, amend paragraph (c) by removing the text ''§ 5.47a,'' and adding, in its place, the text ''§ 5.203''.

§ 26.200 [Amended]

■ 14. In § 26.200:
■ a. Amend paragraph (d)(2) by:
■ i. Removing the text ''27 CFR 5.51'' and adding, in its text, the phrase ''27 CFR 5.24 and 5.25''; and
■ ii. Removing the text ''27 CFR 7.31'' and text, in its place, the phrase ''27 CFR 7.24 and 7.25''; and
■ b. Remove the parenthetical authority citation at the end of the section.

§ 26.202 [Amended]

■ 15. In § 26.202:
■ a. Amend paragraph (c) by:
■ i. In the first sentence, removing the text ''27 CFR 5.51 in the case of distilled spirits, or 27 CFR 7.31'' and adding, in its place, the text ''27 CFR 5.24 and 5.25 in the case of distilled spirits, or 27 CFR 7.24 and 7.25''; and
■ ii. In the second sentence, removing the text ''27 CFR 4.40, 5.51, and 7.31'' and adding, in its place, the text ''27 CFR 4.40, 5.24, 5.25, 7.24, and 7.25,'';
■ b. Amend paragraph (d) by removing the text ''27 CFR 5.52'' and adding, in its place, the text ''27 CFR 5.30''; and
■ c. Remove the parenthetical authority citation at the end of the section.

§ 26.206 [Amended]

■ 16. In § 26.206, amend paragraph (c) by removing the text ''§ 5.47a,'' and adding, in its place, the text ''§ 5.203''.

§ 26.312 [Amended]

■ 17. In § 26.312,
■ a. Amend the first sentence by removing the text ''§ 5.47 or § 5.47a'' and adding, in its place, the text ''§ 5.203''; and
■ b. Amend the second sentence by removing the text ''subpart E'' and adding, in its place, the text ''subpart K''.

PART 27—IMPORTATION OF DISTILLED SPIRITS, WINES, AND BEER

■ 18. The authority citation for part 27 continues to read as follows:

Authority: 5 U.S.C. 552(a), 19 U.S.C. 81c, 1202; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5054, 5061, 5121, 5122–5124, 5201, 5205, 5207, 5232, 5273, 5301, 5313, 5382, 5555, 6109, 6302, 7805.

§ 27.48 [Amended]

■ 19. In § 27.48,
■ a. Paragraph (a)(2)(ii) is amended by:
■ i. Removing the text ''27 CFR 5.51'' and adding, in its place, the text ''27 CFR 5.24 and 5.25''; and
■ ii. Removing the text ''27 CFR 7.31'' and adding, in its place, the text ''27 CFR 7.24 and 7.25''; and
■ b. Remove the parenthetical authority citation at the end of the section.

§ 27.55 [Amended]

■ 20. In § 27.55,
■ a. Paragraph (c) is amended by:
■ i. In the first sentence, removing the text ''27 CFR 5.51 in the case of distilled spirits, or 27 CFR 7.31'' and adding, in its place, the text ''27 CFR 5.24 and 5.25 in the case of distilled spirits, or 27 CFR 7.24 and 7.25''; and
■ ii. In the second sentence, removing the text ''27 CFR 4.40, 5.51, and 7.31'' and adding, in its place, the text ''27 CFR 4.40, 5.24, 5.25, 7.24, and 7.25'';
■ b. Amend paragraph (d) by removing the text ''27 CFR 5.52'' and adding, in its place, the text ''27 CFR 5.30''; and
■ c. Remove the parenthetical authority citation at the end of the section.

§ 27.202 [Amended]

■ 21. In § 27.202,
■ a. Amend the first sentence by removing the text ''§ 5.47a'' and adding, in its place, the text ''§ 5.203''; and
■ b. Amend the second sentence by removing the text ''subpart E'' and adding, in its place, the text ''subpart k''.

Signed: April 28, 2022.

Mary G. Ryan,

Administrator.

Approved: April 28, 2022.

Timothy E. Skud,

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

[FR Doc. 2022–10589 Filed 5–24–22; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1904

[Docket No. OSHA–2021–0006]

RIN 1218–AD40

Improve Tracking of Workplace Injuries and Illnesses

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Extension of comment period.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is extending the comment period on the proposed rule on Improve Tracking of Workplace Injuries and Illnesses for an additional 30 days, to June 30, 2022.

DATES: The comment period for the proposed rule published March 30, 2022, at 87 FR 18528, is extended. Comments must be submitted by June 30, 2022.

ADDRESSES: *Comments:* Comments, along with any submissions and attachments, should be submitted electronically at *www.regulations.gov,* which is the Federal e-Rulemaking Portal. Follow the instructions online for making electronic submissions. After accessing ''all documents and comments'' in the docket (Docket No. OSHA–2021–0006), check the ''proposed rule'' box in the column headed ''Document Type,'' find the document posted on the date of publication of this document, and click the ''Comment Now'' link. When uploading multiple attachments to *www.regulations.gov,* please number all of your attachments, because *www.regulations.gov* will not automatically number the attachments. This will be very useful in identifying all attachments in the preamble. For example, Attachment 1—title of your document, Attachment 2—title of your document, Attachment 3—title of your document. For assistance with commenting and uploading documents, please see the Frequently Asked Questions on *www.regulations.gov.*

Instructions: All submissions must include the agency's name and the docket number for this rulemaking (Docket No. OSHA–2021–0006). All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at *www.regulations.gov.* Therefore, OSHA cautions commenters about submitting information they do not want made available to the public, or submitting materials that contain personal information (either about themselves or others), such as Social Security numbers and birthdates.

Docket: To read or download comments and other materials submitted in the docket, go to Docket No. OSHA–2021–0006 at *www.regulations.gov.* All comments and submissions are listed in the *www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through that website. All comments and submissions, including copyrighted material, are available for inspection through the OSHA Docket Office.[1] Contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627) for information about materials not available through the website, and for assistance in using the internet to locate docket submissions.

Electronic copies of this **Federal Register** document are available at *www.regulations.gov.* This document, as well as news releases and other relevant information, is available at OSHA's website at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: *For press inquiries:* Contact Frank Meilinger, Director, Office of Communications, Occupational Safety and Health Administration, U.S. Department of Labor; telephone (202) 693–1999; email: *meilinger.francis2@dol.gov.*

For general information and technical inquiries: Contact Lee Anne Jillings, Director, Directorate of Technical Support and Emergency Management, U.S. Department of Labor; telephone (202) 693–2300; email: *Jillings.LeeAnne@dol.gov.*

SUPPLEMENTARY INFORMATION: On March 30, 2022, OSHA published a notice of proposed rulemaking to amend its recordkeeping regulation to require certain employers to electronically submit injury and illness information to OSHA that employers are already required to keep under the recordkeeping regulation (87 FR 18528). The notice set a deadline of May 31, 2022, for submitting written comments. OSHA has received a request from the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO) to extend the comment period between 30 to 60 additional days (Document ID 0027). The AFL–CIO's request explains that the agency has multiple deadlines within a one-week period, and the AFL–CIO wishes to have time to meaningfully respond to the important issues in both this notice and the several other requests for comment by OSHA. After reviewing this comment, OSHA has decided to extend the deadline for submitting comments to June 30, 2022, in order to provide stakeholders an additional 30 days (90 days total) to prepare and submit meaningful responses to this rulemaking.

Authority and Signature

This document was prepared under the direction of Douglas L. Parker, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210. It is issued under sections 8 and 24 of the Occupational Safety and Health Act (29 U.S.C. 657, 673), section 553 of the Administrative Procedure Act (5 U.S.C. 553), and Secretary of Labor's Order No. 08–2020 (85 FR 58393, Sept. 18, 2020).

Signed at Washington, DC.

Douglas L. Parker,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2022–11213 Filed 5–24–22; 8:45 am]

BILLING CODE 4510–26–P

[1] Documents submitted to the docket by OSHA or stakeholders are assigned document identification numbers (Document ID) for easy identification and retrieval. The full Document ID is the docket number plus a unique four-digit code. OSHA is identifying supporting information in this document by author name, publication year, and the last four digits of the Document ID.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2022–0303]

RIN 1625–AA09

Drawbridge Operation Regulation; Trail Creek, Michigan City, IN

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the operating schedule that governs the Amtrak Railroad Bridge, mile 0.9, over Trail Creek, in Michigan City, Indiana, to allow it to operate remotely. The bridge has operated remotely since 2003 without inclusion in the CFR and without incident or public complaint. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must reach the Coast Guard on or before July 25, 2022.

ADDRESSES: You may submit comments identified by docket number USCG–2022–0303 using Federal Decision Making Portal at *https://www.regulations.gov.*

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Mr. Lee D. Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone 216–902–6085, email *Lee.D.Soule@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
IGLD85 International Great Lakes Datum of 1985
Left As viewed from the mouth of the river
LWD Low Water Datum Based on IGLD85
NPRM Notice of Proposed Rulemaking (Advance, Supplemental)
OMB Office of Management and Budget
Right As viewed from the mouth of the river
§ Section
U.S.C. United States Code

II. Background, Purpose and Legal Basis

The Amtrak Railroad Bridge, mile 0.9, over Trail Creek, in Michigan City, Indiana, was authorized to operate remotely by letter during the United States Coast Guard's transition from the Department of Transportation to the Department of Homeland Security. Inclusion of the Amtrak Railroad Bridge, mile 0.9, into the regulations was overlooked and this proposed rule will correct that oversight and provide the public the opportunity to comment on the bridge operations.

Trail Creek is 7.3 miles long and used by small powered and unpowered recreational vessels, commercial passenger vessels, and fishing vessels. Freighters have not utilized the waterway for several years. The Amtrak Railroad Bridge, mile 0.9 is a swing railroad bridge and provides a horizontal clearance of 41 feet in the right draw and 44 feet in the left draw and a vertical clearance of 7 feet above

LWD in the closed position and an unlimited vertical clearance in the open position. Each day during the summer, approximately 35 recreational and commercial fishing vessels transit the Amtrak Railroad Bridge, mile 0.9; most of the 35 vessels make daily roundtrips, transiting the bridge two times each day.

In 33 CFR 117.401, the Amtrak Railroad Bridge, mile 0.9, is required to open on signal except that, from December 1 through March 15 the Amtrak Railroad Bridge, mile 0.9, is required to open on signal if a 12-hour advance notice is provided.

III. Discussion of Proposed Rule

This proposed rule will allow the public to comment on how well the bridge has been operated remotely for the last 19 years. The drawtender will continue to remain in Chicago, Illinois and will be responsible for the remote operation of two remote railroad bridges: The Amtrak Railroad Bridge, mile 0.9, over Trail Creek and the Amtrak Railroad Bridge, mile 3.77, over the South Branch of the Chicago River.

The Amtrak Railroad Bridge, mile 0.9, will continue to operate a 2-way public address system to answer calls from: (1) Vessel horn signals; (2) a VHF–FM Marine Radio that will monitor channel 16; and (3) cameras that will monitor the tracks, the underside of the bridge, and the upriver and down river view of the river.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the fact that remote operation will not significantly impact a vessel's ability to transit the bridge; further, the bridge has operated in said manner since 2003 without comment or complaint.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, Rev.1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). The Coast Guard has 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 proposed rule promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under paragraph L49, of Chapter 3, Table 3–1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

V. Public Participation and Request for Comments

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

We encourage you to submit comments through the Federal Decision Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2022–0303 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

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

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

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 117.401 Trail Creek revise paragraph (b) to read as follows:

§ 117.401 Trail Creek.

* * * * *

(b) The draw of the Amtrak Railroad Bridge, mile 0.9, at Michigan City shall open on signal; except from December 1 through March 15, the draw shall open if at least 12-hours advance notice is given. The bridge is authorized to be operated remotely. The bridge shall operate and maintain a VHF–FM Marine Radio.

* * * * *

M.J. Johnston,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 2022–11121 Filed 5–24–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0278]

RIN 1625–AA00

Safety Zone; Kittery Coast Guard Day Fireworks, Kittery, ME

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary safety zone for certain navigable waters of the Piscataqua River near Kittery, Maine. This action is necessary to protect personnel, vessels, and the marine environment from potential hazards associated with a fireworks display. This proposed regulation would prohibit entry of vessels or persons into the safety zone unless authorized by the Captain of the Port Northern New England (COTP) or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before June 24, 2022.

ADDRESSES: You may submit comments identified by docket number USCG–2022–0278 using the Federal Decision Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Chief Petty Officer Christopher Mckibben, Waterways Management Division, Sector Northern New England, U.S. Coast Guard; telephone 207–347–5003, email *Christopher.R.Mckibben@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Northern New England
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

On March 28, 2022, the Wood Island Life Saving Station Association notified the Coast Guard that it will be conducting a fireworks display from 9 p.m. to 9:30 p.m. on August 6, 2022. The fireworks are to be launched from anchored floats on the Piscataqua River located approximately 1000 yards northwest of Fort Foster, Kittery, ME in position 43°04′23.9″ N, 070°41′57.4″ W (NAD83). Hazards from firework displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The Captain of the Port Northern New England (COTP) has determined that potential hazards associated with the fireworks to be used in this display would be a safety concern for anyone within a 500-foot radius of the fireworks launch floats.

The purpose of this rulemaking is to ensure the safety of vessels on the navigable waters within a 500-foot radius of the firework launch floats before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

III. Discussion of Proposed Rule

The COTP is proposing to establish a safety zone from 9 p.m. to 9:30 p.m. on August 6, 2022. The safety zone would cover all navigable waters within 500 feet of the anchored firework floats in the Piscataqua River located approximately 1000 yards northwest of Fort Foster in Kittery, ME. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 9 p.m. to 9:30 p.m. fireworks display on August 6, 2022. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The

regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and duration of the safety zone. The safety zone would only impact a 500-foot radius around firework launch floats on the Piscataqua River in Kittery, ME and would only be enforced during the 9 p.m. to 9:30 p.m. fireworks display on August 6, 2022. Public notice of enforcement will be given through appropriate means, which may include, but are not limited to, publication in the Local Notice to Mariners and Broadcast Notice to Mariners via VHF–FM marine channel 16.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves establishing a safety zone that would be enforced for 0.5 hours that would prohibit entry within a 500-foot radius of firework launch floats. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

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

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at

https://www.regulations.gov. To do so, go to *https://www.regulations.gov,* type USCG–2022–0278 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

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

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

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T01–0278 to read as follows:

§ 165.T01–0278 Safety Zone; Kittery Coast Guard Day Fireworks, Kittery, ME.

(a) *Location.* The following area is a safety zone: All navigable waters of the Piscataqua River, from surface to bottom, within a 500-foot radius of the firework launch floats, located approximately 1000 yards northwest of Fort Foster, Kittery, ME in position 43°04′23.9″ N, 070°41′57.4″ W (NAD83.

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

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

(2) To seek permission to enter, contact the COTP or the COTP's representative via VHF–FM marine channel 16 or by contacting the Coast Guard Sector Northern New England Command Center at (207) 741–5465. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from 9 p.m. to 9:30 p.m. on August 6, 2022.

Dated: May 19, 2022.

A. E. Florentino,

Captain, U.S. Coast Guard, Captain of the Port Northern New England.

[FR Doc. 2022–11270 Filed 5–24–22; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2022–0347; FRL–9333–01–R3]

Federal Implementation Plan Addressing Reasonably Available Control Technology Requirements for Certain Sources in Pennsylvania

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing a Federal implementation plan (FIP) for the Commonwealth of Pennsylvania (Pennsylvania or the Commonwealth). This FIP proposes to set emission limits for nitrogen oxides (NO_X) emitted from coal-fired electric generating units (EGUs) equipped with selective catalytic reduction (SCR) in order to meet the reasonably available control technology (RACT) requirements for the 1997 and 2008 ozone national ambient air quality standards (NAAQS). The FIP is being proposed to ensure that EPA can, if necessary, meet a court-ordered deadline requiring EPA to approve an amended State Implementation Plan (SIP) or issue a FIP by August 27, 2022. This action is being taken under the Clean Air Act (CAA).

DATES: Comments must be received by July 11, 2022.

Public hearing: EPA will hold a virtual public hearing on June 9, 2022. Please refer to the **SUPPLEMENTARY INFORMATION** section for additional information on the public hearing.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–R03–OAR–2022–0347; via the Federal eRulemaking Portal: *https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are open to the public by appointment only to reduce the risk of transmitting COVID–19. Our Docket Center staff also continues to provide remote customer service via email, phone, and webform. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: David Talley, Permits Branch (3AD10), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2117. Mr. Talley can also be reached via electronic mail at *talley.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Written Comments

Submit your comments, identified by Docket ID No. EPA–R03–OAR–2022–0347 at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments

cannot be edited or removed from the docket. EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Due to public health concerns related to COVID–19, EPA Docket Center and Reading Room are open to the public by appointment only. Our Docket Center staff also continues to provide remote customer service via email, phone, and webform. Hand deliveries or couriers will be received by scheduled appointment only. For further information and updates on EPA Docket Center services, please visit us online at *https://www.epa.gov/dockets.*

EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID–19.

B. Participation in Virtual Public Hearing

Please note that because of current CDC recommendations, as well as state and local orders for social distancing to limit the spread of COVID–19, EPA cannot hold in-person public meetings at this time.

EPA will begin pre-registering speakers for the hearing no later than 1 business day after publication of this document in the **Federal Register**. To register to speak at the virtual hearing, please use the online registration form available at *https://www.epa.gov/pa/epa-meetings-and-events-pennsylvania.* The last day to pre-register to speak at the hearing will be June 6, 2022. EPA will post a general agenda for the hearing that will list pre-registered speakers in approximate order at: *https://www.epa.gov/pa/epa-meetings-and-events-pennsylvania.*

The virtual public hearing will be held via teleconference on June 9, 2022. The virtual public hearing will convene at 4 p.m. Eastern Time (ET) and will conclude at 7 p.m. ET. EPA may close a session 15 minutes after the last pre-registered speaker has testified if there are no additional speakers. For information or questions about the public hearing, please contact Ms. Karen Delgrosso at *delgrosso.karen@epa.gov.* EPA will announce further details at *https://www.epa.gov/pa/epa-meetings-and-events-pennsylvania.*

EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearings to run either ahead of schedule or behind schedule.

Each commenter will have 5 minutes to provide oral testimony. EPA encourages commenters to provide EPA with a copy of their oral testimony electronically (via email) by emailing it to *delgrosso.karen@epa.gov.* EPA also recommends submitting the text of your oral comments as written comments to the rulemaking docket.

EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing.

Please note that any updates made to any aspect of the hearing will be posted online at *https://www.epa.gov/pa/epa-meetings-and-events-pennsylvania.* While EPA expects the hearing to go forward as set forth above, please monitor our website or contact Ms. Karen Delgrosso at *delgrosso.karen@epa.gov* to determine if there are any updates. EPA does not intend to publish a document in the **Federal Register** announcing updates.

If you require the services of a translator or special accommodations such as audio description, please pre-register for the hearing and describe your needs by June 6, 2022. EPA may not be able to arrange accommodations without advanced notice.

II. Background

A. RACT Requirements for Ozone

The CAA regulates emissions of NO_X and volatile organic compounds (VOC) to prevent photochemical reactions that result in ozone formation. RACT is an important requirement for reducing NO_X and VOC emissions from major stationary sources and sources covered by EPA's control technique guidelines (CTG). Areas designated nonattainment for the ozone NAAQS are subject to section 182(b)(2) of the CAA which sets forth RACT requirements specific to ozone nonattainment areas classified as Moderate nonattainment or higher.

Specifically, section 182(b)(2) of the CAA sets forth three distinct requirements regarding RACT for the ozone NAAQS. First, section 182(b)(2)(A) requires states with ozone nonattainment areas designated Moderate or higher to submit a RACT rule (or negative declaration) for each category of VOC sources in the area covered by a CTG document issued by EPA between November 15, 1990, and the date of attainment for an ozone NAAQS. Second, section 182(b)(2)(B) requires a RACT rule (or negative declaration) for all VOC sources in the nonattainment area covered by any CTG issued before November 15, 1990. Third, section 182(b)(2)(C) requires a RACT rule or rules (or negative declaration) for any other major stationary sources of VOCs located in the nonattainment area.

In addition, section 182(f) subjects major stationary sources of NO_X to the same RACT requirements that are applicable to major stationary sources of VOC. Therefore, the RACT requirement for major stationary sources found in 182(b)(2)(C) applies to sources of NO_X. A ''major source'' for purposes of RACT applicability in section 182 is defined based on the source's potential to emit (PTE) of NO_X, VOC, or both pollutants, and the applicable thresholds are defined based on the classification of the nonattainment area in which the source is located. See sections 182(c)–(f) and 302 of the CAA. The ozone RACT requirements under section 182(b)(2) are usually referred to as VOC CTG RACT, non-CTG major VOC RACT, and major NO_X RACT.[1]

Section 184(a) of the CAA, which was added by the 1990 Amendments to the CAA, established an Ozone Transport Region (the OTR) comprised of all or parts of 12 eastern states, and the District of Columbia, including all of Pennsylvania.[2] Section 184(b)(1)(B) extends the VOC CTG RACT requirements in section 182(b)(2)(A) and (B) to all areas in the OTR regardless of NAAQS attainment status. Put another way, because the entire State of Pennsylvania is in the OTR, the requirements of CAA section 184 apply statewide even if all areas of the State were attaining the ozone NAAQS. Further, section 184(b)(2) states that

[1] This proposed FIP pertains only to the major NO_X RACT requirements for Pennsylvania's coal-fired EGUs already equipped with SCR (five facilities in total).

[2] *https://www3.epa.gov/region1/airquality/noxract.html.*

''any stationary source that emits or has the potential to emit at least 50 tons per year (TPY) of volatile organic compounds shall be considered a major stationary source and subject to the requirements which would be applicable to major stationary sources if the area were classified as a Moderate nonattainment area.'' This language applies the RACT requirement of 182(b)(2)(C) to all stationary sources in the OTR that have a PTE of at least 50 TPY of VOC. The EPA further clarified in 1992 that for purposes of applying section 182(f) requirements to NO_X sources in the OTR, and certain other areas, a major stationary source for purposes of NO_X RACT applicability will be defined as any stationary source in the OTR that emits or has the potential to emit 100 tons per year or more of NO_X.[3] In total, these RACT requirement in section 184 are referred to as ''OTR RACT.''

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.'' [4] Since then, EPA has provided more substantive information on RACT requirements through implementation rules for each ozone NAAQS, and has issued additional guidance documents on RACT.[5] 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.'' See 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.

On March 6, 2015, EPA issued its final rule for implementing the 2008 8-hour ozone NAAQS (the ''2008 Ozone SIP Requirements Rule''). See 80 FR 12264. At the same time, EPA revoked the 1997 8-hour ozone NAAQS, effective on April 6, 2015. The 2008 Ozone SIP Requirements Rule provided comprehensive requirements related to the revoked 1997 8-hour ozone NAAQS, codified in 40 CFR part 51, subpart AA. EPA determined that areas designated nonattainment for both the 1997 and 2008 8-hour ozone NAAQS at the time the 1997 8-hour ozone NAAQS was revoked retain certain nonattainment area requirements (*i.e.* anti-backsliding requirements) for the 1997 8-hour ozone NAAQS, including RACT. See 40 CFR 51.1105(a)(1); 51.1100(o). Pennsylvania is also required to implement certain RACT requirements statewide since the entirety of the state is in the OTR. CAA section 184(b). Thus, all of Pennsylvania remains subject to RACT requirements for both the 1997 8-hour ozone NAAQS and the 2008 8-hour ozone NAAQS.

B. Applicability of RACT Requirements in Pennsylvania

As indicated previously, RACT requirements apply to any ozone nonattainment areas classified as Moderate or higher (Serious, Severe, or Extreme) under CAA sections 182(b)(2). Pennsylvania has a number of areas that are designated nonattainment for the 2008 8-hour ozone NAAQS, including Allegheny and Armstrong Counties. Some areas are additionally required to implement RACT nonattainment requirements as anti-backsliding measures for the revoked 1997 8-hour NAAQS. Also, the entire Commonwealth of Pennsylvania is part of the OTR established under section 184 of the CAA and thus subject statewide to the RACT requirements of CAA sections 182(b)(2) and 182(f), pursuant to section 184(b). While RACT must be evaluated and satisfied as separate requirements under each applicable standard, in practice the same RACT requirements are applicable at this time in Pennsylvania for both the 1997 and 2008 8-hour ozone NAAQS.

States were required to make RACT SIP submissions for the 1997 8-hour ozone NAAQS by September 15, 2006. The Pennsylvania Department of Environmental Protection (PADEP) submitted a SIP revision on September 25, 2006, certifying that a number of previously approved VOC CTG and non-CTG major VOC RACT rules continued to satisfy RACT under the 1997 8-hour ozone NAAQS. EPA approved PADEP's September 25, 2006 submittal, so those requirements are not addressed in this action. See 82 FR 31464 (July 7, 2017). RACT control measures addressing all applicable CAA requirements under the 1997 8-hour ozone NAAQS have been implemented and fully approved in the jurisdictions of Allegheny County and Philadelphia County in Pennsylvania and are also not addressed here. See 78 FR 34584 (June 10, 2013) and 81 FR 69687 (October 7, 2016). For the 2008 8-hour ozone NAAQS, states were required to submit RACT SIP revisions by July 20, 2014.

C. Pennsylvania RACT Regulatory History, Legal Challenges and Partial Disapproval

On May 16, 2016, PADEP submitted a SIP revision addressing RACT under 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 non-CTG major VOC sources, with a few exceptions not relevant to this action. PADEP's SIP revision included newly adopted regulations found at 25 Pennsylvania Code (Pa. Code) sections 129.96–129.100, titled ''Additional RACT Requirements for Major Sources of NO_X and VOCs'' (the RACT II Rule) and amendments to 25 Pa. Code section 121.1, including related definitions, to be incorporated into the Pennsylvania SIP. These regulatory amendments were adopted by PADEP on April 23, 2016, and became effective on the same date upon publication in the Pennsylvania Bulletin.

On May 9, 2019, EPA published a final action fully approving certain provisions of PADEP's RACT II rule, and conditionally approving other provisions of the SIP revision. 84 FR 20274 (May 9, 2019). The Sierra Club commented on EPA's proposed approval of the RACT II rule, and following EPA's final approval, filed a petition for review with the U.S. Third Circuit Court of Appeals (Third Circuit). The petition challenged EPA's approval of only that portion of the RACT II rule applicable to coal-fired EGUs equipped with SCR for control of NO_X. Specifically, the petition challenged EPA's approval of the presumptive RACT NO_X limit for these EGUs of 0.12 pounds (lb) of NO_X per one million British thermal units (MMBtu) of heat input (lb/MMBtu) when the inlet temperature to the SCR was 600 degrees Fahrenheit or above, found at 25 Pa. Code 129.97(g)(1)(viii); the application of the less stringent NO_X limits of 25 Pa.

[3] See ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 55620, 55622 (November 25, 1992).

[4] Memo, dated December 9, 1976, from Roger Strelow, Assistant Administrator for Air and Waste Management, to Regional Administrators, ''Guidance for Determining Acceptability of SIP Regulations in Non-Attainment Areas,'' p. 2, available at *https://www3.epa.gov/ttn/naaqs/aqmguide/collection/cp2/19761209_strelow_ract.pdf* and 44 FR 53762, footnote 2 (September 17, 1979) (Strelow Memo).

[5] Additional guidance includes the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (1992 General Preamble), 57 FR 13498 (April 16, 1992), and the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990; Supplemental Appendices to the General Preamble, 57 FR 18070 (April 28, 1992). See also *https://www.epa.gov/ground-level-ozone-pollution/ract-information.*

Code 129.97(g)(1)(vi) to EGUs with SCR when the inlet temperature to the SCR was below 600 degrees Fahrenheit; [6] and the failure of the RACT II rule at 25 Pa. Code 129.100(d) to specifically require these EGUs to record temperature data for the inlet temperature to the SCRs and report that data to PADEP. At the time of EPA's approval, there were six facilities in Pennsylvania which were subject to the portion of the RACT II rule which was relevant for purposes of the legal challenge: Bruce Mansfield Generating Station in Beaver County (Bruce Mansfield), Cheswick Generating Station in Allegheny County (Cheswick), Conemaugh Generating Station in Indiana County (Conemaugh), Homer City Generating Station in Indiana County (Homer City), Keystone Generating Station in Armstrong County (Keystone), and Montour Generating Station in Montour County (Montour). Subsequently, Bruce Mansfield ceased operations and surrendered their title V operating permit, and therefore is not included in this action. Additionally, Cheswick Generating Station was issued a title V modification which included an enforceable requirement to cease operations on or before April 1, 2022.[7] Because the process of closure is still ongoing during development of this proposed rulemaking action, EPA cannot affirmatively determine at this time that operations at Cheswick have permanently and enforceably ceased. Therefore, EPA is proposing RACT limits for Cheswick. If operations have permanently and enforceably ceased prior to a final rulemaking action, EPA will not finalize RACT limits for Cheswick.

On August 27, 2020, the Third Circuit Court of Appeals found for the Sierra Club on all three issues, vacated the Agency's approval of the SIP submission on each of these three pieces of the Pennsylvania plan as it pertained to coal-fired EGUs equipped with SCRs (which was applicable to the six facilities listed above), and remanded to the Agency.[8] *Sierra Club* v. *EPA,* 972 F.3d 290 (3rd Cir. 2020) (*Sierra Club*). The court held that EPA's approval of 25 Pa. Code 129.97(g)(1)(viii) was arbitrary and capricious because the record did not support EPA's finding that the emission rate limit of 0.12 lb/MMBtu was RACT for these EGU sources, particularly in light of submitted evidence that EGUs in Pennsylvania regulated by 25 Pa. Code 129.97(g)(1)(viii) had achieved much lower emission rates for NO_X in the past, and that other states had adopted lower RACT NO_X limits for coal-fired sources. *Sierra Club* at 299–303. In addition, the court held that EPA's approval of the less stringent limits (found in 25 Pa Code 129.97(g)(1)(vi)) when the inlet temperature fell below 600-degrees Fahrenheit was arbitrary and capricious because the record failed to support the need for that less stringent limit or explain why 600 degrees was chosen as the threshold for the change in limits. *Id.* at 303–307. Thus, the court vacated EPA's approval of the 0.12 lb/MMBtu limit, and the 600-degree temperature threshold, both of which are only found in 25 Pa. Code 129.97(g)(1)(viii).[9] See *Id.* at 309.

Regarding the reporting and record keeping requirement of 25 Pa. Code 129.100(d), the court also found EPA's approval of the specific SIP revisions discussed above to be arbitrary and capricious based upon the lack of a specific record keeping and reporting requirement for the 600-degree inlet temperature alternative limits to the SCR. See *Id.* Specifically, the court held that ''[b]ecause the SIP's 600-degree threshold necessarily depends upon accurate temperature reporting, the EPA's approval of such inadequate requirements on this record was arbitrary and capricious.'' *Id.* at 309. Lacking evidence in the record that more general recordkeeping and reporting requirements contained in the SIP would require sources subject to 25 Pa. Code 129.97(g)(1)(viii) to keep specific SCR temperature inlet data, report that data to PADEP, and make it available to the public, the court agreed with the Sierra Club. *Id.* at 308. Further, the court explained that ''[t]he combination of this lack of mandatory reporting and the temperature waiver created a potent loophole for polluters to walk through.'' *Id.* at 297.

The court further stated that ''[o]n remand, the agency must either approve a revised, compliant SIP within two years or formulate a new federal implementation plan.'' *Id.* at 309. On September 15, 2021, EPA proposed disapproval of those portions of the prior approval which were vacated by the Court. See 86 FR 51315. EPA proposed that action in part to ensure that we have authority to promulgate a FIP if Pennsylvania does not submit a timely approvable SIP revision addressing the Third Circuit's decision. EPA is now proposing this FIP to address these deficiencies, in accordance with the Court's directive, should it be necessary to finalize a FIP to fulfill the Court's order.[10]

D. Pennsylvania's Efforts To Respond to the Court's Decision

PADEP undertook significant efforts to develop a SIP revision addressing the deficiencies identified by the Third Circuit in the *Sierra Club* decision. PADEP proceeded to develop source specific (''case-by-case'') RACT determinations for the Cheswick, Conemaugh, Homer City, Keystone, and Montour generating stations. As mentioned above, the Bruce Mansfield facility ceased operation, so there is no longer a need to address that facility. By April 1, 2021, each of the five facilities had submitted permit applications to PADEP with alternative RACT proposals in accordance with 25 Pa. Code 129.99. There are a total of ten affected EGUs/units at the five facilities: Three at Homer City, two each at Conemaugh, Keystone and Montour, and one at Cheswick. Subsequently, PADEP issued technical deficiency notices to obtain more information needed to support the facilities' proposed RACT determinations. Although additional information was provided in response to these notices, PADEP determined the proposals to be insufficient and began developing its own RACT determination for each facility. The outcome of this process was PADEP's issuance of draft permits for each facility, which were developed with the intention of submitting each case-by-case RACT permit to be incorporated as a federally enforceable revision to the Pennsylvania SIP. Each draft permit underwent a 30-day public comment period,[11] during

[6] 25 Pa Code 129.97(g)(1)(vi) applies to coal-fired combustion units with a heat input greater than 250 million MMBtu/hr that do not have SCR.

[7] Documentation for both closures is contained in the docket for this action.

[8] Those portions of the SIP which were not subject to challenge in litigation remain approved by EPA's May 2019 action.

[9] The court did not vacate 25 Pa Code 129.97(g)(1)(vi) generally. The court took issue with 25 Pa Code 129.97(g)(1)(vi) only as it was being applied to EGUs with SCR when the inlet temperature to the SCR was below 600 degrees Fahrenheit.

[10] EPA plans to finalize the September 15, 2021, proposed disapproval in the event we need to finalize this proposed FIP to meet the court-ordered deadline. The court-ordered deadline preempts the FIP timeline established by CAA section 110(c)(1) for a finalized disapproval. See 86 FR 51317. EPA may promulgate a FIP contemporaneously with or immediately following predicate final action on a SIP (or finding no SIP was submitted). In order to accomplish this, the EPA must necessarily be able to propose a FIP prior to taking final action to disapprove a SIP or make a finding of failure to submit. The Supreme Court recognized this in *EME Homer City* by stating ''EPA is not obliged to wait two years or postpone its action even a single day: The Act empowers the Agency to promulgate a FIP 'at any time' within the two-year limit.'' *EPA* v. *EME Homer City Generation, L.P.,* 572 U.S. 489, 509 (2014) (citations omitted).

[11] See 51 Pa.B. 5834, September 11, 2021 (Keystone); 51 Pa.B. 6259, October 2, 2021 (Conemaugh); 51 Pa.B. 6558, October 16, 2021

Continued

which EPA provided source-specific comments to PADEP for each permit. The draft permits, technical support memos for each permit drafted by PADEP, and EPA's comments on each draft permit are included in the docket for this proposed action. At this time, it is not known when, or if, PADEP will submit these permits to EPA as SIP revisions to address the Court's decision.

III. EPA's RACT Analysis and Proposed Emission Limits

RACT is not defined in the CAA. However, as discussed above, EPA's longstanding definition of RACT is ''the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.'' [12] Pennsylvania has adopted a very similar definition of RACT as ''[t]he lowest emission limit for VOCs or NO_X that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.'' 25 Pa. Code 121.1. The Third Circuit decision ''assume[d] without deciding'' that EPA's definition of RACT is correct. *Sierra Club* at 294. EPA is using its longstanding definition of RACT to determine the limits proposed in this FIP.

The collection of sources addressed by the RACT analysis in this proposed FIP has been determined by the scope of the Third Circuit's order in the *Sierra Club* case and EPA's subsequent proposed disapproval action.[13] Herein, EPA is proposing RACT control requirements for the five remaining facilities that were subject to the SIP provision which the Court vacated EPA's approval of and which EPA thereafter proposed to disapprove: Cheswick, Conemaugh, Homer City, Keystone, and Montour.

EPA is proposing that the RACT limits in this FIP will apply throughout the year. For reasons explained in the next section, the proposed limits are technologically and economically feasible during the entire year. While other regulatory controls for ozone, such as the Cross State Air Pollution Rule (CSAPR) and its updates, may apply during a defined ozone season,[14] the proposed RACT limits do not authorize seasonal exemptions based on atmospheric conditions or other factors since the RACT emissions rates are technologically and economically feasible year-round. To the degree that the EPA analyses underlying the RACT emissions limits proposed here rely on past performance data, those calculations typically use ozone season data. This is because ozone season data generally represent the time period over which emissions rate performance of these units is the best. Put another way, the ozone season data for the facilities examined here are a reliable indicator of what is technologically and economically feasible for these facilities, and EPA has no reason to believe that achieving the same performance outside the ozone season would be technologically or economically infeasible.

A. Technologically Feasible NO_X Controls for EGUs

EPA has previously identified several technologically feasible controls for reducing NO_X from EGUs. NO_X control technologies are typically divided into combustion controls and post-combustion controls. Combustion controls reduce the formation of NO_X during the combustion of fuel, and include low-NO_X burners (LNBs), over fire air (OFA), and natural gas reburn (NGR). Post-combustion controls ''treat'' NO_X following its formation during combustion, and include Selective Non-Catalytic Reduction (SNCR) and SCR. EPA's Alternative Control Techniques Document for NO_X Emissions from Utility Boilers provides technical information for developing and implementing regulatory programs to control NO_X emission from fossil fuel-fired boilers (EPA–453/R–94–023, 1994/03).[15] The EPA Air Pollution Control Cost Manual (Cost Manual) contains chapters with more recent information, including that for cost, for these post-combustion controls.[16] The technical support document (TSD) for the Revised CSAPR Update rule also explored several technologies for reducing NO_X emissions from EGUs, including SCR and SNCR, and identified the likely cost of these controls.[17]

All ten of the EGUs at the five facilities at issue have been equipped with at least low NO_X burners and overfire air since the 1990s, and with SCRs beginning in the early 2000s, with the exception of Conemaugh, which installed SCR in 2014. As such, low-NO_X burners, overfire air, and SCR are clearly technologically feasible and proven technologies to reduce NO_X for the EGUs at these facilities. The specific NO_X and other pollutant controls on each EGU are discussed in the TSD for this action (See section B—Facility Details). Having determined that these technologies are technologically feasible, the question shifts to identifying, through the application of some or all of these technologies, what is the lowest NO_X emission limitation at these EGUs reasonably available considering technological and economic feasibility.

Section 4 (''NO_X Controls''), Chapter 2 (''Selective Catalytic Reduction'') of the Cost Manual contains a thorough description of how SCRs work and the multiple factors affecting the NO_X removal efficiency (performance) of SCRs. The major operational and design factors that affect the NO_X removal performance of SCRs include: Reaction temperature range; residence time available in the optimum temperature range; degree of mixing between the injected reagent and the combustion gases; molar ratio of injected reagent to inlet NO_X; inlet NO_X concentration level; and ammonia slip. Additional factors affecting NO_X removal efficiency of SCRs identified in the Cost Manual are: catalyst activity; catalyst selectivity; pressure drop across the catalyst; ash management (*i.e.,* mitigating large particle ash (LPA) impacts on the catalyst) and dust loading; catalyst pitch; sulfur dioxide (SO_2) and sulfur trioxide (SO_3) concentrations in gas stream; catalyst deactivation; and catalyst management.[18]

The temperature of the flue gas entering the SCR is a critical factor affecting the performance of any SCR. The temperature of the flue gas entering the SCR affects the degree (percentage) of NO_X reduction the SCR is capable of achieving, the likelihood of creating unfavorable emissions from the SCR, such as ammonia slip, and the potential for damage or fouling of the SCR

(Homer City); 51 Pa.B. 6930, November 6, 2021 (Montour); Allegheny County Health Department Public Notices, December 2, 2021 (Cheswick).

[12] See Strelow Memo at 2.

[13] See 86 FR 51315 (September 15, 2021).

[14] For example, the CSAPR and certain other regulations addressing interstate transport of ozone and its precursors apply during ''ozone season,'' which is defined for purposes of those regulations as the period from May 1 to September 30 of each year. See, *e.g.,* 40 CFR 52.38(b)(1).

[15] For the EPA Alternative Control Techniques Document for NO_X Emissions from Utility Boilers, see *https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=2000INPN.txt.*

[16] The Cost Manual can be found at *https://www.epa.gov/economic-and-cost-analysis-air-pollution-regulations/cost-reports-and-guidance-air-pollution.* Additionally, the relevant section of the manual is included in the docket for this action. As of this publication, there are no sections addressing combustion controls. However, a section addressing low NO_X and Ultra low NO_X burners is in development.

[17] For the TSD for the Revised CSAPR Update, see *https://www.epa.gov/sites/default/files/2021-03/documents/egu_nox_mitigation_strategies_final_rule_tsd.pdf.*

[18] See subsection 2.2.2 of section 4, Chapter 2 of the Cost Manual.

catalyst. As stated in the Cost Manual: ''The NO_X reduction reaction is effective only within a given temperature range. The use of a catalyst in the SCR process lowers the temperature range required to maximize the NO_X reduction reaction. At temperatures below the specified range, the reaction kinetics decrease, and ammonia passes through the boiler (ammonia slip), but there is little effect on nitrous oxide (N_2O) formation. At temperatures above the specified range, N_2O formation increases and catalyst sintering and deactivation occurs, but little ammonia slip occurs.'' [19] The Cost Manual also notes that ''In an SCR system, the optimum temperature depends on both the type of catalyst used in the process and the flue gas composition. For the majority of commercial catalysts (metal oxides), the operating temperatures for the SCR process range from 480 to 800 °F (250 to 430 °C). . . . [T]he rate of NO_X removal increases with temperature up to a maximum between 700 and 750 °F (370 to 400 °C). As the temperature increases above 750 °F (400 °C), the reaction rate and resulting NO_X removal efficiency begin to decrease.'' [20]

Based in part on this language in the Cost Manual, EPA approved a 600-degree flue gas temperature threshold at which a 0.12 lb/MMBtu NO_X rate applied in the Pennsylvania RACT II SIP. However, the Third Circuit found that both EPA's and PADEP's record lacked a reasonable explanation for why 600 degrees was specifically selected by PADEP as the SCR inlet flue gas temperature below which the higher NO_X emission rate applied.[21]

As part of the approach used to develop the proposed rates for this action, EPA examined data related to the threshold at which these facilities can effectively operate their SCR. Since the date of the Third Circuit decision (August 27, 2020), EPA has obtained from PADEP a few redacted pages of the SCR Operator's Manual for Conemaugh and Keystone, as well as hourly flue gas temperature, reagent injection amounts, and NO_X emission data for the years 2017 through 2020 for those same facilities. These were submitted in response to PADEP's technical deficiency letters and are included in the docket for this action. Conemaugh's SCR manual lists 611 degrees Fahrenheit as the minimum temperature for injecting reagent, while Keystone's manual says 612 degrees is the minimum continuous operating temperature for reagent injection, but reagent can be injected for up to 3 hours at temperatures between 582 and 611 degrees before the system automatically shuts off reagent injection. Because these two facilities provided only a few select pages of their SCR manuals, EPA cannot be certain whether there are, or are not, other operating scenarios and/or SCR inlet temperatures at which reagent could be injected. Furthermore, it is unclear whether the operating manual reflects a specific analysis of the injection protocol that would result in the greatest NO_X reductions, as RACT requires. However, in comments submitted in response to the Ozone Transport Commission (OTC)'s CAA section 184(c) petition,[22] Conemaugh and Keystone also identified the threshold in Megawatts (MW) at which they could operate their respective SCRs (see Table 1).[23]

PADEP also provided 30 days of similar data submitted by Montour, which included the inlet temperature and reagent injection amounts. Montour also provided an apparently complete copy of its SCR Operation and Maintenance Manual to PADEP, but this manual was not included in the information provided to EPA.

Absent more complete temperature data and operating manuals for all facilities, EPA then analyzed historical operating data submitted to EPA by each of these facilities in order to determine the operating threshold at which Cheswick, Montour, and Homer City could inject reagent and run their SCRs to develop the same MW measure for these three facilities as for Conemaugh and Keystone.[24] For Homer City, Montour, and Cheswick, EPA looked at hourly data for these sources in EPA's Power Sector Emissions Data for ozone seasons 2002 through 2020, except for any years when the source did not have SCR installed.[25] (See explanation in the introduction to this section for why these analyses use ozone season data) EPA created scatter plots showing hourly NO_X emission rates by gross hourly load (MW/hr) for each unit's three best performing ozone seasons (in terms of overall ozone season average rate), as well as data from its two most recent ozone seasons (which was 2019 and 2020 at the time).[26] From these scatter plots, the SCR threshold was approximated through visual inspection, *i.e.,* by identifying each unit's approximate gross load, above each unit's minimum operating load, at which NO_X rates below 0.2 lb/MMBtu were achieved in the years analyzed. The full analysis and methodology are discussed in detail in the TSD. The results of this analysis, as well as the reported values for Conemaugh and Keystone, are shown in Table 1 in this preamble.

TABLE 1—OBSERVED SCR THRESHOLDS

Facility name	Unit	SCR threshold (MW)
Conemaugh	1	450
Conemaugh	2	450
Keystone	1	660
Keystone	2	660
Homer City	1	320
Homer City	2	320
Homer City	3	320
Montour	1	380
Montour	2	380
Cheswick	1	290

Given the role of gas temperature in SCR performance, EPA considered how best to use this information in establishing RACT limits that address the Third Circuit's concerns about allowing less stringent limits when flue gas temperatures went below what it considered to be an arbitrary temperature threshold. This is a challenging factor to consider in cases when the operating temperature varies, and when the units spend some time at temperatures where SCR is very effective, and some time at temperatures where it is not. To assess whether the units in this FIP exhibit this pattern, EPA evaluated years of data submitted by these sources to EPA to characterize their variability in hours of operation or

[19] *Id.*

[20] *Id.*

[21] *Sierra Club* at 303–307.

[22] CAA section 184(a) establishes a commission for the OTR, the OTC, consisting of the Governor of each state or their designees, the Administrator or their designee, the Regional Administrators for the EPA regional offices affected (or the Administrator's designees), and an air pollution control official representing each state in the region, appointed by the Governor. Section 184(c) specifies a procedure for the OTC to develop recommendations for additional control measures to be applied within all or a part of the OTR if the OTC determines that such measures are necessary to bring any area in the OTR into attainment for ozone by the applicable attainment deadlines. On June 8, 2020, the OTC submitted a recommendation to EPA for additional control measures at certain coal-fired EGUs in Pennsylvania. See 85 FR 41972; July 13, 2020.

[23] See p. 17 of the comments, in the docket for the section 184(c) petition, found at *https://www.regulations.gov/comment/EPA-HQ-OAR-2020-0351-0022.*

[24] Conemaugh and Keystone submitted data in response to the OTC's CAA section 184(c) petition identifying the MW input at which it typically operates or can operate the SCRs. EPA reviewed the historic operating data for these facilities as it did for Homer City, Montour, and Cheswick, and found that Keystone and Conemaugh's stated thresholds were consistent with the data. EPA thus relied upon the stated values for Keystone and Conemaugh in the development of this action's proposed rates.

[25] *https://www.epa.gov/airmarkets/power-sector-emissions-data.*

[26] See Appendix 5 of the TSD for this action.

level of operation.[27] In particular, EPA used this information to identify whether, or to what degree, the EGUs have shifted from being ''baseload'' units (*i.e.,* a steady-state heat input rate generally within SCR optimal temperature range) to ''cycling'' units (*i.e.,* variable heat input rates, possibly including periods below the SCR optimal temperature range). All of these EGUs were designed and built as baseload units, meaning the boilers were designed to be operated at levels of heat input near their design capacity 24 hours per day, seven days per week, for much of the year. As a result, the SCRs installed in the early 2000s were designed and built to work in tandem with a baseload boiler. In particular, the SCR catalyst and the reagent injection controls were designed for the consistently higher flue gas temperatures created by baseload boiler operation. In more recent years, for multiple reasons, these old, coal-fired baseload units have struggled to remain competitive when bidding into the PJM Interconnection (PJM) electricity market.[28] Nationally, total electric generation has generally remained consistent, but between 2010 and 2020, generation at coal-fired utilities has declined by 68%.[29] As a result, many of these units, on a daily basis, more recently have tended to cycle between high heat inputs, when electricity demand is high, and lower heat inputs or complete shutdowns, when demand is low. This cycling behavior can affect the ability of the EGUs to operate their SCRs because at lower heat inputs the temperature of the flue gas can drop below the operating temperature for which the SCR was designed.[30] Accordingly, this proposal seeks to establish limits that account for the technical limits on SCR operation that can result from this cycling behavior.

As alluded to above, PADEP attempted to address this cycling behavior by creating tiered emissions limits for different modes of operation based on the flue gas temperature, which its RACT II rule expressed as a transition from the 0.12 lb/MMBtu rate to much less stringent rates (between 0.35 and 0.4 lb/MMBtu, depending on the type of boiler) based on a temperature cutoff of 600 degrees, with the less stringent rate essentially representing a ''no-SCR'' mode (*i.e.,* an emission limit applicable at times when the SCR has been idled or bypassed and is not actively removing NO_X). The Third Circuit rejected this approach because the selection of the cutoff temperature was not sufficiently supported by the record.[31] The Third Circuit decision also questioned the need for a the less stringent rate, noting that nearby states do not have different emission rates based on inlet temperatures.[32]

EPA has considered the Court's concerns and has further considered the practical and policy implications in structuring a tiered limit for these cycling EGUs based on operating temperature. As such, EPA has decided against proposing a tiered limit. The effectiveness of SCR does not drop to zero at a single temperature point and defining the minimum reasonable temperature range to begin reducing SCR operation for the purposes of creating an enforceable RACT limit is a highly technical, unit-specific determination that depends on several varying factors. EPA expects that defining a specific mode where SCR cannot or should not operate would be exceedingly complex and require information that EPA does not have, showing, for each unit, complete information on all the effects of varying temperature levels on SCR operation and emissions control performance. Such a tiered limit would also require extensive recordkeeping of the source's relevant operating parameters that form the basis of the tiers in order to be enforceable, as the Court noted in its ruling regarding the need to keep detailed temperature records.

EPA has an additional concern about addressing cycling operation through a tiered RACT limit based on operating temperature. It is reasonable to expect that, to the degree that the heat input of sources during cycling mode is under source control, the creation of a tiered limit that allows no-SCR operation at certain inlet temperatures would create an incentive for the source to cycle to temperatures where SCR is not required, in order to avoid SCR operating costs and potentially gain a competitive advantage. In the case of the Pennsylvania limits addressed by the Third Circuit's decision, there was no limit on how much time the units could spend in no-SCR mode. In section C of the TSD for this action, EPA shows that over the last decade, some affected sources have varied the gross load level to which they cycle down, hovering either just above or just below the threshold at which the SCR can likely operate effectively.

Depending on the unit, this slight change in electricity output could significantly affect SCR operation and the resulting emissions output. Though instances of cycling below SCR thresholds occurred in some cases prior to the implementation of Pennsylvania's tiered RACT limit and thus the limit may not be the sole driver of the behavior following its implementation, the limit certainly allows this behavior to occur. While EPA acknowledges the need for EGUs to operate at times in modes where SCR cannot operate, EPA believes its RACT limit should minimize incentives to do that, and a tiered rate structure that effectively has no limit on no-SCR operation tends to do the opposite.

On the other hand, EPA is also concerned about a RACT limit that treats these EGUs as always operating as baseload units by imposing a NO_X emission rate that applies at all times but can technically be achieved only if the boiler is operating at high loads. Recent data indicates that these units are not operating as baseload units and are not likely to do so in the future.[33] Selecting the best baseload rate (the rate reflecting SCR operation in the optimal temperature range) and applying that rate at all times does not account for, and could essentially prohibit, some cycling operation of these units. Cycling has become more common at coal-fired EGUs because they are increasingly outcompeted for baseload power. In the past, these units were among the cheapest sources of electricity and would often run close to maximum capacity. Over time, other EGUs can now generate electricity at lower costs than the coal-fired units. Thus, the coal-fired units now cycle to lower loads during hours with relatively low system demand (often overnight and especially during the spring and fall ''shoulder'' seasons when space heating and cooling demand is minimized) when their power is more expensive than the marginal supply to meet lower load levels. Hence, they cycle up and down as load, and demand-driven power prices, rise and fall and they operate when the price meets or exceeds their cost to supply power. EPA acknowledges that cycling down to a

[27] See the Excel spreadsheet entitled ''PA–MD–DE SCR unit data 2002–2020.xlsx'' in the docket for this action.

[28] PJM is a regional transmission organization (RTO) or grid operator which provides wholesale electricity throughout 13 states and the District of Columbia.

[29] U.S. Energy Information Administration, ''Electric Power Annual 2020,'' Table 3.1.A. Net Generation by Energy Source, *https://www.eia.gov/electricity/annual/.*

[30] U.S. EPA, ''EPA Alternative Control Techniques Document for NO_X Emissions from Utility Boilers'' EPA–453/R–94–023, March 1994, p. 5–119, *https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=2000INPN.txt.*

[31] See *Sierra Club* at 303–307.

[32] Id. at 303.

[33] See section C of the TSD for this action.

no-SCR mode may sometimes happen, for example, when electricity demand drops unexpectedly, and other units provide the power at a lower cost. The consideration of the technical and economic feasibility of a given RACT limit should reflect, to the extent possible, consideration of the past, current, and future expected operating environment of a given unit. EPA seeks comment on how best to consider these feasibility issues to establish a rate for each unit that would reflect a reasonable level of load-following (cycling) (*e.g.,* a level consistent with similar SCR-equipped units) but that also accounts for the lower historic NO_X rates that these units have achieved.

B. Weighted Rates Approach and Analysis

Given these concerns, EPA is proposing to express the RACT limits for these units using a weighted rate limit. The weighted rate incorporates both a lower ''SCR-on'' limit and a higher ''SCR-off'' limit. Through assignment of weights to these two limits based on the proportion of operation in SCR-on and SCR-off modes during a period of operation that represents a reasonably low amount of SCR-off operation, the SCR-on and SCR-off limits are combined into a single RACT limit that applies at all times. The weight given to the proposed SCR-off limit (established as described later in this section) has the effect of limiting the portion of time a cycling source can operate in SCR-off mode and incentivizes a source to shift to SCR-on mode to preserve headroom under the limit. While driving SCR operation, the weighted limit accommodates the need for an EGU to occasionally cycle down to loads below which SCR can operate effectively and does not prohibit no-SCR operation or dictate specific times when it must occur. In this way, the proposed approach avoids the difficulty of precisely establishing the minimum temperature point at which the no-SCR mode is triggered, effectively acknowledging the more gradual nature of the transition between modes where SCR is or is not effective. Finally, it is readily enforceable through existing Continuous Emission Monitoring Systems (CEMS), without the need for development of recordkeeping for additional parameters that define the SCR-off mode. The approach is described in more detail below.

As a starting point for developing the weighted rates for each unit, EPA calculated both ''SCR-on'' and ''SCR-off'' rates using historic ozone season operating data for the unit to determine when the SCR was likely running and when it was likely not running, and then established rates that represent the lowest emission limit that is reasonably available considering economic and technological feasibility. Using the EPA (or source) derived minimum SCR operation threshold as described in section III.A in this preamble, expressed as Megawatts (MW) in Table 1 in this preamble, EPA calculated average ''SCR-on'' and ''SCR-off'' rates for each unit based on historic operating data for that unit, when available, from 2003 to 2021. For detail on the development of these rates, see section D of the TSD for this action. The ''SCR-on'' rate is an average of all hours in which the SCR was likely running (operating above the threshold at which it can run the SCR with an hourly NO_X emission rate below 0.2 lb/MMBtu) during each unit's third best ozone season from the period 2003 to 2021. The third best ozone season was identified based on the unit's overall average NO_X emission rate during each ozone season from 2003 to 2021. This 18-year time period captures all the years of SCR operation for each facility, with the exception of Conemaugh, which only installed SCR in 2014.[34] EPA included all these years of data because the Third Circuit's decision questioned EPA's review of only certain years of emissions data for these sources in determining whether to approve Pennsylvania's RACT II NO_X emission rate for these EGUs. The use of the 3rd-best year accounts for degradation of control equipment over time. EPA used a third best ozone season approach for the Revised CSAPR Update (86 FR 23054, April 30, 2021) and the proposed Good Neighbor Plan for 2015 Ozone NAAQS (87 FR 20036, April 6, 2022) (2015 Good Neighbor Plan). The ''SCR-off rate'' is an average of all hours in which the unit's SCR was likely not running (operating below the threshold at which it can run the SCR with an hourly NO_X rate above 0.2 lb/MMBtu) during all ozone seasons from 2003–2021. All ozone seasons in the time period were used to increase the sample size of this subset of the data, as an individual ozone season likely contains significantly fewer data points of non-SCR operation.

Using the thresholds listed in Table 1 in this preamble, EPA then calculated the SCR-on and SCR-off ''weights,'' which represent the amount of heat input spent above (SCR-on) or below (SCR-off) the SCR threshold, for each EGU. For the weights, EPA evaluated data from the 2011 to 2021 ozone seasons and selected the year in which the EGU had its third highest proportion of heat input spent above the SCR threshold during this time period, using that year's weight (the ''third best weight'') together with the SCR-on/SCR-off rates described previously to calculate the weighted rate. The years 2011–2021 were analyzed because they likely are representative of the time period that encompasses the years when the units began to exhibit a greater cycling pattern, and it is reasonable to expect that this pattern will continue for the foreseeable future.

Using these data, EPA is proposing emissions limitations based on the following equation:

*(''SCR-on'' weight * ''SCR-on'' mean rate) + (''SCR off'' weight * ''SCR off'' mean rate) = emissions limit in lb/MMBtu.*

The calculation for each limit is based on the third best weight for each unit over the 2011 to 2021 time period. Using the third best weight will eliminate the weights that represent years with the most frequent ''no-SCR'' cycling, especially the years in which cycling to just below the SCR threshold became more prevalent, in order to act as a limit on the potential for excessive no-SCR operation and incentivize SCR use. At the same time, using the third best weight will also minimize the weights that represent periods when minimal cycling was occurring (*i.e.,* baseload operation), in order to ensure that the limit is not forcing cycling to be infeasibly constrained. The third best weight is therefore consistent with the RACT requirement: It represents the lowest rate reflecting SCR application, taking both reasonable technological and economic feasibility into account.

C. Proposed NO_X Emission Rate Limits

Table 2 in this preamble presents the proposed NO_X Emission RACT rate limits for each facility that result from the application of the weighted approach. Table 2 in this preamble also presents the range of rates that would be generated using minimum (*i.e.,* more baseload) and maximum (*i.e.,* more cycling) weights over the period. EPA is taking comment on its proposed limits, and is also soliciting comment on all the values in this range as potential alternatives. More details about the weighted rates analysis can be found in section D of the TSD for this action.

[34] Because the facility installed SCR in late 2014, the only ozone seasons available to analyze Conemaugh's operation with SCR are 2015–2021. In addition, Conemaugh's average ozone season NO_X rates vary significantly over this time period. Given the relative newness of Conemaugh's SCRs, and the fewer number of years of data and the wide variation in rates in those years, EPA decided that the second-best ozone season represents reasonable SCR performance for Conemaugh.

TABLE 2—PROPOSED NO_X EMISSION RATE LIMITS

Facility name	Unit	Low range rate (lb/MMBtu)	High range rate (lb/MMBtu)	Weighted rate (lb/MMBtu)	Proposed facility-wide 30-day average rate limit (lb/MMBtu)
Cheswick	1	0.085	0.195	0.099	0.099
Conemaugh	1	0.071	0.132	0.091	0.091
Conemaugh	2	0.070	0.132	0.094	
Homer City	1	0.102	0.190	0.102	0.088
Homer City	2	0.088	0.126	0.088	
Homer City	3	0.096	0.136	0.097	
Keystone	1	0.046	0.170	0.076	0.074
Keystone	2	0.045	0.172	0.074	
Montour	1	0.047	0.131	0.069	0.069
Montour	2	0.048	0.145	0.070	

The resulting NO_X emission rate limits will be based on a 30-day rolling average, and will apply at all times, including during operations when exhaust temperatures are too low for the SCR to operate, or operate optimally. For facilities with more than one unit, the proposed limit will allow facility-wide averaging for compliance, but the average limit will be based on the weighted rate achieved by the best performing unit. Using the best performing unit as the basis for RACT is appropriate, as it would prioritize increased utilization of the best performing units in SCR-on mode. EPA is proposing a 30-operating day, rolling average for this rate-based (*i.e.,* lb/MMBtu) limit. EPA and many states have used such 30-day average limits for this type of limit, where the measured daily lb/MMBtu rate can vary significantly depending on the way the boilers and SCRs are operated in a day, but the limit is designed to apply at all times. A 30-day average ''smooths'' this variability by averaging the current value with the prior values over a rolling 30-day period to determine compliance. While some period of lb/MMBtu values over the target rate can occur without triggering a violation, they must be offset by corresponding periods where the lb/MMBtu rate is lower than the target rate (*i.e.,* the 30-day rolling average rate). Such averaging periods have precedent not only in Federal rulemaking,[35] but in EPA's approval of SIPs.[36] Such a limit can represent RACT so long as it is based on 30-day periods that represent the lowest rate the source is capable of meeting over such period through the application of control technology that is reasonably available considering technological and economic feasibility. When EPA previously provided presumptive RACT limits for coal-fired EGUs, it expressed them as 30-day averages.[37] A 30-day average is similarly appropriate here, as the proposed rate limits here would apply at all times, throughout the year, to units that are expected to exhibit cycling operation as described previously. While there may be periods (typically when cycling down to where the SCR cannot operate effectively) where the lb/MMBtu rate is exceeded, these periods are limited in time by the weighted rate, and must be offset by periods where the lb/MMBtu rate is correspondingly lower to meet 30-day average limit.

D. Proposed Daily NO_X Mass Emission Limits

EPA is also proposing a unit-specific daily NO_X mass emission limit (*i.e.,* lb/day) to complement the weighted facility-wide 30-day NO_X emission rate limit and further ensure RACT is applied continuously. High emissions days are a concern, given the 8-hour averaging time of the underlying 1997 and 2008 ozone NAAQS. This proposed daily NO_X mass emission limit was calculated by multiplying the proposed facility-wide 30-day rolling average NO_X emission limit (in lb/MMBtu) by each unit's heat input maximum permitted rate capacity (in MMBtu/hr) by 24 hours. While the 30-day average rate limit ensures that SCR is operated where feasible while reasonably accounting for cycling, EPA is concerned that units meeting this limit might still occasionally have higher daily mass emissions on one or more days where no or limited SCR operation occurs, which could trigger exceedances of the ozone NAAQS if these high mass emissions occur on days conducive to ozone formation, such as especially hot summer days. Notably, the OTC also raised the issue of daily emission limits in its CAA section 184(c) petition.

For example, in PADEP's ''Technical Evaluation for Case-by-Case RACT, Conemaugh Generating Station,'' the performance of Conemaugh Unit 1 during the month of April 2020 was evaluated. PADEP determined that for most of the month, the unit ran at approximately 75% heat capacity, yet no reagent was injected on most days. Daily NO_X mass emissions were predictably high. For example, on April 2, 2020, Unit 1 ran at roughly 75% heat capacity for about 20 out of the 24 hours. The NO_X emissions rate over that period was roughly 0.275 lb/MMBtu.[38] Twenty hours at 75% heat capacity at 0.275 lb/MMBtu results in approximately 34,000 lbs of NO_X emitted. In contrast, twenty hours at 75% heat capacity at the proposed 0.091 lb/MMBtu weighted rate would result in much less NO_X being emitted: Approximately 11,260 lbs. The addition of a unit-specific daily mass emission limit at an appropriate level will address concerns that a facility-wide 30-day average emission rate, by itself, may not curtail certain days where higher emission rates result in higher mass emissions of NO_X. These foregone emissions reductions could have serious NAAQS implications on days where high ozone levels are likely to occur. A properly operating SCR can reduce NO_X emissions by between 50% to 90%. For example, looking at the same Conemaugh Unit 1 data on a different day, September 30, 2017, the unit operated around 50% load for the entire

[35] See Coal-fired EGU new source performance standards (NSPS); 40 CFR 60.44.

[36] EPA has approved 30-day rolling averages as ''short-term'' RACT limitations in SIP revisions submitted by New York and Wisconsin. See 75 FR 64155 (October 19, 2010) for Wisconsin and 78 FR 41846 (July 12, 2013) for New York.

[37] See ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' at 57 FR 55625 (November 25, 1992).

[38] See ''Technical Evaluation for Case-by-Case RACT, Conemaugh Generating Station'' at 7.

day, but the facility apparently elected to operate the SCR since the NO_X emission rate for that day was 0.05 lb/MMBtu, which is 82% lower than the April 2, 2020, NO_X rate.

For these reasons, EPA believes it is reasonable to propose an additional unit-specific lb/day mass limit as an additional safeguard. The proposed daily mass limit would be an additional constraint on no-SCR operation within a single day. It provides for some boiler operation without using the SCR, which may be unavoidable during part of any given day, but it constrains such operation because the mass limit will necessitate SCR operation (for example by raising heat input to a level where the SCR can operate) if the unit is to continue to operate while remaining below this limit. This provides greater consistency with the RACT definition. Table 3 in this preamble shows the proposed unit-specific NO_X mass limits, which are to be met on a 24-hr basis.

TABLE 3—PROPOSED NO_X MASS LIMITS

Facility name	Unit	Permitted max hourly heat input rate (MMBtu/hr) [39]	Proposed unit-specific mass limit (lb/day)
Cheswick	1	6,000	14,256
Conemaugh	1	8,280	18,084
Conemaugh	2	8,280	18,084
Homer City	1	6,792	14,345
Homer City	2	6,792	14,345
Homer City	3	7,260	15,333
Keystone	1	8,717	15,481
Keystone	2	8,717	15,481
Montour	1	7,317	12,117
Montour	2	7,239	11,988

Table 4 in this preamble shows the reductions these proposed limits would realize when compared to 2021 emissions data.

TABLE 4—2021 ANNUAL NO_X EMISSIONS AND RATES COMPARED TO PROPOSED RATES

Facility	2021 average NO_X rate (lb/MMBtu)	Proposed 30-day NO_X rate (lb/MMBtu)	Proposed rate vs. 2021 average (%)	2021 NO_X emissions (tons)	Potential change in NO_X mass emissions (tons)
Cheswick	0.139	0.099	−29	1,069	−309
Conemaugh	0.149	0.091	−39	5,506	−2,132
Homer City	0.133	0.088	−34	3,144	−1,060
Keystone	0.142	0.074	−48	5,481	−2,618
Montour	0.110	0.069	−37	649	−241
Net	.....	.....	.....	15,850	* −6,361

* −40%

E. Technological and Economic Feasibility of EPA's Proposed RACT Limits

EPA is proposing to determine that the limits discussed in the prior section are technologically feasible, in part because the limits have been met by each of the facilities affected by the proposed FIP. During the process of reviewing PADEP's proposed source specific permits, EPA evaluated past performance of the units in question, as shown in Appendix 1 of the TSD for this action. EPA looked at data from the best and third-best ozone seasons (second best for Conemaugh) over its entire record of operation with SCR, as well as data from just recent ozone seasons (2010–2020), with 2019 shown individually. For each of those time periods, EPA calculated the best daily average, the mean daily average, and the 99th percentile of daily average NO_X emissions.

As previously discussed, RACT is not the lowest rate achievable by a particular source (or source category). Nor, as the Third Circuit pointed out, are RACT requirements satisfied by a limit that represents ''. . . an average of the current emissions being generated by existing systems.'' *Sierra Club* at 14–15. Rather, as previously discussed, RACT is 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. By considering historical data that represent the best performing years, as well as more recent years where the changing realities of electrical generation have presented legitimate technological challenges to meeting those best rates, EPA's weighted rate approach is reasonable, and consistent with the CAA's RACT requirements. It represents a considerable improvement over the status quo, and still allows these sources the flexibility to address fluctuating power demands from the grid operator, so long as operation without SCR is reasonably constrained.

Economic feasibility in the context of RACT is not a ''bright-line'' or ''one-size-fits-all'' test with a clearly established threshold between what is and what is not economically feasible. Rather, it involves a case-by-case evaluation, and ''. . . is largely determined by evidence that other sources in a source category have in fact

[39] Title V Permit maximum heat input rates.

applied the control technology in question.'' [40] In the case of these five facilities, because the controls are already installed (no costs to install or retrofit control equipment), the economic analysis partially involves comparing the emissions limitations achieved by similar sources which operate under similar electrical dispatch constraints, as well as considering the extent to which all of these units have in fact demonstrated an ability to meet the proposed limits in the past. As discussed in more detail below, EPA's cost analysis was consistent with the national, fleetwide approach applied in the context of the CSAPR rulemakings, and the 2015 Good Neighbor Plan. Additionally, EPA has made clear that economic feasibility should not be conflated with affordability: ''Economic feasibility rests very little on the ability of a particular source to 'afford' to reduce emissions to the level of similar sources. Less efficient sources would be rewarded by having to bear lower emission reduction costs if affordability were given high consideration.'' [41]

Furthermore, EPA reviewed operating and emissions data of EGUs in neighboring states which are also contractually obligated to the PJM Interconnection and found that there was nothing unique about the operating patterns of the units in Pennsylvania. EPA performed an analysis comparing certain data for each of the Pennsylvania SCR-equipped EGUs to data for the remaining SCR-equipped coal-fired EGUs in Maryland (Brandon Shores 1,2, Morgantown 1,2, and Wagner 3) and Delaware (Indian River 4). The data were compiled into a spreadsheet which is included in the docket for this action.[42] The data cover the period from 2000 through 2020. The spreadsheet looks at the extent to which changes in units' average ozone season NO_X emission rates over time can be explained by changes in their ozone season operating patterns—*i.e.,* operating fewer hours and spending a larger fraction of the remaining operating hours at lower load levels.

EPA identified a multi-year baseline period after installation of each analyzed unit's SCR when operation of the unit seemed fairly stable and the NO_X emission rate showed fairly consistent SCR optimization. These periods vary by unit and range from 2 years to 9 years across parts of the 2001–2013 time period. For each unit, EPA then compared the averages of the unit's seasonal average NO_X emission rate, seasonal total operating hours, and seasonal average load level per operating hour during the baseline period to the same unit's averages across the 2017–2019 period. EPA did not identify a baseline period or perform the same specific comparisons for Conemaugh units 1 and 2 because these units' SCRs were not installed until 2015. The comparisons support several observations:

- Except for Keystone 1–2, all the units in all three states have experienced moderate to very large decreases in seasonal total operating hours—from 19% to 74%. By comparison, Keystone 1 and 2's operating hours decreased only 3% and 7%. (Conemaugh's pattern of changes in operating hours is similar to Keystone's).
- Except for Keystone 1 and 2 and Conemaugh 1 and 2, all the units in Pennsylvania and Maryland have also experienced moderate to large decreases in seasonal average load levels per operating hour—from 20% to 37%. By comparison, Keystone 1 and 2's average load levels per operating hour decreased only 6% and 9%. (Conemaugh's pattern of changes is similar to Keystone's, and Indian River 4 had a 10% decrease).
- Except for Homer City 3 (and Conemaugh 1 and 2), all the Pennsylvania units experienced large increases in seasonal average NO_X emission rates from the baseline period to the 2017–2019 period—from 59% to 130%. Comparison to the Maryland units calls into question whether these emission rate increases can reasonably be attributed to changes in either the units' total operating hours or the units' average load levels per operating hour, because the Maryland units—which had changes in both of these variables much larger than Keystone 1 and 2 and comparable to the other Pennsylvania units—all experienced decreases in average emission rates from -6% to -25% (Indian River 4 experienced an emission rate increase of 21%, but stayed below 0.085 lb/MMBtu, and Homer City 3 experienced an emission rate decrease of -2%.).

In summary, the comparisons show that all five Maryland units (and to a lesser extent the one Delaware unit) have experienced comparable or greater changes in total operating hours and average load levels per operating hour over time than the Pennsylvania units without a deterioration in NO_X emission rates comparable to the deterioration shown by most of the Pennsylvania units.[43]

F. Increased Injection of Reagent and Increased Use of SCRs

Fixed operation and maintenance (FOM) costs, such as operator salaries, are independent of the operation of the control system and are incurred by the operator regardless of variations in control utilization. Variable operation and maintenance (VOM) costs are proportional to the quantity of waste gas processed by the control system. Because the SCRs at each EGU have already been installed and have been operated for years (albeit in a less than optimal fashion), FOM costs for the SCRs have already been incurred. Therefore, the economic feasibility analysis for this proposal need only consider the VOM costs associated with increased use of the SCRs. The most significant of these costs is the cost of the additional reagent needed to meet the proposed NO_X limits and the additional cost of more frequent catalyst replacement and maintenance that might occur from greater use of the SCRs (compared to the status quo) to meet the lower proposed NO_X limit. EPA has recently evaluated VOM costs associated with increased use of SCRs in a number of national rulemaking actions related to the CAA's interstate transport requirements, including most recently the proposed 2015 Good Neighbor Plan. In the ''EGU NO_X Mitigation Strategies Proposed Rule TSD'' (2015 Good Neighbor Plan TSD) for the proposed rulemaking (included in the docket for this action), EPA used the capital expenses, and operation and maintenance costs for installing and fully operating emission controls based on the cost equations used within the Integrated Planning Model (IPM) that were researched by Sargent & Lundy, a nationally recognized architect/engineering firm with EGU sector expertise. From this research, EPA created a publicly available Excel-based tool called the Retrofit Cost Analyzer (Update 1–26–2022) (Retrofit Cost Analyzer) that implements these cost equations.[44]

In the TSD for the 2015 Good Neighbor Plan, EPA used the Retrofit

[40] See ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990; Supplemental;'' April 28, 1992; 57 FR 18074. See also 44 FR 53761 (September 17, 1979) (supplement to the general preamble on RACT) and EPA Memorandum titled ''Criteria for Determining RACT in Region IV'' dated June 19, 1985 (*https://www.epa.gov/sites/default/files/2016-08/documents/criteria_for_determining_ract_in_region_iv_6-19-85.pdf*).

[41] *Id.*

[42] See ''PA-MD-DE SCR unit data 2000–2020.xlsx''

[43] EPA also notes that the cost of NO_X allowances under the various trading programs varied widely. See ''Allowance Price Data All.xlsx'' in the docket for this action.

[44] See *https://www.epa.gov/airmarkets/retrofit-cost-analyzer* for the ''Retrofit Cost Analyzer (Update 1–26–2022)'' Excel tool.

Cost Analyzer to estimate the cost of additional reagent, as well as additional VOM costs, including catalyst replacement and disposal. Based on those calculations EPA estimated a representative marginal cost of optimizing SCR controls to be approximately $1,600 per ton, consistent with its estimation in the Revised CSAPR Update for this technology. Additionally, depending on a unit's control operating status, the representative cost at the 90th percentile unit (among the relevant fleet of coal units with SCR covered in this rulemaking) ranges between $900 and $1,700 per ton. EPA evaluated all coal-fired units with SCR and determined that for those units with SCRs that are already partially operating, the cost of optimizing is often much lower than $1,600 per ton and is often under $900 per ton. (87 FR 20077; April 6, 2022).

EPA notes that while there is not a direct, one-to-one correlation, the cost of reagents is impacted directly by fluctuations in agricultural fertilizer markets. Fertilizer costs have risen considerably since this analysis was performed. In March of 2022, the cost of anhydrous ammonia was listed at roughly $1500/ton, and urea at roughly $900/ton.[45] The analysis performed for the 2015 Good Neighbor Plan to arrive at a reagent cost of $500/ton involved calculations using the cost of urea.[46] However, all of the sources covered by this proposed FIP currently use ammonia for reagent injection.

Using the proposed NO_X limits and associated predicted NO_X reductions in Table 4 in this preamble, and the assumption from the 2015 Good Neighbor Plan TSD[47] that the chemical reaction requires 0.57 tons of ammonia for each ton of NO_X reduced, we calculated an updated $/ton of NO_X removed using current (March 2022)[48] ammonia costs for the five facilities:

TABLE 5—COST PER NO_X ($/TON) REMOVED BASED ON ADDITIONAL REAGENT

Facility	Predicted reduction (tons NO_X per year from 2021 baseline)	Additional reagent (tons per year from 2021 baseline) *	Total annual cost for additional reagent ^	Cost per ton of NO_X removed for additional reagent ($/ton) +
Cheswick	309	176	$264,000	$854
Conemaugh	2,132	1,215	1,822,500	855
Homer City	1,060	604	906,000	855
Keystone	2,618	1,492	2,238,000	855
Montour	241	137	205,000	853
Average cost/ton	.....	.....	.....	854

* Additional reagent = predicted reduction (tons) × 0.57 tons reagent/ton NO_X reduction.
^ Total cost = additional reagent × $1500/ton reagent.
+ Cost per ton = total cost/predicted reduction.

As previously noted, EPA's general evaluation of the costs of optimizing an existing and already operating SCR in the 2015 Good Neighbor Plan TSD was estimated to be from $900/ton to $1600 per ton of NO_X removed in 2016 dollars. This includes reagent costs, as well as other VOM costs. EPA calculated the reagent-only portion of those costs to be $500 per ton of NO_X removed. Therefore, the remaining, non-reagent VOM costs were determined to be $400–$1100 per ton. While other VOM costs may also have risen since this analysis was conducted, it is unlikely that they have been as volatile as soaring reagent costs, and EPA currently does not have reliable, updated information beyond what was presented in the 2015 Good Neighbor Plan on how VOM costs may have risen. Nevertheless, EPA believes that it is unnecessary to re-evaluate the non-reagent VOM costs for the purposes of this bounding analysis, aside from converting the figures to 2022 dollars, because EPA predicts that the effects of any change in non-reagent VOM would be minimal on the ultimate conclusion. Converting the higher non-reagent VOM cost of $1100/ton NO_X removed to 2022 dollars provides a revised non-reagent VOM cost of $1300/ton of NO_X removed. Combining this updated non-reagent cost and the average reagent cost of $854/ton NO_X removed based on updated reagent prices (see Table 5 in this document), EPA estimates that the cost of optimizing the existing SCRs in use at each facility covered by this proposed FIP is approximately $2154/ton of NO_X removed. EPA finds this cost to be reasonable by any metric, and determine, therefore, that the proposed limits are economically feasible.[49]

Additionally, while the $1600/ton of NO_X removed cost estimate used in the 2015 Good Neighbor Plan was presented on a fleetwide basis, the Retrofit Cost Analyzer estimated individual costs for Homer City Units 1–3, Keystone Units 1 and 2, Conemaugh Unit 1, and Montour, using $350/ton for a 50% solution of urea. Those costs (in 2021 dollars) ranged from a low of $980/ton of NO_X removed for Homer City 3, to a high of $1152/ton of NO_X removed for Conemaugh.[50] To assess the impact of the present, historic high reagent costs, EPA re-ran the Retrofit Cost Analyzer with a reagent cost of $1500/ton (of ammonia).[51] EPA notes that we did not modify other parameters in the Retrofit Cost Analyzer to directly convert urea use to ammonia use. Rather, we took the conservative approach of using the highest fertilizer cost in a bounding analysis to evaluate whether past estimates of the cost effectiveness of increased reagent injection were still

[45] See Appendix 3 of the TSD for this proposed FIP.

[46] See 2015 Good Neighbor Plan TSD at 5.

[47] See *Id.* at 4.

[48] See Appendix 3.

[49] In 1985, EPA explained in a memo regarding cost effectiveness for RACT that while it would be inappropriate to set a specific threshold for economic feasibility, because RACT is necessarily a case-by-case determination, ''[t]here are sources and source categories for which costs in excess of $2,000/ton have been determined to be reasonable.'' EPA Memorandum titled ''Criteria for Determining RACT in Region IV'' dated June 19, 1985 (*https://www.epa.gov/sites/default/files/2016-08/documents/criteria_for_determining_ract_in_region_iv_6-19-85.pdf*).

[50] See ''NO_X_Control_Retrofit_Cost_Tool_Fleetwide_Assessment_Proposed_CSAPR_2015_NAAQS'' in the docket.

[51] This is a high end assumption not necessarily representative of future markets, but used for the purposes of this sensitivity. Combining current market conditions with the RCA methodology would result in approximately $600 to $900 ton cost for the urea cost for the future.

reasonable. The resulting $/ton of NO_X removed estimates ranged from $2590/ton of NO_X removed for Homer City 3, to $2757/ton of NO_X removed for Conemaugh.[52] Given the likelihood of reagent costs returning to lower, historical levels, and the fact that the remaining costs in the analyses were selected at the 90th percentile, EPA believes this bounding analysis to be reasonable and conservative, and that these cost estimates, though higher than the fleetwide averages discussed above, continue to be economically feasible.

G. Other Considerations

EPA notes that in each of the draft permits submitted by PADEP, a number of additional control technologies were evaluated by PADEP in addition to SCR, but were determined to be either technologically or economically infeasible. For example, in all cases except Montour, PADEP determined that upgraded low NO_X burners were economically infeasible.[53] PADEP determined that the costs per ton of NO_X removed ranged from $4,077 for Unit 1 at Conemaugh, to $15,129 for Unit 3 at Homer City. EPA is not evaluating PADEP's determinations related to economic feasibility in this action. However, we did review this information for purposes of developing the proposed FIP, and note that PADEP's source-specific analyses for ultra-low NO_X burners are higher than the fleet wide estimate of $1600/ton of NO_X removed by optimizing SCR use that EPA derived in the 2015 Good Neighbor Plan.[54] Furthermore, neither the facilities nor PADEP considered the potential substantial impact that state of the art combustion controls can have on reducing operating costs of SCRs, including extended catalyst life and reducing reagent consumption: ''Installation of front-end low-NO_X combustion systems or upgrades can essentially reduce total ammonia consumption by as much as 45% and is a viable, cost-effective option to lowering plant cost over the long term.'' [55]

Additionally, PADEP also evaluated a number of post combustion technologies in their draft permits for these five facilities. These post-combustion technologies increase the temperature of the flue gas entering the SCR. Such technologies could, in the context of a weighted limit approach, help lower the SCR-off weight by allowing a greater range of SCR-on operating conditions. These include economizer bypass, ''V-Temp,'' and flue gas reheat. Economizer bypass is installed at Homer City, and the V-Temp system, which similarly reduces heat consumption in the economizer and thus increases inlet temperatures at the SCR, is installed at Conemaugh, but was not used in 2019. PADEP determined that continued operation of V-Temp at Conemaugh was not technically feasible due to cycling operations. In the other cases, PADEP determined installation to be technologically infeasible. Flue gas reheat was not fully analyzed for technological and economic feasibility at any of the sources. Additionally, no analysis was presented to determine whether simply running at moderately higher loads could be an economically feasible method to achieve lower emissions rates. Finally, PADEP also determined in each case that it appeared that the boilers had not been tuned in a manner that would maximize NO_X reductions. As part of this proposal, EPA did not evaluate these technologies in the context of our RACT analysis. As stated previously, EPA is proposing that the optimization of the already installed equipment (the SCR) at each of these sources represents RACT. EPA is proposing rates that greatly reduce the 30-day NO_X emissions in relation to past performance. Our presumption is that the facilities have the flexibility to change their operations to emit less NO_X per unit of heat input, and we identify these technologies as additional ways for the facilities to do so, rather than requiring them as RACT. Moreover, we note that multiple control schemes cannot always be implemented simultaneously and do not always necessarily result in cumulative reductions.

IV. Recordkeeping and Reporting for Compliance Assurance

EPA has included proposed recordkeeping and reporting requirements in the regulatory language for this proposed FIP. The purpose of the requirements is to ensure that each of the facilities subject to the FIP can demonstrate compliance with their respective RACT limits as finalized. EPA is proposing to require that each facility submit a report to EPA every six months containing, among other things, the following: Unit-specific daily operating time (hours); unit-specific daily NO_X mass emissions (lbs); unit-specific daily heat input (MMBtu); unit-specific daily NO_X emission rate (lb/MMBtu); facility-wide 30-day rolling average NO_X emission rate (lb/MMBtu). The proposed regulatory language also defines certain terms and specifies the method for calculating the facility-wide 30-day rolling average NO_X emission rate. These reports are to be submitted to EPA within 30 days after the end of each six month reporting period. In addition, the proposed regulatory language requires the submission of a report containing certain information to EPA within 10 business days if the source violates its 30-day rolling average NO_X limit or daily mass limit three or more times within any 30-day period. The EPA is soliciting comment on whether the six-month reporting period should be shorter (quarterly) and also on other possible ways to improve the proposed recordkeeping and reporting requirements included in this FIP.

V. Economic Analysis

Based on the information presented in section III in this preamble, in 2021, NO_X emissions would have been reduced 6,361 tons. Using $1600/ton of NO_X removed cost estimate as in the 2015 Good Neighbor Plan would result in annual aggregate cost of approximately $10 million dollars for 2021. As discussed in section III in this preamble, EPA believe that a specific analysis of individual plants would result in a lower estimate.

In order to estimate the benefits of this rulemaking, EPA used a ''benefit per ton'' (BPT) approach. EPA has applied this approach in several previous Regulatory Impact Analyses (RIA) [56] in which the economic value of human health impacts is derived using previously established source-receptor relationships from photochemical air quality modeling.[57] The rule will reduce emissions of NO_X, a pollutant that is a precursor to both fine particulate matter ($PM_{2.5}$) and ground-level Ozone; for this reason, we quantify the benefits of reducing each pollutant. These BPT estimates provide the total monetized human health benefits (the sum of

[52] See ''NO_X_Control_Retrofit_Cost_Tool_Fleetwide_Assessment_Proposed_CSAPR_2015_NAAQS_PA'' in the docket.

[53] In the case of Montour, PADEP determined that no upgrade was available, since Montour already has the best available installed.

[54] See 2015 Good Neighbor Plan TSD at 16.

[55] See ''Technical Publication: State of the Art Low NO_X Burners to Reduce SCR Operating Costs;'' Babcock Power; available at *https://www.babcockpower.com/wp-content/uploads/2018/02/state-of-the-art-low-nox-burners-to-reduce-scr-operating-costs.pdf.*

[56] U.S. EPA. Regulatory Impact Analysis for the Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone in 27 States; Correction of SIP Approvals for 22 States. June 2011; Regulatory Impact Analysis for the Final Mercury and Air Toxics Standards, December 2011; and Regulatory Impact Analysis for the Particulate Matter National Ambient Air Quality Standards; December 2012.

[57] Fann N, Fulcher CM, Hubbell BJ. The influence of location, source, and emission type in estimates of the human health benefits of reducing a ton of air pollution. Air Qual Atmos Health. 2009;2(3):169–176. doi:10.1007/s11869–009–004–0.

premature attributable deaths and premature morbidity for either $PM_{2.5}$ or Ozone) of reducing 1 ton of NO_X from a specified source. This analysis draws upon benefit per-ton values quantified for the Electricity Generating Unit (EGU) sector in Pennsylvania. The method used to derive these estimates is described in the ''Technical Support Document on Estimating the Benefit per Ton of Reducing Directly-Emitted $PM_{2.5,}$ $PM_{2.5}$ precursors and Ozone Precursors from 21 Sectors and its precursors from 21 sectors.'' [58] One limitation of using the BPT approach is an inability to provide estimates of the health benefits associated with exposure to nitrogen dioxide, the ambient concentrations of which may also change as a result of this rulemaking. Another limitation is that the photochemical-modeled emissions of the industrial point source sector-attributable $PM_{2.5}$ concentrations used to derive the BPT values may not match the change in air quality resulting from the emissions controls imposed by this FIP. Finally, an additional limitation of this analysis is that we expect in future years that the annual benefits (and cost) estimates will fall because some of these units plan to retire by 2028. Table 6 in this preamble presents the estimated economic value ranges of this proposed action.

TABLE 6—ESTIMATED DISCOUNTED ECONOMIC VALUE OF AVOIDED $PM_{2.5}$ AND OZONE-ATTRIBUTABLE PREMATURE DEATHS AND ILLNESSES FOR THE FEDERAL IMPLEMENTATION PLAN, IF FINALIZED, IN 2022

Discount rate	Pollutant	Estimated economic value range (in millions of 2020$) [A]
3%	Ozone [B]	$48 *and* $350.
	$PM_{2.5}$	$41 *and* $42.
	Sum of Ozone and $PM_{2.5}$ [C].	*$89 and $390.*
7%	Ozone	$43 *and* $320.
	$PM_{2.5}$	$37 *and* $38.
	Sum of Ozone and $PM_{2.5}$.	*$80 and $360.*

[A] Values rounded to two significant figures. Benefits quantified using a benefit per-ton estimate.

[B] We estimated ozone benefits for changes in NO_X for the ozone season and $PM_{2.5}$ attributable benefits resulting from annual changes in NO_X.

[C] Lower value calculated by summing ozone mortality estimated using the pooled short-term ozone exposure risk estimate and the Turner et al. (2016) long-term $PM_{2.5}$ exposure mortality risk estimate. Upper value calculated by summing the Turner et al. (2016) long-term ozone exposure risk estimate and the Di et al. (2017) long-term $PM_{2.5}$ exposure mortality risk estimate.

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act (PRA).[59] A ''collection of information'' under the PRA means ''the obtaining, causing to be obtained, soliciting, or requiring the disclosure to an agency, third parties or the public of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, *ten or more persons,* whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit.'' [60] Because this proposed rule includes RACT reporting requirements for five facilities, the PRA does not apply.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions.

For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This rulemaking does not impose any requirements or create impacts on small entities as no small entities are subject to the requirements of this proposed rule.

D. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local and tribal governments and the private sector. Under section 202 of UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for final rules with ''Federal mandates'' that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more (adjusted for inflation) in any one year.

The EPA has determined that this proposed rule does not contain a Federal mandate that may result in any expenditures by state, local or tribal governments, and as explained in this document, the cost to the private sector of the requirements will not exceed the inflation-adjusted UMRA threshold of $100 million [61] in any one year. Further, this proposed action will not significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

Executive Order 13132, Federalism,[62] revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires the EPA 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.'' [63] ''Policies that have federalism implications'' is defined in

[58] U.S. EPA. 2021. Technical Support Document (BPT TSD) on Estimating the Benefit per Ton of Reducing Directly-Emitted $PM_{2.5,}$ $PM_{2.5}$ Precursors and Ozone Precursors from 21 Sectors and its precursors from 21 sectors. Technical Support Document. Available at: *https://www.epa.gov/benmap/reduced-form-tools-calculating-pm25-benefits.*

[59] 44 U.S.C. 3501 *et seq.*

[60] 5 CFR 1320.3(c) (emphasis added).

[61] Adjusted to 2019 dollars, the UMRA threshold becomes $164 million.

[62] 64 FR 43255, 43255–43257 (August 10, 1999).

[63] 64 FR 43255, 43257.

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.'' [64] Under Executive Order 13132, the EPA may not issue a regulation ''that has 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 the State and local governments,'' or the EPA consults with state and local officials early in the process of developing the final regulation.[65] The EPA also may not issue a regulation that has federalism implications and that preempts state law unless the agency consults with state and local officials early in the process of developing the final regulation.

This action does not have federalism implications. The proposed FIP will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments,'' requires the EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' [66] This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this rulemaking.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive order. This action is not subject to Executive Order 13045 because it implements a previously promulgated health-based Federal standard. Further, the EPA believes that the ozone-related benefits from this proposed rule will further improve children's health.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. Section 12(d) of NTTAA, Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs the EPA to consider and use ''voluntary consensus standards'' in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 establishes Federal executive policy on environmental justice.[67] 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.

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898. EPA reviewed the Regulatory Impact Analysis (RIA) prepared for the recently proposed 2015 Ozone NAAQS transport FIP, and in particular the Ozone Exposure Analysis at section 7.4 of the RIA.[68] Although that analysis projected reductions in overall AS–MO3 ozone concentrations in each state for all affected demographic groups resulting from newly proposed limits on EGUs and non-EGUs (see Figure 7–3 of the RIA), it also found that emission reductions from only EGUs would result in national reductions in AS–MO3 ozone concentrations for all demographic groups analyzed (see Figure 7–2 of the RIA). In summation, that RIA concluded that the proposed FIP is expected to lower ozone in many areas, including residual ozone nonattainment areas, and thus mitigate some pre-existing health risks of ozone across all populations evaluated (RIA, p. 7–32). Further, EPA reviewed an analysis of vulnerable groups near the Conemaugh, Homer City, and Keystone EGUs found in the TSD for EPA's proposed disapproval of the SO_2 attainment plan for the Indiana, PA SO_2 nonattainment area.[69]

Based on EPA's review of those documents, and consideration of the content of this proposed FIP including the proposed NO_X limits, EPA believes that this proposed FIP will serve to lower ozone levels in many areas, including residual ozone nonattainment areas, and thus mitigate some pre-existing health risks of ozone.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Continuous emission monitoring, Electric power plants, Incorporation by reference, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Michael Regan,

Administrator.

For the reasons discussed in the preamble, 40 CFR part 52 is proposed to be amended as follows:

[64] *Id.*

[65] *Id.*

[66] 65 FR 67249, 67250 (November 9, 2000).

[67] Executive Order 12898 can be found 59 FR 7629 (February 16, 1994).

[68] The RIA for that separate EPA action can be found at *www.regulations.gov* under the docket number EPA–HQ–OAR–2021–0668. Section 7.4 begins on page 7–9.

[69] See *www.regulations.gov,* Docket EPA–R03–OAR–2017–0615–0059, pp. 14 –17.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart NN—Pennsylvania

■ 2. Section 52.2065 is added to read as follows:

§ 52.2065 Federal implementation plan addressing reasonably available control technology requirements for certain sources.

(a) *Applicability.* This section shall apply to Cheswick, Conemaugh, Homer City, Keystone, and Montour, as defined in this section, as well as any of their successors or assigns. Each of the five listed facilities are individually subject to the requirements of this section.

(b) *Effective date.* The effective date of this section is June 24, 2022.

(c) *Compliance date.* Compliance with the requirements in this section shall commence immediately upon the effective date, except the Facility-wide 30-Day Rolling Average NO_X Emission Rate Limit requirement in paragraph (f)(1) of this section will commence for the Facility on the day that Facility has operated for thirty (30) Operating Days after, and possibly including, the effective date.

(d) *General provisions.* This section is not a permit. Compliance with the terms of this section does not guarantee compliance with all applicable Federal, state, or local laws or regulations. The emission rates and mass emissions limits set forth in this section do not relieve the Facility from any obligation to comply with other State and Federal requirements under the Clean Air Act, including the Facility's obligation to satisfy any State requirements set forth in the applicable SIP.

(e) *Definitions.* Every term expressly defined by this section shall have the meaning given to that term in this section. Every other term used in this section that is also a term used under the Act or in Federal regulations in this chapter implementing the Act shall mean in this section what such term means under the Act or the regulations in this chapter.

CEMS or *Continuous Emission Monitoring System,* means, for obligations involving the monitoring of NO_X emissions under this section, the devices defined in 40 CFR 72.2 and installed and maintained as required by 40 CFR part 75.

Cheswick means, for purposes of this section, GenOn Power Midwest, LP's Cheswick Generating Station consisting of one coal-fired unit designated as Unit 1 (6,000 MMBtu/hr), located in Springdale, Allegheny County, Pennsylvania.

Clean Air Act or *Act* means the Federal Clean Air Act, 42 U.S.C. 7401–7671q, and its implementing regulations in this chapter.

Conemaugh means, for purposes of this section, Keystone Conemaugh Project LLC's Conemaugh Generating Station consisting of two coal-fired units designated as Unit 1 (8,280 MMBtu/hr) and Unit 2 (8,280 MMBtu/hr), located in West Wheatfield Township, Indiana County, Pennsylvania.

Day or *Daily* means calendar day unless otherwise specified in this section.

EGU means electric generating unit.

EPA means the United States Environmental Protection Agency.

Facility means each of the following as defined in this section: Cheswick; Conemaugh; Homer City; Keystone; and Montour.

Facility-Wide 30-Day Rolling Average NO_X Emission Rate for the Facility shall be expressed in lb/MMBtu and calculated in accordance with the following procedure: First, sum the total pounds of NO_X emitted from all Units during the current Operating Day and the previous twenty-nine (29) Operating Days; second, sum the total heat input from all Units in MMBtu during the current Unit Operating Day and the previous twenty-nine (29) Operating Days; and third, divide the total number of pounds of NO_X emitted *from all Units* during the thirty (30) Operating Days by the total heat input during the thirty (30) Operating Days. A new Facility-wide 30-Day Rolling Average NO_X Emission Rate shall be calculated for each new Operating Day. Each 30-Day Rolling Average NO_X Emission Rate shall include all emissions that occur during all periods within any Operating Day, including, but not limited to, emissions from startup, shutdown, and malfunction.

Fossil Fuel means any hydrocarbon fuel, including coal, petroleum coke, petroleum oil, fuel oil, or natural gas.

Homer City means, for purposes of this section, Homer City Generation LP's Homer City Generating Station consisting of three coal-fired units designated as Unit 1 (6,792 MMBtu/hr), Unit 2 (6,792 MMBtu/hr), and Unit 3 (7,260 MMBtu/hr), located in Center Township, Indiana County, Pennsylvania.

Keystone means, for purposes of this section, Keystone Conemaugh Project LLC's Keystone Generating Station consisting of two coal-fired units designated as Unit 1 (8,717 MMBtu/hr) and Unit 2 (8,717 MMBtu/hr), located in Plumcreek Township, Armstrong County, Pennsylvania.

lb/MMBtu means one pound per million British thermal units.

Montour means, for purposes of this section, Talen Energy Corporation's Montour Steam Electric Station consisting of two coal-fired units designated as Unit 1 (7,317 MMBtu/hr) and Unit 2 (7,239 MMBtu/hr), located in Derry Township, Montour County, Pennsylvania.

NO_X means oxides of nitrogen, measured in accordance with the provisions of this section.

NO_X Emission Rate means the number of pounds of NO_X emitted per million British thermal units of heat input (lb/MMBtu), calculated in accordance with this section.

Operating Day means any calendar day on which a Unit fires Fossil Fuel.

Title V Permit means the permit required for major sources pursuant to Subchapter V of the Act, 42 U.S.C. 7661–7661e.

Unit means collectively, the coal pulverizer, stationary equipment that feeds coal to the boiler, the boiler that produces steam for the steam turbine, the steam turbine, the generator, the equipment necessary to operate the generator, steam turbine, and boiler, and all ancillary equipment, including pollution control equipment and systems necessary for production of electricity. An electric steam generating station may be comprised of one or more Units.

Unit-specific Daily NO_X Mass Emissions shall be expressed in lb/day and calculated as the sum of total pounds of NO_X emitted from the Unit during the Unit Operating Day. Each Unit-specific Daily NO_X Mass Emissions shall include all emissions that occur during all periods within any Operating Day, including emissions from startup, shutdown, and malfunction.

(f) *NO_X emission limitations.* (1) The Facility shall achieve and maintain their Facility-wide 30-Day Rolling Average NO_X Emission Rate to not exceed their Facility limit in Table 1 to this paragraph (f)(1).

TABLE 1 TO PARAGRAPH (f)(1)—FACILITY-WIDE 30-DAY ROLLING AVERAGE NO_X EMISSION RATE LIMITS

Facility	Facility-wide 30-day rolling average NO_X emission rate limit (lb/MMBtu)
Cheswick	0.099
Conemaugh	0.091

TABLE 1 TO PARAGRAPH (f)(1)—FACILITY-WIDE 30-DAY ROLLING AVERAGE NO_X EMISSION RATE LIMITS—Continued

Facility	Facility-wide 30-day rolling average NO_X emission rate limit (lb/MMBtu)
Homer City	0.088
Keystone	0.074
Montour	0.069

(2) The Facility shall achieve and maintain their Unit-specific Daily NO_X Mass Emissions to not exceed the Unit-specific limit in Table 2 to this paragraph (f)(2).

TABLE 2 TO PARAGRAPH (f)(2)—UNIT-SPECIFIC DAILY NO_X MASS EMISSIONS LIMITS

Facility	Unit	Unit-specific daily NO_X Mass emissions limit (lb/day)
Cheswick	1	14,256
Conemaugh	1	18,084
Conemaugh	2	18,084
Homer City	1	14,345
Homer City	2	14,345
Homer City	3	15,333
Keystone	1	15,481
Keystone	2	15,481
Montour	1	12,117
Montour	2	11,988

(g) *Monitoring of NO_X emissions.* (1) In determining the Facility-wide 30-Day Rolling Average NO_X Emission Rate, the Facility shall use CEMS in accordance with the procedures of 40 CFR part 60 and 40 CFR part 75, appendix F, Procedure 1.

(2) For purposes of calculating the Unit-specific Daily NO_X Mass Emissions Limits, the Facility shall use CEMS in accordance with the procedures at 40 CFR part 75. Emissions rates, mass emissions, and other quantitative standards set by or under this section must be met to the number of significant digits in which the standard or limit is expressed. For example, an emission rate of 0.100 is not met if the actual emission rate is 0.101. The Facility shall round the fourth significant digit to the nearest third significant digit, or the sixth significant digit to the nearest fifth significant digit, depending upon whether the limit is expressed to three or five significant digits. For example, if an actual emission rate is 0.1004, that shall be reported as 0.100, and shall be in compliance with an emission rate of 0.100, and if an actual emission rate is 0.1005, that shall be reported as 0.101, and shall not be in compliance with an emission rate of 0.100. The Facility shall report data to the number of significant digits in which the standard or limit is expressed.

(h) *Recordkeeping and periodic reporting.* (1) The Facility shall electronically submit to EPA a periodic report, within thirty (30) days after the end of each six-month reporting period (January through June, July through December in each calendar year). The portion of the periodic report containing the data required to be reported by this paragraph (h) shall be in an unlocked electronic spreadsheet format, such as Excel or other widely-used software, and contain data for each Operating Day during the reporting period, including, but not limited to: Facility ID (ORISPL); Facility name; Unit ID; Date; Unit-specific total Daily Operating Time (hours); Unit-specific Daily NO_X Mass Emissions (lbs); Unit-specific total Daily Heat Input (MMBtu); Unit-specific Daily NO_X Emission Rate (lb/MMBtu); Facility-wide 30-Day Rolling Average NO_X Emission Rate (lb/MMBtu); Owner; Operator; Representative (Primary); and Representative (Secondary). In addition, the Facility shall maintain the following information for 5 years from the date of creation of the data and make such information available to EPA if requested: Unit-specific hourly heat input, Unit-specific hourly ammonia injection amounts, and Unit-specific hourly NO_X emission rate.

(2) In any periodic report submitted pursuant to this section, the Facility may incorporate by reference information previously submitted to EPA under its Title V permitting requirements in this chapter, so long as that information is adequate to determine compliance with the emission limits and in the same electronic format as required for the periodic report, and provided that the Facility attaches the Title V Permit report (or the pertinent portions of such report) and provides a specific reference to the provisions of the Title V Permit report that are responsive to the information required in the periodic report.

(3) In addition to the reports required pursuant to this section, if the Facility exceeds the Facility-wide 30-day rolling average NO_X emission limit on three or more days during any 30-day period, or exceeds the Unit-specific daily mass emission limit for any Unit on three or more days during any 30-day period, the Facility shall electronically submit to EPA a report on the exceedances within ten (10) business days after the Facility knew or should have known of the event. In the report, the Facility shall explain the cause or causes of the exceedances and any measures taken or to be taken to cure the reported exceedances or to prevent such exceedances in the future. If at any time, the provisions of this section are included in Title V Permits, consistent with the requirements for such inclusion in this section, then the deviation reports required under applicable Title V regulations in this chapter shall be deemed to satisfy all the requirements of this paragraph (h)(3).

(4) Each report shall be signed by the Responsible Official as defined in Title V of the Clean Air Act, or his or her equivalent or designee of at least the rank of Vice President. The signatory shall also electronically submit the following certification, which may be contained in a separate document:

> This information was prepared either by me or under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my evaluation, or the direction and my inquiry of the person(s) who manage the system, or the person(s) directly responsible for gathering the information, I hereby certify under penalty of law that, to the best of my knowledge and belief, this information is true, accurate, and complete. I understand that there are significant penalties for submitting false, inaccurate, or incomplete information to the United States.

(5) Whenever notifications, submissions, or communications are required by this section, they shall be made electronically to the attention of the Air Enforcement Manager via email to the following address: *R3_ORC_mailbox@epa.gov.*

[FR Doc. 2022–10765 Filed 5–24–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 751

[EPA–HQ–OPPT–2021–0057; FRL–8332–03–OCSPP]

RIN 2070–AK86

Asbestos Part 1: Chrysotile Asbestos; Regulation of Certain Conditions of Use Under Section 6(a) of the Toxic Substances Control Act (TSCA); Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: EPA proposed a rule under the Toxic Substances Control Act

(TSCA) to address the unreasonable risk of injury to health it has identified for conditions of use of chrysotile asbestos following completion of the TSCA Risk Evaluation for Asbestos, Part 1: Chrysotile Asbestos.

DATES: The comment period for the proposed rule published April 12, 2022, 87 FR 21706, is extended. Comments must be received on or before July 13, 2022.

ADDRESSES: Submit your comments, identified by ID number EPA–HQ–OPPT–2021–0057, 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/about-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Peter Gimlin, Existing Chemicals Risk Management Division (Mail Code 7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–0515; email address: *gimlin.peter@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: This document extends the public comment period established in the **Federal Register** of April 12, 2022 (87 FR 21706) (FRL–8332–02–OCSPP) for 30 days, from June 13, 2022 to July 13, 2022. In that document, EPA proposed a rule under TSCA to address the unreasonable risk of injury to health it has identified for conditions of use of chrysotile asbestos following completion of the TSCA Risk Evaluation for Asbestos, Part 1: Chrysotile Asbestos, and solicited public comment on the proposed rule. More information on EPA's proposed regulation and solicitation of comment can be found in the **Federal Register** of April 12, 2022.

EPA received requests to extend the comment period and believes it is appropriate to do so in order to give stakeholders additional time to review the proposed regulation and prepare comments.

If you have questions, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects in 40 CFR Part 751

Environmental protection, Chemicals, Export certification, Hazardous substances, Import certification, Recordkeeping.

Dated: May 16, 2022.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2022–10854 Filed 5–24–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 600

[CMS–2441–P]

RIN 0938–AU89

Basic Health Program; Federal Funding Methodology for Program Year 2023 and Proposed Changes to Basic Health Program Regulations

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This document proposes the methodology and data sources necessary to determine Federal payment amounts to be made for program year 2023 to States that elect to establish a Basic Health Program under the Patient Protection and Affordable Care Act to offer health benefits coverage to low-income individuals otherwise eligible to purchase coverage through Health Insurance Exchanges.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on June 24, 2022.

ADDRESSES: In commenting, refer to file code CMS–2441–P.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2441–P, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2441–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Christopher Truffer, (410) 786–1264; or Cassandra Lagorio, (410) 786–4554.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that website to view public comments. CMS will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm another individual. CMS continues to encourage individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments.

I. Background

A. Overview of the Basic Health Program

Section 1331 of the Patient Protection and Affordable Care Act (Pub. L. 111–148, enacted on March 23, 2010), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152, enacted on March 30, 2010) (collectively referred to as the Affordable Care Act or ACA) provides States with an option to establish a Basic Health Program (BHP). In the States that elect to operate a BHP, the BHP makes affordable health benefits coverage available for individuals under age 65 with household incomes between 133 percent and 200 percent of the Federal poverty level (FPL) who are not otherwise eligible for Medicaid, the Children's Health Insurance Program (CHIP), or affordable employer-sponsored coverage, or for individuals whose income is below these levels but

are lawfully present non-citizens ineligible for Medicaid. For those States that have expanded Medicaid coverage under section 1902(a)(10)(A)(i)(VIII) of the Social Security Act (the Act), the lower income threshold for BHP eligibility is effectively 138 percent due to the application of a required 5 percent income disregard in determining the upper limits of Medicaid income eligibility (section 1902(e)(14)(I) of the Act).

A BHP is another option for States to provide affordable health benefits to individuals with incomes in the ranges described above. States may find a BHP a useful option for several reasons, including the ability to potentially coordinate standard health plans in the BHP with their Medicaid managed care plans, or to potentially reduce the costs to individuals by lowering premiums or cost-sharing requirements.

Federal funding for a BHP under section 1331(d)(3)(A) of the ACA is based on the amount of the Federal premium tax credit (PTC) allowed and payments to cover required cost-sharing reductions (CSRs) that would have been provided for the fiscal year to eligible individuals enrolled in BHP standard health plans in the State if such eligible individuals were allowed to enroll in a qualified health plan (QHP) through Health Insurance Exchanges (Exchanges). These funds are paid to trusts established by the States and dedicated to the BHP, and the States then administer the payments to standard health plans within the BHP.

In the March 12, 2014, **Federal Register** (79 FR 14111), we published a final rule entitled the ''Basic Health Program: State Administration of Basic Health Programs; Eligibility and Enrollment in Standard Health Plans; Essential Health Benefits in Standard Health Plans; Performance Standards for Basic Health Programs; Premium and Cost Sharing for Basic Health Programs; Federal Funding Process; Trust Fund and Financial Integrity'' (hereinafter referred to as the BHP final rule) implementing section 1331 of the ACA, which governs the establishment of BHPs. The BHP final rule established the standards for State and Federal administration of BHPs, including provisions regarding eligibility and enrollment, benefits, cost-sharing requirements and oversight activities. While the BHP final rule codified the overall statutory requirements and basic procedural framework for the funding methodology, it does not contain the specific information necessary to determine Federal payments. We anticipated that the methodology would be based on data and assumptions that would reflect ongoing operations and experience of BHPs, as well as the operation of the Exchanges. For this reason, the BHP final rule indicated that the development and publication of the funding methodology, including any data sources, would be addressed in a separate annual BHP Payment Notice.

In the BHP final rule, we specified that the BHP Payment Notice process would include the annual publication of both a proposed and final BHP payment methodology. The proposed BHP Payment Notice would be published in the **Federal Register** each October, 2 years prior to the applicable program year, and would describe the proposed funding methodology for the relevant BHP year,[1] including how the Secretary of the Department of Health and Human Services (the Secretary) considered the factors specified in section 1331(d)(3) of the ACA, along with the proposed data sources used to determine the Federal BHP payment rates for the applicable program year. The final BHP Payment Notice would be published in the **Federal Register** in February, and would include the final BHP payment methodology, as well as the Federal BHP payment rates for the applicable BHP program year.[2] For example, payment rates in the final BHP Payment Notice published in February 2015 applied to BHP program year 2016, beginning in January 2016. As discussed in section II.D. of this proposed rule, and as referenced in 42 CFR 600.610(b)(2), State data needed to calculate the Federal BHP payment rates for the final BHP Payment Notice must be submitted to CMS.

As described in the BHP final rule, once the final methodology for the applicable program year has been published, we will generally make modifications to the BHP funding methodology on a prospective basis, with limited exceptions. The BHP final rule provided that retrospective adjustments to the State's BHP payment amount may occur to the extent that the prevailing BHP funding methodology for a given program year permits adjustments to a State's Federal BHP payment amount due to insufficient data for prospective determination of the relevant factors specified in the applicable final BHP Payment Notice. For example, the population health factor adjustment described in section II.D.3. of this proposed rule allows for a retrospective adjustment (at the State's option) to account for the impact that BHP may have had on the risk pool and QHP premiums in the Exchange. Additional adjustments could be made to the payment rates to correct errors in applying the methodology (such as mathematical errors).

Under section 1331(d)(3)(ii) of the ACA, the funding methodology and payment rates are expressed as an amount per eligible individual enrolled in a BHP standard health plan (BHP enrollee) for each month of enrollment. These payment rates may vary based on categories or classes of enrollees. Actual payment to a State would depend on the actual enrollment of individuals found eligible in accordance with a State's certified BHP Blueprint eligibility and verification methodologies in coverage through the State BHP. A State that is approved to implement a BHP must provide data showing quarterly enrollment of eligible individuals in the various Federal BHP payment rate cells. Such data must include the following:

- Personal identifier;
- Date of birth;
- County of residence;
- Indian status;
- Family size;
- Household income;
- Number of persons in household enrolled in BHP;
- Family identifier;
- Months of coverage;
- Plan information; and
- Any other data required by CMS to properly calculate the payment.

B. The 2018 Final Administrative Order and 2019 Through 2022 Payment Methodologies

On October 11, 2017, the Attorney General of the United States provided the Department of Health and Human Services and the Department of the Treasury (the Departments) with a legal opinion indicating that the permanent appropriation at 31 U.S.C. 1324, from which the Departments had historically drawn funds to make CSR payments, cannot be used to fund CSR payments to insurers. In light of this opinion—and in the absence of any other appropriation that could be used to fund CSR payments—the Department of Health and Human Services directed CMS to discontinue CSR payments to issuers until Congress provides for an appropriation. In the absence of a Congressional appropriation for Federal funding for CSR payments, we cannot provide States with a Federal payment attributable to CSRs that would have been paid on behalf of BHP enrollees had they been enrolled in a QHP through an Exchange.

[1] BHP program years span from January 1 through December 31.

[2] In section III. of this proposed rule, we propose to modify the publication schedule of the BHP payment notices.

Starting with the payment for the first quarter (Q1) of 2018 (which began on January 1, 2018), we stopped paying the CSR component of the quarterly BHP payments to New York and Minnesota (the States), the only States operating a BHP in 2018. The States then sued the Secretary for declaratory and injunctive relief in the United States District Court for the Southern District of New York. *See New York* v. *U.S. Dep't of Health & Human Servs.,* No. 18–cv–00683 (RJS) (S.D.N.Y. filed Jan. 26, 2018). On May 2, 2018, the parties filed a stipulation requesting a stay of the litigation so that HHS could issue an administrative order revising the 2018 BHP payment methodology. As a result of the stipulation, the court dismissed the BHP litigation. On July 6, 2018, we issued a Draft Administrative Order on which New York and Minnesota had an opportunity to comment. Each State submitted comments. We considered the States' comments and issued a Final Administrative Order on August 24, 2018 [3] (Final Administrative Order) setting forth the payment methodology that would apply to the 2018 BHP program year.

In the November 5, 2019 **Federal Register** (84 FR 59529) (hereinafter referred to as the November 2019 final BHP Payment Notice), we finalized the payment methodologies for BHP program years 2019 and 2020. The 2019 payment methodology is the same payment methodology described in the Final Administrative Order. The 2020 payment methodology is the same methodology as the 2019 payment methodology with one additional adjustment to account for the impact of individuals selecting different metal tier level plans in the Exchange, referred to as the Metal Tier Selection Factor (MTSF).[4] In the August 13, 2020 **Federal Register** (85 FR 49264 through 49280) (hereinafter referred to as the August 2020 final BHP Payment Notice), we finalized the payment methodology for BHP program year 2021. The 2021 payment methodology is the same methodology as the 2020 payment methodology, with one adjustment to the income reconciliation factor (IRF). In the July 7, 2021 **Federal Register** (86 FR 35615) (hereinafter referred to as the July 2021 final BHP Payment Notice), we finalized the payment methodology for BHP program year 2022. The 2022 payment methodology is the same as the 2021 payment methodology, which the exception of the removal of the Metal Tier Selection Factor. The 2023 proposed payment methodology is the same as the 2022 payment methodology, except for the addition of a factor to account for a State operating a BHP and implementing an approved State Innovation Waiver under section 1332 of the ACA (referred to as a section 1332 waiver throughout this proposed payment methodology). In section III of this proposed rule, we also propose regulation changes related to the publication schedule of the BHP payment notices and recalculation of States' Federal payments due to mathematical errors.

II. Provisions of the Proposed Rule

A. Overview of the Funding Methodology and Calculation of the Payment Amount

Section 1331(d)(3) of the ACA directs the Secretary to consider several factors when determining the Federal BHP payment amount, which, as specified in the statute, must equal 95 percent of the value of the PTC allowed and CSRs that would have been paid on behalf of BHP enrollees had they enrolled in a QHP through an Exchange. Thus, the BHP funding methodology is designed to calculate the PTC and CSRs as consistently as possible and in general alignment with the methodology used by Exchanges to calculate advance payments of the PTC (APTC) and CSRs, and the methodology used to calculate PTC under 26 U.S.C. 36B, for the tax year. In general, we have relied on values for factors in the payment methodology specified in statute or other regulations as available, and have developed values for other factors not otherwise specified in statute, or previously calculated in other regulations, to simulate the values of the PTC allowed and CSRs that would have been paid on behalf of BHP enrollees if they had enrolled in QHPs offered through an Exchange. In accordance with section 1331(d)(3)(A)(iii) of the ACA, the final funding methodology must be certified by the Chief Actuary of CMS, in consultation with the Office of Tax Analysis (OTA) of the Department of the Treasury, as having met the requirements of section 1331(d)(3)(A)(ii) of the ACA.

Section 1331(d)(3)(A)(ii) of the ACA specifies that the payment determination shall take into account all relevant factors necessary to determine the value of the PTC allowed and CSRs that would have been paid on behalf of eligible individuals, including but not limited to, the age and income of the enrollee, whether the enrollment is for self-only or family coverage, geographic differences in average spending for health care across rating areas, the health status of the enrollee for purposes of determining risk adjustment payments and reinsurance payments that would have been made if the enrollee had enrolled in a QHP through an Exchange, and whether any reconciliation of APTC and CSR would have occurred if the enrollee had been so enrolled. Under all previous payment methodologies, the total Federal BHP payment amount has been calculated using multiple rate cells in each State. Each rate cell represents a unique combination of age range (if applicable), geographic area, coverage category (for example, self-only or two-adult coverage through the BHP), household size, and income range as a percentage of FPL, and there is a distinct rate cell for individuals in each coverage category within a particular age range who reside in a specific geographic area and are in households of the same size and income range. The BHP payment rates developed also are consistent with the State's rules on age rating. Thus, in the case of a State that does not use age as a rating factor on an Exchange, the BHP payment rates would not vary by age.

Under the methodology finalized in the July 2021 final BHP Payment Notice, the rate for each rate cell is calculated in 2 parts. The first part is equal to 95 percent of the estimated PTC that would have been allowed if a BHP enrollee in that rate cell had instead enrolled in a QHP in an Exchange. The second part is equal to 95 percent of the estimated CSR payment that would have been made if a BHP enrollee in that rate cell had instead enrolled in a QHP in an Exchange. These two parts are added together and the total rate for that rate cell would be equal to the sum of the PTC and CSR rates. As noted in the July 2021 final BHP Payment Notice, we currently assign a value of zero to the CSR portion of the BHP payment rate calculation, because there is presently no available appropriation from which we can make the CSR portion of any BHP payment. We seek comment on the following proposals.

We propose that Equation (1) would be used to calculate the estimated PTC for eligible individuals enrolled in the BHP in each rate cell. We note that throughout this proposed rule, when we refer to enrollees and enrollment data, we mean data regarding individuals who are enrolled in the BHP who have been found eligible for the BHP using

[3] *https://www.medicaid.gov/sites/default/files/2019-11/final-admin-order-2018-revised-payment-methodology.pdf.*

[4] ''Metal tiers'' refer to the different actuarial value plan levels offered on the Exchanges. Bronze-level plans generally must provide 60 percent actuarial value; silver-level 70 percent actuarial value; gold-level 80 percent actuarial value; and platinum-level 90 percent actuarial value. See 45 CFR 156.140.

the eligibility and verification requirements that are applicable in the State's most recent certified Blueprint. By applying the equations separately to rate cells based on age (if applicable), income and other factors, we effectively take those factors into account in the calculation. In addition, the equations reflect the estimated experience of individuals in each rate cell if enrolled in coverage through an Exchange, taking into account additional relevant variables. Each of the variables in the equations is defined in this section, and further detail is provided later in this section of this proposed rule. In addition, we describe in Equation (2a) and Equation (2b) (below) how we propose to calculate the adjusted reference premium that is used in Equation (1).

Equation 1: Estimated PTC by Rate Cell

We propose that the estimated PTC, on a per enrollee basis, would continue to be calculated for each rate cell for each State based on age range (if applicable), geographic area, coverage category, household size, and income range. The PTC portion of the rate would be calculated in a manner consistent with the methodology used to calculate the PTC for persons enrolled in a QHP as defined in 26 CFR 1.36B–3, with five adjustments. First, the PTC portion of the rate for each rate cell would represent the mean, or average, expected PTC that would be paid on behalf of all persons in the rate cell, rather than being calculated for each individual enrollee. Second, the reference premium (RP) (described in section II.D.1. of this proposed rule) used to calculate the PTC would be adjusted for the BHP population health status, and in the case of a State that elects to use 2022 premiums for the basis of the BHP Federal payment, for the projected change in the premium from 2022 to 2023, to which the rates announced in the final payment methodology would apply. These adjustments are described in Equation (2a) and Equation (2b). Third, the PTC would be adjusted prospectively to reflect the mean, or average, net expected impact of income reconciliation on the combination of all persons enrolled in the BHP; this adjustment, the IRF, as described in section II.D.6. of this proposed rule, would account for the impact on the PTC that would have occurred had such reconciliation been performed. Finally, the rate is multiplied by 95 percent, consistent with section 1331(d)(3)(A)(i) of the ACA. We note that in the situation where the average contribution amount of an enrollee would exceed the adjusted reference premium, we would calculate the PTC to be equal to 0 and would not allow the value of the PTC to be negative.

We propose using Equation (1) to calculate the PTC rate, consistent with the methodology described above:

$$\textbf{Equation (1):}\ PTC_{a,g,c,h,i} = \left[ARP_{a,g,c} - \frac{\sum_j I_{h,i,j} \times PTCF_{h,i,j}}{n}\right] \times IRF \times 95\%$$

$PTC_{a,g,c,h,i}$ = Premium tax credit portion of BHP payment rate
a = Age range
g = Geographic area
c = Coverage status (self-only or applicable category of family coverage) obtained through BHP
h = Household size
i = Income range (as percentage of FPL)
$ARP_{a,g,c}$ = Adjusted reference premium
$I_{h,i,j}$ = Income (in dollars per month) at each 1 percentage-point increment of FPL
j = *jth* percentage-point increment FPL
n = Number of income increments used to calculate the mean PTC
$PTCF_{h,i,j}$ = Premium tax credit formula percentage
IRF = Income reconciliation factor

Equation (2a) and Equation (2b): Adjusted Reference Premium Variable (used in Equation 1)

As part of the calculations for the PTC component, we propose to continue to calculate the value of the adjusted reference premium as described below. Consistent with the existing approach, we are proposing to allow States to choose between using the actual current year premiums or the prior year's premiums multiplied by the premium trend factor (PTF) (as described in section II.E. of this proposed rule). Below we describe how we would continue to calculate the adjusted reference premium under each option.

In the case of a State that elected to use the reference premium (RP) based on the current program year (for example, 2023 premiums for the 2023 program year), we propose to calculate the value of the adjusted reference premium as specified in Equation (2a). The adjusted reference premium will be equal to the RP, which would be based on the second lowest cost silver plan premium in the applicable program year, multiplied by the BHP population health factor (PHF) (described in section II.D.3. of this proposed rule), which would reflect the projected impact that enrolling BHP-eligible individuals in QHPs through an Exchange would have had on the average QHP premium, and multiplied by the PAF (described in section II.D.2. of this proposed rule), which would account for the change in silver-level premiums due to the discontinuance of CSR payments. We also propose to multiply this by the section 1332 waiver factor (WF) (described in section II.D.7 of this proposed rule), as applicable.

$$\textbf{Equation (2a):}\ ARP_{a,g,c} = RP_{a,g,c} \times PHF \times PAF \times WF_g$$

$ARP_{a,g,c}$ = Adjusted reference premium
a = Age range
g = Geographic area
c = Coverage status (self-only or applicable category of family coverage) obtained through BHP
$RP_{a,g,c}$ = Reference premium
PHF = Population health factor
PAF = Premium adjustment factor
WF_g = Section 1332 waiver factor

In the case of a State that elected to use the RP based on the prior program year (for example, 2022 premiums for the 2023 program year, as described in more detail in section II.E. of this proposed rule), we propose to calculate the value of the adjusted reference premium as specified in Equation (2b). The adjusted reference premium will be equal to the RP, which would be based on the second lowest cost silver plan premium in 2022, multiplied by the BHP PHF (described in section II.D.3. of this proposed rule), which would reflect the projected impact that enrolling BHP-eligible individuals in QHPs on an Exchange would have had on the average QHP premium, multiplied by

the PAF (described in section II.D.2. of this proposed rule), which would account for the change in silver-level premiums due to the discontinuance of CSR payments, and multiplied by the PTF (described in section II.E. of this proposed rule), which would reflect the projected change in the premium level between 2022 and 2023. We also propose to multiply this by the WF (described in section II.D.7. of this proposed rule).

$$\textbf{Equation (2b):}\ ARP_{a,g,c} = RP_{a,g,c} \times PHF \times PAF \times PTF \times WF_g$$

$ARP_{a,g,c}$ = Adjusted reference premium
a = Age range
g = Geographic area
c = Coverage status (self-only or applicable category of family coverage) obtained through BHP
$RP_{a,g,c}$ = Reference premium
PHF = Population health factor
PAF = Premium adjustment factor
PTF = Premium trend factor
WF_g = Section 1332 waiver factor

Equation 3: Determination of Total Monthly Payment for BHP Enrollees in Each Rate Cell

In general, the rate for each rate cell would be multiplied by the number of BHP enrollees in that cell (that is, the number of enrollees that meet the criteria for each rate cell) to calculate the total monthly BHP payment. This calculation is shown in Equation (3).

$$\textbf{Equation (3):}\ PMT = \sum \left[(PTC_{a,g,c,h,i} + CSR_{a,g,c,h,i}) \times E_{a,g,c,h,i} \right]$$

PMT = Total monthly BHP payment
$PTC_{a,g,c,h,i}$ = Premium tax credit portion of BHP payment rate
$CSR_{a,g,c,h,i}$ = Cost sharing reduction portion of BHP payment rate
$E_{a,g,c,h,i}$ = Number of BHP enrollees
a = Age range
g = Geographic area
c = Coverage status (self-only or applicable category of family coverage) obtained through BHP
h = Household size
i = Income range (as percentage of FPL)

In this equation, we would assign a value of zero to the CSR part of the BHP payment rate calculation ($CSR_{a,g,c,h,i}$) because there is presently no available appropriation from which we can make the CSR portion of any BHP payment. In the event that an appropriation for CSR payments for 2023 is made, we would determine whether and how to modify the CSR part of the BHP payment rate calculation ($CSR_{a,g,c,h,i}$) or the PAF in the payment methodology.

B. Federal BHP Payment Rate Cells

Consistent with the previous payment methodologies, we propose that a State implementing a BHP will provide us an estimate of the number of BHP enrollees it projects will enroll in the upcoming BHP program quarter, by applicable rate cell, prior to the first quarter and each subsequent quarter of program operations until actual enrollment data is available. Upon our approval of such estimates as reasonable, we will use those estimates to calculate the prospective payment for the first and subsequent quarters of program operation until the State provides us with actual enrollment data for those periods. The actual enrollment data is required to calculate the final BHP payment amount and make any necessary reconciliation adjustments to the prior quarters' prospective payment amounts due to differences between projected and actual enrollment. Subsequent quarterly deposits to the State's trust fund would be based on the most recent actual enrollment data submitted to us. Actual enrollment data must be based on individuals enrolled for the quarter who the State found eligible and whose eligibility was verified using eligibility and verification requirements as agreed to by the State in its applicable BHP Blueprint for the quarter that enrollment data is submitted. Procedures will ensure that Federal payments to a State reflect actual BHP enrollment during a year, within each applicable category, and prospectively determined Federal payment rates for each category of BHP enrollment, with such categories defined in terms of age range (if applicable), geographic area, coverage status, household size, and income range, as explained above.

We propose requiring the use of certain rate cells as part of the proposed methodology. For each State, we propose using rate cells that separate the BHP population into separate cells based on the five factors described as follows:

Factor 1—Age: We propose to continue separating enrollees into rate cells by age (if applicable), using the following age ranges that capture the widest variations in premiums under HHS's Default Age Curve: [5]

- Ages 0–20.
- Ages 21–34.
- Ages 35–44.
- Ages 45–54.
- Ages 55–64.

This proposed provision is unchanged from the current methodology.[6]

Factor 2—Geographic area: For each State, we propose separating enrollees into rate cells by geographic areas within which a single RP is charged by QHPs offered through the State's Exchange. Multiple, non-contiguous geographic areas would be incorporated within a single cell, so long as those areas share a common RP.[7] This

[5] This curve is used to implement the ACA's 3:1 limit on age-rating in States that do not create an alternative rate structure to comply with that limit. The curve applies to all individual market plans, both within and outside the Exchange. The age bands capture the principal allowed age-based variations in premiums as permitted by this curve. The default age curve was updated for plan or policy years beginning on or after January 1, 2018 to include different age rating factors between children 0–14 and for persons at each age between 15 and 20. More information is available at *https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Market-Reforms/Downloads/StateSpecAgeCrv053117.pdf*. Both children and adults under age 21 are charged the same premium. For adults age 21–64, the age bands in this notice divide the total age-based premium variation into the three most equally-sized ranges (defining size by the ratio between the highest and lowest premiums within the band) that are consistent with the age-bands used for risk-adjustment purposes in the HHS-Developed Risk Adjustment Model. For such age bands, see HHS-Developed Risk Adjustment Model Algorithm ''Do It Yourself (DIY)'' Software Instructions for the 2018 Benefit Year, April 4, 2019 Update, *https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Updated-CY2018-DIY-instructions.pdf*.

[6] In this document, references to the ''current methodology'' refer to the 2022 program year methodology as outlined in the 2022 final BHP Payment Notice.

[7] For example, a cell within a particular State might refer to ''County Group 1,'' ''County Group 2,'' etc., and a table for the State would list all the counties included in each such group. These geographic areas are consistent with the geographic areas established under the 2014 Market Reform Rules. They also reflect the service area requirements applicable to QHPs, as described in 45 CFR 155.1055, except that service areas smaller

Continued

proposed provision is also unchanged from the current methodology.

Factor 3—Coverage status: We propose to continue separating enrollees into rate cells by coverage status, reflecting whether an individual is enrolled in self-only coverage or persons are enrolled in family coverage through the BHP, as provided in section 1331(d)(3)(A)(ii) of the ACA. Among individuals enrolled in family coverage through the BHP, separate rate cells, as explained below, would apply based on whether such coverage involves two adults alone or whether it involves children. This proposed provision is unchanged from the current methodology.

Factor 4—Household size: We propose to continue the current methods for separating enrollees into rate cells by household size that States use to determine BHP enrollees' household income as a percentage of the FPL under § 600.320 (Determination of eligibility for and enrollment in a standard health plan). We propose to require separate rate cells for several specific household sizes. For each additional member above the largest specified size, we propose to publish instructions for how we would develop additional rate cells and calculate an appropriate payment rate based on data for the rate cell with the closest specified household size. We propose to publish separate rate cells for household sizes of 1 through 10. This proposed provision is unchanged from the current methodology.

Factor 5—Household Income: For households of each applicable size, we propose to continue the current methods for creating separate rate cells by income range, as a percentage of FPL. The PTC that a person would receive if enrolled in a QHP through an Exchange varies by household income, both in level and as a ratio to the FPL. Thus, we propose that separate rate cells would be used to calculate Federal BHP payment rates to reflect different bands of income measured as a percentage of FPL. We propose using the following income ranges, measured as a percentage of the FPL:

- 0 to 50 percent of the FPL.
- 51 to 100 percent of the FPL.
- 101 to 138 percent of the FPL.[8]
- 139 to 150 percent of the FPL.
- 151 to 175 percent of the FPL.
- 176 to 200 percent of the FPL.

This proposed provision is unchanged from the current methodology.

These rate cells would be used only to calculate the Federal BHP payment amount. A State implementing a BHP would not be required to use these rate cells or any of the factors in these rate cells as part of the State payment to the standard health plans participating in the BHP or to help define BHP enrollees' covered benefits, premium costs, or out-of-pocket cost-sharing levels.

Consistent with the current methodology, we propose using averages to define Federal payment rates, both for income ranges and age ranges (if applicable), rather than varying such rates to correspond to each individual BHP enrollee's age (if applicable) and income level. We believe that the proposed approach will increase the administrative feasibility of making Federal BHP payments and reduce the likelihood of inadvertently erroneous payments resulting from highly complex methodologies. We also believe this approach should not significantly change Federal payment amounts since, within applicable ranges, the BHP-eligible population is distributed relatively evenly.

The number of factors contributing to rate cells, when combined, can result in over 350,000 rate cells, which can increase the complexity when generating quarterly payment amounts. In future years, and in the interest of administrative simplification, we will consider whether to combine or eliminate certain rate cells.

C. Sources and State Data Considerations

To the extent possible, unless otherwise provided, we intend to continue to use data submitted to the Federal government by QHP issuers seeking to offer coverage through the Exchange in the relevant BHP State to perform the calculations that determine Federal BHP payment cell rates.

States operating a State Exchange in the individual market, however, must provide certain data, including premiums for second lowest cost silver plans, by geographic area, for CMS to calculate the Federal BHP payment rates in those States. We propose that States operating BHPs interested in obtaining the applicable 2023 program year Federal BHP payment rates for its State must submit such data accurately, completely, and as specified by CMS, by no later than October 15, 2022. If additional State data (that is, in addition to the second lowest cost silver plan premium data) are needed to determine the Federal BHP payment rate, such data must be submitted in a timely manner, and in a format specified by us to support the development and timely release of annual BHP Payment Methodologies. The specifications for data collection to support the development of BHP payment rates are published in CMS guidance and are available on the Basic Health Program page of Medicaid.gov, *https://www.medicaid.gov/sites/default/files/2019-11/premium-data-collection-tool.zip.*

States operating a BHP must submit enrollment data to us on a quarterly basis and should be technologically prepared to begin submitting data at the start of their BHP, starting with the beginning of the first program year. This differs from the enrollment estimates used to calculate the initial BHP payment, which States would generally submit to CMS 60 days before the start of the first quarter of the program start date. This requirement is necessary for us to implement the payment methodology that is tied to a quarterly reconciliation based on actual enrollment data.

We propose to continue the policy first adopted in the 2016 final BHP Payment Methodology that in States that have BHP enrollees who do not file Federal tax returns (non-filers), the State must develop a methodology to determine the enrollees' household income and household size consistently with Exchange requirements.[9] The State must submit this methodology to us at the time of their Blueprint submission. We reserve the right to approve or disapprove the State's methodology to determine household income and household size for non-filers if the household composition and/or household income resulting from application of the methodology are different from what typically would be expected to result if the individual or head of household in the family were to file a tax return. States currently operating a BHP that wish to change the methodology for non-filers must submit a revised Blueprint outlining the revisions to its methodology, consistent with § 600.125.

In addition, as the Federal payments are determined quarterly and the enrollment data is required to be submitted by the States to us quarterly, we propose that the quarterly payment be based on the characteristics of the enrollee at the beginning of the quarter (or their first month of enrollment in the BHP in each quarter). Thus, if an enrollee were to experience a change in county of residence, household income,

than counties are addressed as explained in this notice.

[8] The three lowest income ranges would be limited to lawfully present immigrants who are ineligible for Medicaid because of immigration status.

[9] See 81 FR at 10097.

household size, or other factors related to the BHP payment determination during the quarter, the payment for the quarter would be based on the data as of the beginning of the quarter (or their first month of enrollment in the BHP in the applicable quarter). Payments would still be made only for months that the person is enrolled in and eligible for the BHP. We do not anticipate that this would have a significant effect on the Federal BHP payment. The States must maintain data that is consistent with CMS' verification requirements, including auditable records for each individual enrolled, indicating an eligibility determination and a determination of income and other criteria relevant to the payment methodology as of the beginning of each quarter.

Consistent with § 600.610 (Secretarial determination of BHP payment amount), the State is required to submit certain data in accordance with this notice. We require that this data be collected and validated by States operating a BHP, and that this data be submitted to CMS.

D. Discussion of Specific Variables Used in Payment Equations

1. Reference Premium (RP)

To calculate the estimated PTC that would be allowed if BHP-eligible individuals enrolled in QHPs through an Exchange, we must calculate a RP because the PTC is based, in part, on the premiums for the applicable second lowest cost silver plan as explained in section II.D.5. of this proposed rule, regarding the premium tax credit formula (PTCF). The proposed method is unchanged from the current methodology except to update the reference years, and to provide additional methodological details to simplify calculations and to deal with potential ambiguities. Accordingly, for the purposes of calculating the BHP payment rates, the RP, in accordance with 26 U.S.C. 36B(b)(3)(C), is defined as the adjusted monthly premium for an applicable second lowest cost silver plan. The applicable second lowest cost silver plan is defined in 26 U.S.C. 36B(b)(3)(B) as the second lowest cost silver plan of the individual market in the rating area in which the taxpayer resides that is offered through the same Exchange. We propose to use the adjusted monthly premium for an applicable second lowest cost silver plan in the applicable program year (2023) as the RP (except in the case of a State that elects to use the prior plan year's premium as the basis for the Federal BHP payment for 2023, as described in section II.E. of this proposed rule).

The RP would be the premium applicable to non-tobacco users. This is consistent with the provision in 26 U.S.C. 36B(b)(3)(C) that bases the PTC on premiums that are adjusted for age alone, without regard to tobacco use, even for States that allow insurers to vary premiums based on tobacco use in accordance with 42 U.S.C. 300gg(a)(1)(A)(iv).

Consistent with the policy set forth in 26 CFR 1.36B–3(f)(7), to calculate the PTC for those enrolled in a QHP through an Exchange, we propose not to update the payment methodology, and subsequently the Federal BHP payment rates, in the event that the second lowest cost silver plan used as the RP, or the lowest cost silver plan, changes (that is, terminates or closes enrollment during the year).

The applicable second lowest cost silver plan premium will be included in the BHP payment methodology by age range (if applicable), geographic area, and self-only or applicable category of family coverage obtained through the BHP.

We note that the choice of the second lowest cost silver plan for calculating BHP payments would rely on several simplifying assumptions in its selection. For the purposes of determining the second lowest cost silver plan for calculating PTC for a person enrolled in a QHP through an Exchange, the applicable plan may differ for various reasons. For example, a different second lowest cost silver plan may apply to a family consisting of two adults, their child, and their niece than to a family with two adults and their two children, because one or more QHPs in the family's geographic area might not offer family coverage that includes the niece. We believe that it would not be possible to replicate such variations for calculating the BHP payment and believe that in the aggregate, they would not result in a significant difference in the payment. Thus, we propose to use the second lowest cost silver plan available to any enrollee for a given age, geographic area, and coverage category.

This choice of RP relies on an assumption about enrollment in the Exchanges. In the payment methodologies for program years 2015 through 2019, we had assumed that all persons enrolled in the BHP would have elected to enroll in a silver level plan if they had instead enrolled in a QHP through an Exchange (and that the QHP premium would not be lower than the value of the PTC). In the November 2019 final BHP Payment Notice, we continued to use the second-lowest cost silver plan premium as the RP, but for the 2020 payments we changed the assumption about which metal tier plans enrollees would choose, by adding the MTSF. In the 2021 payment methodology, we continued to apply the MTSF. In the final 2022 payment methodology, we removed the MTSF. We propose to continue the approach taken in the final 2022 payment methodology and not apply the MTSF in this proposed 2023 payment methodology.

We do not believe it is appropriate to adjust the payment for an assumption that some BHP enrollees would not have enrolled in QHPs for purposes of calculating the BHP payment rates, since section 1331(d)(3)(A)(ii) of the ACA requires the calculation of such rates as if the enrollee had enrolled in a QHP through an Exchange.

The applicable age bracket (if any) will be one dimension of each rate cell. We propose to assume a uniform distribution of ages and estimate the average premium amount within each rate cell. We believe that assuming a uniform distribution of ages within these ranges is a reasonable approach to determining the total monthly payment for BHP enrollees. We also believe this approach would avoid potential inaccuracies that could otherwise occur in relatively small payment cells if age distribution were measured by the number of persons eligible or enrolled. We have used this approach starting since the 2015 program year. We believe that other approaches (than assuming uniform age distribution) could skew the calculation of the payment rates for each rate cell. Given the number of rate cells and the fact that in some cases the number of enrollees in a cell may be small (particularly for less common family sizes, smaller counties, etc.), we believe that using estimates of age distribution or historical data could skew results. We also believe a uniform age distribution is reasonably simple to use and avoids increasing burden on States to report data to CMS. We have found this approach reliable to date.

We propose to use geographic areas based on the rating areas used in the Exchanges. We propose to define each geographic area so that the RP is the same throughout the geographic area. When the RP varies within a rating area, we propose defining geographic areas as aggregations of counties with the same RP. Although plans are allowed to serve geographic areas smaller than counties after obtaining our approval, we propose that no geographic area, for purposes of defining BHP payment rate cells, will be smaller than a county. We believe that the benefits of simplifying both the

calculation of BHP payment rates and the operation of the BHP justify any impacts on Federal payment levels.

Finally, in terms of the coverage category, we propose that Federal payment rates only recognize self-only and two-adult coverage, with exceptions that account for children who are potentially eligible for the BHP. First, in States that set the upper income threshold for children's Medicaid and CHIP eligibility below 200 percent of FPL (based on modified adjusted gross income (MAGI)), children in households with incomes between that threshold and 200 percent of FPL would be potentially eligible for the BHP. Currently, the only States in this category are Idaho and North Dakota.[10] Second, the BHP would include lawfully present immigrant children with household incomes at or below 200 percent of FPL in States that have not exercised the option under sections 1903(v)(4)(A)(ii) and 2107(e)(1)(E) of the Act to qualify all otherwise eligible, lawfully present immigrant children for Medicaid and CHIP. States that fall within these exceptions would be identified based on their Medicaid and CHIP State Plans, and the rate cells would include appropriate categories of BHP family coverage for children. For example, Idaho's Medicaid and CHIP eligibility is limited to families with MAGI at or below 185 percent FPL. If Idaho implemented a BHP, Idaho children with household incomes between 185 and 200 percent could qualify. In other States, BHP eligibility will generally be restricted to adults, since children who are citizens or lawfully present immigrants and live in households with incomes at or below 200 percent of FPL will qualify for Medicaid or CHIP, and thus be ineligible for a BHP under section 1331(e)(1)(C) of the ACA, which limits a BHP to individuals who are ineligible for minimum essential coverage (as defined in 26 U.S.C. 5000A(f)).

2. Premium Adjustment Factor (PAF)

The PAF considers the premium increases in other States that took effect after we discontinued payments to issuers for CSRs provided to enrollees in QHPs offered through Exchanges. Despite the discontinuance of Federal payments for CSRs, QHP issuers are required to provide CSRs to eligible enrollees. As a result, many QHP issuers increased the silver-level plan premiums to account for those additional costs; adjustments and how those were applied (for example, to only silver-level plans or to all metal tier plans) varied across States. For the States operating BHPs in 2018, the increases in premiums were relatively minor, because the majority of enrollees eligible for CSRs (and all who were eligible for the largest CSRs) were enrolled in the BHP and not in QHPs on the Exchanges, and therefore issuers in BHP States did not significantly raise premiums to cover costs related to HHS not making CSR payments.

In the Final Administrative Order and the 2019 through 2022 final BHP Payment Notices, we incorporated the PAF into the BHP payment methodologies to capture the impact of how other States responded to us ceasing to make CSR payments. We propose to include the PAF in the 2023 payment methodology and to calculate it in the same manner as in the Final Administrative Order. In the event that an appropriation for CSR payments is made for 2023, we would determine whether and how to modify the PAF in the payment methodology.

Under the Final Administrative Order,[11] we calculated the PAF by using information sought from QHP issuers in each State and the District of Columbia, and we determined the premium adjustment that the responding QHP issuers made to each silver level plan in 2018 to account for the discontinuation of CSR payments to QHP issuers. Based on the data collected, we estimated the median adjustment for silver level QHPs nationwide (excluding those in the two BHP States). To the extent that QHP issuers made no adjustment (or the adjustment was zero), this would be counted as zero in determining the median adjustment made to all silver level QHPs nationwide. If the amount of the adjustment was unknown—or we determined that it should be excluded for methodological reasons (for example, the adjustment was negative, an outlier, or unreasonable)—then we did not count the adjustment towards determining the median adjustment.[12] The median adjustment for silver level QHPs is the nationwide median adjustment.

For each of the two BHP States, we determined the median premium adjustment for all silver level QHPs in that State, which we refer to as the State median adjustment. The PAF for each BHP State equaled one plus the nationwide median adjustment divided by one plus the State median adjustment for the BHP State. In other words,

PAF = (1 + Nationwide Median Adjustment) ÷ (1 + State Median Adjustment)

To determine the PAF described above, we sought to collect QHP information from QHP issuers in each State and the District of Columbia to determine the premium adjustment those issuers made to each silver level plan offered through the Exchange in 2018 to account for the end of CSR payments. Specifically, we sought information showing the percentage change that QHP issuers made to the premium for each of their silver level plans to cover benefit expenditures associated with the CSRs, given the lack of CSR payments in 2018. This percentage change was a portion of the overall premium increase from 2017 to 2018.

According to our 2018 records, there were 1,233 silver-level QHPs operating on Exchanges in 2018. Of these 1,233 QHPs, 318 QHPs (25.8 percent) responded to our request for the percentage adjustment applied to silver-level QHP premiums in 2018 to account for the discontinuance of HHS making CSR payments. These 318 QHPs operated in 26 different States, with 10 of those States running State based exchanges (SBEs) (while we requested information only from QHP issuers in States serviced by an FFE, many of those issuers also had QHPs in State Exchanges and submitted information for those States as well). Thirteen of these 318 QHPs were in New York (and none were in Minnesota). Excluding these 13 QHPs from the analysis, the nationwide median adjustment was 20.0 percent. Of the 13 QHPs in New York that responded, the State median adjustment was 1.0 percent. We believe that this is an appropriate adjustment for QHPs in Minnesota, as well, based on the observed changes in New York's QHP premiums in response to the discontinuance of CSR payments (and the operation of the BHP in that State) and our analysis of expected QHP premium adjustments for States with BHPs. We calculated the proposed PAF as (1 + 20%) ÷ (1 + 1%) (or 1.20/1.01), which results in a value of 1.188.

We propose to continue to set the PAF to 1.188 for program year 2023, with one limited exception as described below. We believe that this value for the PAF continues to reasonably account for the increase in silver-level premiums experienced in non-BHP States that took

[10] CMCS. ''State Medicaid, CHIP and BHP Income Eligibility Standards Effective July 1, 2021.''

[11] *https://www.medicaid.gov/sites/default/files/2019-11/final-admin-order-2018-revised-payment-methodology.pdf.*

[12] Some examples of outliers or unreasonable adjustments include (but are not limited to) values over 100 percent (implying the premiums doubled or more because of the adjustment), values more than double the otherwise highest adjustment, or non-numerical entries.

effect after the discontinuance of the CSR payments. We believe that the impact of the increase in silver-level premiums in 2023 can reasonably be expected to be similar to that in 2018, because the discontinuation of CSR payments has not changed. Moreover, we believe that States and QHP issuers have not significantly changed the manner and degree to which they are increasing QHP silver-level premiums to account for the discontinuation of CSR payments since 2018, and we expect the same for 2023.

In addition, the percentage difference between the average second lowest-cost silver level QHP and the bronze-level QHP premiums has not changed significantly since 2018, and we do not expect a significant change for 2023. In 2018, the average second lowest-cost silver level QHP premium was 41.1 percent higher than the average lowest-cost bronze-level QHP premium ($481 and $341, respectively). In 2022, (the latest year for which premiums have been published), the difference was modestly lower; the average second lowest-cost silver-level QHP premium was 33.1 percent higher than the average lowest-cost bronze-level QHP premium ($438 and $329, respectively).[13] In contrast, the average second lowest-cost silver-level QHP premium was only 23.8 percent higher than the average lowest-cost bronze-level QHP premium in 2017 ($359 and $290, respectively).[14] If there were a significant difference in the amounts that QHP issuers were increasing premiums for silver-level QHPs to account for the discontinuation of CSR payments over time, then we would expect the difference between the bronze-level and silver-level QHP premiums to change significantly over time, and that this would be apparent in comparing the lowest-cost bronze-level QHP premium to the second lowest-cost silver-level QHP premium.

We propose to make one limited exception in setting the value of the PAF, all for States in the first year of implementing a BHP. In the case of a State in the first year of implementing a BHP, if the State chooses to use prior year second lowest cost silver plan (SLCSP) premiums to determine the BHP payment (for example, the 2022 premiums for the 2023 program year), we propose to set the value of the PAF to 1.00. In this case, we believe that adjustment to the QHP premiums to account for the discontinuation of CSR payments would be included fully in the prior year premiums. If the State chooses to use the prior year premiums, then no further adjustment would be necessary for the BHP payments; therefore, the value of the PAF would be 1.00.

3. Population Health Factor (PHF)

We propose that the PHF be included in the methodology to account for the potential differences in the average health status between BHP enrollees and persons enrolled through the Exchanges. To the extent that BHP enrollees would have been enrolled through an Exchange in the absence of a BHP in a State, the exclusion of those BHP enrollees in the Exchange may affect the average health status of the overall population and the expected QHP premiums.

We currently do not believe that there is evidence that the BHP population would have better or poorer health status than the Exchange population. At this time, there continues to be a lack of data on the experience in the Exchanges that limits the ability to analyze the potential health differences between these groups of enrollees. More specifically, Exchanges have been in operation since 2014, and two States have operated BHPs since 2015, but data is not available to do the analysis necessary to determine if there are differences in the average health status between BHP and Exchange enrollees. In addition, differences in population health may vary across States. We also do not believe that sufficient data would be available to permit us to make a prospective adjustment to the PHF under § 600.610(c)(2) for the 2023 program year.

Given these analytic challenges and the limited data about Exchange coverage and the characteristics of BHP-eligible consumers, we propose that the PHF continue to be 1.00 for program year 2023.

In previous years BHP payment methodologies, we included an option for States to include a retrospective population health status adjustment. We propose that States be provided with the same option for 2023 to include a retrospective population health status adjustment in the certified methodology, which is subject to our review and approval. This option is described further in section II.F. of this proposed rule. Regardless of whether a State elects to include a retrospective population health status adjustment, we anticipate that, in future years, when additional data becomes available about Exchange coverage and the characteristics of BHP enrollees, we may propose a different PHF.

While the statute requires consideration of risk adjustment payments and reinsurance payments insofar as they would have affected the PTC that would have been allowed for BHP-eligible individuals had they enrolled in QHPs, we are not proposing to require that a BHP's standard health plans receive such payments. As explained in the BHP final rule, BHP standard health plans are not included in the Federally-operated risk adjustment program.[15] Further, standard health plans did not qualify for payments under the transitional reinsurance program established under section 1341 of the ACA for the years the program was operational (2014 through 2016).[16] To the extent that a State operating a BHP determines that, because of the distinctive risk profile of BHP-eligible consumers, BHP standard health plans should be included in mechanisms that share risk with other plans in the State's individual market, the State would need to use other methods for achieving this goal.

4. Household Income (I)

Household income is a significant determinant of the amount of the PTC that is provided for persons enrolled in a QHP through an Exchange. Accordingly, all BHP Payment Methodologies incorporate household income into the calculations of the payment rates through the use of income-based rate cells. We propose defining household income in accordance with the definition in 26 U.S.C. 36B(d)(2)(A) and consistent with the definition in 45 CFR 155.300. Income would be measured relative to the FPL, which is updated periodically in the **Federal Register** by the Secretary under the authority of 42 U.S.C. 9902(2). In our proposed methodology, household size and income as a percentage of FPL would be used as factors in developing the rate cells. We propose using the following income ranges measured as a percentage of FPL:[17]

- 0–50 percent.
- 51–100 percent.

[13] *See* Kaiser Family Foundation, ''Average Marketplace Premiums by Metal Tier, 2018–2021,'' *https://www.kff.org/health-reform/State-indicator/average-marketplace-premiums-by-metal-tier/*.

[14] See Basic Health Program: Federal Funding Methodology for Program Years 2019 and 2020; Final Methodology, 84 FR 59529 at 59532 (November 5, 2019).

[15] See 79 FR at 14131.

[16] See 45 CFR 153.400(a)(2)(iv) (BHP standard health plans are not required to submit reinsurance contributions), 153.20 (definition of ''Reinsurance-eligible plan'' as not including ''health insurance coverage not required to submit reinsurance contributions''), 153.230(a) (reinsurance payments under the national reinsurance parameters are available only for ''Reinsurance-eligible plans'').

[17] These income ranges and this analysis of income apply to the calculation of the PTC.

- 101–138 percent.
- 139–150 percent.
- 151–175 percent.
- 176–200 percent.

We further propose to assume a uniform income distribution for each Federal BHP payment cell. We believe that assuming a uniform income distribution for the income ranges proposed would be reasonably accurate for the purposes of calculating the BHP payment and would avoid potential errors that could result if other sources of data were used to estimate the specific income distribution of persons who are eligible for or enrolled in the BHP within rate cells that may be relatively small.

Thus, when calculating the mean, or average, PTC for a rate cell, we propose to calculate the value of the PTC at each one percentage point interval of the income range for each Federal BHP payment cell and then calculate the average of the PTC across all intervals. This calculation would rely on the PTC formula described in section II.D.5. of this proposed rule.

As the APTC for persons enrolling in QHPs would be calculated during the open enrollment period based on their projected household income for the coverage year, and that income would be measured against the FPL at that time, we propose to adjust the FPL by multiplying the FPL by a projected increase in the CPI–U between the time that the BHP payment rates are calculated and the QHP open enrollment period, if the FPL is expected to be updated during that time. We propose that the projected increase in the CPI–U would be based on the intermediate inflation forecasts from the most recent Old-Age, Survivors, and Disability Insurance (OASDI) and Medicare Trustees Reports.[18]

5. Premium Tax Credit Formula (PTCF)

In Equation 1 described in section II.A.1. of this proposed rule, we propose to use the formula described in 26 U.S.C. 36B(b) to calculate the estimated PTC that would be allowed for a person enrolled in a QHP on an Exchange as part of the BHP payment methodology. This formula is used to determine the contribution amount (the amount of premium that an individual or household theoretically would be required to pay for coverage in a QHP on an Exchange), which is based on (A) the household income; (B) the household income as a percentage of FPL for the family size; and (C) the schedule specified in 26 U.S.C. 36B(b)(3)(A) and shown below.

The difference between the contribution amount and the adjusted monthly premium (that is, the monthly premium adjusted for the age of the enrollee) for the applicable second lowest cost silver plan is the estimated amount of the PTC that would be provided for the enrollee.

The PTC amount allowed for a person enrolled in a QHP through an Exchange is calculated in accordance with the methodology described in 26 U.S.C. 36B(b)(2). The amount is equal to the lesser of the premium for the plan in which the person or household enrolls, or the adjusted premium for the applicable second lowest cost silver plan minus the contribution amount.

The applicable percentage is defined in 26 U.S.C. 36B(b)(3)(A) and 26 CFR 1.36B–3(g) as the percentage that applies to a taxpayer's household income that is within an income tier, increasing on a sliding scale in a linear manner from an initial premium percentage to a final premium percentage. We propose to continue to use applicable percentages to calculate the estimated PTC that would be allowed for a person enrolled in a QHP on an Exchange as part of the BHP payment methodology as part of Equation 1.

The Internal Revenue Service publishes the applicable percentages each year. They are not yet available for 2023, but we propose to apply them to the 2023 payment methodology upon publication.

6. Income Reconciliation Factor (IRF)

For persons who enroll, or enroll a family member, in a QHP through an Exchange for which APTC is paid, a reconciliation is required by 26 U.S.C. 36B(f) following the end of the coverage year. The reconciliation requires the enrolling individual (the taxpayer) to compare the total amount of APTC paid on behalf of the taxpayer or a family member of the taxpayer for the year of coverage to the total amount of PTC allowed for the year of coverage, based on household circumstances shown on the Federal income tax return. If the amount of a taxpayer's PTC exceeds the APTC paid on behalf of the taxpayer, the difference reduces the taxpayer's tax liability for the year of coverage or results in a refund to the extent it exceeds the taxpayer's tax liability. If the APTC exceeds the PTC allowed, the taxpayer must increase his or her tax liability for the year of coverage by the difference, subject to any limitations in statute or regulation.

Section 1331(e)(2) of the ACA specifies that an individual eligible for the BHP may not be treated as a ''qualified individual'' under section 1312 of the ACA who is eligible for enrollment in a QHP offered through an Exchange. We are defining ''eligible'' to mean anyone for whom the State agency or the Exchange assesses or determines, based on the single streamlined application or renewal form, as eligible for enrollment in the BHP. Because APTC is paid only on behalf of individuals enrolled in a QHP, individuals determined or assessed as eligible for a BHP are not eligible for APTC for coverage in the Exchange. Consequently, unlike Exchange enrollees for whom APTC is paid, no reconciliation is required of BHP enrollees, on whom the BHP payment methodology is generally based.

Nonetheless, there may still be differences between a BHP enrollee's household income reported at the beginning of the year and the actual household income for the year. These may include small changes (reflecting changes in hourly wage rates, hours worked per week, and other fluctuations in income during the year) and large changes (reflecting significant changes in employment status, hourly wage rates, or substantial fluctuations in income). There may also be changes in household composition. Thus, we believe that using unadjusted income as reported prior to the BHP program year may result in calculations of estimated PTC that are inconsistent with the actual household incomes of BHP enrollees during the year. Even if the BHP adjusts household income determinations and corresponding claims of Federal payment amounts based on household reports during the year or data from third-party sources, such adjustments may not fully capture the effects of tax reconciliation that BHP enrollees would have experienced had they been enrolled in a QHP through an Exchange with APTC.

Therefore, in accordance with current practice, we propose including in Equation 1 an adjustment, the IRF, that would account for the difference between calculating estimated PTC using: (a) Household income relative to FPL as determined at initial application and potentially revised mid-year under § 600.320, for purposes of determining BHP eligibility and claiming Federal BHP payments; and (b) actual household income relative to FPL for the plan year, as it would be reflected on individual Federal income tax returns. This adjustment would seek

[18] *See* Table IV A1 from the 2020 Annual Report of the Boards of Trustees of the Federal Hospital Insurance and Federal Supplementary Medical Insurance Trust Funds, available at *https://www.cms.gov/files/document/2020-medicare-trustees-report.pdf.*

prospectively to capture the average effect of income reconciliation aggregated across the BHP population had those BHP enrollees been subject to reconciliation after APTC was paid for coverage through QHPs. Consistent with the methodology used in past years, we propose estimating reconciliation effects based on tax data for 2 years, reflecting income and tax unit composition changes over time among BHP-eligible individuals.

OTA maintains a model that combines detailed tax and other data, including Exchange enrollment and PTC claimed, to project Exchange premiums, enrollment, and tax credits. For each enrollee, this model compares the APTC based on household income and family size estimated at the point of enrollment with the PTC based on household income and family size reported at the end of the tax year. The former reflects the determination using enrollee information furnished by the applicant and tax data furnished by the IRS. The latter would reflect the PTC eligibility based on information on the tax return, which would have been determined if the individual had not enrolled in the BHP. Consistent with prior years, we propose to use the ratio of the reconciled PTC to the initial estimation of PTC as the IRF in Equation (1) for estimating the PTC portion of the BHP payment rate.

We believe that it is appropriate to distinguish between the IRF for Medicaid expansion States and non-Expansion States to remove data for those with incomes under 138 percent of FPL for Medicaid expansion States. This is the same approach that we finalized in the 2021 and 2022 final BHP Payment Notices. Therefore, we propose to set the value of the IRF for States that have expanded Medicaid equal to the value of the IRF for incomes between 138 and 200 percent of FPL and the value of the IRF for States that have not expanded Medicaid equal to the value of the IRF for incomes between 100 and 200 percent of FPL. This gives an IRF of 100.66 percent for States that have expanded Medicaid and 101.63 percent for States that have not expanded Medicaid for program year 2023. Both current States operating a BHP have expanded Medicaid eligibility, and therefore we propose an IRF of 100.66 percent.

We propose to use these values for the IRF in Equations (1) for calculating the PTC portion of the BHP payment rate.

7. Section 1332 Waiver Factor (WF)

Section 1332 of the ACA permits States to apply for a waiver from certain ACA requirements to pursue innovative strategies for providing their residents with access to high quality, affordable health insurance coverage while retaining the basic protections of the ACA. Section 1332 of the ACA authorizes the Secretary of HHS and the Secretary of the Treasury (collectively, the Secretaries) to approve a State's request to waive all or any of the following requirements falling under their respective jurisdictions for health insurance coverage within a State for plan years beginning on or after January 1, 2017: (1) Part I of subtitle D of Title I of the ACA (relating to the establishment of QHPs); (2) Part II of subtitle D of Title I of the ACA (relating to consumer choices and insurance competition through Health Benefit Exchanges); (3) Section 1402 of the ACA (relating to reduced cost sharing for individuals enrolling in QHPs); and (4) Sections 36B (relating to refundable credits for coverage under a QHP), 4980H (relating to shared responsibility for employers regarding health coverage), and 5000A (relating to the requirement to maintain minimum essential coverage) of the Internal Revenue Code (Code).

Under section 1332 of the ACA, the Secretaries may exercise their discretion to approve a request for a section 1332 waiver only if the Secretaries determine that the proposal for the section 1332 waiver meets the following four requirements, referred to as the statutory guardrails: (1) The proposal will provide coverage that is at least as comprehensive as coverage defined in section 1302(b) of the ACA and offered through Exchanges established under title I of the ACA, as certified by the Office of the Actuary of CMS, based on sufficient data from the State and from comparable States about their experience with programs created by the ACA and the provisions of the ACA that would be waived; (2) the proposal will provide coverage and cost-sharing protections against excessive out-of-pocket spending that are at least as affordable for the State's residents as would be provided under title I of the ACA; (3) the proposal will provide coverage to at least a comparable number of the State's residents as would be provided under title I of the ACA; and (4) the proposal will not increase the Federal deficit.[19] The Secretaries retain their discretionary authority under section 1332 of the ACA to deny waivers when appropriate given consideration of the application as a whole, even if an application meets the four statutory guardrails. Sixteen (16) States are operating approved section 1332 waivers in plan year 2022.[20]

Section 1332(a)(3) of the ACA directs the Secretaries to pay pass-through funding to the State for the purpose of implementing the State's section 1332 waivers. Under an approved section 1332 waiver, a State may receive pass-through funding associated with the resulting reductions in Federal spending on Exchange financial assistance (PTC, CSRs, and small business tax credits (SBTC)) consistent with the statute and reduced as necessary to ensure deficit neutrality. These payments are made in compliance with the applicable waiver plans, the specific terms and conditions governing the waiver, and accompanying statutory and regulatory requirements. Specifically, section 1332(a)(3) of the ACA provides that pass-through funding shall be paid to States for purposes of implementing the States' waiver plans. The specific impacts of the waivers on premiums and PTCs vary across States and plan years, depending, in part, on the State's approved section 1332 waiver plan and the design of the State's program.[21] 31 CFR 33.122 and 45 CFR 155.1322 specify that pass-through funding amounts will be calculated annually by the Departments for States with approved waivers.[22] Additionally, section 1332(a)(4)(B)(v) of the ACA requires that the Secretaries issue regulations that provide a process for periodic evaluations by the Secretaries of the program under the waiver.[23] As implemented by the Departments, the periodic evaluations include evaluation of pass-through funding and associated reporting and methodologies. Information on the pass-through funding amounts is made available publicly on the CMS website.[24]

[19] See section 1332(b)(1)(A) through (D) of the ACA, 45 CFR 155.1308(f)(3)(iv)(A) through (D), and 31 CFR 33.108(f)(3)(iv)(A) through (D).

[20] See the CMS section 1332 waiver website for information on approved waivers: *https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Section_1332_State_Innovation_Waivers-*.

[21] For example, some State reinsurance programs under a section 1332 waiver have reduced Statewide average QHP premiums by 4 percent to 40 percent compared to what premiums would have been without the waiver. See Data Brief on Section 1332 waivers: State-based reinsurance programs available here *https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/1332-Data-Brief-Aug2021.pdf.*

[22] See section 1332(a)(3) of the ACA. See also Patient Protection and Affordable Care Act; Updating Payment Parameters and Improving Health Insurance Markets for 2022 and Beyond; Final Rule, 86 FR 53412 at 53482–53483 (Sep 27, 2021).

[23] See 31 CFR 33.128 and 45 CFR 155.1328.

[24] See the CMS section 1332 website for information on pass-through funding here: *https://www.cms.gov/CCIIO/Programs-and-Initiatives/*

Continued

With regard to a State that operates a BHP and an approved section 1332 waiver, the Federal BHP program can have an impact on section 1332 waiver pass-through funding for that State. For example, the existence of a Federal BHP program impacts aggregate PTC amounts in the State because BHP moves some individuals, who would otherwise be eligible for PTC, out of Exchange coverage. Similarly, as the section 1332 waiver may impact the benchmark QHP premiums and the PTCs in a State, the waiver may also have an effect on the calculation of Federal BHP payments in a State operating a BHP.

If the section 1332 waiver reduces premiums for eligible enrollees, then this can lead to a reduction in the amount of PTC available for eligible enrollees (in particular, if the second lowest-cost silver QHP premium is reduced). While this may not have an effect on particular subsidized QHP enrollees, as their share of the premium would remain unchanged, it would reduce the amount of Federal outlays for PTC. With respect to a State's approved section 1332 waiver, the amount of Federal pass-through funding would equal the difference between (1) the amount, determined annually by the Secretaries, of PTC under section 36B of the Code, the SBTC under section 45R of the Code, or CSRs under part I of subtitle E of the ACA (collectively referred to as Exchange financial assistance) that individuals and small employers in the State would otherwise be eligible for had the State not received approval for its section 1332 waiver and (2) the amount of Exchange financial assistance that individuals and small employers are eligible for with the approved section 1332 waiver in place. The section 1332 waiver pass-through amount would not be increased to account for any savings or decreases in Federal spending other than the reduction in Exchange financial assistance. This pass-through amount for the section 1332 waiver would be reduced by any net increase in Federal spending or net decrease in Federal revenue if necessary to ensure deficit neutrality. The State must use this pass-through funding only for purposes of implementing the plan associated with the State's approved section 1332 waiver. Therefore, in States that operate only an approved section 1332 waiver, the net expected Federal spending is the same, even though the amount of PTC paid by the Federal government is lower.

However, for a State that operates a BHP and a section 1332 waiver, a reduction in the expected Federal PTC payments due to the operation of the waiver leads directly to a reduction in Federal BHP funding to the State under the current BHP methodology. The amount of PTC and CSRs individuals are eligible for in the Exchange is dependent on the cost of the SLCSP premium, and the cost of the SLCSP premium is the basis for determining the amount of Federal funding for its BHP program. Therefore, a reduction in SLCSP premium due to a section 1332 waiver, also reduces the Federal BHP payment. These reductions may be substantial. For example, in Minnesota in 2021, the State's section 1332 waiver resulted in a State-wide average premium reduction of 21.3 percent compared to without the waiver. This led to a similar reduction in PTC paid, and thus a similar reduction in Federal BHP funding. While the PTC allowed for persons eligible for subsidized coverage in the Exchange is lower with the section 1332 waiver in place, the reduction in premiums means that the net benefit to those individuals has not decreased—rather, Federal funding has been shifted from PTC in part to pass-through payments made to the State.

On January 28, 2021, President Biden issued Executive Order (E.O.) 14009 directing HHS, and the heads of all other executive departments and agencies with authorities and responsibilities related to Medicaid and the ACA, to review all existing regulations, orders, guidance documents, policies, and any other similar agency actions to determine whether such agency actions are inconsistent with the policy set forth in section 1 of E.O. 14009 to protect and strengthen the ACA.[25] As part of this review, we considered the impact of approved section 1332 waivers on Federal BHP funding and vice versa in States that elect to operate both a BHP and an approved section 1332 waiver, including the impact in Minnesota, cited above.

We determined it is appropriate to account for the impact of an approved section 1332 waiver when calculating Federal BHP payments. This proposal is necessary for consistency with E.O. 14009 and this Administration's goal of protecting and strengthening the ACA and making high-quality, affordable health care accessible for every American. We believe that it is appropriate to consider the amount of pass-through funding associated with the section 1332 waiver as part of the PTC for the purpose of determining the BHP payments. As described previously, while the PTC allowed may be reduced under the section 1332 waiver, the benefit to the persons eligible for such subsidized coverage has not decreased. Considering the section 1332 pass-through funding as part of the PTC for purposes of determining the BHP payment also counteracts the reduction in Federal BHP funding for States that lawfully exercise the flexibility Congress provided to implement both of the alternative State programs under sections 1331 and 1332 of the ACA. Therefore, we are proposing to add the section 1332 WF for the 2023 BHP payment methodology. We propose that this factor would be calculated as the ratio of (1) the SLCSP premium that would have been in place without the waiver in place for the plan year to (2) the SLCSP in place with the waiver in place for the plan year, as determined for the purposes of calculating the section 1332 waiver pass-through payment.[26] This factor would be calculated specific to each State and geographic area, to the extent that the factor may vary across geographic areas. The SLCSP premiums with and without the waiver, as provided by the State as part of the section 1332 waiver information submitted to the Secretaries, would be reviewed by CMS and used to calculate the factor. In the event that the State's section 1332 waiver SLCSP with- and without-waiver information is not available prior to the calculation of the Federal BHP payments in the fall prior to the start of the BHP program year, we propose to temporarily use values from the prior year's waiver reporting, and then update the payment rates and payments once the values for the applicable plan year are known.[27] In the case that prior-year data is not available, such as in the case of a new waiver or waiver amendment that could delay the timeline by which the State would receive BHP funding, we propose to initially calculate the rates without adjustment for the section 1332 WF, and then to adjust payment rates and payments using the updated waiver data once it becomes available.[28]

We seek public comment on this proposal.

State-Innovation-Waivers/Section_1332_State_Innovation_Waivers-.

[25] 86 FR 7793 (February 2, 2021).

[26] Office of Tax Analysis, Department of Treasury, ''Method for Calculation of Section 1332 Reinsurance Waiver 2021 Premium Tax Credit Pass-through Amounts,'' March 2021.

[27] 42 CFR 600.610(c)(2)(iii).

[28] 42 CFR 600.610(c)(2)(iii).

E. State Option To Use Prior Program Year QHP Premiums for BHP Payments

In the interest of allowing States greater certainty in the total BHP Federal payments for a given plan year, we have given States the option to have their final Federal BHP payment rates calculated using a projected adjusted reference premium (that is, using premium data from the prior program year multiplied by the PTF, as described in Equation (2b)). We propose to require States to make their election to have their final Federal BHP payment rates calculated using a projected adjusted reference premium by the later of (1) May 15 of the year preceding the applicable program year or (2) 60 days after the publication of the final notice. Because we are publishing this proposed rule after May 15, 2022, we propose that States be required to inform CMS in writing of their election for the 2023 program year by 60 days after the publication of the final notice.

With the addition of the section 1332 WF, there is the possibility that using the previous year's QHP premiums multiplied by the PTF could lead to unexpected results if there are significant changes to the State's approved section 1332 waiver, including changes that could occur at the start or the end of the waiver. For example, if a State were to implement a section 1332 waiver in 2023 that lowered premiums significantly, and the State then chose to use the prior year's premiums (that is, 2022 plan year premiums) multiplied by the PTF, this could lead to BHP payment well in excess of what would have been paid in the Exchanges when the WF is added to the methodology. Similarly, if a State were to end its section 1332 waiver and choose to use the prior year's premiums, the BHP payment could be less than what would otherwise be expected.

Therefore, we also propose that in the following cases, the current year QHP premiums would have to be used for calculating BHP payments with regard to section 1332 waivers: (1) A State implements a new section 1332 waiver that begins at the start of the BHP program year; (2) a State ends a section 1332 waiver in the year prior to the start of the BHP program year; or (3) the percentage difference between the with and without waiver premiums used to determine the section 1332 waiver pass-through funding amount (and used to determine the WF) changes by 5 or more percentage points from the prior year. The percentage difference would be measured based on the enrollment-weighted average of the with and without waiver premiums. We believe that these three scenarios (the start of a new waiver, the end of a waiver, and a significant change to a waiver) reflect all relevant scenarios in which changes to a section 1332 waiver would lead to a significant error in the calculation of BHP payments if the prior year premiums were used in the BHP payment methodology. We believe that this proposed requirement to use the current year QHP premiums in these limited circumstances would avoid an incorrect calculation of BHP payments due to changes related to the section 1332 waiver.

We seek public comments on this proposal.

For Equation (2b), we propose to continue to define the PTF, with minor proposed changes in calculation sources and methods, as follows:

PTF: In the case of a State that would elect to use the 2022 premiums as the basis for determining the 2023 BHP payment, it would be appropriate to apply a factor that would account for the change in health care costs between the year of the premium data and the BHP program year. This factor would approximate the change in health care costs per enrollee, which would include, but not be limited to, changes in the price of health care services and changes in the utilization of health care services. This would provide an estimate of the adjusted monthly premium for the applicable SLCSP that would be more accurate and reflective of health care costs in the BHP program year.

For the PTF we propose to use the annual growth rate in private health insurance expenditures per enrollee from the National Health Expenditure (NHE) projections, developed by the Office of the Actuary of CMS (*https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/NationalHealthAccountsProjected*). Based on these projections, for BHP program year 2023, we propose that the PTF would be 4.6 percent.

We note that the increase in premiums for QHPs from one year to the next may differ from the PTF developed for the BHP funding methodology for several reasons. In particular, we note that the second lowest cost silver plan may be different from 1 year to the next. This may lead to the PTF being greater than or less than the actual change in the premium of the SLCSP.

F. State Option To Include Retrospective State-Specific Health Risk Adjustment in Certified Methodology

To determine whether the potential difference in health status between BHP enrollees and consumers in an Exchange would affect the PTC allowed and risk adjustment payments that would have otherwise been made had BHP enrollees been enrolled in coverage through an Exchange, we propose to continue to provide States implementing the BHP the option to propose and to implement, as part of the certified methodology, a retrospective adjustment to the Federal BHP payments to reflect the actual value that would be assigned to the PHF (or risk adjustment) based on data accumulated during that program year for each rate cell.

We acknowledge that there is uncertainty with respect to this factor due to the lack of available data to analyze potential health differences between the BHP and QHP populations, which is why, absent a State election, we propose to use a value for the PHF (see section II.D.3. of this proposed rule) to determine a prospective payment rate which assumes no difference in the health status of BHP enrollees and QHP enrollees. There is considerable uncertainty regarding whether the BHP enrollees will pose a greater risk or a lesser risk compared to the QHP enrollees, how to best measure such risk, the potential effect such risk would have had on PTC, and risk adjustment that would have otherwise been made had BHP enrollees been enrolled in coverage through an Exchange. However, to the extent that a State would develop an approved protocol to collect data and effectively measure the relative risk and the effect on Federal payments of PTC and CSRs, we propose to continue to permit a retrospective adjustment that would measure the actual difference in risk between the two populations to be incorporated into the certified BHP payment methodology and used to adjust payments in the previous year.

For a State electing the option to implement a retrospective population health status adjustment as part of the BHP payment methodology applicable to the State, we propose requiring the State to submit a proposed protocol to CMS, which would be subject to approval by CMS and would be required to be certified by the Chief Actuary of CMS, in consultation with the OTA. We propose to apply the same protocol for the population health status adjustment as what is set forth in guidance in *Considerations for Health Risk Adjustment in the Basic Health Program in Program Year 2015* (*https://www.medicaid.gov/sites/default/files/2019-11/risk-adjustment-and-bhp-white-paper.pdf*). We propose requiring a State to submit its proposed protocol for the 2023 program year by the later of

August 1, 2022, or 60 days after the publication of the final notice. We propose that this submission would also need to include descriptions of how the State would collect the necessary data to determine the adjustment, including any contracting contingences that may be in place with participating standard health plan issuers. We would provide technical assistance to States as they develop their protocols, as requested. To implement the population health status adjustment, we propose that we will approve the State's protocol by December 31, 2022, for the 2023 program year. Finally, we propose that the State be required to complete the population health status adjustment at the end of the program year based on the approved protocol. After the end of the program year, and once data is made available, we propose to review the State's findings, consistent with the approved protocol, and make any necessary adjustments to the State's Federal BHP payment amounts. If we determine the Federal BHP payments were less than they would have been using the final adjustment factor, we would apply the difference to the State's next quarterly BHP trust fund deposit. If we determine that the Federal BHP payments were more than they would have been using the final reconciled factor, we would subtract the difference from the next quarterly BHP payment to the State.

III. Revisions to Basic Health Program Regulations

The calculation of BHP payment amounts is set forth in § 600.610 and is a prospective quarterly calculation of rates based on estimated or known enrollment data prior to the beginning of the quarter for which the rates are calculated, adjusted by actual enrollment data submitted by States after the end of the quarter. Currently, § 600.610(a) commits the Secretary to publish an annual proposed payment notice in October, and § 600.610(b) requires the Secretary to publish an annual final payment notice the following February, setting forth the BHP payment methodology for the following year.

Over the past several years, minimal changes to the payment methodology have been required, and we no longer view an annual publication of a payment methodology as necessary. Specifically, between 2015 and 2022, only two factors (the PAF and the MTSF) were added to the payment methodology, and one of the factors (the MTSF) was subsequently removed. For 2023, we are proposing to add the section 1332 WF. Other than this year's addition of the proposed section 1332 WF, if finalized, we do not believe that additional factors will be added or removed on an annual basis as this program has now been in operation for several years. Therefore, we are proposing to revise § 600.610(a)(1) to provide for issuance of payment notices that may be effective for only one or multiple program years, as determined by and subject to the discretion of the Secretary, beginning with the 2023 BHP payment methodology and then going forward. We believe this will be beneficial to States that operate a BHP, as it will provide greater certainty regarding the payment methodology for a given year.

In addition, we are proposing at § 600.610(a)(1) and (b)(1) to change the schedule of publication dates for the proposed and final BHP payment notices. Under the current regulation, CMS must publish a proposed payment notice annually in October and a final notice annually in February. As stated above, we do not believe that the publication of an annual payment notice is necessary. In addition, we do not believe that this schedule allows for adequate time for States and other stakeholders to provide comments and for CMS to carefully consider comments received. Therefore, we propose to revise § 600.610(a)(1) and (b)(1) to remove the specific months in which the proposed and final payment methodologies must be published. We note that in years in which the Secretary determines a new payment methodology needs to be proposed and published, if finalized, we would publish a proposed payment methodology with an opportunity for public comment. We would also publish a final payment methodology in advance of the effective date of the payment methodology. If this proposal is finalized, the 2023 final BHP payment methodology would be in effect until we propose and finalize a revised payment methodology. We would also release subregulatory guidance updating the values of factors needed to calculate the Federal BHP payments in years in which a revised payment methodology is not proposed and finalized.

We are proposing these changes under the authority in section 1331(d)(3)(A)(iii) of the ACA, which requires that the Chief Actuary of CMS, in consultation with OTA, shall certify whether the methodology used to make payments to the States meets the requirements of section 1331(d)(3)(A)(ii) of the ACA.

Under § 600.610(c)(2)(ii), the Secretary will recalculate a State's BHP payment amount upon determination that a mathematical error occurred during the application of the BHP funding methodology. Under this current regulation, it is not permissible to recalculate a State's BHP payment amount upon determining that a mathematical error occurred during the *development* of the applicable BHP funding methodology.

Examples of mathematical errors in the application and/or development of the BHP funding methodology include using the incorrect value of a factor within the BHP payment methodology or using incorrect data to calculate a factor within the BHP payment methodology. Examples of changes that are not mathematical errors under this regulation include the addition or removal of a factor in the BHP payment methodology or a change in the approach for calculating a factor.

As an example of mathematical error in the development of the BHP payment methodology, we recently became aware of an error in calculating the Income Reconciliation Factor (IRF) for program year 2019, resulting in an underpayment of Federal funds to States for their BHPs. In reviewing the model used to calculate the IRF, CMS and OTA found an error in the computation of the IRF. Working with OTA, we have developed a new value for the IRF for 2019. Previously, the IRF for the 2019 BHP payment methodology was 98.03 percent. The corrected value for the IRF for program year 2019 was recalculated as the median of the impact of income reconciliation on PTC for persons with incomes between 100 percent and 200 percent of FPL (102.36 percent) and the impact for persons with incomes between 133 percent and 200 percent of FPL (101.66 percent), which is 102.01 percent. Using the median of the two values is the same approach as we used to calculate the original IRF value in 2019, and the difference between the values is attributable to a mathematical error made during the development of the BHP payment methodology for program year 2019.

Therefore, we are proposing to revise § 600.610(c)(2)(ii) such that a State's payment amount may be retroactively revised due to a mathematical error in the development or application of the BHP funding methodology. If finalized, we would then be able to recalculate Federal payments to States for 2019 using the updated value of the IRF. We propose this change under the authority in section 1331(d)(3)(B) of the ACA, which requires the Secretary to adjust payments for any fiscal year to reflect any error in the payment amounts under section 1331(d)(3)(A) of the ACA.

We seek public comment on these proposals.

IV. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a ''collection of information'' requirement is submitted to the Office of Management and Budget (OMB) for review and approval. For the purposes of the PRA and this section of the preamble, collection of information is defined under 5 CFR 1320.3(c) of OMB's implementing regulations.

To fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following sections of this document that contain proposed collection of information requirements.

A. Wage Estimates

To derive average costs for individuals, we used data from the U.S. Bureau of Labor Statistics' (BLS) May 2021 National Occupational Employment and Wage Estimates for our salary estimates (*https://www.bls.gov/oes/current/oes_nat.htm*). In this regard, Table 1 presents BLS' mean hourly wage, our estimated cost of fringe benefits and overhead, and our adjusted hourly wage.

TABLE 1—NATIONAL OCCUPATIONAL EMPLOYMENT AND WAGE ESTIMATES

Occupation title	Occupation code	Mean hourly wage ($/hr)	Fringe benefits and overhead ($/hr)	Adjusted hourly wage ($/hr)
Business Operations Specialists	13–1000	38.64	38.64	77.25
General and Operations Managers	11–1021	55.41	55.41	110.82

To derive our proposed cost estimates, we adjusted BLS' mean hourly wage by a factor of 100 percent. This is necessarily a rough adjustment, both because fringe benefits and overhead costs vary significantly from employer to employer, and because methods of estimating these costs vary widely from study to study. Therefore, we believe that doubling the hourly wage to estimate total cost is a reasonably accurate and conservative estimation method.

B. Proposed Information Collection Requirements (ICRs)

The following proposed changes will be submitted to OMB for review under control number 0938–1218 (CMS–10510). We also propose to reinstate that control number as our previous approval was discontinued on August 31, 2017, based on our estimated number of respondents. We are proposing to reinstate the control number based on 5 CFR 1320.3(c)(4)(i) using the standard non-rule PRA process which includes the publication of 60- and 30-day **Federal Register** notices. We anticipate that the initial 60-day notice will publish within 10 business days from the date of publication of this proposed rule.

1. ICRs Regarding the Submission of Estimated and Actual Quarterly Enrollment Data

In sections I.A. and II.B. of this proposed rule, we propose that a State that is approved to implement a BHP must provide CMS with an estimate of the number of BHP enrollees it projects will enroll in the upcoming BHP program quarter, by applicable rate cell, prior to the first quarter and each subsequent quarter of program operations until after actual enrollment data is available. Enrollment data must be submitted by age range (if applicable), geographic area, coverage status, household size, and income range.

We estimate that it would take a business operations specialist 10 hours at $77.25/hr and a general manager 2 hours at $110.82/hr to compile and submit the quarterly estimated enrollment data to CMS. For 2023, we estimate that two States will operate a BHP and will submit the required estimated enrollment data to CMS. In aggregate, we estimate an annual burden of 96 hours (2 States × 12 hr/response × 44 U.S.C. 35014 responses/yr) at a cost of $7,953 [2 States × 4 responses/yr ((10 hr × $77.25/hr) + (2 hr × $110.82/hr)).

In sections I.A. and II.B. of this proposed rule, we also propose that following each BHP program quarter, a State operating a BHP must submit actual enrollment data to CMS. Actual enrollment data must be based on individuals enrolled for the quarter who the State found eligible and whose eligibility was verified using eligibility and verification requirements as agreed to by the State in its applicable BHP Blueprint for the quarter that enrollment data is submitted. Actual enrollment data must include a personal identifier, date of birth, county of residence, Indian status, family size, household income, number of persons in the household enrolled in BHP, family identifier, months of coverage, plan information, and any other data required by CMS to properly calculate the payment. This may include the collection of data related to eligibility for other coverage, marital status (for calculating household composition), or more precise residence location.

We estimate that it would take a business operations specialist 100 hours at $77.25/hr and a general manager 10 hours at $110.82/hr to compile and submit the quarterly actual enrollment data to CMS. For 2023, we estimate that two States will operate a BHP and will submit the required actual enrollment data to CMS. In aggregate, we estimate an annual burden of 880 hours (2 States × 110 hr/response × 4 responses/yr) at a cost of $70,666 [2 States × 4 responses/yr ((100 hr × $77.25/hr) + (10 hr × $110.82/hr)).

2. ICRs Regarding Submission of Qualified Health Plan Data

In section II.C. of this proposed rule, we specify that States operating an SBE in the individual market must provide certain data, including premiums for SLCSPs, by geographic area, for CMS to calculate the Federal BHP payment rates in those States. States operating BHPs interested in obtaining the applicable 2023 program year Federal BHP payment rates for its State must submit the data to CMS by October 15, 2022.

We estimate that it would take a business operations specialist 20 hours at $77.25/hr and a general manager 2

hours at $110.82/hr to compile and submit the required data to CMS. In aggregate, we estimate an annual burden of 44 hours (2 States × 22 hr/response) at a cost of $3,533 [2 States × ((20 hr × $77.25/hr) + (2 hr × $110.82/hr))].

C. Summary of Proposed Requirements and Annual Burden Estimates

Section under Title 42 of the CFR	OMB control No. (CMS ID No.)	Number of respondents	Total responses	Time per response (hr)	Total time (hr)	Labor cost ($/hr)	Total cost ($)
600.610	0938–1218 (CMS–10510)	2	8	Varies	96	Varies	7,953
600.610	0938–1218 (CMS–10510)	2	8	Varies	880	Varies	70,666
600.610	0938–1218 (CMS–10510)	2	2	Varies	44	Varies	3,533
Total		2	18	Varies	1,020	Varies	82,152

D. Submission of PRA-Related Comments

We have submitted a copy of this proposed rule to OMB for its review of the rule's information collection requirements and burden. The requirements are not effective until they have been approved by OMB.

To obtain copies of the supporting statement and any related forms for the proposed collections discussed above, please visit the CMS website at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRAListing,* or call the Reports Clearance Office at 410–786–1326.

We invite public comments on these potential information collection requirements. If you comment, please submit your comments electronically as specified in the **DATES** and **ADDRESSES** sections of this proposed rule.

V. Response to Comments

Because of the large number of public comments, we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

VI. Regulatory Impact Analysis

A. Statement of Need

Section 1331 of the ACA (42 U.S.C. 18051) requires the Secretary to establish a BHP, and section 1331(d)(1) specifically provides that if the Secretary finds that a State meets the requirements of the program established under section 1331(a) of the ACA, the Secretary shall transfer to the State Federal BHP payments described in section 1331(d)(3) of the ACA. This proposed methodology provides for the funding methodology to determine the Federal BHP payment amounts required to implement these provisions for program year 2023.

B. Overall Impact

We have examined the impacts of this rule as required by E.O. 12866 on Regulatory Planning and Review (September 30, 1993), E.O. 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96354), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), E.O. 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

A regulatory impact analysis (RIA) must be prepared for major rules with significant regulatory action(s) or with economically significant effects ($100 million or more in any 1 year). Based on our estimates, OMB's Office of Information and Regulatory Affairs has determined this rulemaking is ''economically significant'' as measured by the $100 million threshold. Accordingly, we have prepared a Regulatory Impact Analysis that to the best of our ability presents the costs and benefits of the rulemaking.

C. Detailed Economic Analysis

The aggregate economic impact of this proposed payment methodology is estimated to be $357 million in transfers for calendar years (CY) 2022 and 2023 (measured in real 2022 dollars), which would be an increase in Federal payments to the State BHPs. For the purposes of this analysis, we have assumed that two States would implement BHPs in 2023. This assumption is based on the fact that two States have established a BHP to date, and we do not have any indication that additional States may implement a BHP in CY 2023. Of these two States, only one (Minnesota) currently has an approved section 1332 waiver.

Projected BHP enrollment and expenditures under the previous payment methodology were calculated using the most recent 2022 QHP premiums and State estimates for BHP enrollment. We projected enrollment for 2023 using the projected increase in the number of adults in the U.S. from 2022 to 2023 (0.4 percent), and we projected premiums using the NHE projection of premiums for private health insurance (4.6 percent). Prior to any changes made in the 2023 BHP payment methodology, Federal BHP expenditures are projected to be $8,340 million in 2023, which are described in detail below. This projection serves as our baseline scenario when estimating the net impact of the 2023 proposed methodology on Federal BHP expenditures.

The incorporation of the WF is the most significant change in this proposed

methodology from the final 2022 payment methodology. To calculate the impact of adding the WF to the methodology, we took the following steps. First, we calculated the estimated value of the WF using the most recently available section 1332 waiver premium data for 2021.[29] In Minnesota, the average percentage difference between the ''with waiver'' SLCSP premiums and the ''without waiver'' SLCSP premiums for 2021 is 27.3 percent (calculated as the average of the ''without waiver'' SLCSP premium divided by the ''with waiver'' SLCSP premium, averaged across all rating areas). We then increased the RPs in the model for Minnesota by 27.3 percent, which represents the impact of the WF. The resulting Federal BHP payments were 28.2 percent higher incorporating this adjustment. The projected BHP expenditures after these changes are $8,154 million, which is the sum of the prior estimate ($8,021 million) and the impacts of the changes to the methodology ($133 million). For Minnesota, estimated payments would increase from $470 million to $603 million in 2023.

TABLE 2—ESTIMATED FEDERAL IMPACTS FOR THE BASIC HEALTH PROGRAM 2023 PAYMENT METHODOLOGY TO ADD WAIVER FACTOR

[Millions of 2022 dollars]

Projected Federal BHP Payments under 2022 Final Methodology	$8,021
Projected Federal BHP Payment under 2023 Proposed Methodology	8,154
Federal costs	133

Totals may not add due to rounding.

The provisions of this proposed methodology are designed to determine the amount of funds that will be transferred to States offering coverage through a BHP rather than to individuals eligible for Federal financial assistance for coverage purchased on the Exchange. We are uncertain what the total Federal BHP payment amounts to States will be as these amounts will vary from State to State due to the State-specific factors and conditions. In this case, the exact value of the WF and the effects of the section 1332 waiver in 2023 are currently unknown. The value of the WF could be higher or lower than estimated here as a result. In addition, projected BHP expenditures and enrollment may also differ from our current estimates, which may also lead to costs being higher or lower than estimated here.

In addition, the proposed methodology would allow for a retrospective correction to the BHP payment methodology for errors that occurred during the development or application of the BHP funding methodology. For 2019, we propose to correct the value of the IRF from 98.03 percent to 102.01 percent. Actual Federal BHP expenditures in 2019 were $5,591 million, including payment reconciliations that have occurred as of March 2022. Calculating the payments with the corrected IRF value increases the payments by about $224 million. The actual amount may differ as we continue to reconcile 2019 payments based on actual enrollment.

TABLE 3—ESTIMATED FEDERAL IMPACTS FOR THE BASIC HEALTH PROGRAM 2023 PAYMENT METHODOLOGY TO APPLY RETROSPECTIVE CORRECTIONS

[Millions of 2022 dollars]

Actual Federal BHP Payment (2019)	$5,591
Projected Federal BHP Payment with Correction (2019)	5,815
Federal costs	224

Totals may not add due to rounding.

The total estimated impact of this proposed methodology is $357 million ($133 million for the addition of the section 1332 waiver factor, and $224 million for the correction to the income reconciliation factor for 2019).

D. Alternative Approaches

We considered several alternatives in developing the BHP payment methodology for 2023, and we discuss some of these alternatives below.

We considered alternatives as to how to calculate the PAF in the final methodology for 2023. The value for the PAF is 1.188, which is the same as was used for 2018, 2019, 2020, 2021, and 2022. We believe it would be difficult to obtain the updated information from QHP issuers comparable to what was used to develop the 2018 factor, because QHP issuers may not distinctly consider the impact of the discontinuance of CSR payments on the QHP premiums any longer. We do not have reason to believe that the value of the PAF would change significantly between program years 2018 and 2023. We are continuing to consider whether or not there are other methodologies or data sources we may be able to use to calculate the PAF.

We also considered whether to continue to provide States the option to develop a protocol for a retrospective adjustment to the PHF as we did in previous payment methodologies. We believe that continuing to provide this option is appropriate and likely to improve the accuracy of the final payments.

We also considered whether to require the use of the program year premiums to develop the Federal BHP payment rates, rather than allow the choice between the program year premiums and the prior year premiums trended forward. We believe that the payment rates can still be developed accurately using either the prior year QHP premiums or the current program year premiums and that it is appropriate to continue to provide the States these options.

We also considered whether or not to include a factor to address the impacts of State Innovation Waivers. In previous methodologies, we have not addressed the potential impacts of State Innovation Waivers on BHP payments. We believe it is appropriate to include such a factor for this payment methodology. We also considered other approaches to calculating the factor, including whether or not to use each State's experience separately or to look at the impacts across all States. We believe it is more accurate to use each State's experience separately, as applicable.

Many of the factors in the final methodology are specified in statute; therefore, for these factors we are limited in the alternative approaches we could consider. We do have some choices in selecting the data sources used to determine the factors included in the methodology. We will continue to use national rather than State-specific data, with the exception of State-specific RPs and enrollment data. This is due to the lack of currently available State-specific data needed to develop the majority of the factors included in the methodology. We believe the national data will produce sufficiently accurate determinations of payment rates. In addition, we believe that this approach will be less burdensome on States. In many cases, using State-specific data would necessitate additional requirements on the States to collect, validate, and report data to CMS. By using national data, we are able to collect data from other sources and limit the burden placed on the States. For RPs and enrollment data, we

[29] *https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/1332-State-Specific-Premium-Data-Feb-2021.xlsx.*

will use State-specific data rather than national data, as we believe State-specific data will produce more accurate determinations than national averages.

E. Accounting Statement and Table

TABLE 4—ACCOUNTING STATEMENT: FEDERAL TRANSFERS TO STATES

[$ millions]

Category	Primary estimate	Low estimate	High estimate	Units		
				Year dollars	Discount rate	Period covered
Annualized Monetized Transfers from Federal Government to States	$180 179	$163 162	$197 196	2022 2022	7% 3%	2022–2023 2022–2023

As required by OMB Circular A–4 (available at *https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf*), we have prepared an accounting statement in Table 4 showing the classification of the transfer payments from the Federal government to States associated with the provisions of this proposed rule. Table 4 provides our best estimates of the transfer payments outlined in the section C. Detailed Economic Analysis above. These estimates assume that costs in 2022 could be 5 percent above and below the primary estimate ($224 million in 2022 dollars) and that costs in 2023 could be 18 percent above and below the primary estimate ($133 million in 2022 dollars, which reflects a waiver factor that could be 5 percentage points higher or lower than assumed in the analysis).

F. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, we estimate that no small entities will be impacted as that term is used in the RFA (include small businesses, nonprofit organizations, and small governmental jurisdictions). The great majority of hospitals and most other health care providers and suppliers are small entities, either by being nonprofit organizations or by meeting the SBA definition of a small business (having revenues of less than $8.0 million to $41.5 million). Individuals and States are not included in the definition of a small entity. As its measure of significant economic impact on a substantial number of small entities, HHS uses a change in revenue of more than 3 to 5 percent. We do not believe that this threshold will be reached by the requirements in this proposed rule.

Because this methodology is focused solely on Federal BHP payment rates to States, it does not contain provisions that would have a direct impact on hospitals, physicians, and other health care providers that are designated as small entities under the RFA. Accordingly, we have determined that the methodology, like the previous methodology and the final rule that established the BHP program, will not have a significant economic impact on a substantial number of small entities. Therefore, the Secretary has determined that this rule will not have a significant economic impact on a substantial number of small entities.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a methodology may have a significant economic impact on the operations of a substantial number of small rural hospitals. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. For the preceding reasons, we have determined that the methodology will not have a significant impact on a substantial number of small rural hospitals. Therefore, the Secretary has determined that this rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

G. Unfunded Mandates Reform Act (UMRA)

Section 202 of the Unfunded Mandates Reform Act (UMRA) of 2005 (Pub. L. 104–4) requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation, by State, local, or tribal governments, in the aggregate, or by the private sector. In 2022, that threshold is approximately $165 million. States have the option, but are not required, to establish a BHP. Further, the methodology would establish Federal payment rates without requiring States to provide the Secretary with any data not already required by other provisions of the ACA or its implementing regulations. Thus, neither the current nor the proposed payment methodologies mandate expenditures by State governments, local governments, or tribal governments.

H. Federalism

E.O. 13132 establishes certain requirements that an agency must meet when it issues a final rule that imposes substantial direct effects on States, preempts State law, or otherwise has Federalism implications. The BHP is entirely optional for States, and if implemented in a State, provides access to a pool of funding that would not otherwise be available to the State. Accordingly, the requirements of E.O. 13132 do not apply to this proposed rule.

I. Conclusion

We believe that this proposed BHP payment methodology is effectively the same methodology as finalized for 2022, with the exception of the addition of the WF. In addition, we propose to update the regulation to clarify that errors in the application and the development of the methodology may be corrected retroactively. BHP payment rates may change as the values of the factors change, most notably the QHP premiums for 2022 or 2023. We do not anticipate this proposed methodology to have any significant effect on BHP enrollment in 2023.

In accordance with the provisions of E.O. 12866, this regulation was reviewed by the Office of Management and Budget.

Chiquita Brooks-LaSure, Administrator of the Centers for Medicare & Medicaid Services, approved this document on May 13, 2022.

List of Subjects in 42 CFR Part 600

Administrative practice and procedure, Health care, health

insurance, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR part 600 as set forth below:

PART 600—ADMINISTRATION, ELIGIBILITY, ESSENTIAL HEALTH BENEFITS, PERFORMANCE STANDARDS, SERVICE DELIVERY REQUIREMENTS, PREMIUM AND COST SHARING, ALLOTMENTS, AND RECONCILIATION

■ 1. The authority citation for part 600 continues to read as follows:

Authority: Section 1331 of the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111–148, 124 Stat. 119), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152, 124 Stat 1029).

■ 2. Amend § 600.610—

■ a. By revising paragraphs (a)(1) and (b)(1); and

■ b. In paragraph (c)(2)(ii), by removing the phrase ''during the application of the BHP funding methodology'' and adding in its place the phrase ''during the application or development of the BHP funding methodology''.

The revisions read as follows:

§ 600.610 Secretarial determination of BHP payment amount.

(a) * * *

(1) Beginning in FY 2015, the Secretary will determine and publish in a **Federal Register** document the BHP payment methodology for the next calendar year, or for multiple calendar years beginning in calendar year 2022, as determined by the Secretary. Beginning in calendar year 2023, in years in which the Secretary does not publish a new BHP methodology, the Secretary will update the values of factors needed to calculate the Federal BHP payments via subregulatory guidance, as appropriate. Beginning in calendar year 2023, in years that the Secretary publishes a revised payment methodology, the Secretary will publish a proposed BHP payment methodology upon receiving certification from the Chief Actuary of CMS.

* * * * *

(b) * * *

(1) Beginning in calendar year 2023, in years that the Secretary publishes a revised payment methodology, the Secretary will determine and publish the final BHP payment methodology and BHP payment amounts in a **Federal Register** document.

* * * * *

Dated: May 18, 2022.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2022–11047 Filed 5–23–22; 11:15 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WC Docket No. 19–195, DA 22–543; FR ID 88208]

Broadband Data Task Force, Wireless Telecommunications Bureau, Wireline Competition Bureau, and Office of Economics and Analytics Seek Comment on Competitive Carriers Association Petition for Declaratory Ruling or Limited Waiver Regarding the Requirement for a Certified Professional Engineer To Certify Broadband Data Collection Maps

AGENCY: Federal Communications Commission.

ACTION: Petition for Declaratory Ruling and Limited Waiver; request for comments.

SUMMARY: In this document, the Broadband Data Task Force (BDTF), Wireless Telecommunications Bureau (WTB), the Wireline Competition Bureau (WCB), and the Office of Economics and Analytics (OEA) seek comment on a Petition for Declaratory Ruling or Limited Waiver filed by the Competitive Carriers Association (CCA) requesting that the Commission issue a declaratory ruling to clarify that Broadband Data Collection (BDC) filings may be certified by a qualified professional engineer or an otherwise-qualified engineer that is not a licensed professional engineer accredited by a state licensure board.

DATES: Comments are due on or before June 8, 2022. Reply Comments are due on or before June 15, 2022.

ADDRESSES: You may submit comments, identified by WC Docket No. 19–195, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *https://www.fcc.gov/ecfs.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.
- 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.

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 & Government Affairs Bureau at 202–418–0530 (voice, 202–418–0432 (tty).

FOR FURTHER INFORMATION CONTACT: Will Holloway, *William.Holloway@fcc.gov,* Wireless Telecommunications Bureau, or Kirk Burgee, *Kirk.Burgee@fcc.gov,* Wireline Competition Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice in WC Docket No 19–195, DA 22–543, released on May 17, 2022. The full text of this document is available for public inspection and can be downloaded at *https://www.fcc.gov/document/bdtf-wtb-wcb-and-oea-seek-comment-petition-filed-cca* or by using the Commission's ECFS web page at *www.fcc.gov/ecfs.*

Ex Parte Rules

This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) List all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in 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 § 1.1206(b) of the Commission's rules. In proceedings governed by § 1.49(f) of the rules 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

On May 13, 2022, the Competitive Carriers Association (CCA) filed a Petition for Declaratory Ruling or Limited Waiver asking the Commission to clarify that Broadband Data Collection (BDC) filings may be certified by a qualified professional engineer or an otherwise-qualified engineer that is not a licensed professional engineer accredited by a state licensure board. The Commission's rules require that an engineer review and certify the accuracy of the broadband availability data submitted by mobile and fixed providers as part of the BDC. In particular, the Commission requires each mobile and fixed service provider to include certifications as to the accuracy of its data submissions by a certified professional engineer or corporate engineering officer, in which the engineer certifies ''that he or she has examined the information contained in the submission and that, to the best of the engineer's actual knowledge, information, and belief, all statements of fact contained in the submission are true and correct and in accordance with the service provider's ordinary course of network design and engineering.'' This certification is in addition to the corporate officer certification required by the Broadband DATA Act. For government and other third-party entities that submit verified broadband availability data, the engineering certification must also include a certification by a certified professional engineer that he or she is employed by the government or other third-party entity submitting the verified broadband availability data and has direct knowledge of, or responsibility for, the generation of the government or other entity's Broadband Data Collection coverage maps.

In its petition, CCA asserts that the ''experience and expertise developed by [Radio Frequency (RF)] engineers through their work provides comprehensive skills relevant to broadband deployment [and] provides skills comparable to, and perhaps more relevant than, general licensure through the PE . . . exam process.'' CCA therefore requests that the Commission clarify that the requirement in 47 CFR 1.7004(d) that all providers must include as part of their BDC filing a certification of the accuracy of its submissions by a certified professional engineer may be completed by either a licensed professional engineer or an otherwise qualified engineer who possesses the appropriate engineering expertise but does not hold a professional engineer license. Additionally, CCA requests that the Commission clarify that the term ''corporate engineering officer'' may be any employee who has ''direct knowledge'' and is ''responsible for'' the carrier's network design and construction and who possesses a Bachelor of Science degree in Engineering. Alternatively, CCA requests a limited waiver of the requirement that BDC data be certified by a licensed professional engineer, and instead allow mobile providers to certify their data with an RF engineering professional with specified qualifications that are directly relevant to broadband availability assessment. CCA recommends that if the Commission seeks to specify qualification standards or requirements for engineers to certify broadband availability, it should adopt standards that specifically relate to broadband availability assessment, such as academic and employment experience, RF and propagation modeling experience, and knowledge relevant to wireless carriers' networks.

Federal Communications Commission.

Amy Brett,

Acting Chief of Staff, Wireless Telecommunications Bureau.

[FR Doc. 2022–11193 Filed 5–24–22; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–HQ–ES–2021–0073; FF09E22000 FXES1111090FEDR 223]

RIN 1018–BF34

Endangered and Threatened Wildlife and Plants; Endangered Species Status for Russian, Ship, Persian, and Stellate Sturgeon

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list four species of Eurasian sturgeon as endangered species under the Endangered Species Act of 1973, as amended (Act). Specifically, we are proposing to list the Russian sturgeon (*Acipenser gueldenstaedtii*), ship sturgeon (*A. nudiventris*), Persian sturgeon (*A. persicus*), and stellate sturgeon (*A. stellatus*), all large fish native to the Black, Azov, Aral, Caspian, and northern Aegean Sea basins and their rivers in Europe and western Asia. This determination also serves as our 12-month finding on a petition to list these four species. After a review of the best scientific and commercial information available, we find that listing all four species is warranted. Accordingly, we propose to list the Russian, ship, Persian, and stellate sturgeon as endangered species under the Act. If we finalize this rule as proposed, it would add these species to the List of Endangered and Threatened Wildlife and extend the Act's protections to the four species.

DATES: We will accept comments received or postmarked on or before July 25, 2022. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. eastern time on the closing date. We must receive requests for a public hearing, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by July 11, 2022.

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–HQ–ES–2021–0073, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the 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.''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–HQ–ES–2021–0073, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *https://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

Availability of supporting materials: This proposed rule and supporting documents, including the species status assessment (SSA) report, are available at *https://www.regulations.gov* under Docket No. FWS–HQ–ES–2021–0073.

FOR FURTHER INFORMATION CONTACT: Elizabeth Maclin, Chief, Branch of Delisting and Foreign Species, Ecological Services, U.S. Fish and Wildlife Service, MS: ES, 5275 Leesburg Pike, Falls Church, VA 22041–3803; telephone, 703–358–2171. 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:

Executive Summary

Why we need to publish a rulemaking. Under the Act, if we determine that a species is warranted for listing, we are required to promptly publish a proposal in the **Federal Register**, unless doing so is precluded by higher priority actions and expeditious progress is being made to add and remove qualified species to or from the Lists of Endangered and Threatened Wildlife and Plants. The Service will make a determination on our proposal within 1 year. If there is substantial disagreement regarding the sufficiency and accuracy of the available data relevant to the proposed listing, we may extend the final determination for not more than 6 months. Listing a species as an endangered or threatened species can only be completed by issuing a rule.

What this document does. We propose to list four species of sturgeon—the Russian, ship, Persian, and stellate sturgeon—as endangered species under the Act. Together, we refer to the species as the ''Ponto-Caspian sturgeon,'' using the adjective that refers to the Black and Caspian Sea regions in which all four species are found. If finalized, the Act and our implementing regulations would prohibit with respect to listed endangered species of fish or wildlife: Import; export; take; possession and other acts with unlawfully taken specimens; delivery, receipt, carriage, transport, or shipment in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity; and sale or offer for sale in interstate or foreign commerce of the species and their parts and products. It would also be unlawful to attempt to commit, to solicit another to commit, or to cause to be committed any such conduct.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that habitat destruction and loss due to construction of dams (Factor A), and to a lesser extent due to pollution (Factor A), decades of overharvest for the caviar and sturgeon meat trade (Factor B), ineffective fisheries regulation and enforcement (Factor D), invasive species' impacts on sturgeon prey (Factor E), and hybridization (Factor E) all put the four species at risk of extinction.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other governmental agencies (including those in the species' range countries), Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule.

We particularly seek comments concerning:

(1) The biology, range, and population trends of the species, including:

(a) Biological or ecological requirements of the species, including habitat requirements for feeding, breeding, and sheltering;

(b) Taxonomy;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends;

(e) Past and ongoing conservation measures for the species, their habitat, or both;

(f) Genetics and evolutionary capacity to adapt to changing environments.

(2) Factors that may affect the continued existence of the species, which may include destruction, modification, or curtailment of habitat or range, overutilization for commercial, recreational, scientific, or educational purposes, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and existing regulations that may be addressing those threats.

(4) Additional information concerning the historical and current status, range, distribution, and population size of this species, including the locations of any additional populations of this species.

(5) The impacts (positive or negative) of commercial sturgeon farming on conservation and restoration of the species, including:

(a) Ongoing efforts to restock wild populations using aquacultured fish and the success or lack of success of these activities for establishing self-sustaining wild populations;

(b) The degree to which commercial production of the species' meat and caviar contributes to or relieves wild stocks from harvest pressure;

(c) Whether and under what circumstances the production of the species in commercial aquaculture continues to use wild-caught fish as broodstock; and

(d) How the production and trade of interspecific hybrids with parentage from the species affects conservation of the pure species in the wild.

(6) Whether hybrid offspring produced from interspecific mating of a Ponto-Caspian sturgeon species with a non-listed species should be included in the listed (and therefore regulated) entity (see ''Hybridization'' under *Summary of Biological Status and Threats* below).

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, will not be considered

in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or a threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *https://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy 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 submissions 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.*

Because we will consider all comments and information we receive during the comment period, our final determinations may differ from this proposal. Based on the new information we receive (and any comments on that new information), we may conclude that any of the four species is threatened instead of endangered, or we may conclude that any of the four species does not warrant listing as either an endangered species or a threatened species.

Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received by the date specified in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** at least 15 days before the hearing. For the immediate future, we will provide these public hearings using webinars that will be announced on the Service's website, in addition to the **Federal Register**. The use of these virtual public hearings is consistent with our regulations at 50 CFR 424.16(c)(3).

Previous Federal Actions

On March 12, 2012, the National Marine Fisheries Service (NMFS) received a petition dated March 8, 2012, from Friends of Animals and WildEarth Guardians to list the Russian, ship, Persian, and stellate sturgeon and 11 related sturgeon species as endangered or threatened species under the Act. Although the petition was initially sent to NMFS, 10 of the 15 petitioned sturgeon species—including the Russian, ship, Persian, and stellate sturgeon species—are under the jurisdiction of the Service pursuant to an August 28, 1974, memorandum of understanding between the Service and NMFS outlining our respective jurisdictional responsibilities under the Act. On September 24, 2013, we announced in the **Federal Register** (78 FR 58507) our 90-day finding that the petition presented substantial scientific and commercial information indicating that the petitioned action may be warranted for these 10 sturgeon species.

This document constitutes our review and determination of the status of the Russian, ship, Persian, and stellate sturgeon, our 12-month finding on each of these species as required by the Act's section 4(b)(3)(B), and our proposed rule to list these species.

Supporting Documents

We prepared a species status assessment (SSA) report for the four Ponto-Caspian sturgeon. The SSA analysis was led by a Service biologist in consultation with other Service staff and species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species. In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we sought the expert opinions of four appropriate specialists regarding the SSA and received three responses.

I. Proposed Listing Determination

Background

A thorough review of the taxonomy, life history, and ecology of the Ponto-Caspian sturgeon is presented in the SSA report (Service 2021, pp. 11–23, available at *https://www.regulations.gov*). The following discussion is a summary of the biological background on the species from the SSA report.

Taxonomy

The Ponto-Caspian sturgeon are 4 of 27 species of sturgeon in the family Acipenseridae (Fricke et al. 2019, not paginated). Based on a review of the best available scientific information concerning current taxonomic classification, we determined that all four Ponto-Caspian sturgeon are valid entities for listing under the Act. Russian (*Acipenser gueldenstaedtii*), ship (*A. nudiventris*), and stellate (*A. stellatus*) sturgeon are all full species (Integrated Taxonomic Information System (ITIS) 2020, not paginated; Fricke et al. 2019, not paginated). As of 2021, ichthyological and general taxonomic authorities continue to consider Persian sturgeon endemic to the Caspian basin as a separate species (ITIS 2021, not paginated; Fricke et al. 2019, not paginated; Esmaeli et al. 2018, p. 7), although it was formerly considered a subspecies of Russian sturgeon until 1973 (Lukyanenko and Korotaeva 1973 cited in Gessner et al. 2010c, not paginated).

Many sturgeon species can produce offspring from interspecific mating events (Sergeev et al. 2019, p. 2; Havelka et al. 2011, entire; Saber et al. 2015, entire), and Russian sturgeon can even breed with fish of related families (Kaldy et al. 2020, entire). Such matings occur in the wild and in captivity (*e.g.,* Bronzi et al. 2019, pp. 259–264; Billard and Lecointre 2000, p. 363).

Physical Description

All sturgeon have an elongate body form with a flattened underside and downward-facing mouth. As adults, their bodies are at least partially covered with bony plates and they have tactile barbels hanging beneath the snout (Billard and Lecointre 2000, p. 363). Sturgeon have small eyes—characteristic of species that live in their low-light river- and lake-bottom habitats—and a cartilaginous skeleton (Billard and Lecointre 2000, p. 363). Specific morphological differences among Acipenseridae species are described in Billard and Lecointre (2000, entire) and in the references within the sturgeon family account in Fricke et al. 2019. Ponto-Caspian sturgeon attain sexual maturity at around 1 meter (m) (3 feet (ft)) in length but can grow to be 2–2.4 m (6–8 ft) long and to weigh 70–120 kilograms (kg) (150–260 pounds (lb); table 1; Gessner et al. 2010a–c, not paginated; Qiwei 2010, not paginated).

Range

The Ponto-Caspian sturgeon are native to rivers of more than 20

countries in the Black, Azov, Caspian, and Aral Sea basins (fig. 1–3; table 1; Gessner et al. 2010a–c, not paginated; Qiwei 2010, not paginated). Among the world's largest inland waterbodies (Kostianoy et al. 2005, p. 1; Kideys 2002, p. 1482), the Black and Caspian Seas are fed by rivers including Europe's two longest: The Danube, which flows from Germany to Romania and into the Black Sea, and the Volga, which runs 3,500 kilometers (km) (2,200 miles (mi)) through western Russia into the Caspian. The Volga is the largest in the Caspian basin, contributes 82 percent of freshwater discharge to the Caspian (Dumont 1995, p. 674), and formerly accounted for 75 percent of sturgeon harvest in the Caspian Sea, primarily Russian and stellate sturgeon, but also some ship and Persian sturgeon (Ruban and Khodorevskaya 2011, p. 202; Lagutov and Lagutov 2008, p. 201). Together, discharge from the Danube, Dnieper, and Dniester Rivers accounts for about 85 percent of water entering the Black Sea (Sorokin 2002 cited in Kideys 2002, p. 1482).

TABLE 1—GEOGRAPHIC RANGE AND KEY LIFE-HISTORY CHARACTERISTICS OF FOUR PONTO-CASPIAN STURGEON SPECIES

	Russian sturgeon	Ship sturgeon	Persian sturgeon	Stellate sturgeon
Native sea basins	Azov, Black, and Caspian Sea basins.	More common historically in Caspian and Aral than Black and Azov Sea basins.	Caspian basin, esp. its southern extent.	Azov, Black, and Caspian Sea basins.
Countries inhabited (countries with extirpated wild populations in *italics;* the country with introduced and established wild populations is CAPITALIZED).	Armenia; *Austria;* Azerbaijan; *Belarus; Bosnia & Herzegovina;* Bulgaria; *Croatia; Hungary;* Georgia; *Germany;* Iran (Islamic Republic of); Kazakhstan (Republic of); Moldova; Romania; Russian Federation (Russia); Serbia; *Slovakia;* Turkey; Turkmenistan; Ukraine.	*Armenia;* Azerbaijan; *Bosnia & Herzegovina; Bulgaria;* CHINA; *Croatia;* Georgia; *Hungary;* Iran, Kazakhstan (Republic of); *Moldova;* Russian Federation (Russia); *Romania; Serbia; Turkey; Ukraine; Uzbekistan; Turkmenistan.*	Armenia; Azerbaijan; Iran (Islamic Republic of); Kazakhstan (Republic of); Russian Federation (Russia); Turkmenistan.	Armenia; *Austria;* Azerbaijan; *Belarus; Bosnia & Herzegovina;* Bulgaria; *Croatia; Hungary;* Georgia; *Germany;* Iran (Islamic Republic of); Kazakhstan (Republic of); Moldova; Romania; Russian Federation (Russia); Serbia; *Slovakia;* Turkey; Turkmenistan; Ukraine.
Age at maturity, years (male/female).	8–13/10–16	9/12–18	8–15/12–18	6–12/7–14.
Reproductive frequency, years (male/female).	2–3/4–6	1–2/2–3	2–4/2–4	2–3/3–4.
Maximum longevity (male/female).	>50; now rarely reaches 40, due to harvest.	32	60–70; now rarely reaches 40, due to harvest.	41; now rarely reaches 30, due to harvest.
Female fecundity (mean # of eggs, varies with female body size).	350,000	400,000–850,000; 10–22% of body mass.	320,000	Up to 1.5 million.

Notes on Table 1: Sources for information in the table are: Gessner, 2021, in litt.; World Sturgeon Conservation Society (WSCS) and World Wildlife Fund (WWF) 2018, p. 41; WWF 2012, not paginated; Gessner et al. 2010a–c, not paginated; Qiwei 2010, not paginated; Lagutov and Lagutov 2008, p. 200; Billard and Lecointre 2000, pp. 357–360; Putilina and Artyukhin 1985 cited in Khoshkholgh et al. 2013.

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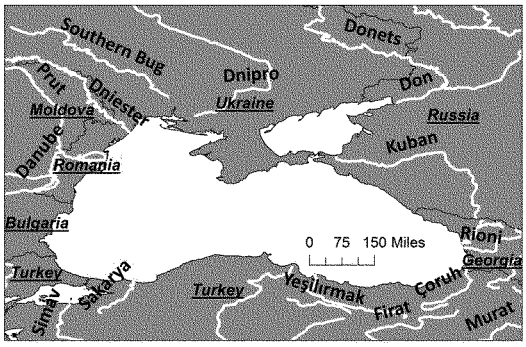

Figure 1—The Black (southern) and Azov (northern) Seas and their major rivers.

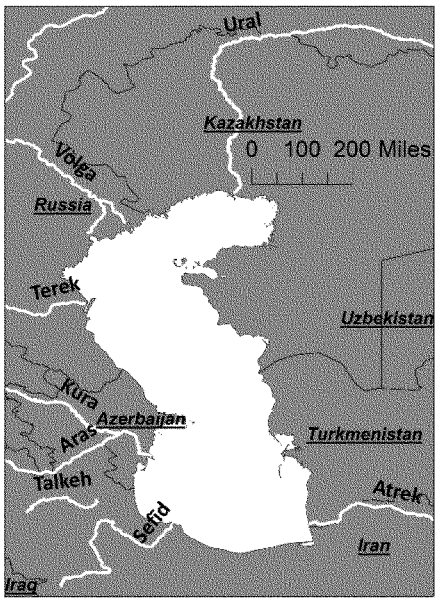

Figure 2—The Caspian Sea and its major rivers.

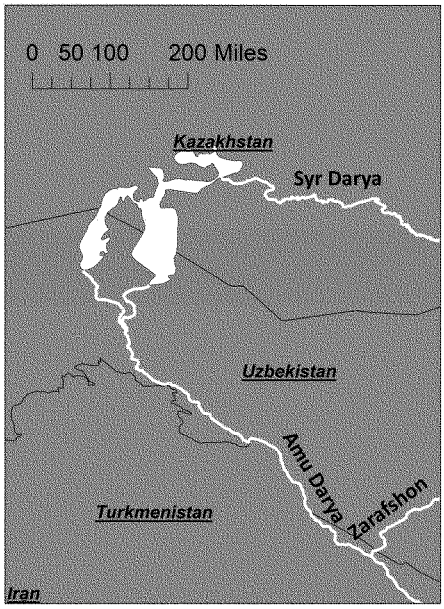

Figure 3—The Aral Sea and its major rivers.

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Life History

All four Ponto-Caspian sturgeon species use both rivers and seas (Billard and Lecointre 2000, pp. 371–374). Adults generally live and feed in saline seas but migrate several hundred kilometers (and up to 2,000 km (1,200 mi) in the Volga River) upstream into freshwater rivers—specifically the river in which they were born (Lagutov and Lagutov 2008, p. 197)—to spawn. A small number of populations, especially of ship sturgeon, live only in freshwater (WSCS and WWF 2018, p. 35; Billard and Lecointre 2000, p. 371).

Adult Ponto-Caspian sturgeon migrate into rivers in the spring or fall, then spawn in late spring (Gessner et al. 2010a–c, not paginated; Qiwei 2010, not paginated). Spawners that migrate in fall overwinter in their river before spawning. After spawning, adults return to the sea (Qiwei 2010c, not paginated).

If water temperature, flow, depth, turbidity, and cleanliness are not appropriate, females will fail to lay eggs (Ruban et al. 2019, p. 389; Chebanov et al. 2011 cited in Friedrich et al. 2019, p. 1060). Water temperatures are especially key to spawning success. Russian, ship, and stellate sturgeon all prefer water of 8–16 °C (Gessner et al. 2010a, not paginated; Gessner et al. 2010b, not paginated, Qiwei 2010, not paginated), whereas Persian sturgeon breed beginning at 16 °C and stop at 25 °C (Gessner et al. 2010c, not paginated).

Eggs between 2 and 4 millimeters (0.1–0.2 inches) in diameter are deposited in gravelly or sometimes sandy river bottoms (Billard and Lecointre 2000, p. 360). Cool, flowing water is necessary to oxygenate the eggs and avoid sediment accumulation (Lagutov and Lagutov 2008, p. 232). Depending on the species, a 50-kg (110-lb) female will lay from a few hundred thousand to 1.5 million eggs (table 1).

Once eggs hatch (approximately 8–11 days post-spawning, dependent on the species and the water temperature; Billard and Lecointre 2000 p. 360), larva drift downstream before settling among sediments while using the energy reserves of their yolk sack (2–8 days depending on the species; Billard and Lecointre 2000, p. 360). Fry then begin feeding; they and juvenile sturgeon tend to use shallower areas than adults (Gessner et al. 2010b, not paginated). Juvenile Russian sturgeon can remain in their natal river for as long as 4 years before reaching the sea (Khodorevskaya et al. 2009 cited in Ruban et al. 2019,

p. 389). Ship sturgeon also have a long period spent in freshwater as juveniles (Gessner 2021, in litt.), but some Ponto-Caspian sturgeon may spend only their first year in the river (Lagutov and Lagutov 2008, p. 199).

Ponto-Caspian sturgeons' high fecundity is balanced by very high mortality of early life stages. Based on values for related species, it is reasonable to expect that no more than 1 in 2,000 fish survive their first year (Jaric and Gessner 2013, pp. 485–486; Jager et al. 2001, p. 351). Juvenile and adult sturgeon have much higher natural survival rates (20–90 percent per year for several *Acipenser* spp.; Jaric and Gessner 2013, pp. 485–486; Jager et al. 2001, p. 351), although mature fish are heavily harvested for their roe, which is sold as caviar (see *Summary of Biological Status and Threats;* Van Eenennaam et al. 2004, p. 302).

Ponto-Caspian sturgeon continue to grow and reach sexual maturity after 6 to 22 years (table 1) with males reproducing one to a few years earlier than females (Gessner et al. 2010a–c, not paginated; Qiwei 2010, not paginated). Most female sturgeon spawn every 2–4 years, although Russian sturgeon females may wait up to 6 years between spawning bouts (Gessner et al. 2010a–c, not paginated; Qiwei 2010, not paginated). Sturgeons' long times to maturity and intervals between reproductive bouts limit their capacities to rebound from population declines.

Diet

Adult Ponto-Caspian sturgeon diets vary between species and locations but generally include small fish, mollusks, worms, and crustaceans (Billard and Lecointre 2000, p. 373; Polyaninova and Molodtseva 1995 cited in Billard and Lecointre 2000, p. 374). In the Caspian and Black Sea regions, this includes herring (Clupeidae), gobies (Gobiidae), crabs (Brachyura), mysids (Mysidae), annelids, and other taxa (Gessner et al. 2010a–c, not paginated; Qiwei 2010, not paginated).

Population Biology

The viability of Ponto-Caspian sturgeon populations is highly sensitive to:

- Abundance of adult females in a population;
- Adult sex ratio in the population;
- Age of females at first reproduction;
- Female fecundity (number of eggs laid);
- Natural mortality rate of the youngest age classes;
- Female spawning frequency; and
- Adult mortality rate (Jaric et al. 2010, pp. 219–227).

Ponto-Caspian sturgeon likely have separate populations that travel up and spawn within different rivers (Norouzi and Pourkazemi 2016, pp. 691–696; Norouzi et al. 2015, pp. 96–99; Khoshkholgh et al. 2013, pp. 33–35). This conclusion is reasonable because sturgeon return to breed in their natal river (Gessner and Ludwig 2020, pers. comm.; Pikitch et al. 2005, p. 243). Therefore, we assess the status of the four Ponto-Caspian sturgeon species within each of the major rivers that they presently inhabit or historically inhabited and consider each river to hold a separate population of each inhabiting species.

Nonetheless, some data (*e.g.,* some fisheries landing records) are recorded for entire sea basins. In the absence of finer scale data, we use these coarser records. Similarly, some authors indicate distinct populations within rivers, delineated by their winter or spring migration (Friedrich et al. 2019, p. 1060), but the strength of this separation and its frequency across rivers is uncertain.

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species is an endangered species or a threatened species. The Act defines an endangered species as a species that is ''in danger of extinction throughout all or a significant portion of its range'' and a threatened species as a species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the expected response by the species, and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term ''foreseeable future'' extends only so far into the future as the Service can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define foreseeable future as a

particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the species, including an assessment of the potential threats to the species. The SSA report does not represent a decision by the Service on whether the species should be proposed for listing as an endangered or threatened species under the Act. However, it does provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies. The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at Docket No. FWS–HQ–ES–2021–0073 on *https://www.regulations.gov.*

To assess Ponto-Caspian sturgeon viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency supports the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years), redundancy supports the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation supports the ability of the species to adapt over time to long-term changes in the environment (for example, climate changes). In general, the more resilient and redundant a species is and the more representation it has, the more likely it is to sustain populations over time, even under changing environmental conditions. Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated the individual species' life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species' responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We use this information to inform our regulatory decision.

Summary of Biological Status and Threats

In this discussion, we review the biological condition of the species and their resources, and the threats that influence the species' current and future conditions to assess the species' overall viability and the risks to their viability.

Individual Ponto-Caspian sturgeon require well-oxygenated, low-turbidity, unpolluted water for respiration (Ruban et al. 2019, p. 389). The species feed on larval insects, small mollusks, crustaceans, and fish (Gessner et al. 2010a–c, not paginated; Qiwei 2010, not paginated; Billard and Lecointre 2000, pp. 373–374). At the population level, all four species rely on connectivity of feeding and spawning grounds, usually several hundred kilometers (several hundred miles) or more up the natal river (Lagutov and Lagutov 2008, p. 197; Billard and Lecointre 2000, pp. 371–374). Successful spawning and reproduction is dependent on having large areas of loose gravel substrate 2–25 m (6.6–82 ft) below the surface to shelter eggs and embryos and with sufficient interstitial flow for eggs to be oxygenated (Lagutov and Lagutov 2008, p. 232; Billard and Lecointre 2000, pp. 360–361). The viability of the species depends on having adaptive capacity to respond ecologically and/or evolutionarily to changing environments. This is partially related to population size and to the persistence of multiple distinct, wide-ranging populations to reduce susceptibility to catastrophes (Smith et al. 2018, pp. 304–305).

Dams and Other Hydrological Engineering

All major rivers in the Ponto-Caspian region are dammed. Nearly 100 dams at least 8 m (26 ft) tall are present in the Caspian and Aral Sea Basins, and approximately 300 such dams dot the Black and Azov Sea basins (Service 2021, pp. 22–28; GRanD 2019, not paginated; Lehner et al. 2011, pp. 494–502). These dams are effectively impassable for sturgeon, eliminating the fishes' ability to migrate to and from spawning grounds upstream of such barriers (WSCS and WWF 2018, p. 48; He et al. 2017, p. 12 and references therein; WWF 2016, p. 19; Fashchevsky 2004, p. 185). Among the many impacts of large dams are that fish that cannot reach their historical spawning grounds may not reproduce successfully at downstream locations, and reduced water flow may hinder proper navigation during migration (Gessner 2021, in litt.; WSCS and WWF 2018, p. 48; He et al. 2017, p. 12 and references therein; WWF 2016, p. 19; Fashchevsky 2004, p. 185).

As the foremost example, the Volgograd Dam was built on the Volga River between 1958 and 1961, destroying access to 60–80 percent of the river's Russian sturgeon spawning grounds and 40–60 percent of those for stellate sturgeon (Vlasenko 1982 cited in Ruban et al. 2019, p. 389; Ruban and Khodorevskaya 2011, pp. 199–204; Fashchevsky 2004, p. 195). It is now the final dam of about 10 that impede the flow of the Volga and its tributaries to the Caspian Sea (GRanD 2019, not paginated; Lehner et al. 2011, pp. 494–502). As mentioned above, the Volga River is the primary input to the Caspian Sea, historically accounting for more than 80 percent of freshwater discharge (Dumont 1995, p. 674) and 75 percent of sturgeons harvested from the Caspian Sea (Ruban and Khodorevskaya 2011, p. 202). Following the Volgograd's completion, areas downstream of the dam became overcrowded, as fish that once migrated farther upstream were forced to stop here (Slivka and Pavlov 1982 cited in Ruban and Khodorevskaya 2011, p. 203). Up to 70 percent of eggs laid in these spawning grounds did not hatch (Khoroshko 1972 and Novikova 1989 cited in Ruban and Khodorevskaya 2011, p. 203).

In the Volga's remaining spawning grounds downstream of the dam, the annual sturgeon reproductive output now depends heavily on the volume and timing of water released from the upstream reservoir (Veshchev et al. 2012, entire). In the first 40 years of dam operation, only 13 years saw the downstream spawning grounds flooded. In relatively dry years, sturgeon numbers recruited into the population can be six to seven times lower than in relatively wet years, although productivity is greatly depleted in all years compared to before dam construction (Khodorevskaya and Kalmykov 2014, p. 578).

The spring peak water levels in the Volga used to follow snowmelt but now

follow the water release schedule of dam operators, creating a compressed spring high-flow period (Fashchevsky 2004, p. 192). This change forces juvenile sturgeon to migrate away from shallow spawning grounds earlier than they naturally would and those that survive arrive in the Caspian Sea at smaller size (Khodorevskaya et al. 2009 cited in Ruban et al. 2019, p. 389), likely more susceptible to predation and other threats. A lower volume spring flood also reduces the initial size of spawning grounds and migration intensity, decreasing egg and larval survival (Ruban et al. 2019, p. 389).

Managed water releases from the Volgograd dam for electricity generation homogenize flows across the year, limiting flow relative to natural spring peaks and increasing winter flow rates compared to the pre-dam baseline. Up to 30 percent of Russian sturgeon that overwinter below the dam fail to spawn after exhausting their energy reserves fighting the high velocity of dam outflows (Altufiev et al. 1984 cited in Ruban et al. 2019, p. 389).

Similar impacts of other dams are prevalent across the Ponto-Caspian sturgeons' ranges. In the Caspian basin, fewer than 2,000 hectares (5000 acres) of spawning habitat remained in the Caspian's major rivers as of 2008, with about 75 percent of what was left in the Volga and Ural (Lagutov and Lagutov 2008, p. 230). Of the remaining 25 percent, two-thirds is in rivers where sturgeon failed to spawn for at least 25 years (Lagutov and Lagutov 2008, p. 230). As another example from the Black Sea basin, the Kakhov Dam was constructed on the Black Sea's Dnieper River in Ukraine in the early 1950s; immediately following its completion, the catch of migratory fish including Russian and stellate sturgeon as well as beluga sturgeon (*Huso huso*) and herring (Clupeida) fell by 80 percent (Fashchevsky 2004, p. 195).

The Danube River, responsible for over 50 percent of discharge to the Black Sea, is another representative case of the extent and impacts of damming in the Ponto-Caspian region. No fewer than 31 dams cross the Danube (Friedrich et al. 2019, p. 1061; Bacalbasa-Dobrovici 1997, p. 201). The Iron Gates Dams built in 1970 and 1984 (Bacalbasa-Dobrovici 1997, p. 201) created an isolated and now extirpated population of Russian sturgeon in the middle Danube (Billard and Lecointre 2000, p. 373). Danube Russian sturgeon fishery landings declined by 90 percent in 1985, the year after the second of two Iron Gates Dams went into place (Gessner et al. 2010a, not paginated).

To date, most fish passage structures built or retrofitted into dams to aid fish movement past the barrier have been unsuccessful at facilitating passage of sturgeon; slow-moving sturgeon rarely move through fast-flowing spillways (Fashchevsky 2004, p. 185; Billard and Lecointre 2000, p. 380). Such structures require low-flow resting pools and wide berths, if they are to aid sturgeon migration (Cai et al. 2013, p. 153). In addition, long-stagnant reservoirs behind dams may be low in oxygen and/or high in pollutants, either of which can confuse migratory navigation (Gessner 2021, in litt.). Few concrete plans exist to mitigate dam impacts, although planning for improved passage opportunities at the Iron Gates Dam is underway (International Commission for the Protection of the Danube River 2018, p. 9) and regional action plans call for increased investment in research and implementation of measures to improve river connectivity (*e.g.,* WSCS and WWF 2018, pp. 13–14, 21–22).

Dams are far from the only water-control structures engineered into Ponto-Caspian rivers, and all of irrigation and pumping stations, dredging, watercourse straightening, and water transfers between waterbodies affect sturgeon. For instance, since the mid-1980s, 85 percent of floodplains in the lower Danube have been diked (Botzan 1984 cited in Bacalbasa-Dobrovici 1997, p. 203). Dikes increase water depths and flow rates, which causes both migrating and recently hatched sturgeon to struggle, and prevent water from entering the natural floodplain, greatly reducing the availability of invertebrate prey for sturgeon (WSCS and WWF 2018, p. 49).

Massive withdrawals for irrigation or drinking water can dry out or alter the timing of flooding on spawning grounds; for instance, 40–60 percent of the Ural's discharge was diverted in the early 2000s, although this river is actually better off than most in the region because the lower 1,800 km (1,100 mi) has not been dammed (Lagutov and Lagutov 2008, p. 197; Fashchevsky 2004, pp. 194–196). Still, water levels have continued to drop in the Ural, due to intensive water use for irrigation, industry, and drinking water (Trotsenko and Melnikova 2019, not paginated).

Water withdrawals from the inlets to the Aral Sea, where ship sturgeon was native, have had particularly devastating impacts. Beginning in the 1960s, diversion of water from the Syr-Darya and Amu-Darya Rivers in what is now Kazakhstahn and Uzbekistan greatly limited the volume of water entering the Aral Sea (Micklin 2007, entire). The sea shrank from over 67,000 km^2 (26,000 mi^2) in 1960 to just over 14,000 km^2 (5,400 mi^2; nearly an 80 percent decline) by 2006 (Micklin 2007, p. 53). For at least 13 years (1974–1986), the Syr-Darya dried up before reaching the Aral Sea, and the same was true of the Amu-Darya for 5 years in the 1980s (Micklin 2007, p. 51). Extensive restoration is unlikely given the value of continued water withdrawals for agriculture (Micklin 2007, pp. 60–61). Moreover, dams in both the Syr-Darya (just 20 km (12 mi) from its mouth) and the Amu-Darya block the migration path to most former spawning sites (Ermakhanov et al. 2012, p. 6; Zholdasova 1997, p. 374).

Canals built for shipping access connect previously separate waterways, shifting the composition of ecological communities of which sturgeon are members. In the case of the Volga-Don navigational canal, connection of these two rivers spread an invasive species, the western Atlantic comb jelly *Mnemiopsis leidyi,* with grave environmental impact (see *Invasive species* below; Ivanov et al. 2000, p. 255). Ship noise and collisions in canals and elsewhere can also injure or kill sturgeon and interrupt their migration and other behavior (WSCS and WWF 2018, p. 49; He et al. 2017, p. 9).

Overfishing and the Trade in Ponto-Caspian Sturgeon Caviar and Meat

Heavy fishing pressure has for several decades or even centuries severely strained Ponto-Caspian sturgeon populations. Most data supporting the historical impact of overfishing come from fisheries landing records, and declines in commercial catch volume are widely believed to reflect population size in sturgeon (Qiwei 2010, not paginated). The black-market trade continues to negatively affect the species in the wild, despite existing Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulations and national and regional conservation agreements. Today, the primary threat from trade is due to domestic trade in the species' range states, although some international illegal trade likely still occurs.

History of Caspian Sea Sturgeon Fisheries

Commercial fisheries have long threatened the Ponto-Caspian sturgeon (Khodorevskaya and Kalmykov 2014, p. 577; Ruban and Khodorevskaya 2011, p. 199), and the threat stems primarily from lethal harvest to meet consumer demand for caviar, as well as sturgeon

meat. Recent global caviar demand (from all sturgeon species) requires production from well over 1.5 million fish annually (Service 2021, p. 28; Gessner 2021, in litt.; Gessner et al. 2002, p. 665), and sturgeon overfishing is considered worst in the Ponto-Caspian (Reinartz and Slavcheva 2016, p. 16).

Russian sturgeon—sometimes combined with Persian sturgeon due to the historical taxonomic uncertainty—has been the most abundant species in Caspian basin catches (around 50 percent of the fishery for the four species assessed here plus beluga (*Huso huso*) and sterlet (*Acipenser ruthenus*) in most years since at least 1930, primarily in Russian waters; Ruban et al. 2011 entire; Ruban and Khodorevskaya 2011, pp. 200–202), with stellate sturgeon the next most common (mostly from Kazakh territory; Ruban and Khodorevskaya 2011, pp. 200–203). Ship sturgeon has long accounted for minimal catch volume in the Caspian.

Overfishing led to a decline in sturgeon abundance and catch in the Caspian as early as 1914 (Khodorevskaya and Kalmykov 2014, p. 577; Korobochkina 1964 cited in Ruban and Khodorevskaya 2011, p. 199). Although a reduction in fishing pressure during World War I and during the Soviet revolution immediately thereafter allowed some stocks to rebound, by the late 1930s, the average size of Russian sturgeon caught had fallen by 50 percent from the period 1928–1930 (Ruban and Khodorevskaya 2011, p. 199), an indicator of an over-exploited fishery (Koshelev et al. 2014, pp. 1129–1130; Shackell et al. 2010, p. 1357; McClenachan 2009a pp. 636–643; McClenachan 2009b, pp. 175–181). Smaller females lay fewer eggs (Gessner 2021 in litt.), meaning a greater number of fish were likely required to satisfy demand for wild-caught caviar, and that the ability of wild populations to withstand harvest was likely reduced. Quotas and minimum fish size limits imposed on southern and central Caspian Sea sturgeon harvesting in 1938 combined with a strong downturn in fishing during World War II (Service 2021, figs. 3.5, 3.6) to allow limited recovery of sturgeon stocks (Ruban and Khodorevskaya 2011, p. 199).

Over the ensuing three decades, sturgeon landings in the Caspian generally rebounded to approximately 30,000 metric tons (33,000 U.S. tons) annually in 1977, similar to the catch in 1914–1915 (but 40 percent less than the annual Volga River catch alone in the 1600s; Korobochkina 1964 cited in Khodorevskaya and Kalmykov 2014, p. 577; Ruban and Khodorevskaya 2011, p. 199). This recovery may have been aided by a near-complete ban on sturgeon fishing in the Caspian Sea that was in place during 1962–1965 (Ruban and Khodorevskaya 2011, p. 199; Abdolhay 2004, p. 137) . The increased catch may also have been due to increased efficiency of fishing operations (Lagutov and Lagutov 2008, p. 212).

From the 1960s until the early 1980s, the Caspian fishery focused intensely on harvesting spring migrants moving into rivers (Ruban and Khodorevskaya 2011, p. 204). Despite the Volgograd Dam's impacts, the Volga River remained the primary fishery location, accounting for 90 percent of all Soviet sturgeon harvest, with 80 to 95 percent of Volga River spawners captured yearly (note that not all adults spawn each year, so this is not 80–95 percent of all adults; Ruban and Khodorevskaya 2011, p. 204).

The collapse of the Soviet Union and the economic hardships that followed encouraged sturgeon poaching in the former Soviet territories (Ruban and Khodorevskaya 2011, p. 204). By the late 1990s, the illegal catch of all sturgeon species was estimated to be 6 to 10 times the permitted fishery (CITES Animals Committee 2000, p. 47; Fashchevsky 2004, p. 186). Others estimate that the illicit catch may have been as much as 35 times greater than the total legal catch (Bobyrev et al. cited in Ruban et al. 2019, p. 389).

The fishery history in the Ural River parallels those of the Volga and of the Caspian as a whole. In the late 1800s and early 1900s, the Ural River fishery was strictly controlled by the Cossack military government (Lagutov and Lagutov 2008, p. 209). However, by the 1950s, the Ural was heavily overfished (Lagutov and Lagutov 2008, p. 209) and the 1962 Soviet ban on sturgeon fishing in the sea increased pressure on the Ural River fishery (Lagutov and Lagutov 2008, p. 212), which was dominated by stellate sturgeon (Lagutov and Lagutov 2008, p. 220).

The Ural River sturgeon catch (all species) peaked in the late 1970s at about 10,000 metric tons (11,000 U.S. tons), 30 percent of the Caspian harvest (Lagutov and Lagutov 2008, p. 213). Thereafter, the catch continuously declined to near-zero by the early 2000s (Lagutov and Lagutov 2008, p. 213). In the late 1990s, as the Soviet collapse encouraged increased poaching, up to 60 percent of spawning ship sturgeon plus beluga sturgeon were caught in the Ural annually (Lagutov and Lagutov 2008, p. 219). From 1993 through 2007, ever-shrinking Kazakh quotas for sturgeon harvest in the Ural basin were generally not met because too few fish remained (Lagutov and Lagutov 2008, p. 213).

Although 4–5 tons of ship sturgeon were caught per year in the Kura River in the 1980s (Lagutov and Lagutov 2008, p. 227), the Terek, Kura, and Sefid-Rud Rivers' fishery volumes never approached those of the Volga and Ural (Lagutov and Lagutov 2008, p. 198). These rivers' fish populations have similarly been fished to near-extirpation (Lagutov and Lagutov 2008, p. 223).

In the late 1970s and early 1980s, sturgeon catches in the Caspian began to collapse. From their peak of around 30,000 metric tons (33,000 U.S. tons) in the mid-1970s, landings of Russian, Persian, and stellate sturgeon fell to 1,000–2,000 metric tons (1,100–2,200 U.S. tons) per year by the early 2000s (Service 2021, figs. 3.5, 3.6). Although these catch declines appear to mirror those in the 1930s and 1940s from which sturgeon fisheries rebounded, there are important distinctions. The drop in fisheries landings during the 1930s to 1940s were largely the result of a strong downturn in fishing effort during World War II (Service 2021, figs. 3.5, 3.6; Ruban and Khodorevskaya 2011, p. 199). No analogous event occurred during the late 1970s and early 1980s. Additionally, by the 1970s sturgeon populations were also heavily impacted by dams constructed between World War II and the 1970s (see *Dams and other hydrological engineering*), rendering a potential recovery in numbers even less likely.

In response to declining landings, some types of fishing equipment were banned seasonally n 1981 by Soviet authorities in portions of the Volga, including upstream of Astrakhan and on Glavnyi Bank (Ruban and Khodorevskaya 2011, p. 204). Still-stricter regulations began in 1986 (Ruban and Khodorevskaya 2011, p. 204), but the Caspian basin catch continued crashing fast, largely due to increased poaching and overfishing in both the sea itself and in rivers (Ruban and Khodorevskaya 2011, pp. 200–201, 204).

Overall, Caspian Sea sturgeon landings declined by more than 95 percent from their 1977 peak to 2003, when only about 1,000–2,000 metric tons (1,100–2,200 U.S. tons) were captured in the Caspian basin (Ruban and Khodorevskaya 2011, p. 200). This amount is 2 percent of the volume caught in just the Volga River in the 1600s and just over 3 percent of that caught a little over a century ago (Khodorevskaya and Kalmykov 2014, p. 577; Korobochkina 1964 cited in Ruban

and Khodorevskaya 2011, p. 199; Ruban and Khodorevskaya 2011, p. 199).

History of Aral Sea Sturgeon Fisheries

From 1928 through 1935, 3,000–4,000 metric tons (3,300–4,400 U.S. tons) of ship sturgeon were harvested from the Aral Sea basin annually (Zholdasova 1997, p. 379). Following decimation of the region's ship sturgeon stock by the introduced parasite *Nitzschia* (see *Disease* below), the fishery was closed from 1940 until at least 1960, and resumed only at very low levels (0.7–9 metric tons (0.8–1.0 U.S. tons) per year; Zholdasova 1997, p. 379). From the 1970s on, intensive illegal fishing caused the extirpation of the population, and by 1984 no Aral basin fishery remained (Zholdasova et al. 1997, pp. 376–379).

History of Black and Azov Sea Sturgeon Fisheries

As in the Caspian Basin's Volga River, sturgeon catch records indicate prodigious volumes of the fish were caught in the Black Sea basin several centuries ago. Remarkably, in 1548, the Vienna, Austria, fish market once sold 50,000 metric tons (55,000 U.S. tons) of sturgeon from the Danube River (including the four species assessed here plus sterlet, beluga, and European sturgeon) in just a few days (Krisch 1900 cited in Friedrich et al. 2019, p. 1060). However, large sturgeon were already rare in the middle and upstream portions of the Danube by the 1800s (Heckel and Kner 1858 and Schmall and Friedrich 2014 cited in Friedrich 2019, p. 1060) with population declines due to overfishing underway (Bacalbasa-Dobrovici 1997, p. 202).

Sturgeon fishing on Romania's portion of the lower Danube was tightly controlled beginning with Communist rule in 1947, but even so, the catch declined precipitously during the second half of the 20th century. Whereas nearly 300 metric tons (330 U.S. tons) of sturgeon (all species) were caught in 1960 and 1965, this amount fell to less than 25 metric tons (28 U.S. tons) by 1990 (Bacalbasa-Dobrovici 1997, p. 203). Similar catastrophic declines in catch volume occurred on the Ukranian Danube, with almost no fish caught by 2000 (Reinartz et al. 2020a, p. 8).

The abundances of Russian, ship, and stellate sturgeon have all declined greatly in the lower Danube (Bacalbasa-Dobrovici 1997, p. 203). Historically, fishing was done with hooklines, but the introduction of large nets was a game-changer; one fisherman called them ''endless fences in the Black Sea'' (Luca et al. 2020, not paginated). Despite the much-decreased catch, by 2000, over 80 fishing sites remained along many hundreds of kilometers (hundreds of miles) of the Romanian Danube (Suciu 2008, p. 11). However, by 2006, no commercial fishing of sturgeon was permitted in the country (Suciu 2008, p. 17).

Trawl nets in the Danube estuary and surrounding seabed destroyed bottom habitats (Bacalbasa-Dobrovici 1997, pp. 205–206). Compared to the 1930s, by the 1980s, over two-thirds of river-bottom species and about 60 percent of their abundance had been lost; many of these are sturgeon prey items (Bacalbasa-Dobrovici 1997, pp. 205–206).

In the Kizilirmak and other Turkish Rivers, overfishing coupled with dams led to a collapse of the fishery in the 1970s (Memis 2014, p. 1552). Whereas legal Turkish sturgeon landings (all sturgeon species) were as high as 300 metric tons (330 U.S. tons) in the early 1960s, this volume dropped to just 4 metric tons (4.4 U.S. tons) in 1979 (Memis 2014, p. 1555). Despite a ban since 1980 on catching Ponto-Caspian sturgeon above 140 centimeters (4 ft 7 in) in length, illegal fishing continued to reap up to 15 metric tons (17 U.S. tons) of all sturgeon species from nearby coastal fisheries annually in the 1990s (Memis 2014, p. 1555). Illegal fishing is said to have slowed, then ceased in 2005 (Memis 2014, p. 1555), although it is not clear whether this is because of better enforcement or the exhaustion of the sturgeon population. By the late 1990s, as in the Caspian Sea, the illegal catch of all sturgeon species in the Black and Azov Sea basins was estimated to be 6 to 10 times greater than the legal fishery (CITES Animals Committee 2000, p. 47; Fashchevsky 2004, p. 186).

Few historical sturgeon data specific to the Dnieper, Southern Bug, Dniester, and Rioni Rivers are available. However, the Ponto-Caspian sturgeon populations are much reduced in these rivers, where they also were not as abundant to begin with (Vecsei 2001, p. 362; Fauna and Flora International 2019a, entire).

Invasive Species

The warty comb jelly (*Mnemiopsis leadyi*) is a western Atlantic ctenophore (a comb jelly) and is by far the invasive species with the greatest impacts on the Ponto-Caspian sturgeon and their habitats. First documented in the Black Sea (Pereladov 1983 cited in Ivanov et al. 2000, p. 255) in 1982, the warty comb jelly was widespread and native in western hemisphere estuaries, but has had vast impacts on Ponto-Caspian food webs, including on sturgeon by reducing prey abundance (Shiganova et al. 2019, entire; Kamakin and Khodorevskaya 2018, entire; Ivanov 2000, entire). The warty comb jelly was very likely introduced to the Black Sea in ship ballast water and then spread and multiplied prolifically (Ivanov et al. 2000, p. 255).

By 1988, the biomass of the warty comb jelly in the Black Sea ballooned to 1.1 billion metric tons (1.2 billion U.S. tons), greater than all the fish caught worldwide that year (Sorokin et al. 2001 cited in Ivanov et al. 2000, p. 255). It spread through the Black Sea where it flourished and was found at densities as high as 21,000 individuals per m^2 (2,000 per ft^2; Mirsoyan et al. 2006 cited in Shiganova and Shirshov 2011, p. 35).

The warty comb jelly feeds on zooplankton, floating fish eggs (not those of sturgeon, which adhere to the benthos), and fish larva (Tzikhon-Lukanina et al. 1993 cited in Ivanov et al. 2000, p. 256). In a single day, warty comb jelly individuals may ingest over 10 times their own body mass (Kremer 1979 cited in Ivanov et al. 2000, p. 256).

The warty comb jelly blooms in both the Black and Azov Seas caused zooplankton abundance to decrease dramatically and pelagic fish stocks to crash because of both direct predation and the loss of their zooplankton prey (Shiganova and Bulgakova 2000 cited in Ivanov et al. 2000, p. 256). The pelagic fish impacted include mackerel, anchovy, and kilka, several species of which are favored sturgeon prey (Gessner et al. 2010a–c, not paginated; Qiwei 2010, not paginated).

In 1997, another jelly species, *Beroe ovata,* was deliberately introduced to the Black Sea as a biocontrol for the warty comb jelly. *B. ovata* is a predator of the warty comb jelly in their native range and has considerably reduced the abundance of the warty comb jelly in the Black Sea (Shiganova et al. 2019, p. 434). Although *B. ovata* depresses the abundance of the warty comb jelly, there is an annual lag in the abundance of *B. ovata,* so there remains a short 1–2-month period each year in which the warty comb jelly has pronounced effects on the Black Sea food web, reducing sturgeon prey availability (Shiganova and Shirshov 2011, p. 89).

By 1999, the warty comb jelly was also confirmed from the Caspian Sea (Ivanov et al. 2000, pp. 255–256). The species likely moved from the Sea of Azov through the human-made Volga-Don canal into the Caspian basin (Ivanov et al. 2000, p. 255). The abundance of the warty comb jelly grew more than 200-fold from 1999 to 2009, peaking near 300 individuals per m^2 (28 per ft^2) in the middle and southeastern portions of the Caspian (Kamakin and

Khodorevskaya 2018, p. 174), although some authors report as many as 8,085 warty comb jellies per m^2 (751 per ft^2) in the same region (Shiganova and Shirshov 2011, p. 36). The warty comb jelly tended to be least abundant in the cooler areas of the Caspian, including the north in winter and the central east (Shiganova and Shirshov 2011, p. 40). The eastern region was first invaded to a considerable degree only in 2008 (Shiganova and Shirshov 2011, p. 41).

The warty comb jelly impacts on the Caspian ecosystem have been greater than those in the Black Sea (Shiganova and Shirshov 2011, p. 44). Caspian zooplankton abundance crashed by up to 90 percent, and mollusk larva—which grow into important sturgeon prey—disappeared from major sturgeon feeding grounds (Kamakin and Khodorevskaya 2018, p. 173; Shiganova and Shirshov 2011, p. 51). In the northern Caspian, crustacean biomass was halved as warty comb jellies ate their planktonic larvae (Shiganova and Shirshov 2011, p. 52); in the south, crustaceans were nearly eliminated after having once been the dominant benthic taxa and sturgeon food item (Shiganova and Shirshov 2011, p. 53).

As in the Black and Azov Seas, Caspian Sea planktivorous fish declined heavily, due to both direct predation of eggs by the warty comb jelly and the loss of their zooplankton prey (Kamakin and Kohodoreskaya 2018, p. 175). In particular, several herring species (*Clupeonella* spp.) that previously formed a major component of sturgeon diets became rare, likely declining by 90 percent or more (Shiganova and Shirshov 2011, pp. 53–59).

As in the Black Sea, releasing *B. ovata* in the Caspian would likely help ameliorate warty comb jelly impacts on sturgeon and the broader food web (Shiganova and Shirsov 2011, pp. 105–113), although *B. ovata* may be limited to the southern edge of the northern Caspian because salinity is too low farther north (Shiganova and Shirshov 2011, p. 104). No release of *B. ovata* has yet occurred in the Caspian, to our knowledge.

Approximately 60 other nonnative species are present in the Caspian Basin (Shiganova and Shirshov 2011, p. 31). For instance, sturgeon feeding grounds are periodically colonized by invasive shellfish and polychaete worms (Ruban et al. 2019, p. 390). Whether sturgeon consume these as readily as they do native invertebrates is not known. Regardless, no nonnative species are considered nearly as consequential for sturgeon as is the warty comb jelly.

Pollution

Most Ponto-Caspian rivers and all four sea basins discussed here have been polluted to a considerable degree. While the vast range of impacts of the many different contaminants and their range of concentrations are not completely known, pollution most strongly affects eggs, embryos, young juveniles, and maturing and reproducing adults (WSCS and WWF 2018, p. 50); adults feeding in seas between reproductive bouts may be somewhat less susceptible. Because sturgeon live near sea and river bottoms, they are exposed to organic pollutants (*e.g.,* polychlorinated biphenyl (PCBs)) and heavy metals that accumulate in sediments and in the bottom-dwelling animals that sturgeon feed on (Kasymov 1994 cited in He et al. 2017, p. 10; Billard and Lecointre 2000, p. 366; Kocan et al. 1996, p. 161). Heavy metals, organochlorine compounds, and hydrocarbons can all accumulate in sturgeon tissues where they can cause disorders including but not limited to organ and reproductive failure (Jaric et al., 2011, Luk'yanenko and Khabarov 2005, and Poleksic et al. 2010 cited in Friedrich et al. 2019, pp. 1061–1062; WSCS and WWF 2018, p. 50; Gessner et al. 2010a, not paginated).

The Volga River has been heavily polluted since the 1980s and 1990s when 500–1,100 percent increases in the concentration of several heavy metals, some of which vastly exceeded Soviet and Russian maximum allowable concentrations (MACs; Makarova 2000 and Andreev et al. 1989 cited in Ruban et al. 2019, p. 389). River water quality was said to be ''unsatisfactory'' for aquatic species (Moiseenko et al. 2011, p. 21). Petroleum compounds accumulated in the river's sediments, surpassing MACs by 300–700 percent on Russian sturgeon spawning grounds (Andreev et al. 1989 and Khoroshko et al. 1997 cited in Ruban et al. 2019, p. 389). Heavy metals passed into sturgeon livers, kidneys, and spleens (Ruban et al. 2019, p. 389) and caused measurable physiological, reproductive, and morphological pathologies in bream (*Abramis brama*), a fish species used as an indicator of pollution impacts (Moiseenko et al. 2011, pp. 13–20). In sturgeon, eggshells were weakened, and muscular abnormalities were observed (Moiseenko et al. 2011, p. 2). There is no indication of material improvement in Volga River water quality since the 1980s.

In contrast, pollution is a relatively limited problem in the Ural River, because the human population in the region is relatively sparse (Lagutov and Lagutov 2008, p. 246). Still, upstream portions of the river (especially within Cheliabinsk Oblast, Russia) may be highly polluted by industrial and agricultural inputs (Lagutov 2008, p. 148), which could potentially affect sturgeon or their food resources downstream.

Pollution in the Kura River is not well studied but is due to poorly treated municipal and industrial wastewater, agricultural and urban runoff, and mining residue (Bakradze et al. 2017, entire). Eutrophication (the process by which waters lose oxygen following extreme plant growth triggered by excessive nutrient inputs) appears not to be at emergency levels (Bakradze et al. 2017, p. 369). Heavy metal concentrations are elevated in upstream portions of the Kura, relative to other regional rivers; however, the Mingachevir dam and reservoir prevent most such pollution from entering the lower 200-plus km (120-plus mi) of river (Suleymanov et al. 2010, pp. 306–311). The Terek and Sefid-Rud Rivers may not have problematic levels of pollution (Askhabova et al. 2019, p. 557; Askhabova et al. 2018, p. 213), but the evidence base is not as complete for these rivers.

In the Azov Basin, the Don River receives considerable volumes of heavy metals and petroleum byproducts (*e.g.,* Dotsenko et al. 2018, entire; Sazykin et al. 2015, pp. 6–10), as do parts of the Kuban (Qdais et al. 2018, pp. 821–823). Since the 1970s, river inputs of nitrogen and phosphorus to the Azov have led to eutrophication in both rivers (Strokal and Kroeze 2013, p. 190). However, the degree to which pollution and eutrophication are affecting sturgeon health in the Azov basin is poorly characterized. That said, in 1990, 55,000 sturgeon of unspecified species composition were found dead along the shores of the Azov Sea, apparently due to pollution (Gessner et al. 2010a, not paginated). The event very likely killed even more fish that did not wash ashore.

The Dniester, Dnieper, and especially Danube Rivers in the northern Black Sea basin were all subject to large increases (300–700 percent) in nutrient and organic matter loading between the 1950s and 2000 (Bacalbasa-Dobrovici 1997, p. 205; Strokal and Kroeze 2013, p. 188). These increases typically resulted from fertilizer runoff and wastewater discharge and caused eutrophication that increased turbidity and decreased the availability of sturgeon prey (Zaitzev 1992 and 1993 cited in Bacalbasa-Dobrovici 1997, p. 205). Oxygen concentrations crashed, making several thousand square kilometers (over 1,000 square miles)

between the Danube and Dniester deltas unable to support fish between 1973 and 1990 (Bacalbasa-Dobrovici 1997, p. 206). The so-called ''dead zones'' killed many of the benthic mollusks that sturgeon prey on (Strokal and Kroeze 2013, p. 179). In 2000, 14,000 km^2 (5,400 mi^2) in the northern Black Sea (approximately 3 percent of the sea) was hypoxic, although nutrient inputs to the region have decreased since the 1970s and are forecast to continue decreasing (Strokal and Kroeze 2013, pp. 179, 190). Clear data on more recent trends in Dnieper water quality are not available, to our knowledge.

Overall, pollution impacts on sturgeon in the Danube are considered severe (Banaduc et al. 2016, p. 144). Along the lower Danube River in Romania, a centuries-long history of deforestation has eroded riverbanks; consequently, water turbidity and sedimentation of sturgeons' gravel spawning grounds has increased (Bacalbasa-Dobrovici 1997, p. 203). In other sturgeon species, high sediment loads limit egg development (Li et al. 2012, p. 557); very likely the Ponto-Caspian sturgeon experience similar effects of sedimentation. Heavy metals accumulate in muscle and liver tissues of Danube River stellate and Russian sturgeon over time, and migrants that overwinter in the river for several months are likely exposed to heavily polluted fine sediments (Wachs 2000; Onara et al. 2013, p. 93).

Heavy metals from industry and the removal of gravel for sand mining have degraded spawning grounds in the Kizilirmak and Sakarya Rivers (Memis et al. 2019, pp. 53–59). Moreover, fast-increasing human population density, fertilizer use, and sewage outflows mean the southern Black Sea rivers are experiencing moderate pollution (Tiril and Memis 2018, pp. 142–143; Jin et al. 2013, p. 104) and are likely to see increasing nutrient inputs and eutrophication in the near future (Strokal and Kroeze 2013, pp. 186–187). Half the length of Turkey's Yesilirmak River was classified in 2008 as ''polluted'' or ''highly polluted'' with no clear trend since 1995 (Jin et al. 2013, pp. 111–114).

In Turkey's Coruh River, it is unclear the extent to which sturgeon are imperiled by pollution, but there is significant impairment of water quality due to heavy metals that leach from copper and gold mines and nutrient pollution from sewage and agriculture (Bayram 2017, entire; Secrieru et al. 2004, entire).

In the eastern part of the Black Sea basin, the Rioni River, especially its lower and middle reaches, is impacted by wastewater, persistent industrial organochlorine compounds, and mining residues (Global Water for Sustainability Program, Florida International University 2011, pp. 22–25), although the degree of the pollution and its effects on sturgeon are not well known.

In the northern Aegean Basin, the sediments of the Evros River are moderately to heavily polluted with heavy metals (Karaouzas et al. 2021, entire), and several industrial centers are likely discharging other pollutants in the river's upstream catchment (Nikolaou et al. 2008, pp. 309–310). However, it is unclear the extent to which this pollution contributed to the extirpation of stellate sturgeon from the river. The Struma receives organohaline and petrochemical pollutants in volumes sufficient to consider the river to have poor water quality (Litskas et al. 2012, entire), but the specific impacts on sturgeon are uncertain.

The Amu-Darya and Syr-Darya Rivers, which formerly entered the Aral Sea, were heavily polluted with agricultural and industrial chemicals from the 1970s to 1990s (Zholdasova 1997, pp. 374–375), as the ship sturgeon population was extirpated (Aladin et al. 2018, p. 2077; Ermakhanov et al. 2012, p. 4). Concentrations of phenols, nitrates, and heavy metals were all above Soviet MACs in the lower and middle Amu-Darya in 1989–1990, with especially polluted conditions at downstream locations. There, several such contaminants were present at dozens of times their MACs (Zholdasova 1997, p. 375). The massive evaporation that occurred in the Aral Sea and its inlets greatly increased dissolved mineral contents and salinity (up from 10 to 38 parts per thousand in 1961) to levels avoided by and even intolerable to sturgeon.

The Syr-Darya remains heavily polluted today. Intensive use of fertilizer and pesticides in the basin, especially for cotton farming, have made the water unsafe for fisheries (Taltakov 2015, pp. 137–138). Water withdrawals for irrigation have caused increased salinity of the remaining river water (Taltakov 2015, p. 137). Some warn that it will take over a decade to have safe water in the river, if and when cleaning begins (Taltakov 2015, pp. 135–138).

Climate Change

When and how progressing climate change will affect the species is uncertain. Global climate models (Karger et al. 2018, not paginated; Karger et al. 2017, entire) indicate that by 2041–2060 mean annual air temperature in the Caspian, Black, and Aral Sea basins will increase by 2–3 °C relative to the mean for the period 1979–2013 (Service 2021, pp. 50–52, 101–102). Precipitation projections over the same time period are less certain. The eastern Aral Sea basin may see slightly more precipitation, and the region between the Black and Caspian Seas is expected to become drier, as is that south of the Black Sea (Service 2021, pp. 50–52, 101–102). However, projections for most of the region indicate little directional change (Service 2021, pp. 50–52, 101–102).

Water in the remaining accessible spawning grounds will also become warmer, with potentially positive or negative effects on sturgeon reproduction. Surface waters (0–2-m depth) warm quickly in response to air temperature (McCombie 1959, pp. 254–258), and air temperatures in upstream regions of the Volga have warmed by up to 0.5 °C per decade since 1971 (Bui et al. 2018, p. 499). The lower Danube River is projected to warm by up to 1 °C by the year 2100 relative to 1961–1990 (van Vliet et al. 2013, p. 5). For deeper waters where sturgeon breed and feed, the exact concurrence between regional warming of air temperatures and local warming of water is uncertain, at least in calmer water where turbulence does not create mixing.

Increased water temperatures could eventually halt reproduction because Russian, ship, and stellate sturgeon spawn at 8–16 °C, whereas Persian sturgeon prefer warmer water of 16–25 °C (Gessner et al. 2010a, not paginated; Gessner et al. 2010b, not paginated, Gessner et al. 2010c, not paginated; Qiwei 2010, not paginated). Juvenile sturgeon may also struggle to survive in water above 25 °C (WSCS and WWF 2018, p. 51). For the most northerly Ponto-Caspian rivers including the Volga, daily mean temperatures rarely exceed 17 °C as of 2015 (Bui et al. 2018, p. 499), but the central and southern rivers are warmer (*e.g.,* Danube and Sefid-Rud: Gessner et al. 2010c, not paginated; Bonacci et al. 2008, p. 1016). It is unclear whether Ponto-Caspian sturgeon have the adaptive potential to shift their breeding phenology to match shifting temperatures, but temperature cues influence timing of spawning in other sturgeon (Bruch and Binkowski 2002, entire) and anadromous fish (Lombardo et al. 2019, entire).

In contrast, warming might speed Ponto-Caspian sturgeon growth and maturation, as it does for other sturgeon species (Krykhtin and Svirskii 1997, pp. 234–237; Nilo et al. 1997, p. 778). Any such benefits are likely to be of minimal impact to populations, given the ongoing and much greater negative impacts of dams and overfishing.

It is also uncertain whether increasing temperatures are the aspect of climate change to which Ponto-Caspian sturgeon are most sensitive. For instance, in the Caspian basin, increased evaporation is expected to continue causing a decrease in sea level, with consequent loss of shallow feeding areas (Chen et al. 2017, p. 6999), although increased rainfall may partially counterbalance this net decline in some years (Chen et al. 2017, p. 6999). Warmer water also holds less oxygen, and other sturgeon species outside the Ponto-Caspian region are projected to experience high enough water temperatures, and consequently low enough oxygen concentrations, to limit habitat availability as climate change progresses (Lyons et al. 2015, p. 1508; Hupfeld et al. 2015, pp. 1197–1200). We are not aware of studies assessing this possibility for Ponto-Caspian sturgeon, specifically.

Several rivers in the Ponto-Caspian sturgeons' ranges are fed by either snowmelt or glaciers. In the case of the Amu-Darya River, climate change progression is expected to speed glacier melting, creating an increase in year-to-year variability of river flow over the next few decades, followed by a decrease in flow when the glaciers are exhausted and snow is less abundant, possibly by the end of this century (White et al. 2014, p. 5274; Savitskiy et al. 2008, pp. 337–338). For the Syr-Darya, which is primarily snow-fed, increased temperatures are projected to limit snowfall and speed snowmelt, leading to reduced river flow and an earlier spring peak in flow (Savitskiy et al. 2008, pp. 337–338). Still, dams and irrigation are by far the main causes of flow decrease in the Aral Sea basin (White et al. 2014, p. 5268).

Disease

Although historically important to some populations, disease and parasites do not currently present Ponto-Caspian sturgeon with nearly the magnitude of threats posed by overfishing and dams (WSCS and WWF 2018, entire; Reinartz and Slavcheva 2016, entire; Gessner et al. 2010a–c, Qiwei 2010, not paginated). In 1934, 90 stellate sturgeon were transplanted into the Aral Sea, where only the ship sturgeon among the four Ponto-Caspian sturgeon taxa was native (Bauer et al. 2002, p. 422). The stellate sturgeon brought with them the monogeneid parasite *Nitzschia sturionis,* to which ship sturgeon lacked immune defenses (Bauer et al. 2002, pp. 422–423). The ship sturgeon population was decimated; people reported fish jumping out of the water and dying on the adjacent beaches (Bauer et al. 2002, p. 422). We are not aware of any additional *N. sturionis* outbreaks since 1934, and the ship sturgeon was extirpated from the Aral Sea basin in the 1980s. The SSA report has information on additional diseases and parasites affecting Ponto-Caspian sturgeon, although we do not determine any to be a current threat of even moderate magnitude for any of the four species (Service 2021, pp. 49–50).

Hybridization

Two processes can lead to hybridization among sturgeon species, which hinders the maintenance of species' distinct genetic character and potentially dilutes locally adapted evolutionary capacity. First, natural matings produce interspecific sturgeon hybrids that compose up to 3 percent of juveniles in the Volga River between 1965 and 1995; whether these hybrids mature and reproduce is unclear (Billard and Lecointre 2000, p. 363), but even the production of sterile individuals is wasted reproductive output by the parental fish (Allendorf et al. 2001, p. 616).

Second, sturgeon and their close relatives produced in commercial aquaculture sometimes escape aquaculture facilities and colonize wild Ponto-Caspian sturgeon habitats where interspecific hybridization can occur. For example, nonnative sturgeon and American paddlefish (*Polyodonta spathula*) may occasionally hybridize with Russian sturgeon as they escape from aquaculture facilities along the Danube (Kaldy et al. 2020, entire; Banaduc et al. 2016, p. 146). Neither mechanism of hybridization presents a threat that rises to the level posed by fishing and dams. Natural hybridization has presumably continued at a low rate over a long period of time as the species have evolved in sympatry. Its frequency relative to intraspecific matings could have increased as the fish become rare and mates are harder to find, but such data are not available. Hybridization in aquaculture facilities is problematic to the extent that such offspring escape into wild habitats.

Extra-Territorial Introductions

In the 1960s, ship sturgeon were introduced to China and Kazakhstan's Lake Balkhash and are now present in its tributary, the Ile River (Gessner et al. 2010b, not paginated). The species is now listed as a class II species under China's Wild Animal Protection Law, which restricts use to those cases permitted by regional, provincial, or local government (Harrish and Shiraishi 2018, pp. 46–47). Most approved fishing is for research or monitoring (Harris and Shiraishi 2018, p. 47). Fines for violating the regulations are 2 to 10 times the catch value (Harris and Shiraishi 2018, p. 47). Because the Ile River population has no hydrological connection to any water bodies in the ship sturgeon's native range, we place relatively little conservation value on this introduced population.

Russian sturgeon are aquacultured in Uruguay, and sporadic escapes followed by dispersal have led to a small number of observations of the species in the rivers of Uruguay, Argentina, and Brazil (Chuctaya et al. 2018, p. 397; Demonte et al. 2017, p. 1). Similarly, a very small number of Russian sturgeon have been caught in the Polish Baltic Sea basin since first being documented there in 1968 following introductions in the Soviet part of the Baltic Sea (Skóra and Arciszewski 2013, p. 365). Introductions also have occurred in Florida, Chile, China, Vietnam, The Arab Emirates, Italy, Germany, Spain, Czech Republic, Latvia, Lithuania, Finland, Greece, Madagascar, and elsewhere (Gessner 2021, in litt.), although there is no indication that the species is reproducing in these areas. We conclude that these introductions have low conservation value, but they also do not pose any threat to the species.

Current Condition

We determined the resilience of Ponto-Caspian sturgeon populations based on three characteristics, derived from the species' biological needs: (1) Its reproductive success (*i.e.,* likelihood of producing at least enough offspring to maintain a stable population size), (2) the connectivity for migration between seas and river spawning grounds, and (3) the habitat quality, based on water quality and prey abundance. No populations in the native range of the Ponto-Caspian sturgeon are considered to have better than low resilience presently, and we have determined that none of the populations have greater than a 50 percent chance of reproducing at a self-sustaining level, based on the best available science. Details of how we scored resilience based on these three criteria can be found in the SSA report (Service 2021, pp. 19–22).

More redundant species are those with a higher number of populations, especially those with moderate or high levels of resilience. Having populations spread among multiple sea basins and/or evidence of adaptive genetic capacity within the species was considered evidence for higher representation. Table 2 summarizes the current condition of the four Ponto-Caspian species.

TABLE 2—HIGHLIGHTS OF CURRENT PONTO-CASPIAN STURGEON RESILIENCY, REDUNDANCY, AND REPRESENTATION

RESILIENCY (large, connected populations; reproducing and able to withstand demographic stochasticity).	• Few, if any, populations breed at self-sustaining levels. • All four taxa are extirpated from upstream segments of most rivers due to river blockage by dams. • RUSSIAN: >90% decline in the abundance of wild Russian sturgeon between 1964 and 2009; females—harvested for their roe—comprise only 10% of mature fish in major populations. • SHIP: >80% decline over the last three generations (24–66 years). • PERSIAN: at least 80% decline over the last three generations (36–54 years). • STELLATE: 92% decline from 1960s–2008.
REDUNDANCY (number and distribution of populations to withstand catastrophic events).	• RUSSIAN: 9–10 extant populations, all with low or very low resiliency. • SHIP: 7 extant populations, all with low or very low resiliency. • PERSIAN: 3–5 extant populations, all with low or very low resiliency. • STELLATE: 9 extant populations, all likely with low or very low resiliency.
REPRESENTATION (ecological and genetic diversity; maintenance of adaptive potential).	• RUSSIAN: High intrapopulation genetic variation, but low inter-population diversity. Extirpated from upstream segments of most inhabited rivers. • SHIP: Extirpated from Aral Sea basin; freshwater population extirpated from Danube River; differentiated stocks remain in Caspian. • PERSIAN: Differentiated stocks remain when comparing stocks in Sefid-Rud and other, smaller south Caspian rivers. • STELLATE: Differentiated stocks remain among Caspian rivers.

Russian Sturgeon

The Russian sturgeon is presently found in 9–10 river basins and is extirpated from 7 or 8. Redundancy is interrelated with resiliency; low-resiliency populations cannot be considered to contribute to redundancy to the same degree, or with the same level of future certainty, as more resilient ones (Service 2021, pp. 19–22). Although at least 9 rivers retain populations of the species, all have low or very low resiliency and we consider the redundancy of the species to be low (Service 2021, pp. 59–62). All extant populations have low or very low resiliency because of the limited level of natural reproduction and the condition of connectivity and water quality in the species' habitats.

In the Volga River at the north of the Caspian Sea, the species' historical stronghold, Russian sturgeon biomass decreased by more than 80 percent between 1995 and 2010 (Lepelina et al. 2010 cited in Khodorevskaya and Kalmykov 2014, p. 578). Due to heavy harvesting pressure, as of 2011, females were only about 10 percent of mature fish in the Volga (Safaraliev et al. 2012 and Konopleya et al. 2007 cited in Khodorevskaya and Kalmykov 2014, p. 578), and females rarely live long enough to spawn more than once (Ruban et al. 2019, p. 391).

Russian sturgeon no longer reproduce every year in either the Volga or the other major north-Caspian River, the Ural (Sergeev et al. 2020, pp. 3–4; Lagutov and Lagutov 2008, p. 204). This follows approximately 90 percent declines in the number of spawners arriving yearly between 1964 and 2009 (Gessner et al. 2010a, not paginated) and a greater than 99 percent decrease in annual recruitment of Russian sturgeon juveniles from the Volga between 1966 and 2011 (Khodorevskaya and Kalmykov 2014, p. 579).

Today, fewer than 1 percent of all Caspian basin sturgeon (all species) are found outside the Volga and Caspian basins. In Azerbaijan, Russian sturgeon may be extirpated from the Kura River (Ruban and Khodorevskaya 2011, p. 202), and whether they have ever spawned there or in the Terek River is uncertain (Gessner et al. 2010a; Lagutov and Lagutov 2008, p. 223).

The Russian sturgeon is extirpated, or nearly so, from most of its former range in the Black and Azov basins, reducing its representation relative to past levels (WSCS and WWF 2018, pp. 10–12; fig. 3; Gessner et al. 2010a, not paginated); reproduction of the species is extremely rare in the Danube River—the largest entering the Black Sea—since at least 2010 (Reinartz et al. 2020d, pp. 6, 10; WSCS and WWF 2018, pp. 10–12, 30–31). Any remaining population in Georgia's Rioni River is on the brink of extirpation (Fauna and Flora International 2019a, p. 2), and the species only persists in the Don, Kuban, and Dnieper Rivers due to the continued release of aquacultured fish (WSCS and WWF 2018, pp. 10–12, 31).

Ship Sturgeon

Eight rivers retain populations of ship sturgeon, but the species is extirpated from 11 river basins. Their redundancy is, therefore, low, and resilience is low or very low in all extant native populations (Service 2021, pp. 62–64). Only one introduced population in China has moderate resilience; however, as stated previously, this population is of low conservation value because it is outside the native range of the species. Since the 1980s, the ship sturgeon has been extirpated from the Aral Sea and both its major tributaries, the Amu-Darya and Syr-Darya Rivers (Aladin et al. 2018, p. 2077; Ermakhanov et al. 2012, p. 4, Gessner et al. 2010b, not paginated). In the Caspian basin, ship sturgeon reproduction is only confirmed in the Ural River and as for all Ponto-Caspian sturgeon species, the ship sturgeon is extirpated, or nearly so, from the south and central rivers of this sea (WSCS and WWF 2018, p. 36; Aladin et al. 2018, p. 2069; Gessner et al. 2010b, not paginated).

Ship sturgeon are extirpated from several southern Black Sea rivers (Turkey's Kizilirmak, Yesilirmak, and Sakarya Rivers; WSCS and WWF 2018, pp. 10–12), and, as of 2018, the species had not been recorded in the Daube River for more than 10 years (WSCS and WWF 2018, p. 35). Loss of this fully freshwater (*i.e.,* not anadromous) population in the Danube contributed to a reduction in the species' representation, although there remains measurable genetic variation among extant populations (Qasemi et al. 2006, p. 164). As of 2009 (the most recent data available), the species was not found in Ukraine's Southern Bug, Dniester, and Dnieper Rivers for approximately 30 years (Gessner et al. 2010b, not paginated). Recent discovery of juveniles of the species in the Rioni River indicate reproduction is occurring there (Beridze et al. 2021, entire). Only restocking efforts maintain ship sturgeon in the Azov's two main rivers, the Don and the Kuban (Gessner 2021, in litt; Scheele 2020, pers. comm; Gessner et al. 2010b).

Persian Sturgeon

The Persian sturgeon, the most geographically restricted of the Ponto-Caspian sturgeon, remains present in the Ural, Kura, and Sefid-Rud Rivers of the Caspian basin. The species may still breed in the lower courses of the Sefid-Rud and Kura (Aladin et al. 2018, p. 2069), but this has not been confirmed for at least several years (Gessner 2021, in litt.). It may be extirpated from the Volga and Terek, and reproduction is less than likely in the Ural (Gessner et al. 2010c, not paginated). There has likely been a steady decline in the proportional abundance of females and their longevity, as for Russian sturgeon (Safaraliev et al. 2012 and Konopleya et al. 2007 cited in Khodorevskaya and Kalmykov 2014, p. 578). No extant population is likely to have natural reproduction occurring at a rate sufficient to allow population viability, and all extant populations have low or very low resilience (Service 2021, pp. 64–65). The restricted historical range of Persian sturgeon limits its potential redundancy severely. Relatively little is known about Persian sturgeon representation, but some level of genetic diversity remains in the species, as the Sefid-Rud River population is genetically differentiated from the species in other southern Caspian locations (Khoshkholgh et al. 2013, pp. 33–34; Chakmehdouz Ghasemi et al. 2011, p. 602).

Stellate Sturgeon

The stellate sturgeon is present in 9 river basins but extirpated from 10 others, giving the species' low redundancy. Because no extant populations are likely to have natural reproduction occurring at a rate sufficient for population viability, their resiliencies are all low or very low (Service 2021, pp. 65–66). In the Caspian basin, it is now rare for the stellate sturgeon to breed in the Volga River (Sergeev 2020, pp. 1–4; Reinartz and Slavcheva 2016, p. 48), and annual recruitment of stellate sturgeon juveniles from this river fell by more than 97 percent between 1966 and 2011 (Khodorevskaya and Kalmykov 2014, p. 579; Veshchev et al. 2012, entire). Most females in the Volga only live to spawn once due to heavy harvesting pressure, meaning average age of female spawners in the river is now less than half what it was 30 years ago (Ruban et al. 2019, p. 392). Only about 10 percent of mature stellate sturgeon in the Volga were female as of 2012 (Ruban et al. 2019, p. 392). Spawning is also very uncommon in the Ural River now (Reinartz and Slavcheva 2016, p. 48).

Small populations likely remain and breed in the Sefid-Rud and Kura Rivers, although reproduction rates are very low (Norouzi and Pourkazemi 2015, p. 95). Few recent data exist for the Terek River population, but it was said to be very small even in 1997 and there is no expectation that its situation has improved (Ruban and Khodorevskaya 2011, p. 202).

In the Black Sea basin, the stellate sturgeon was largely depleted in the Danube by the mid-1990s (Bacalbasa-Dobrovici 1997, pp. 201–203), and reproduction there is now minimal in most years (Reinartz et al. 2020d, p. 5). Ongoing reproduction was confirmed from the Rioni River in Georgia and the Sakarya River in Turkey in 2018 (WSCS and WWF 2018, p. 41), and the species still reproduces in the Azov basin's Kuban River, although the population is augmented by release of aquacultured stock (WSCS and WWF 2018, pp. 10–12). There is no indication that the remaining level of reproduction is sufficient to sustain any of these populations without such augmentation (Service 2021, pp. 66–68).

Despite the species' historical presence there, no records of stellate sturgeon are available for at least 10 years from each of the Don, Dnieper, Dniester, Southern Bug, Engui, Coruh, Yesilirmak, and Kizilirmak Rivers in the Black and Azov Seas or from the Struma and Evros Rivers that enter the Aegean Sea from Bulgaria and Greece (WSCS and WWF 2018, p. 41).

Stellate sturgeon representation is likely moderate-to-high, but with substantial uncertainty. As of 2005, there was considerable genetic diversity remaining Caspian-wide (Norouzi & Pourkazemi 2015 pp. 98–99; Doukakis et al. 2005, pp. 458–459); however, hybridization with related species may be diluting the species' genetic character in both the Caspian and Black Sea basins (Sergeev 2020, pp. 1–4; Banaduc et al. 2016, p. 146).

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have not only analyzed individual effects on the species, but we have also analyzed their potential cumulative effects. We incorporate the cumulative effects into our SSA analysis when we characterize the current and future condition of the species. To assess the current and future condition of the species, we undertake an iterative analysis that encompasses and incorporates the threats individually and then accumulates and evaluates the effects of all the factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative-effects analysis.

Conservation Efforts and Regulatory Mechanisms

Fisheries and trade regulations targeting the harvest, farming, and sale of the species have not effectively protected Ponto-Caspian sturgeon (WSCS and WWF 2018, p. 6). Many international agreements are non-binding, and economic interests, corruption, and the illegal trade all lessen the effectiveness of legal measures (WSCS and WWF 2018, p. 6; Mammadov et al. 2014, section 2.1; Lagutov and Lagutov 2008, p. 239).

CITES and the International Sturgeon Trade

The Ponto-Caspian sturgeon were all added to Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in 1998, along with all other species in the order Acipenseriformes not previously listed under Appendix I (CITES 1997). Except for Turkmenistan, all range countries are Parties to CITES, as is the United States. CITES Parties adopted a series of recommendations to improve regulation of the international sturgeon trade (Harris and Shirashi 2018, pp. 19–22), including reporting of scientifically based quotas for any legal wild-caught sturgeon (CITES 2015, entire; CITES 2010, entire) and a caviar labeling system to verify its legal origin (CITES 2015; 50 CFR 23.71; U.S. Fish and Wildlife Service Office of Law Enforcement 2008).

Since the inclusion of all sturgeon species in the CITES Appendices in 1998, the proportion of caviar in international trade reported to be of captive-bred origin has climbed from near zero to near 100 percent (CITES Trade database cited in Harris and Shiraishi 2018, p. 25; United Nations Environment Programme (UNEP)—World Conservation Monitoring Centre (WCMC) 2008 p. 31). Other than Iran, no country has reported a quota greater than zero since at least 2011 for any of the four Ponto-Caspian sturgeon (UNEP 2020, not paginated). In 2021, all quotas for the Ponto-Caspian species were zero or were not reported to CITES, except for a 50-kg quota for cultured caviar of ship sturgeon submitted by Iran (CITES 2021). When a quota is not reported, it is effectively set at zero (UNEP 2021, not paginated); thus, no wild-caught Ponto-

Caspian sturgeon can be legally traded internationally until relevant quotas are reestablished.

Still, wild-sourced caviar is very likely traded internationally using fraudulent labels or reporting (Irving 2021, pers. comm; Harris and Shiraishi 2018, entire; UNEP–WCMC 2012, p. 22). The sale of caviar and meat with mislabeled origin and/or species makes enforcement difficult (Harris and Shiraishi 2018, table 9), and it is very challenging for enforcement officials to confidently differentiate wild from cultured caviar (produced from aquacultured sturgeon; DePeters et al. 2013, pp. 130–131; Rehbein et al., 2008 entire; Czesny et al. 2000, pp. 147–148). Domestic sale of caviar of all sturgeon species (including in the United States and the many other sturgeon range countries) is not subject to CITES labeling requirements, likely facilitating trade in wild-sourced products within the range countries (Harris and Shiraishi 2018, p. 54). In addition, legitimate CITES labels and containers are resold for use in concealing transport of illegal caviar (van Uhm and Siegel 2016, p. 81).

The legal international trade in Ponto-Caspian sturgeon is now composed of aquacultured sturgeon caviar and meat (CITES Trade Database, 2020; Service 2021, pp. 35–40). In 2018, this included over 40 metric tons (44 U.S. tons) of Russian sturgeon caviar (CITES Trade Database, 2020). No ship sturgeon and only 353 kg (778 lb) of aquacultured stellate sturgeon were reported in the CITES Trade Database in 2018, the last year with complete data, as of the SSA report's compilation. Nearly all reported international trade in meat of the four Ponto-Caspian sturgeon since 2007 is also Russian sturgeon, with approximately 550 metric tons (600 U.S. tons) recorded in 2018 (CITES Trade Database, 2020). Less than 1 percent of this was reported as wild-sourced (CITES Trade Database, 2020). Three metric tons (3.3 U.S. tons) of aquacultured stellate sturgeon meat were traded internationally in 2018, but no such trade in ship or Persian sturgeon meat was reported (CITES Trade Database, 2020). Less than 10 kg (22 lb) of international trade in live eggs of each species was reported in 2018 (CITES Trade Database, 2020).

Although interspecific hybrids of Ponto-Caspian sturgeon with each other and with other sturgeon species are commonly produced in aquaculture (Bronzi et al. 2019, pp. 257), the above-cited figures do not include sturgeon hybrids. The CITES Trade Database does not specify which sturgeon species are included in reported hybrids, so we cannot determine which shipments include the species assessed here.

Beyond the caviar and meat trade, aquacultured Russian sturgeon are exported in large numbers (250,000 annually) from Hungary (Gessner et al. 2010a, not paginated) for the ornamental pet trade (Gessner 2021, in litt.). The species' eggs are used as an ingredient in cosmetics and pharmaceuticals, and their skin is used for leather. Russian sturgeon cartilage is used in medicines, and their intestines for sauces and in the production of gelatin (Gessner et al. 2010a, not paginated). Their swim bladder can be used to make glue (Gessner et al. 2010a, not paginated).

The United States has been the largest importer of sturgeon and sturgeon products since 1998 (CITES Trade database 2020, not paginated; Harris and Shiraishi 2018, p. 26; UNEP–WCMC 2012, p. 22). Between 2016 and 2018, the U.S. share of caviar imports (223,000 kg (492,000 lb); all sturgeon species) was more than 80 percent higher than that of the next-largest importing country, Denmark (CITES Trade Database 2020, not paginated). China, Italy, Moldova, Armenia, and Uruguay were the biggest importers of sturgeon meat over this period (Harris and Shiraishi 2018, p. 28).

As is true at the global scale, U.S. imports of Ponto-Caspian sturgeon products (caviar, meat, live eggs, and extracts, likely for cosmetics) have been dominated by Russian sturgeon in recent years. Meat, live eggs, and extracts from other Ponto-Caspian taxa are imported to the United States in near-zero quantities (CITES Annual Report database, 2020).

Domestic and Ongoing Illegal Sturgeon Trade

Across the 20-plus countries that comprise the ranges of Ponto-Caspian sturgeons, various legal efforts are aimed at regulating the harvest, farming, and trade of the species. The rules are many (WSCS and WWF 2018, pp. 63–75; Mammadov et al. 2014, section 2.1), but they have rarely been effective for protecting and recovering diminished sturgeon populations (WSCS and WWF 2018, p. 6). Economic interests, corruption, the large profits available from illegal trade, a failure to act before sturgeon stocks crashed, unnecessary complexity, the largely voluntary nature of agreements, and a lack of public awareness all conspire to make most national and multilateral legislation ineffective (WSCS and WWF 2018, p. 6; Mammadov et al. 2014, section 2.1; Lagutov and Lagutov 2008, p. 239). We provide some examples of relevant legislation and their limitations in the SSA report (Service 2021, p. 43).

Although difficult to monitor (Harris and Shiraishi 2018, pp. 16–17), the illegal trade in sturgeon products is generally thought to be robust, potentially accounting worldwide and across sturgeon species for 10 times the volume of caviar as in legal trade (Nelleman et al. 2014 cited in Harris and Shiraishi 2018, p. 14). In the Ponto-Caspian region, illegal harvest continues (Reinartz et al. 2020c, entire; WSCS and WWF 2018, p. 8; Reinartz and Slavcheva 2016, pp. 44–49; Jahrl 2013, entire) and is estimated to yield over 100 metric tons (110 U.S. tons) of sturgeon (all species) per year in the northern Caspian basin alone (Ermolin and Svolkinas 2018, p. 17). Organized crime and extensive corruption associated with sturgeon poaching on the Ural has even led in exceptional cases to militant violence against enforcement officers (Lagutov and Lagutov 2008, pp. 228, 239).

Most illegally caught sturgeon and their caviar are now likely sold domestically, especially in Russia (Congiu 2021, in litt.; Gessner 2021, in litt.). Black-market sellers there and in the eastern Black Sea region (Georgia, northeast Turkey, and far southwestern Russia) can collect a premium price for wild-sourced products and do not have to take the risk of laundering fish through a legitimate caviar factory (Congiu 2021, in litt.; Fauna and Flora International 2019a, pp. 2–3). Although some consumers accept aquacultured caviar as equivalent to wild-sourced products (Harris and Shiraishi 2018, p. 39), most people prefer caviar from rarer species (Gault et al. 2008, pp. 202–205). This preference can help drive a continued market for illegal wild-sourced caviar and could drive species to extinction in the wild (Gault et al. 2008, pp. 202–205). It is this domestic black market that is presently the biggest fishery-based threat to the Ponto-Caspian species (Gessner 2021, in litt.), a market that CITES regulation of international trade does not address.

Some international caviar smuggling occurs but is not thought to be of nearly the same volume as domestic sales. Still, in 2013 and 2014, Service investigations of the U.S. caviar trade revealed that each year most major importers on the East Coast were illegally importing millions of dollars' worth of caviar (Wyler and Sheikh 2013, p. 10; Zabyelina, 2014 cited in Harris and Shiraishi 2018, p. 48). Between 2000 and 2016, U.S. authorities seized more than 18 metric tons (20 U.S. tons) of illegally traded caviar (CITES Trade Database, 2020). Russian sturgeon was a

common species among those traded illegally to the United States (Harris and Shiraishi 2018, p. 8). Generally, seizures were made for improper CITES labeling or mislabeled species identity (Gessner 2021, in litt.); however, an unknown volume is likely wild-sourced fish (Irving 2021, pers. comm.).

Seizures of illegally traded caviar continue in the Black Sea basin (Kecse-Nagy 2011, pp. 10–11 and tables 6, 7). Between 2014 and 2019, Danube Delta Police confiscated 640 kg (1,400 lb) of poached sturgeon (Luca et al. 2020, not paginated). Among three lower Danube countries—Bulgaria, Romania, and Ukraine—175 sturgeon poaching incidents (all species present, including beluga and sterlet) were reported by law enforcement between 2016 and May 2020 (Reinartz et al. 2020b, p. 4). Fishermen in the region also use relatively sophisticated methods including sonar and explicitly banned techniques such as hooked lines (Jahrl 2013, p. 3).

Some range country aquaculture facilities were believed to retain wild-caught broodstock intended to be released after spawning and may even have killed these fish to sell their caviar (Jahrl 2013, pp. 12–16, 34–35). There is also speculation that some companies producing and selling aquacultured caviar may participate in laundering of wild-sourced illegal caviar into the legal market in Romania, Bulgaria, and the Caspian basin (Jahrl 2013, p. 12). Neither of these practices is likely common, because transport of live fish for spawning in captivity is a difficult and high-risk undertaking and because some range states have domestic black markets on which premium prices are paid for wild-sourced caviar sold as such.

Law enforcement capacity is weak in the eastern Black Sea (Fauna and Flora International 2019a, p. 4), and existing regulations may be poorly communicated (Gessner 2021, in litt.). Nongovernmental volunteers supplement official capabilities in this region but have not stopped the trade (Fauna and Flora International 2019a, pp. 2–4). Fish are likely smuggled from Georgian waters to Turkey (Fauna and Flora International 2019a, p. 4). Over 50 Turkish and Georgian boats fishing for anchovy are also suspected of collecting Black Sea sturgeon as bycatch (harvest caught in the process of fishing for other species; Fauna and Flora International 2019a, p. 7; Fauna and Flora International 2019b, p. 6).

Where reported caviar imported from a given country is higher than that country's reported exports, exporters may be skirting the established CITES regulations (Harris and Shiraishi 2018, p. 22). Data from several Ponto-Caspian range states (Iran, Azerbaijan, and Russia, among others) all had such discrepancies for some years between 2000 and 2010 (Harris and Shiraishi 2018, p. 23). Indeed, Iran, Russia, and Kazakhstan often did not report any caviar exports between 2006 and 2010, despite allowing sturgeon trade (Harris and Shiraishi 2018, p. 23).

Neither most Ponto-Caspian sturgeon range states nor the United States (Harris and Shiraishi 2018, pp. 35, 50) require the CITES-style labeling recommended for domestic caviar sales (Harris and Shiraishi 2018, p. 11). Without documentation of caviar origin, species, date of packaging, and trade permissions as required on CITES labels (WSCS and WWF 2018, p. 66; Harris and Shiraishi 2018, p. 9), fraudulent sale of sturgeon products whose origin is undocumented or misstated as being derived from aquaculture is facilitated (Harris and Shiraishi 2018, p. 48).

For additional details of ongoing illegal trade in the range states, see the SSA report (Service 2021, pp. 40–43).

Restocking

Large-scale efforts have been made to recover Ponto-Caspian sturgeon populations in some parts of the species' ranges by restocking rivers with aquacultured fish. Approximately 3.3 billion sturgeon (all species) were released into the Caspian basin between 1954 and 2011 (Khodorevskaya and Kalmykov 2014, p. 578). The four Ponto-Caspian sturgeon were produced by a combined 20-plus aquaculture facilities in the Caspian region as of 2014, with about half in Russia, one third in Iran, and fewer in Azerbaijan and Kazakhstan (Service 2021, p. 54; Khodorevskaya and Kalmykov 2014, p. 578).

We are not aware of any large-scale assessment of stocking success. Still, in 2018, three adult Russian sturgeon and one stellate sturgeon (all males) were captured 126 km (78 mi) from the mouth of the Danube (Iani et al. 2019, p. 35). These were the first adult sturgeons of hatchery origin confirmed to return for spawning in the Danube after being released into the river as early as 2005 (Iani et al. 2019, p. 35). However, although widely practiced and at least partially responsible for preventing extinction of Ponto-Caspian sturgeon to date, restocking is far from a perfect solution. In general, restocking produces ''put-and-take'' fisheries, where fish are released and then mostly caught before or just after reproducing for the first time (Vecsei 2001, p. 362; WSCS and WWF 2018, pp. 18, 42). True population recovery is unlikely without mitigating dam and fishing impacts (WSCS and WWF 2018, p. 6; Gessner et al. 2010a–c, not paginated). Indeed, for watercourses like the Danube, which have dozens of dams, some experts believe it is futile to consider restoration of the species and their migration to upstream reaches of such rivers (Friedrich et al. 2019, p. 1065). Restoration of downstream reaches through restocking and facilitated dam passage is more feasible (Friedrich et al. 2019, p. 1065). Most fish released are fingerlings, 1 to several months old (Gessner et al. 2010a, not paginated); these young fish naturally have extremely low first-year survival rates (around 1 in 2,000; Jaric and Gessner 2013, pp. 485–486; Jager et al. 2001, p. 351).

Another challenge is that releasing fish native to one region or river into another can dilute locally adaptive traits when wild-born native fish breed with these captive individuals (WSCS and WWF 2018, p. 50). This within-species hybridization can reduce the resiliency and representation of local populations if introduced individuals are maladapted to local conditions.

For example, translocation of fertilized eggs from the Caspian Sea to the Azov Sea likely diluted the local stellate sturgeon gene pool in the 1990s and early 2000s (Qiwei 2010, not paginated). For ship sturgeon, captive stocks are available only from Caspian basin rivers (WSCS and WWF 2018, p. 36). This lack of captive stock could make their restoration in the Black, Azov, and Aral Seas more difficult, if local adaptations and migration instincts limit the success in the wild of captive-reared fish released in these parts of the range. Stocking of the Don and Kuban Rivers with stellate sturgeon from Caspian stocks that naturally have lower population growth rates than the Azov's stellate sturgeon similarly reduces the species' representation (Tsvetnenko 1993, p. 1). Moreover, aquacultured fish may not have the navigational instincts to migrate to the ''correct'' river, if they are not derived from a local stock (Lagutov and Lagutov 2008, p. 262).

Several Ponto-Caspian countries (Russia, Armenia, Iran, Bulgaria, Azerbaijan, Hungary, and Germany) rank in the top 15 producers of aquacultured sturgeon globally, but significant participation of commercial aquaculture facilities in sturgeon conservation is presently rare (Jahrl and Streibel-Greiter pers. comm. 2020; WSCS and WWF 2018, pp. 31, 59).

Determination of Ponto-Caspian Sturgeon Status—Introduction

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines an endangered species as a species ''in danger of extinction throughout all or a significant portion of its range,'' and a threatened species as a species ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The Act requires that we determine whether a species meets the definition of an endangered species or a threatened species because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence.

In conducting our status assessment of the Ponto-Caspian sturgeon, we evaluated all identified threats under the section 4(a)(1) factors and assessed how the cumulative impact of all threats acts on the viability of each of the four species. That is, all the anticipated effects from both habitat-based and direct mortality-based threats were examined in total and then evaluated in the context of what those combined negative effects will mean to the future condition of each of the species. In addition, we considered the effects of existing conservation and regulatory measures on the current and future condition of each of the species. We used the best available information to gauge the magnitude of each individual threat on each of the Ponto-Caspian sturgeon species, and then assessed how those effects combined (and as may be ameliorated by any existing regulatory mechanisms or conservation efforts) impact a species' viability.

Russian Sturgeon—Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effect of the threats under the section 4(a)(1) factors, we determined that the distribution and abundance of Russian sturgeon has been reduced across its range as demonstrated by both the number of occupied rivers and the estimated abundance of the species where it remains present. Historically, the species occurred within at least 16 river basins in the Caspian, Azov, Black, and Aegean Sea basins; currently, the species occurs in no more than 10 river basins, reducing the species' redundancy. The remaining extant populations are all considered to have low or very low resiliency (*i.e.,* it is more likely than not that no self-sustaining populations remain; Service 2021, pp. 59–62). Overall, the species' abundance is estimated to have declined by more than 80 percent in just the last three generations, with additional declines before that. Representation is likely moderate—multiple river and sea basins are occupied—but with considerable uncertainty regarding adaptive evolutionary capacity.

Ongoing threats are from habitat degradation or loss due to both the widespread presence of dams and pollution (Factor A), demographic impacts from past harvest and ongoing overutilization of wild populations (Factor B), existing national and international regulations not adequately halting illegal trade in the species or recovering wild populations (Factor D), and invasive, nonnative species that impact Russian sturgeons' prey base (Factor E). These threats are current, widespread across the species' range, and imperil the viability of the species now. The species does not fit the statutory definition of a threatened species because it is currently in danger of extinction, whereas threatened species are those likely to become in danger of extinction in the foreseeable future. Thus, after assessing the best available information, we conclude that the Russian sturgeon is in danger of extinction throughout all of its range.

Ship Sturgeon—Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effect of the threats under the section 4(a)(1) factors, we determined that the distribution and abundance of ship sturgeon has been reduced across its range as demonstrated by both the number of occupied rivers and the estimated abundance of the species where it remains present. Historically, the species occurred within at least 18 river basins in the Caspian, Azov, Black, and Aral Sea basins; currently, the species occurs in 8 river basins, reducing the species' redundancy, and it is extirpated from the Aral Sea basin. The remaining extant populations are all considered to have low or very low resiliency (*i.e.,* it is more likely than not that no self-sustaining populations remain), except for one population introduced outside the historical range, which is considered to have moderate resiliency (Service 2021, pp. 62–64). Overall, the species' abundance is estimated to have declined by more than 80 percent in just the last three generations, with additional declines before that. Representation is uncertain in terms of adaptive evolutionary capacity but has been lowered by the extirpation of the species' Aral Sea basin and fully freshwater Danube River populations.

Ongoing threats are from habitat degradation or loss due to both the widespread presence of dams and pollution and water abstraction for irrigation (Factor A), demographic impacts from past harvest and ongoing overutilization of wild populations (Factor B), existing national and international regulations not adequately halting illegal trade in the species or recovering wild populations (Factor D), and invasive, nonnative species that impact the species' prey base (Factor E). These threats are current, widespread across the species' range, and imperil the viability of the species now. The species does not fit the statutory definition of a threatened species because it is currently in danger of extinction, whereas threatened species are those likely to become in danger of extinction in the foreseeable future. Thus, after assessing the best available information, we conclude that the ship sturgeon is in danger of extinction throughout all of its range.

Persian Sturgeon—Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effect of the threats under the section 4(a)(1) factors, we determined that the condition of Persian sturgeon has been reduced across its range as demonstrated by both the number of occupied rivers and the estimated abundance of the species where it remains present. Historically, the species occurred in five river basins in the Caspian Sea basin; currently, the species may occupy as few as three river basins, reducing the species' redundancy. The remaining extant populations are all considered to have low or very low resiliency (*i.e.,* it is more likely than not that no self-sustaining populations remain; Service 2021, pp. 64–65). Overall, the species' abundance is estimated to have declined by more than 80 percent in just the last three generations, with additional declines before that. Relatively little is known about Persian sturgeon representation The Sefid-Rud River population is genetically differentiated from the species in other southern Caspian locations (Khoshkholgh et al.

2013, pp. 33–34; Chakmehdouz Ghasemi et al. 2011, p. 602), indicating some level of genetic diversity in the species. However, the extent of diversity is unknown.

Ongoing threats are from habitat degradation or loss due to both the widespread presence of dams and pollution (Factor A), demographic impacts from past harvest and ongoing overutilization of wild populations (Factor B), existing national and international regulations not adequately halting illegal trade in the species or recovering wild populations (Factor D), and invasive, nonnative species that impact Persian sturgeons' prey base (Factor E). These threats are current, widespread across the species' range, and imperil the viability of the species now. The species does not fit the statutory definition of a threatened species because it is currently in danger of extinction, whereas threatened species are those likely to become in danger of extinction in the foreseeable future. Thus, after assessing the best available information, we conclude that the Persian sturgeon is in danger of extinction throughout all of its range.

Stellate Sturgeon—Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effect of the threats under the section 4(a)(1) factors, we determined that the distribution and abundance of stellate sturgeon has been reduced across its range as demonstrated by both the number of occupied rivers and the estimated abundance of the species where it remains present. Historically, the species occurred in 19 river basins in the Caspian, Azov, Black, and Aegean Sea basins; currently, the species occurs in 9 river basins, reducing the species' redundancy, and it is extirpated from the Aegean Sea basin. The remaining extant populations are all considered to have low or very low resiliency (*i.e.,* it is more likely than not that no self-sustaining populations remain; Service 2021, pp. 65–68). Overall, the species' abundance is estimated to have declined by more than 80 percent in just the last three generations, with additional declines before that. Representation is moderate to high, with measurable genetic diversity among populations, but is likely decreasing due to hybridization.

Ongoing threats are from habitat degradation or loss due to both the widespread presence of dams and pollution (Factor A), demographic impacts from past harvest and ongoing overutilization of wild populations (Factor B), existing national and international regulations not adequately halting illegal trade in the species or recovering wild populations (Factor D), and invasive, nonnative species that impact sturgeons' prey base (Factor E). These threats are current, widespread across the species' range, and imperil the viability of the species now. The species does not fit the statutory definition of a threatened species because it is currently in danger of extinction, whereas threatened species are those likely to become in danger of extinction in the foreseeable future. Thus, after assessing the best available information, we conclude that the stellate sturgeon is in danger of extinction throughout all of its range.

Status Throughout a Significant Portion of the Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. We have determined that all four Ponto-Caspian sturgeon species are in danger of extinction throughout all of their ranges and accordingly did not undertake an analysis of any significant portion of the range for any of the four species. Because the Russian, ship, Persian, and stellate sturgeons each warrant listing as endangered throughout all of their ranges, our determinations are consistent with the decision in *Center for Biological Diversity* v. *Everson,* 2020 WL 437289 (D.D.C. Jan. 28, 2020), in which the court vacated the aspect of the Final Policy on Interpretation of the Phrase ''Significant Portion of Its Range'' in the Endangered Species Act's Definitions of ''Endangered Species'' and ''Threatened Species'' (79 FR 37578; July 1, 2014) that provided the Service does not undertake an analysis of significant portions of a species' range if the species warrants listing as threatened throughout all of its range.

Determination of Status

Our review of the best available scientific and commercial information indicates that each of the four Ponto-Caspian sturgeon species—the Russian, ship, Persian, and stellate sturgeon species—meet the definition of endangered species. Therefore, we propose to list the Russian sturgeon, ship sturgeon, Persian sturgeon, and stellate sturgeon as endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies, foreign governments, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

An ''action'' that is subject to the consultation provisions of section 7(a)(2) of the Act is defined in our implementing regulations at 50 CFR 402.02 as ''all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies in the United States or upon the high seas.'' In view of this regulatory definition that clarifies that consultation requirements under section 7(a)(2) do not have extraterritorial application, we anticipate any ''actions'' involving the Ponto-Caspian sturgeon that require section 7 consultations would be limited to the Service's issuance of any section 10 permits under the Act. For example, in the event a person applies for a permit to import Ponto-Caspian sturgeon specimens into the United States for scientific purposes, or for enhancing the propagation or survival of the species under section 10(a)(1)(A) of the Act, authorization of the proposed activity would be a Federal action subject to consultation. Apart from

consultations on section 10 permits, however, the Ponto Caspian sturgeon is unlikely to be the subject of section 7 consultations because the entire life of the species occurs in freshwater and nearshore marine areas outside of the United States. Additionally, no critical habitat will be designated for this species Additionally, no critical habitat will be designated for this species because, under 50 CFR 424.12(g), we will not designate critical habitat within foreign countries or in other areas outside of the jurisdiction of the United States.

Section 8(a) of the Act (16 U.S.C. 1537(a)) authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered or threatened species in foreign countries. Sections 8(b) and 8(c) of the Act (16 U.S.C. 1537(b) and (c)) authorize the Secretary to encourage conservation programs for foreign listed species and to provide assistance for such programs in the form of personnel and the training of personnel.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered wildlife. The prohibitions of section 9(a)(1) of the Act, codified at 50 CFR 17.21, make it illegal for any person subject to the jurisdiction of the United States to import; export; deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any species listed as an endangered species. In addition, it is unlawful to take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these) endangered wildlife within the United States or on the high seas. It is also illegal to possess, sell, deliver, carry, transport, or ship, by any means whatsoever any such wildlife that has been taken illegally. Certain exceptions apply to employees of the Service, NMFS, other Federal land management agencies, and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22. Regarding endangered wildlife, a permit may be issued for the following purposes: For scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities. The Service may also register persons subject to the jurisdiction of the United States through its captive-bred-wildlife (CBW) program if certain established requirements are met under the CBW regulations (50 CFR 17.21(g)). Through a CBW registration, the Service may allow a registrant to conduct certain otherwise prohibited activities with live wildlife specimens as part of conservation breeding activities that enhance the propagation or survival of the affected species: Take; export or re-import; deliver, receive, carry, transport or ship in interstate or foreign commerce, in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce. A CBW registration may authorize interstate purchase and sale only between entities that both hold a registration for the taxon concerned. The CBW program is available for species having a natural geographic distribution not including any part of the United States. The individual living specimens must have been born in captivity in the United States. The statute also contains certain exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9(a) of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of the species proposed for listing. Based on the best available information, the following actions are unlikely to result in a violation of section 9(a), if these activities are carried out in accordance with existing regulations and permit requirements; this list is not comprehensive:

(1) Take of any Ponto-Caspian sturgeon in its native range.

(2) Trade in any Ponto-Caspian sturgeon and its products that is both outside the United States and conducted by persons not subject to U.S. jurisdiction (although this activity would still be subject to CITES requirements).

(3) Activities with respect to hybrid fish or their products produced from hybridization to the second or subsequent generations of any Ponto-Caspian sturgeon and one or more other species not listed as threatened or endangered under the Act (although international trade would still be subject to CITES requirements). We do not consider hybrid fish produced from interspecific mating one of the Ponto-Caspian sturgeon species with a non-listed species to be part of the listing entity, although hybrid offspring of two Ponto-Caspian parent species or of one Ponto-Caspian sturgeon and another listed species, as well as all first generation hybrids, would be protected from all activities prohibited with endangered species of fish or wildlife under section 9(a)(1).

Based on the best available information, the following activities may potentially result in a violation of section 9 of the Act if they are not authorized in accordance with applicable law; this list is not comprehensive:

(1) Import into the United States of any Ponto-Caspian sturgeon and its products, including fish derived from the wild or captive-bred, and including hybrid offspring of two Ponto-Caspian parent species or of one Ponto-Caspian sturgeon and another listed species or of one Ponto-Caspian sturgeon and another species not listed as threatened or endangered under the Act (first generation hybrids), see 16 U.S.C. 1532(8); 1538(a)(1), without obtaining permits required under section 10 of the Act or without following applicable CITES requirements at 50 CFR part 23.

(2) Export of the Ponto-Caspian sturgeon and its products, whether derived from wild or captive-bred stock, and including hybrid offspring of two Ponto-Caspian parent species or of one Ponto-Caspian sturgeon and another listed species or of one Ponto-Caspian sturgeon and another species not listed as threatened or endangered under the Act (first generation hybrids), see 16 U.S.C. 1532(8); 1538(a)(1), from the United States without obtaining permits required under section 10 of the Act or without following applicable CITES requirements at 50 CFR part 23.

Separate from their proposed listing as endangered species, Ponto-Caspian sturgeon are also regulated as CITES-listed species: All international trade of these species by persons subject to the jurisdiction of the United States must also comply with CITES requirements pursuant to section 9(c) and (g) of the Act and 50 CFR part 23. Applicable wildlife import/export requirements established under section 9(d)(f) of the Act, the Lacey Act Amendments of 1981 (16 U.S.C. 3371, *et seq.*), and 50 CFR part 14 must also be met for imports and exports of any of the four Ponto-Caspian sturgeon species.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to Mary Cogliano, Chief of the Branch of Permits (*mary_cogliano@fws.gov;* 703–358–2104).

Required Determinations

Clarity of the Proposed Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rulemaking, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

References Cited

A complete list of references cited in this rulemaking is available on the internet at *https://www.regulations.gov* and upon request from the Branch of Delisting and Foreign Species, Headquarters Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Branch of Delisting and Foreign Species.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to 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(h) by adding entries for ''Sturgeon, Persian'', ''Sturgeon, Russian'', ''Sturgeon, ship'', and ''Sturgeon, stellate'' to the List of Endangered and Threatened Wildlife in alphabetical order under Fishes to read as set forth below:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
* *	*	* *	*	* *
FISHES				
* *	*	* *	*	* *
Sturgeon, Persian	*Acipenser persicus*	Wherever found	E	[**Federal Register** citation when published as a final rule].
Sturgeon, Russian	*Acipenser gueldenstaedtii*	Wherever found	E	[**Federal Register** citation when published as a final rule].
* *	*	* *	*	* *
Sturgeon, ship	*Acipenser nudiventris*	Wherever found	E	[**Federal Register** citation when published as a final rule].
* *	*	* *	*	* *
Sturgeon, stellate	*Acipenser stellatus*	Wherever found	E	[**Federal Register** citation when published as a final rule].
* *	*	* *	*	* *

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2022–10708 Filed 5–24–22; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register
Vol. 87, No. 101
Wednesday, May 25, 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 COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Special Census Program

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act (PRA) of 1995, invites 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. The purpose of this notice is to allow for 60 days of public comment on the proposed reinstatement, with change, of the Special Census Program, prior to the submission of the information collection request (ICR) to OMB for approval.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before July 25, 2022.

ADDRESSES: Interested persons are invited to submit written comments by email to *dcmd.special.census@census.gov.* Please reference Special Census Program in the subject line of your comments. You may also submit comments, identified by Docket Number USBC–2022–0009 to the Federal e-Rulemaking Portal: *http://www.regulations.gov.* All comments received are part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Christine Borman, Chief, Nonresponse Operations Branch, Decennial Census Management Division, 301–763–4315, and *Christine.Flanagan.Borman@census.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

A Special Census is an enumeration of population, housing units, group quarters, and transitory locations, conducted by the Census Bureau at the request of a Governmental Unit (GU). The Special Census questionnaires will collect the same information that was gathered during the 2020 Census. Title 13, United States Code, Section 196 authorizes the Census Bureau to conduct Special Censuses on a cost reimbursable basis for the government of any state, county, city, or other political subdivision within a state. This includes the District of Columbia, American Indian Reservations, Alaskan Native villages, Puerto Rico, the Island Areas (*e.g.* American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the U.S. Virgin Islands), and other governmental units that require current population data between decennial censuses. Local officials frequently request a Special Census when there has been a significant population change in their community due to annexation, growth, or the addition of new group quarters facilities. Communities may also consider a Special Census if there was a significant number of vacant housing units during the previous Decennial Census that are now occupied.

A full Special Census is a basic enumeration of population, housing units, and group quarters for the entire area within the jurisdiction of a local GU requesting the Special Census. A partial Special Census is conducted using the same methodologies and procedures as a regular or full Special Census, but it is for an area or section within the jurisdiction of the local GU. For example, GUs may choose to conduct a partial Special Census for just those areas that might have experienced a large population growth or a boundary change.

Many states use Special Census population statistics to determine the distribution of state funds to local jurisdictions. The local jurisdictions may also use the data to plan new schools, transportation systems, housing programs, or water treatment facilities. GUs that request a Special Census will receive the data files containing housing unit and population counts by email when data processing and disclosure avoidance have been completed for the Special Census. The data will also be posted at *data.census.gov* for public use. These data will not be used to update official 2020 Census data products and apportionment counts, but they will be used to update data in the Census Bureau's Population Estimates Program.

The Census Bureau is requesting a reinstatement of the Special Census Program with change. For this Special Census Program, the Census Bureau will use an internet self-response instrument, which is the online tool through which respondents can answer their Special Census. The Census Bureau will also conduct fieldwork to perform listing and enumeration at housing units, group quarters, and transitory locations using a paper collection mode. As stated above, the Special Census questionnaires will collect the same information that was gathered during the 2020 Census.

The Special Census Program will accept requests for cost estimates from GUs starting in March 2023 and will start data collection no sooner than January 2024. A Request for Cost Estimate form (SC–900 RCE) will be available on the Census Bureau website by February 2023. There is a fee to submit a request form. GUs will submit this form to the Census Bureau along with the fee associated with making the request. Once this form has been reviewed by the Census Bureau, the GU and the Census Bureau will coordinate to identify the exact geographic boundaries for the Special Census. Then the Special Census Program will coordinate with the Census Bureau's regional offices to determine a cost estimate and timeline for the Special

Census and will present them to the GU. The cost of a Special Census varies depending on the GU's housing and population counts and whether a government requests a full or partial Special Census. The cost estimate outlines the anticipated costs to the sponsoring government for staffing, materials, data processing and tabulation. Included with the cost estimate is a Memorandum of Agreement (MOA). Once a signed MOA and initial payment are transmitted to the Census Bureau, the Special Census process will begin. When data collection, processing, disclosure avoidance, and tabulation have been completed, the GU will receive official census statistics on the population and housing unit counts for the entire jurisdiction or parts of the jurisdiction, as defined in the MOA at the beginning of the Special Census process. All Special Census statistics will be subject to disclosure avoidance using differential privacy methods, consistent with the processes and methods used for 2020 Census data products, prior to their release to the public. Requests for cost estimates from GUs will be accepted through May 2027.

II. Method of Collection

The Census Bureau plans to use an internet self-response instrument for respondents to respond online to the Special Census questionnaire. Respondents will have a number of weeks to respond to the Special Census questionnaire using the internet self-response instrument. At the start of the Special Census, the Census Bureau will send an invitation letter to housing units in the GU's Special Census area with information needed to respond online. Reminder letters and postcards will be sent to each housing unit to encourage self-response and provide information needed to do so.

Approximately two weeks after the end of the Special Census self-response period, the Census Bureau will conduct follow-up operations in the field to enumerate housing units that did not respond using the internet self-response instrument. Housing units that do not respond online will be contacted by a field representative who will conduct a Special Census interview using a paper questionnaire. The field operations will also enumerate group quarters and transitory locations in the GU's Special Census area. The Census Bureau plans to use a paper questionnaire to conduct Special Census interviews at transitory locations and group quarters. During the field operations, Special Census field representatives will also update the addresses of living quarters as needed, based on their observation of housing units, transitory locations, and group quarters.

Several quality assurance measures will be implemented for each Special Census to ensure that high quality data are gathered using the most efficient and cost-effective procedures. These include edits incorporated into the online questionnaire and the ability to validate potentially erroneous responses in the field. Independent quality assurance checks and reinterview of a sample of field questionnaires will also be implemented to ensure the quality of the data collected in the field.

As the Census Bureau develops automated tools and methods for data collection and listing for the 2030 Decennial Census, the Special Census Program may incorporate this additional automation throughout the decade. Updates to the operational design will be implemented no earlier than 2026. The incorporation of additional automation may increase data collection quality and efficiency, resulting in a cost savings for GUs, but the extent of those cost savings is currently unknown.

III. Data

OMB Control Number: 0607–0368.

Form Number(s): SC–Q, SC–CQ, SC–Q–TL, SC–CQ–TL, SC–Q–GE, SC–RQ, SC–900 RCE.

Type of Review: Regular submission, Request for a Reinstatement, with Change, of a Previously Approved Collection.

Affected Public: Individuals or households; State, Local, or Tribal government.

Estimated Number of Respondents: 340,000.

Estimated Time per Response: approximately 10 minutes.

Estimated Total Annual Burden Hours: 56,667.

Estimated Total Annual Cost to Public: $0. (This is not the cost of respondents' time, but the indirect costs respondents may incur for such things as purchases of specialized software or hardware needed to report, or expenditures for accounting or records maintenance services required specifically by the collection.)

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C. Section 196.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include, or summarize, each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–11218 Filed 5–24–22; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Rossiya Airlines, Pilotov St 18–4, St. Petersburg, Russia, 196210; Order Temporarily Denying Export Privileges

Pursuant to Section 766.24 of the Export Administration Regulations, 15 CFR parts 730–774 (2021) (''EAR'' or ''the Regulations''),[1] the Bureau of Industry and Security (''BIS''), U.S.

[1] On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. 4801–4852 (''ECRA''). While Section 1766 of ECRA repeals the provisions of the Export Administration Act, 50 U.S.C. App. § 2401 *et seq.* (''EAA''), (except for three sections which are inapplicable here), Section 1768 of ECRA provides, in pertinent part, that all orders, rules, regulations, and other forms of administrative action that were made or issued under the EAA, including as continued in effect pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.* (''IEEPA''), and were in effect as of ECRA's date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA. Moreover, Section 1761(a)(5) of ECRA authorizes the issuance of temporary denial orders. 50 U.S.C. 4820(a)(5).

Department of Commerce, through its Office of Export Enforcement (''OEE''), has requested the issuance of an Order temporarily denying, for a period of 180 days, the export privileges under the Regulations of Russian airline Rossiya Airlines (''Rossiya''). OEE's request and related information indicates that Rossiya is headquartered in St. Petersburg, Russia, and Aeroflot Russian Airlines JSC, a/k/a PJSC Aeroflot (''Aeroflot'') is Rossiya's majority shareholder.[2] The Russian Federal Government is the majority owner of Aeroflot, through its Federal Agency for State Property Management.

I. Legal Standard

Pursuant to Section 766.24, BIS may issue an order temporarily denying a respondent's export privileges upon a showing that the order is necessary in the public interest to prevent an ''imminent violation'' of the Regulations, or any order, license or authorization issued thereunder. 15 CFR 766.24(b)(1) and 766.24(d). ''A violation may be 'imminent' either in time or degree of likelihood.'' 15 CFR 766.24(b)(3). BIS may show ''either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations.'' *Id.* As to the likelihood of future violations, BIS may show that the violation under investigation or charge ''is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent[.]'' *Id.* A ''lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation.'' *Id.*

II. OEE's Request for a Temporary Denial Order (''TDO'')

The U.S. Commerce Department, through BIS, responded to the Russian Federation's (''Russia's'') further invasion of Ukraine by implementing a sweeping series of stringent export controls that severely restrict Russia's access to technologies and other items that it needs to sustain its aggressive military capabilities. These controls primarily target Russia's defense, aerospace, and maritime sectors and are intended to cut off Russia's access to vital technological inputs, atrophy key sectors of its industrial base, and undercut Russia's strategic ambitions to exert influence on the world stage. Effective February 24, 2022, BIS imposed expansive controls on aviation-related (*e.g.,* Commerce Control List Categories 7 and 9) items to Russia, including a license requirement for the export, reexport or transfer (in-country) to Russia of any aircraft or aircraft parts specified in Export Control Classification Number (ECCN) 9A991 (Section 746.8(a)(1) of the EAR).[3] BIS will review any export or reexport license applications for such items under a policy of denial. *See* Section 746.8(b). Effective March 2, 2022, BIS excluded any aircraft registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia from being eligible for license exception Aircraft, Vessels, and Spacecraft (AVS) (Section 740.15 of the EAR).[4] Accordingly, any U.S.-origin aircraft or foreign aircraft that includes more than 25% controlled U.S.-origin content, and that is registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia, is subject to a license requirement before it can travel to Russia.

OEE's request is based upon facts indicating that Rossiya engaged in recent conduct prohibited by the Regulations by operating aircraft subject to the EAR and classified under ECCN 9A991 on flights into Russia after March 2, 2022, without the required BIS authorization.

Specifically, OEE's investigation, including publicly available flight tracking information, indicates that after March 2, 2022, Rossiya operated multiple U.S.-origin aircraft subject to the EAR, including, but not limited to, those identified below, on flights into and out of Moscow, Russia and St. Petersburg, Russia from/to Sharjah, United Arab Emirates; Tel Aviv, Israel; and Dubai, United Arab Emirates. Pursuant to Section 746.8 of the EAR, all of these flights would have required export or reexport licenses from BIS. Rossiya flights would not be eligible to use license exception AVS. No BIS authorizations were either sought or obtained by Rossiya for these exports or reexports to Russia. The information about those flights includes the following:

Tail No.	Serial No.	Aircraft type	Departure/arrival cities	Dates
VQ–BVU	41202	737–8LJ (B738)	Sharjah, AE/Moscow, RU	March 7, 2022.
VP–BUS	44435	737–8MC (B738)	Tel Aviv, IL/St. Petersburg, RU	March 3, 2022.
VP–BUS	44435	737–8MC (B738)	Dubai, AE/St. Petersburg, RU	March 4, 2022.
VP–BUS	44435	737–8MC (B738)	Dubai, AE/St. Petersburg, RU	March 5, 2022.
VP–BUS	44435	737–8MC (B738)	Dubai, AE/St. Petersburg, RU	March 6, 2022.
VQ–BWJ	41212	737–8LJ (B738)	Sharm el-Sheikh, EG/St. Petersburg, RU	March 6, 2022.
EI–XLH	27650	747–446 (B744)	Hurghada, EG/Moscow, RU	March 8, 2022.

Based on this information, there are heightened concerns of future violations of the EAR, given that any subsequent actions taken with regard to any of the listed aircraft, or other Rossiya aircraft illegally exported or reexported to Russia after March 2, 2022, may violate the EAR. Such actions include, but are not limited to, refueling, maintenance, repair, or the provision of spare parts or services. *See* General Prohibition 10 of the EAR at 15 CFR 736.2(b)(10).[5] Even

[2] Aeroflot is the subject of a Temporary Denial Order issued on April 8, 2022. *See* 87 FR 21611 (April 12, 2022).

[3] 87 FR 12226 (Mar. 3, 2022). Additionally, BIS published a final rule effective April 8, 2022, which imposed licensing requirements on items controlled on the Commerce Control List (''CCL'') under Categories 0–2 that are destined for Russia or Belarus. Accordingly, now all CCL items require export, reexport, and transfer (in-country) licenses if destined for or within Russia or Belarus. 87 FR 22130 (Apr. 14, 2022).

[4] 87 FR 13048 (Mar. 8, 2022).

[5] Section 736.2(b)(10) of the EAR provides: General Prohibition Ten—Proceeding with transactions with knowledge that a violation has occurred or is about to occur (Knowledge Violation to Occur). You may not sell, transfer, export, reexport, finance, order, buy, remove, conceal, store, use, loan, dispose of, transport, forward, or otherwise service, in whole or in part, any item subject to the EAR and exported or to be exported with knowledge that a violation of the Export Administration Regulations, the Export Administration Act or any order, license, License Exception, or other authorization issued thereunder has occurred, is about to occur, or is intended to occur in connection with the item. Nor may you rely upon any license or License Exception after notice to you of the suspension or revocation of that license or exception. There are no License Exceptions to this General Prohibition Ten in part 740 of the EAR. (emphasis in original).

Rossiya's continued use of such U.S.-origin aircraft only on domestic routes within Russia runs afoul of General Prohibition 10, which (among other restrictions) prohibits the continued use of an item that was known to have been exported or reexported in violation of the EAR. For example, publicly available flight tracking data shows that, between April 14 and April 15, 2022, aircraft VQ–BVU (SN: 41202), VP–BUS (SN: 44435), and VQ–BWJ (SN: 41212) flew on flights into and out of St. Petersburg, Russia to/from Kaliningrad, Russia, Sochi, Russia, Omsk, Russia, Kazan, Russia, and Moscow, Russia, respectively.

Moreover, additional concerns of future violations of the Regulations are raised by public information indicating efforts by Rossiya to have aircraft re-registered in Russia and assigned Russian tail numbers, suggesting that Rossiya intends not only to maintain control over the aircraft but also to continue operating them in likely violation of the EAR. Specifically, a public statement dated March 30, 2022, and available as of the signing of this order states ''Rossiya completes the process of transferring aircraft to Russian jurisdiction.'' [6] Publicly available information further shows, for example, that in March 2022, Rossiya re-registered a U.S.-origin 747 (SN: 27100) in Russia and assigned the aircraft Russian tail number RA–73283.[7] Given BIS's review policy of denial under Section 746.8(a) of the Regulations for exports and reexports to Russia, it is foreseeable that Rossiya will attempt to evade the Regulations in order to obtain new or additional aircraft parts for or service its existing aircraft that were exported or reexported to Russia in violation of Section 746.8 of the Regulations.

III. Findings

Under the applicable standard set forth in Section 766.24 of the Regulations and my review of the entire record, I find that the evidence presented by BIS convincingly demonstrates that Rossiya took actions in apparent violation of the Regulations by exporting or reexporting the aircraft cited above, among many others, on flights into Russia after March 2, 2022, without the required BIS authorization. Moreover, the continued operation of these aircraft by Rossiya, even on domestic routes within Russia, and the company's on-going need to acquire replacement parts and components, many of which are U.S.-origin, presents a high likelihood of imminent violations warranting imposition of a TDO. Additionally, given that Rossiya and its majority shareholder Aeroflot both own and operate a number of similar models of U.S-origin aircraft requiring the same spare parts, I find it necessary to issue this Order not only to prevent further violations involving Rossiya's aircraft but also to prevent evasion of the Aeroflot TDO that I issued on April 8, 2022. I further find that such apparent violations have been ''significant, deliberate, covert and/or likely to occur again, rather than technical or negligent[.]'' Therefore, issuance of the TDO is necessary in the public interest to prevent imminent violation of the Regulations and to give notice to companies and individuals in the United States and abroad that they should avoid dealing with Rossiya, in connection with export and reexport transactions involving items subject to the Regulations and in connection with any other activity subject to the Regulations.

This Order is being issued on an *ex parte* basis without a hearing based upon BIS's showing of an imminent violation in accordance with Section 766.24 and 766.23(b) of the Regulations.

IV. Order

It is therefore ordered:

First, Rossiya Airlines, Pilotov St 18–4, St. Petersburg, Russia, 196210, when acting for or on their behalf, any successors or assigns, agents, or employees may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license (except directly related to safety of flight), license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations, or engaging in any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or from any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of Rossiya any item subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by Rossiya of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby Rossiya acquires or attempts to acquire such ownership, possession or control except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from Rossiya of any item subject to the EAR that has been exported from the United States except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations;

D. Obtain from Rossiya in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by Rossiya, or service any item, of whatever origin, that is owned, possessed or controlled by Rossiya if such service involves the use of any item subject to the EAR that has been or will be exported from the United States except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations. For purposes of this paragraph, servicing means installation, maintenance, repair, modification, or testing.

Third, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to Rossiya by

[6] *https://www.rossiya-airlines.com/en/about/news/rossiya-completes-the-process-of-transferring-aircraft-to-russian-jurisdiction/.*

[7] The aircraft was previously registered in Ireland with tail number EI–XLC.

ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order.

In accordance with the provisions of Sections 766.24(e) of the EAR, Rossiya may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

In accordance with the provisions of Section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. A renewal request may be opposed by Rossiya as provided in Section 766.24(d), by filing a written submission with the Assistant Secretary of Commerce for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be provided to Rossiya and shall be published in the **Federal Register**.

This Order is effective immediately and shall remain in effect for 180 days.

Dated: May 20, 2022.

Matthew S. Axelrod,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2022–11214 Filed 5–24–22; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Scope Rulings

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) hereby publishes a list of scope rulings and anti-circumvention determinations made during the period January 1, 2022, through March 31, 2022. We intend to publish future lists after the close of the next calendar quarter.

DATES: Applicable May 25, 2022.

FOR FURTHER INFORMATION CONTACT: Marcia E. Short, AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: 202–482–1560.

SUPPLEMENTARY INFORMATION:

Background

Commerce regulations provide that it will publish in the **Federal Register** a list of scope rulings on a quarterly basis.[1] Our most recent notification of scope rulings was published on February 9, 2022.[2] This current notice covers all scope rulings and anti-circumvention determinations made by Enforcement and Compliance from January 1, 2022, through March 31, 2022.

Scope Rulings Made January 1, 2022, Through March 31, 2022

Mexico

A–201–820: Fresh Tomatoes From Mexico

Requestor: Simply Fresh, LLC. Fresh Roma tomatoes for processing that are preserved by a commercial process using chemical additives, used in Simply Fresh LLC's salsa products, are outside the scope of the suspension agreement and the suspended investigation; January 12, 2022.

People's Republic of China (China)

A–570–073 and C–570–074: Common Alloy Aluminum Sheet From China

Requestor: Hammond Power Solutions, Inc. Specially processed, beveled aluminum foil conductor for transformer coil windings is covered by the scope of the antidumping and countervailing duty orders on common alloy aluminum sheet (CAAS) because the further processing performed on the CAAS in Canada would neither remove the CAAS from the scope of the orders if it were performed in China, nor constitutes ''substantial transformation'' that renders the resulting product a product of Canada; January 20, 2022.

A–570–051 and C–570–052: Certain Hardwood Plywood Products From China

Requestor: EAPA Referral from U.S. Customs and Border Protection. Two-ply panels produced in China are covered by the scope of the antidumping and countervailing duty orders on certain hardwood plywood products (hardwood plywood) from China. The hardwood plywood that Vietnam Finewood Company Limited exported to the United States, which was assembled in the Socialist Republic of Vietnam (Vietnam) using two-ply panels imported from China, are Chinese country of origin because the two-ply panels are not substantially transformed by the processing occurring in Vietnam; January 21, 2022.

A–570–929: Small Diameter Graphite Electrodes From China

Requestor: Boart Longyear Company. The graphite rods subject to the request are within the scope of the antidumping duty order on small diameter graphite electrodes from China because the products have the same physical characteristics as unfinished small diameter graphite electrodes and can be machined into graphite pin joining systems, *i.e.,* subject merchandise, after importation; February 1, 2022.

A–570–967 and C–570–968: Aluminum Extrusions From China

Requestor: Discount Ramps.com LLC. The aluminum extrusions within Discount Ramps.com LLC's bogie wheel kit are covered by the scope of the antidumping and countervailing duty orders on aluminum extrusions from China because they are made from an Aluminum Association 6-series alloy, and the bogie wheel kit does not meet the criteria for the scope exclusion for finished goods kits because it does not contain, at the time of importation, all of the necessary parts to fully assemble a final finished good; February 4, 2022.

Taiwan

A–583–869: Passenger Vehicle and Light Truck Tires From Taiwan

Requestor: Cheng Shin Rubber Ind. Col Ltd. Three models of light-truck tires are not covered by the scope of the antidumping duty order on passenger vehicle and light truck tires from Taiwan because they have been designed and marketed exclusively for use as temporary-use spare tires for light trucks and meet the additional technical requirements under the fifth exclusion of the scope; February 14, 2022.

Notification to Interested Parties

Interested parties are invited to comment on the completeness of this list of completed scope inquiries and anti-circumvention determinations made during the period January 1, 2022, through March 31, 2022. Any comments should be submitted to the Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, Enforcement and Compliance, International Trade Administration, via email to *CommerceCLU@trade.gov.*

This notice is published in accordance with 19 CFR 351.225(o).

[1] *See* 19 CFR 351.225(o).

[2] *See Notice of Scope Rulings,* 87 FR 7425 (February 9, 2022).

Dated: May 19, 2022.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2022–11215 Filed 5–24–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–870]

Certain New Pneumatic Off-the-Road Tires From India: Final Results of Expedited First Sunset Review of the Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of this expedited sunset review, the U.S. Department of Commerce (Commerce) finds that revocation of the countervailing duty (CVD) order on certain pneumatic off-the-road tires (off-road tires) from India would be likely to lead to continuation or recurrence of countervailable subsidies at the levels indicated in the ''Final Results of Sunset Review'' section of this notice.

DATES: Applicable May 25, 2022.

FOR FURTHER INFORMATION CONTACT: Daniel Alexander, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4313.

SUPPLEMENTARY INFORMATION:

Background

On March 6, 2017, Commerce published the CVD order on off-road tires from India.[1] On February 1, 2022, Commerce published the notice of initiation of the first sunset review of the *Order,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] Commerce received a timely notice of intent to participate from Titan Tire Corporation (Titan Tire), a domestic interested party, within the deadline specified in 19 CFR 351.218(d)(1)(i).[3] Titan Tire claimed interested party status under section 771(9)(C) of the Act, as a manufacturer of the domestic like product in the United States.

Commerce received a substantive response from the domestic interested party[4] within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). Commerce also received a substantive response from the Government of India (GOI).[5] We received no substantive response from any other domestic or interested parties in this proceeding, nor was a hearing requested.

On March 22, 2022, Commerce notified the U.S. International Trade Commission (ITC) that it did not receive an adequate substantive response from respondent interested parties.[6] As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of this *Order.*

Scope of the Order

The products covered by the scope of the *Order* are off-road tires. Certain off-road tires are tires with an off-road tire size designation. The tires included in the scope may be either tube-type or tubeless, radial, or non-radial, regardless of whether for original equipment manufacturers or the replacement market. Certain off-road tires, whether or not mounted on wheels or rims, are included in the scope. However, if a subject tire is imported mounted on a wheel or rim, only the tire is covered by the scope. The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4011.20.1025, 4011.20.1035, 4011.20.5030, 4011.20.5050, 4011.61.0000, 4011.62.0000, 4011.63.0000, 4011.69.0050, 4011.92.0000, 4011.93.4000, 4011.93.8000, 4011.94.4000, 4011.94.8000, 8431.49.9038, 8431.49.9090, 8709.90.0020, and 8716.90.1020. Tires meeting the scope description may also enter under the following HTSUS subheadings: 4011.99.4550, 4011.99.8550, 8424.90.9080, 8431.20.0000, 8431.39.0010, 8431.49.1090, 8431.49.9030, 8432.90.0005, 8432.90.0015, 8432.90.0030, 8432.90.0080, 8433.90.5010, 8503.00.9520, 8503.00.9560, 8708.70.0500, 8708.70.2500, 8708.70.4530, 8716.90.5035, 8716.90.5055, 8716.90.5056 and 8716.90.5059. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the subject merchandise is dispositive. A full description of the scope of the *Order* is contained in the Issues and Decision Memorandum.[7]

Analysis of Comments Received

All issues raised in this sunset review are addressed in the Issues and Decision Memorandum. A list of topics discussed in the Issues and Decision Memorandum is included as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via the Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Final Results of Sunset Review

Pursuant to sections 751(c)(1) and 752(b) of the Act, we determine that revocation of the CVD order on off-road tires from India would be likely to lead to continuation or recurrence of countervailable subsidies at the following rates:

Producer/exporter	Net countervailable subsidy rate (percent)
Balkrishna Industries Limited	5.36
ATC Tires Private Limited	4.72
All Others	4.94

Administrative Protective Order (APO)

This notice also serves as the only reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an

[1] *See Certain New Pneumatic Off-the-Road Tires from India and Sri Lanka: Amended Final Affirmative Countervailing Duty Determination for India and Countervailing Duty Orders,* 82 FR 12556 (March 6, 2017) (*Order*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 87 FR 5467 (February 1, 2022).

[3] *See* Titan Tire's Letter, ''Certain New Pneumatic Off-the-Road Tires from India: Notice of Intent to Participate in Sunset Review,'' dated February 16, 2022.

[4] *See* Titan Tire's Letter, ''Certain New Pneumatic Off-the-Road Tires from India: Substantive Response to Notice of Initiation,'' dated March 3, 2022.

[5] *See* GOI's Letter, ''Institution of First Five-Year (''Sunset'') Review of Countervailing Duty Order on New Pneumatic Off-The-Road Tires from India: Government of India's Substantive Response to the Institution of Initiation and Intent to Participate in the Investigation,'' dated March 3, 2022.

[6] *See* Commerce's Letter, ''Sunset Reviews Initiated on February 1, 2022—Amended Notification,'' dated March 22, 2022.

[7] *See* Memorandum, ''Issues and Decision Memorandum for the Expedited First Sunset Review of the Countervailing Duty Order on Certain New Pneumatic Off-the-Road Tires from India,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing the final results and this notice in accordance with sections 751(c), 752(b), and 777(i)(1) of the Act, and 19 CFR 351.218.

Dated: May 18, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2022–11212 Filed 5–24–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO–C–2022–0013]

Patent and Trademark Public Advisory Committees

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Request for nominations for the Patent and Trademark Public Advisory Committees.

SUMMARY: The United States Patent and Trademark Office (USPTO)—America's Innovation Agency—is seeking nominations for up to three members of its Patent Public Advisory Committee (PPAC) to advise the Director of the USPTO on patent policy and for up to three members of its Trademark Public Advisory Committee (TPAC) to advise the Director on trademark policy. Each new member, who can serve remotely, will serve a three-year term. The members represent the interests of the public and the stakeholders of the USPTO.

DATES: Nominations must be electronically transmitted on or before July 1, 2022.

ADDRESSES: Persons wishing to submit nominations will be required to electronically complete the appropriate Public Advisory Committee application form by entering detailed information and qualifications at: *https://tinyurl.com/ynae4a67* for the Patent Public Advisory Committee, and *https://tinyurl.com/hcux6462* for the Trademark Public Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Cordelia Zecher, Acting Chief of Staff, Office of the Under Secretary of Commerce for Intellectual Property and Director of the USPTO, at 571–272–8600.

SUPPLEMENTARY INFORMATION: On November 29, 1999, the President signed into law the Patent and Trademark Office Efficiency Act (Act). The Act established two Public Advisory Committees—the PPAC and TPAC—to review the policies, goals, performance, budget, and user fees of the USPTO. The America Invents Act Technical Corrections set staggered terms for members of the Advisory Committees, with each term starting and ending on December 1.

The PPAC and TPAC members shall:

- Advise the Under Secretary of Commerce for Intellectual Property and Director of the USPTO on matters relating to policies, goals, performance, budget, and user fees of the USPTO relating to patents and trademarks, respectively (35 U.S.C. 5); and
- Within 60 days after the end of each fiscal year: (1) Prepare an annual report on matters listed above; (2) transmit the report to the Secretary of Commerce (Secretary), the President, and the Committees on the Judiciary of the Senate and the House of Representatives; and (3) publish the report in the Official Gazette of the USPTO. *Id.*

Public Advisory Committees

The Public Advisory Committees are each composed of nine voting members who are appointed by the Secretary and serve at the pleasure of the Secretary for three-year terms. Members are eligible for reappointment for a second consecutive three-year term. The Public Advisory Committee members must be citizens of the United States. Members must also certify that they are not required to register with the Department of Justice as a foreign agent under the Foreign Agents Registration Act of 1938, as amended, and that they are not a federally-registered lobbyist. Members are chosen to represent the interests of diverse users of the USPTO and must represent small and large entity applicants located in the United States in proportion to the number of applications filed by such applicants. In no case, however, shall members who represent small entity patent applicants, including small business concerns, independent inventors, and nonprofit organizations, constitute less than 25 percent of the members of the Patent Public Advisory Committee. There must at least one independent inventor on the Patent Public Advisory Committee. The Committees must include individuals with a ''substantial background and achievement in finance, management, labor relations, science, technology, and office automation.'' 35 U.S.C. 5(b)(3). Each of the Public Advisory Committees also includes three non-voting members representing each labor organization recognized by the USPTO.

Procedures and Guidelines of the PPAC and TPAC

Each newly appointed member of the PPAC and TPAC will serve for a three-year term that begins on December 1, 2022, and ends on December 1, 2025. As required by the 1999 Act, members of the PPAC and TPAC will receive compensation for each day (including travel time) they attend meetings or engage in the business of their Advisory Committee. The enabling statute states that members are to be compensated at the daily equivalent of the annual rate of basic pay in effect for level III of the Executive Schedule under 5 U.S.C. 5314. Committee members are compensated on an hourly basis, calculated at the daily rate. While away from home or their regular place of business, each member shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by 5 U.S.C. 5703.

Applicability of Certain Ethics Laws

Public Advisory Committee members are Special Government Employees within the meaning of 18 U.S.C. 202. The following additional information includes several, but not all, of the ethics rules that apply to members, and assumes that members are not engaged in Public Advisory Committee business more than 60 days during any period of 365 consecutive days.

- Each member will be required to file a confidential financial disclosure form within 30 days of appointment. 5 CFR 2634.202(c), 2634.204, 2634.903, and 2634.904(b).
- Each member will be subject to many of the public integrity laws, including criminal bars against representing a party in a particular matter that comes before the member's committee and that involves at least one specific party. 18 U.S.C. 205(c); *see also* 18 U.S.C. 207 for post-membership bars. Also, a member must not act on a matter in which the member (or any of certain

closely related entities) has a financial interest. 18 U.S.C. 208.

• Representation of foreign interests may also raise issues. 35 U.S.C. 5(a)(1) and 18 U.S.C. 219.

Meetings of the PPAC and TPAC

Meetings of each Public Advisory Committee will take place at the call of the respective Committee Chair to consider an agenda set by that Chair. Meetings may be conducted in person, telephonically, online, or by other appropriate means. The meetings of each Public Advisory Committee will be open to the public, except each Public Advisory Committee may, by majority vote, meet in an executive session when considering personnel, privileged, or other confidential information. Nominees must have the ability to participate in Public Advisory Committee business through the internet.

Katherine K. Vidal,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2022–11200 Filed 5–24–22; 8:45 am]

BILLING CODE 3510–16–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Extend Collection 3038–0078: Conflicts of Interest Policies and Procedures by Futures Commission Merchants and Introducing Brokers

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is announcing an opportunity for public comment on the proposed renewal of a collection of certain information by the agency. Under the Paperwork Reduction Act (''PRA''), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment. This notice solicits comments on the collections of information mandated by a Commission regulation dealing with conflicts of interest policies and procedures by futures commission merchants and introducing brokers.

DATES: Comments must be submitted on or before July 25, 2022.

ADDRESSES: You may submit comments, identified by ''OMB Control Number 3038–0078'' by any of the following methods:

• The Agency's website, at *https://comments.cftc.gov/.* Follow the instructions for submitting comments through the website.

• *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

• *Hand Delivery/Courier:* Same as Mail above.

Please submit your comments using only one method. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *https://www.cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Andrew Chapin, Associate Chief Counsel, Market Participants Division, Commodity Futures Trading Commission, (202) 418–5465, email: *achapin@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA,[1] Federal agencies must obtain approval from the Office of Management and Budget (''OMB'') for each collection of information they conduct or sponsor. ''Collection of Information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the Commission is publishing notice of the proposed collection of information listed below. 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.[2]

Title: Conflicts of Interest Policies and Procedures by Futures Commission Merchants and Introducing Brokers (OMB Control Nos. 3038–0078). This is a request for an extension of currently approved information collection.

Abstract: On April 3, 2012, the Commission adopted Commission regulation 1.71 (Conflicts of interest policies and procedures by futures commission merchants and introducing brokers) [3] pursuant to sections 4d(c) [4] of the Commodity Exchange Act (''CEA'').[5] Commission regulation 1.71 generally requires that, among other things, generally that, among other things, futures commission merchants (''FCM'') [6] and introducing brokers (''IB'') [7] develop conflicts of interest procedures and disclosures, adopt and implement written policies and procedures reasonably designed to ensure compliance with their conflicts of interest and disclosure obligations, and maintain specified records related to those requirements.[8] The Commission believes that the information collection obligations imposed by Commission regulation 1.71 are essential to (i) ensuring that FCMs and IBs develop and maintain the conflicts of interest systems, procedures and disclosures required by the CEA, and Commission regulations, and (ii) the effective evaluation of these registrants' actual compliance with the CEA and Commission regulations. 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.

With respect to the collection of information, the Commission invites comments on:

• Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;

• The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Ways to enhance the quality,usefulness, and clarity of the information to be collected; and

• Ways to minimize the burden of collection of information on those whoare to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

You should submit only information that you wish to make available publicly. If you wish the Commission to

[1] 44 U.S.C. 3501 *et seq.*

[2] 44 U.S.C. 3512, 5 CFR 1320.5(b)(2)(i) and 1320.8 (b)(3)(vi).

[3] 17 CFR 1.71.

[4] 7 U.S.C. 6d(c).

[5] 77 FR 20198.

[6] For the definition of FCM, see section 1a(28) of the CEA and Commission regulation 1.3. 7 U.S.C. 1a(49) and 17 CFR 1.3.

[7] For the definitions of IB, see section 1a(31) of the CEA and Commission regulation 1.3. 7 U.S.C. 1a(33) and 17 CFR 1.3.

[8] See 17 CFR 1.71.

consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[9]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the information collection request will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

Burden Statement: The Commission is revising its estimate of the burden for this collection to reflect the current number of respondents. The respondent burden for this collection is estimated to be as follows:

Estimated Number of Respondents: 1,065.

Estimated Average Burden Hours per Respondent: 44.5.

Estimated Total Annual Burden Hours: 47,392.

Frequency of Collection: As applicable.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: May 20, 2022.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2022–11253 Filed 5–24–22; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0012, Futures Volume, Open Interest, Price, Deliveries, and Exchanges of Futures

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (''PRA''), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment. This notice solicits comments on futures volume, open interest, price, deliveries, and purchases/sales of futures for commodities or for derivatives positions.

DATES: Comments must be submitted on or before July 25, 2022.

ADDRESSES: You may submit comments, identified by ''Futures Volume & Open Interest Collection,'' 3038–0012, by any of the following methods:

- The Agency's website, at *http://comments.cftc.gov/*. Follow the instructions for submitting comments through the website.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

Please submit your comments using only one method. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *https://www.cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Adam Charnisky, Market Analyst, Division of Market Oversight, Commodity Futures Trading Commission, (312) 596–0630; email*: acharnisky@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (''OMB'') for each collection of information they conduct or sponsor. ''Collection of Information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below. 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.[1]

Title: Futures Volume, Open Interest, Price, Deliveries and Exchanges of Futures (OMB Control No. 3038–0012). This is a request for extension of a currently approved information collection.

Abstract: Commission Regulation 16.01 requires the U.S. futures exchanges to publish daily information on the items listed in the title of the collection. The information required by this rule is in the public interest and is necessary for market surveillance and analysis. This rule is promulgated pursuant to the Commission's rulemaking authority contained in Section 5 of the Commodity Exchange Act, 7 U.S.C. 7 (2010).

With respect to the collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[2]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the Information Collection Request will be retained in the public

[9] 17 CFR 145.9.

[1] 44 U.S.C. 3512, 5 CFR 1320.5(b)(2)(i) and 1320.8 (b)(3)(vi).

[2] 17 CFR 145.9.

comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

Burden Statement: The respondent burden for this collection is estimated to be as follows:

Respondents/Affected Entities: Designated Contract Markets.

Estimated number of respondents: 17.

Estimated Average Burden Hours per Respondent: 250.[3]

Estimated Total Annual Burden Hours: 4,250 hours.

Frequency of collection: Daily.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: May 20, 2022.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2022–11254 Filed 5–24–22; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Research and Engineering, Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Science Board (DSB) will take place.

DATES: Closed to the public Wednesday, June 1, 2022 from 8:30 a.m. to 4:30 p.m. Closed to the public Thursday, June 2, 2022 from 8:00 a.m. to 3:30 p.m.

ADDRESSES: The address of the closed meeting is conference room 3E869 at the Pentagon, Washington, DC 20301.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Doxey, (703) 571–0081 (voice), (703) 697–1860 (facsimile), *kevin.a.doxey.civ@mail.mil* (email). Mailing address is Defense Science Board, 3140 Defense Pentagon, Room 3B888A, Washington, DC 20301–3140. Website: *http://www.acq.osd.mil/dsb/.* The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) (Title 5 United States Code (U.S.C.), Appendix), the Government in the Sunshine Act (5 U.S.C. 552b), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The mission of the DSB is to provide independent advice and recommendations on matters relating to the DoD's scientific and technical enterprise. The objective of the meeting is to obtain, review, and evaluate classified information related to the DSB's mission. DSB membership will meet with DoD Leadership to discuss classified current and future national security challenges and priorities within the DoD.

Agenda: The DSB Quarterly Meeting will begin on June 1, 2022 at 8:30 a.m. with opening remarks from Mr. Kevin Doxey, the Designated Federal Officer, and Dr. Eric Evans, DSB Chairman, followed by member introductions. The first briefing will be from the Honorable Christine Wormuth, Secretary of the Army, who will provide a classified briefing on her view of the defense issues and challenges the Army faces. DSB members will then receive a classified briefing on pending DSB studies. Next, the DSB Sponsor, the Honorable Heidi Shyu, Under Secretary of Defense, Research & Engineering, will provide classified remarks on her view on defense challenges, issues, and priorities. Finally, Vice Admiral Stuart B. Munsch, Director for Joint Force Development, J7, will provide classified remarks on his view of current defense challenges and issues. The meeting will adjourn at 4:30 p.m. On June 2, 2022, the first presentation will be from Dr. John Manferdelli and Dr. Robert Wisnieff, Co-Chairs of the DSB Task Force on Ensuring Microelectronics Superiority (Microelectronics), who will provide a brief on the Task Force on Microelectronics' findings and recommendations and engage in classified discussion with the DSB. The DSB will then vote on the Microelectronics Task Force's findings and recommendations. The next presentation will be from Dr. Mark Maybury and Mr. Mark Russell, Co-Chairs of the DSB Task Force on Homeland Air Defense (HAD), who will provide a brief on the Task Force on HAD's findings and recommendations and engage in classified discussion with the DSB. The DSB will then vote on the HAD Task Force's findings and recommendations. Next, Dr. William Schneider and Dr. Theodore Gold, Co-Chairs of the 2020 Summer Study on New Dimensions of Conflict (2020 Summer Study), will provide a brief on the 2020 Summer Study's findings and recommendations and engage in classified discussion with the DSB. The DSB will then vote on the 2020 Summer Study's findings and recommendations. Next, General Paul M. Nakasone, United States Army, Commander, United States Cyber Command, Director, National Security Agency/Chief, Central Security Service will provide a classified briefing on his view of current defense challenges and issues. Finally, Admiral Christopher W. Grady, Vice Chairman, Joint Chiefs of Staff, will provide a classified briefing on his view of current defense challenges and issues. The meeting will adjourn at 3:30 p.m.

Meeting Accessibility: In accordance with Section 10(d) of the FACA and 41 CFR 102–3.155, the DoD has determined that the DSB meeting will be closed to the public. Specifically, the Under Secretary of Defense (Research and Engineering), in consultation with the DoD Office of General Counsel, has determined in writing that the meeting will be closed to the public because it will consider matters covered by 5 U.S.C. 552b(c)(1). The determination is based on the consideration that it is expected that discussions throughout will involve classified matters of national security concern. Such classified material is so intertwined with the unclassified material that it cannot reasonably be segregated into separate discussions without defeating the effectiveness and meaning of the overall meetings. To permit the meeting to be open to the public would preclude discussion of such matters and would greatly diminish the ultimate utility of the DSB's findings and recommendations to the Secretary of Defense and to the Under Secretary of Defense (Research and Engineering).

Written Statements: In accordance with Section 10(a)(3) of the FACA and 41 CFR 102–3.105(j) and 102–3.140, interested persons may submit a written statement for consideration by the DSB at any time regarding its mission or in response to the stated agenda of a planned meeting. Individuals submitting a written statement must submit their statement to the DSB DFO provided in the **FOR FURTHER INFORMATION CONTACT** section at any point; however, if a written statement is not received at least three calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the DSB until a later date.

Meeting Announcement: Due to circumstances beyond the control of the Department of Defense and the Designated Federal Officer, the Defense Science Board was unable to provide public notification required by 41 CFR

[3] The Commission estimates that its Data, Market and Surveillance Staff will expend approximately 1 hour per day on each respondent/response over 250 trading days to collect and analyze the information submitted.

102–3.150(a), concerning the meeting on June 1–2, 2022 of the Defense Science Board. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Dated: May 19, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–11194 Filed 5–24–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army; Army Corps of Engineers

Notice of Solicitation of Applications for Stakeholder Representative Members of the Missouri River Recovery Implementation Committee

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: The Commander of the Northwestern Division of the U.S. Army Corps of Engineers (Corps) is soliciting applications to fill vacant stakeholder representative member positions on the Missouri River Recovery Implementation Committee (MRRIC). Members are sought to fill vacancies on a committee to represent various categories of interests within the Missouri River basin. The MRRIC was formed to advise the Corps on a study of the Missouri River and its tributaries and to provide guidance to the Corps with respect to the Missouri River recovery and mitigation activities currently underway. The Corps established the MRRIC as required by the U.S. Congress through the Water Resources Development Act of 2007 (WRDA), Section 5018.

DATES: The agency must receive completed applications and endorsement letters no later than July 1, 2022.

ADDRESSES: Mail completed applications and endorsement letters to U.S. Army Corps of Engineers, Kansas City District (Attn: MRRIC), 601 E 12th Street, Kansas City, MO 64106 or email completed applications to *mrric@usace.army.mil.* Please put ''MRRIC'' in the subject line.

FOR FURTHER INFORMATION CONTACT: Lisa Rabbe, 816–389–3837.

SUPPLEMENTARY INFORMATION: The operation of the MRRIC is in the public interest and provides support to the Corps in performing its duties and responsibilities under the Endangered Species Act, 16 U.S.C. 1531 *et seq.;* Sec. 601(a) of the Water Resources Development Act (WRDA) of 1986, Public Law 99–662; Sec. 334(a) of WRDA 1999, Public Law 106–53, and Sec. 5018 of WRDA 2007, Public Law 110–114. The Federal Advisory Committee Act, 5 U.S.C. App. 2, does not apply to the MRRIC.

A Charter for the MRRIC has been developed and should be reviewed prior to applying for a stakeholder representative membership position on the Committee. The Charter, operating procedures, and stakeholder application forms are available electronically at *www.MRRIC.org.*

Purpose and Scope of the Committee.

1. The primary purpose of the MRRIC is to provide guidance to the Corps and U.S. Fish and Wildlife Service with respect to the Missouri River recovery and mitigation plan currently in existence, including recommendations relating to changes to the implementation strategy from the use of adaptive management; coordination of the development of consistent policies, strategies, plans, programs, projects, activities, and priorities for the Missouri River recovery and mitigation plan. Information about the Missouri River Recovery Program is available at *www.MoRiverRecovery.org.*

2. Other duties of MRRIC include exchange of information regarding programs, projects, and activities of the agencies and entities represented on the Committee to promote the goals of the Missouri River recovery and mitigation plan; establishment of such working groups as the Committee determines to be necessary to assist in carrying out the duties of the Committee, including duties relating to public policy and scientific issues; facilitating the resolution of interagency and intergovernmental conflicts between entities represented on the Committee associated with the Missouri River recovery and mitigation plan; coordination of scientific and other research associated with the Missouri River recovery and mitigation plan; and annual preparation of a work plan and associated budget requests.

Administrative Support. To the extent authorized by law and subject to the availability of appropriations, the Corps provides funding and administrative support for the Committee.

Committee Membership. Federal agencies with programs affecting the Missouri River may be members of the MRRIC through a separate process with the Corps. States and Federally recognized Native American Indian tribes, as described in the Charter, are eligible for Committee membership through an appointment process. Interested State and Tribal government representatives should contact the Corps for information about the appointment process.

This Notice is for individuals interested in serving as a stakeholder member on the Committee. Members and their alternates must be able to demonstrate that they meet the definition of ''stakeholder'' found in the Charter of the MRRIC. Applications are currently being accepted for representation in the stakeholder interest categories listed below:

a. Conservation Districts;
b. Fish & Wildlife;
c. Flood Control;
d. Irrigation;
e. Major Tributaries;
f. Water Quality; and
g. Waterway Industries.

Terms of stakeholder representative members of the MRRIC are three years. There is no limit to the number of terms a member may serve. Incumbent Committee members seeking reappointment do not need to re-submit an application. However, renewal requests are not guaranteed re-selection and they must submit a renewal request letter and related materials as outlined in the ''Streamlined Process for Existing Members'' portion of the document *Process for Filling MRRIC Stakeholder Vacancies* (*www.MRRIC.org*).

Members and alternates of the Committee will not receive any compensation from the federal government for carrying out the duties of the MRRIC. Travel expenses incurred by members of the Committee are not currently reimbursed by the federal government.

Application for Stakeholder Membership. Persons who believe that they are or will be affected by the Missouri River recovery and mitigation activities may apply for stakeholder membership on the MRRIC. Committee members are obligated to avoid and disclose any individual ethical, legal, financial, or other conflicts of interest they may have involving MRRIC. Applicants must disclose on their application if they are directly employed by a government agency or program (the term ''government'' encompasses state, tribal, and federal agencies and/or programs).

Applications for stakeholder membership may be obtained electronically at *www.MRRIC.org.* Applications may be emailed or mailed to the location listed (see **ADDRESSES**). In order to be considered, each application must include:

1. The name of the applicant and the primary stakeholder interest category that person is qualified to represent;

2. A written statement describing the applicant's area of expertise and why the applicant believes he or she should be appointed to represent that area of expertise on the MRRIC;

3. A written statement describing how the applicant's participation as a Stakeholder Representative will fulfill the roles and responsibilities of MRRIC;

4. A written description of the applicant's past experience(s) working collaboratively with a group of individuals representing varied interests towards achieving a mutual goal, and the outcome of the effort(s);

5. A written description of the communication network that the applicant plans to use to inform his or her constituents and to gather their feedback, and

6. A written endorsement letter from an organization, local government body, or formal constituency, which demonstrates that the applicant represents an interest group(s) in the Missouri River basin.

To be considered, the application must be complete and received by the close of business on July 1, 2022, at the location indicated (see **ADDRESSES**). Applications must include an endorsement letter to be considered complete. Full consideration will be given to all complete applications received by the specified due date.

Application Review Process. Committee stakeholder applications will be forwarded to the current members of the MRRIC. The MRRIC will provide membership recommendations to the Corps as described in Attachment A of the *Process for Filling MRRIC Stakeholder Vacancies* document (*www.MRRIC.org*). The Corps is responsible for appointing stakeholder members. The Corps will consider applications using the following criteria:

- Ability to commit the time required.
- Commitment to make a good faith (as defined in the Charter) effort to seek balanced solutions that address multiple interests and concerns.
- Agreement to support and adhere to the approved MRRIC Charter and Operating Procedures.
- Demonstration of a formal designation or endorsement by an organization, local government, or constituency as its preferred representative.
- Demonstration of an established communication network to keep constituents informed and efficiently seek their input when needed.
- Agreement to participate in collaboration training as a condition of membership.

All applicants will be notified in writing as to the final decision about their application.

Certification. I hereby certify that the establishment of the MRRIC is necessary and in the public interest in connection with the performance of duties imposed on the Corps by the Endangered Species Act and other statutes.

Geoffrey R. Van Epps,

Colonel, Corps of Engineers, Division Commander.

[FR Doc. 2022–11258 Filed 5–24–22; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2022–SCC–0068]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application for Grants Under the Strengthening Institutions Program, CFDA #84.031A & 84.031F

AGENCY: Office of Postsecondary Education (OPE), 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 June 24, 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 Nalina Lamba-Nieves, (202) 453–7953.

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: Application for grants under the Strengthening Institutions Program, CFDA #84.031A & 84.031F.

OMB Control Number: 1840–0114.

Type of Review: Extension without change of a currently approved collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 590.

Total Estimated Number of Annual Burden Hours: 38,350.

Abstract: This collection is the application booklet for the Strengthening Institutions Program (SIP), ALN #84.031A & 84.031F. SIP provides grants to eligible institutions of higher education (IHEs) to improve their academic programs, institutional management, and fiscal stability to increase their self-sufficiency and strengthen their capacity. Funding is targeted to institutions that enroll a large proportion of financially disadvantaged students and have low per-student expenditures. Section 311(b) and Section 391(a)(1) of Title III, Part A of the Higher Education Act of 1965, as amended (HEA), 20 US Code § 1057 and the governing regulations (34 CFR 607.1–607.31) require collection of the information identified in the application package, in order to make awards.

This collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1894–0001). Therefore, the 30-day public comment period notice will be the only public

comment notice published for this information collection.

Dated: May 19, 2022.

Kun 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. 2022–11178 Filed 5–24–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF22–6–000]

Transcontinental Gas Pipe Line Company, LLC; Notice of Scoping Period Requesting Comments on Environmental Issues for the Planned Southeast Energy Connector Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document that will discuss the environmental impacts of the Southeast Energy Connector Project involving construction and operation of facilities by Transcontinental Gas Pipe Line Company, LLC (Transco) in Coosa and Chilton Counties, Alabama. The Commission will use this environmental document in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies regarding the project. As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. This gathering of public input is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the environmental document on the important environmental issues. Additional information about the Commission's NEPA process is described below in the *NEPA Process and Environmental Document* section of this notice.

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on June 20, 2022. Comments may be submitted in written. Further details on how to submit written comments are provided in the *Public Participation* section of this notice.

Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the environmental document. Commission staff will consider all written comments during the preparation of the environmental document.

If you submitted comments on this project to the Commission before the opening of this docket on February 22, 2022, you will need to file those comments in Docket No. PF22–6–000 to ensure they are considered.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the planned facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the project, the Natural Gas Act conveys the right of eminent domain to the company. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law. The Commission does not subsequently grant, exercise, or oversee the exercise of that eminent domain authority. The courts have exclusive authority to handle eminent domain cases; the Commission has no jurisdiction over these matters.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' addresses typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (*www.ferc.gov*) under the links to Natural Gas Questions or Landowner Topics.

Public Participation

There are three methods you can use to submit your comments to the Commission. Please carefully follow these instructions so that your comments are properly recorded. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.*

(1) You can file your comments electronically using the *eComment* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature, which is also located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing;'' or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (PF22–6–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

It is important to note that the Commission provides equal consideration to all comments received.

Additionally, the Commission offers a free service called eSubscription, which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Summary of the Planned Project

Transco plans to install a new compressor unit and modify compressor units at Transco's existing Compressor Station 105 located in Coosa County, Alabama and construct the 1.83 mile 42-inch-diameter Chilton Loop pipeline in Coosa and Chilton Counties, Alabama. The general location of the planned project facilities is shown in appendix 1.[1] Specifically, the Southeast Energy Connector Project would consist of the following facilities:

- Installation of a 11,110 horsepower Solar Taurus 70 gas-fired turbine in a new building with associated appurtenant facilities at Transco's existing Compressor Station 105 in Coosa County, Alabama;
- Modification of compressor units 1–3 at Compressor Station 105;
- Construction of 1.83 miles of new 42-inch-diameter 'E' mainline loop[2] pipeline from Mileposts (MP) 909.63 to 911.46 in Chilton and Coosa Counties, Alabama; and
- Remove the existing pigging[3] traps at MPs 909.63 and 911.43 on Transco's existing 'E' mainline and tie-in the planned 42-inch-diameter Chilton Loop.

The Southeast Energy Connector Project would enable Transco to construct and operate the project facilities to provide an incremental 150,000 dekatherms per day of year-round firm transportation capacity from existing supply points in Mississippi and Alabama to the existing Gaston delivery meter station located adjacent to the existing Compressor Station 105 in Coosa County, Alabama. The purpose of the planned project is to provide natural gas solely to the Gaston Steam Plant for the conversion of existing 895-megawatt (MW) Unit 5 to natural gas. The Gaston Steam Plant is a 2,015–MW capacity power station in Shelby County, near Wilsonville, Alabama, currently powering its Unit 5 on coal.

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary''. For instructions on connecting to eLibrary, refer to the last page of this notice. At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

[2] A pipeline loop is a segment of pipe constructed parallel to an existing pipeline to increase capacity.

[3] A ''pig'' is a tool that the pipeline company inserts into and pushes through the pipeline for cleaning the pipeline, conducting internal inspections, or other purposes.

Land Requirements for Construction

Construction and modification of the planned facilities would disturb about 129 acres of land, which includes temporary construction workspace, permanent easement, and permanent access roads. Following construction, Transco would maintain 13 acres for permanent operation of the project's facilities and the remaining acreage would be restored to pre-construction conditions.

NEPA Process and the Environmental Document

Any environmental document issued by Commission staff will discuss impacts that could occur as a result of the construction and operation of the planned project under the relevant general resource areas:

- Geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- socioeconomics;
- environmental justice;
- air quality and noise; and
- reliability and safety.

Community groups, schools, churches, and businesses within these environmental justice communities, along with known environmental justice organizations, have been included on the Commission's environmental mailing list for the project, as further explained in the *Environmental Mailing List* section of this notice.

Commission staff will also evaluate reasonable alternatives to the planned project or portions of the project and make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff identify and focus on the issues that might have an effect on the human environment and potentially eliminate others from further study and discussion in the environmental document.

Although no formal application has been filed, Commission staff have already initiated a NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before the Commission receives an application. As part of the pre-filing review, Commission staff will contact federal and state agencies to discuss their involvement in the scoping process and the preparation of the environmental document.

If a formal application is filed, Commission staff will then determine whether to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). The EA or the EIS will present Commission staff's independent analysis of the environmental issues. If Commission staff prepares an EA, a *Notice of Schedule for the Preparation of an Environmental Assessment* will be issued. The EA may be issued for an allotted public comment period. The Commission would consider timely comments on the EA before making its determination on the planned project. If Commission staff prepares an EIS, a *Notice of Intent to Prepare an EIS/ Notice of Schedule* will be issued once an application is filed, which will open an additional public comment period. Staff will then prepare a draft EIS that will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS, and revise the document, as necessary, before issuing a final EIS. Any EA or draft and final EIS will be available in electronic format in the public record through eLibrary[4] and the Commission's natural gas environmental documents web page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). If eSubscribed, you will receive instant email notification when the environmental document is issued.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues related to this project to formally cooperate in the preparation of the environmental document.[5] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the *Public Participation* section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's

[4] For instructions on connecting to eLibrary, refer to the last page of this notice.

[5] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at title 40, Code of Federal Regulations, part 1501.8.

potential effects on historic properties.[6] The environmental document for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; local community groups, schools, churches, and businesses; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the planned project.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to *GasProjectAddressChange@ferc.gov* stating your request. You must include the docket number PF22–6–000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments. *OR*

(2) Return the attached ''Mailing List Update Form'' (appendix 2).

Becoming an Intervenor

Once Transco files its application with the Commission, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Only intervenors have the right to seek rehearing of the Commission's decision and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). Motions to intervene are more fully described at *https://www.ferc.gov/resources/guides/how-to.asp.* Please note that the Commission will not accept requests for intervenor status at this time. You must wait until the Commission receives a formal application for the project, after which the Commission will issue a public notice that establishes an intervention deadline.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field (*i.e.,* PF22–6). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

Dated: May 19, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–11244 Filed 5–24–22; 8:45 am]

BILLING CODE 6717–01–P

[6] The Advisory Council on Historic Preservation regulations are at title 36, Code of Federal Regulations, part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP22–162–000, CP18–549–001]

Equitrans, L.P.; Notice of Schedule for the Preparation of an Environmental Assessment for the Swarts Complex Abandonment Project Amendment

On April 12, 2022, Equitrans, L.P. (Equitrans) filed an application in Docket Nos. CP22–162–000 and CP18–549–001 requesting a limited amendment to the existing abandonment authorization issued by the Federal Energy Regulatory Commission (Commission or FERC) on March 20, 2019. The proposed project is known as the Swarts Complex Abandonment Project Amendment (Project) and would change Equitrans' abandonment method for five injection and withdrawal (I/W) wells in the Swarts Complex. Equitrans previously proposed abandonment-by-sale and currently proposes to plug-and-abandon the five wells to comply with Pennsylvania Department of Environmental Protection's (PADEP) regulations.

On April 15, 2022, the Commission issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's environmental document for the Project.

This notice identifies Commission staff's intention to prepare an environmental assessment (EA) for the Project and the planned schedule for the completion of the environmental review.[1]

Schedule for Environmental Review

Issuance of EA—September 2, 2022.
90-day Federal Authorization Decision Deadline [2]—December 1, 2022.

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

The Commission authorization issued on March 20, 2019 in Docket No. CP18–549–000 authorized Equitrans to abandon eighteen I/W wells in the Swarts Complex by sale, abandon the associated well lines in place, and abandon any associated appurtenant facilities. Since the issuance of the Abandonment Authorization, Equitrans has abandoned four of the originally authorized eighteen I/W wells by sale to CONSOL Pennsylvania Coal Company LLC, CONSOL Mining Company LLC,

[1] 40 CFR 1501.10 (2020).

[2] The Commission's deadline applies to the decisions of other federal agencies, and state agencies acting under federally delegated authority, that are responsible for federal authorizations, permits, and other approvals necessary for proposed projects under the Natural Gas Act. Per 18 CFR 157.22(a), the Commission's deadline for other agency's decisions applies unless a schedule is otherwise established by federal law.

and CNX Gas Company LLC (collectively, CONSOL). The PADEP's setback regulation requires wells within 2,000 feet of coal mining activities to be plugged/abandoned or reconditioned. Equitrans, to comply with the PADEP's regulations, now proposes to perform the plugging and abandonment of five of the remaining fourteen wells itself rather than transferring those responsibilities to CONSOL. Specifically, Equitrans now proposes to plug and abandon I/W wells 603791, 603792, 603793, 603795, and 603797, and abandon in place the pipelines associated with the five wells. Equitrans also proposes to disconnect and remove aboveground appurtenances along with a portion of the well lines that are within each well site workspace.

Background

On April 19, 2022, the Commission issued a *Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Swarts Complex Abandonment Project Amendment* (Notice of Scoping). The Notice of Scoping was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. In response to the Notice of Scoping, the Commission has not received any comments to date. Any substantive comment filed in response to the Notice of Scoping will be addressed in the EA.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This service provides automatic notification of filings made to subscribed dockets, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' excluding the last three digits (*i.e.,* CP22–162 or CP18–549), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: May 19, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–11240 Filed 5–24–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4428–011]

Walden Hydro, LLC; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for license for the Walden Hydroelectric Project, located on the Wallkill River in the Village of Walden, in Orange County, New York, and has prepared an Environmental Assessment (EA) for the project. The project does not occupy federal land.

The EA contains staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

The Commission provides all interested persons with an opportunity to view and/or print the EA 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. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

You may also register online at *https://ferconline.ferc.gov/eSubscription.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 45 days from the date of this notice.

The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at *https://ferconline.ferc.gov/eFiling.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. 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. The first page of any filing should include docket number P–4428–011.

For further information, contact Samantha Pollak at (202) 502–6419 or *samantha.pollak@ferc.gov.*

Dated: May 19, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–11246 Filed 5–24–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL22–45–000]

Lincoln Electric System; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On May 19, 2022, the Commission issued an order in Docket No. EL22–45–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation into whether Lincoln Electric System's formula rate protocols are unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. *Lincoln Electric System,* 179 FERC ¶ 61,110 (2022).

The refund effective date in Docket No. EL22–45–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL22–45–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2021), within 21 days of the date of issuance of the order.

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 FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFile'' link at *http://www.ferc.gov.* 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.

Dated: May 19, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–11236 Filed 5–24–22; 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 exempt wholesale generator filings:

Docket Numbers: EG22–124–000.

Applicants: Great Pathfinder Wind, LLC.

Description: Great Pathfinder Wind, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 5/19/22.

Accession Number: 20220519–5100.

Comment Date: 5 p.m. ET 6/9/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER21–2524–003.

Applicants: PJM Interconnection, L.L.C.

Description: Compliance filing: Errata to Compliance ER21–2524–002 RE Req. for Waiver NAESB Business Practices to be effective 5/1/2022.

Filed Date: 5/19/22.

Accession Number: 20220519–5145.

Comment Date: 5 p.m. ET 6/9/22.

Docket Numbers: ER22–600–000.

Applicants: American Electric Power Service Corporation, Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, PJM Interconnection, L.L.C.

Description: American Electric Power Service Corporation submits Supplemental Information to include actuarial reports for 2021 to the amended PBOP Informational filing on February 10, 2022.

Filed Date: 5/18/22.

Accession Number: 20220518–5187.

Comment Date: 5 p.m. ET 6/8/22.

Docket Numbers: ER22–1901–000.

Applicants: Ingenco Wholesale Power, LLC.

Description: Ingenco Wholesale Power, LLC submits a Prospective Waiver.

Filed Date: 5/17/22.

Accession Number: 20220517–5208.

Comment Date: 5 p.m. ET 6/7/22.

Docket Numbers: ER22–1903–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original IISA, Service Agreement No. 6442; Queue No. AF1–202 to be effective 4/19/2022.

Filed Date: 5/19/22.

Accession Number: 20220519–5046.

Comment Date: 5 p.m. ET 6/9/22.

Docket Numbers: ER22–1904–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 2827R8 KPP and Evergy Kansas Central Meter Agent Agreement to be effective 5/1/2022.

Filed Date: 5/19/22.

Accession Number: 20220519–5050.

Comment Date: 5 p.m. ET 6/9/22.

Docket Numbers: ER22–1905–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: Revisions to Attachment V to Define Electromagnetic Transient Study to be effective 8/1/2022.

Filed Date: 5/19/22.

Accession Number: 20220519–5064.

Comment Date: 5 p.m. ET 6/9/22.

Docket Numbers: ER22–1906–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Amendment to SA 807 to be effective 5/18/2022.

Filed Date: 5/19/22.

Accession Number: 20220519–5070.

Comment Date: 5 p.m. ET 6/9/22.

Docket Numbers: ER22–1907–000.

Applicants: Red Lake Falls Community Hybrid LLC.

Description: Baseline eTariff Filing: Reactive Power Compensation Filing to be effective 7/1/2022.

Filed Date: 5/19/22.

Accession Number: 20220519–5076.

Comment Date: 5 p.m. ET 5/31/22.

Docket Numbers: ER22–1908–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 6454; Queue No. AE1–237 to be effective 4/19/2022.

Filed Date: 5/19/22.

Accession Number: 20220519–5091.

Comment Date: 5 p.m. ET 6/9/22.

Docket Numbers: ER22–1909–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 6540; Queue No. AC2–060/AD1–073 to be effective 4/19/2022.

Filed Date: 5/19/22.

Accession Number: 20220519–5096.

Comment Date: 5 p.m. ET 6/9/22.

Docket Numbers: ER22–1910–000.

Applicants: Wheeling Power Company.

Description: Tariff Amendment: RS 305 System Integration Agreement Concurrence Cancellation to be effective 5/22/2022.

Filed Date: 5/19/22.

Accession Number: 20220519–5121.

Comment Date: 5 p.m. ET 6/9/22.

Docket Numbers: ER22–1911–000.

Applicants: Kentucky Power Company.

Description: Tariff Amendment: Cancellation of Rate Schedule Concurrence to be effective 5/22/2022.

Filed Date: 5/19/22.

Accession Number: 20220519–5127.

Comment Date: 5 p.m. ET 6/9/22.

Docket Numbers: ER22–1912–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: First Revised ISA, Service Agreement No. 3793; Queue AB2–132 to be effective 4/20/2022.

Filed Date: 5/19/22.

Accession Number: 20220519–5132.

Comment Date: 5 p.m. ET 6/9/22.

Docket Numbers: ER22–1913–000.

Applicants: Ohio Power Company.

Description: Tariff Amendment: RS 201 and 301 Concurrence Cancellation to be effective 5/22/2022.

Filed Date: 5/19/22.

Accession Number: 20220519–5133.

Comment Date: 5 p.m. ET 6/9/22.

Docket Numbers: ER22–1914–000.

Applicants: Florida Power & Light Company.

Description: § 205(d) Rate Filing: FPL Revisions to MBR Tariff, Req for Expedited Action and Confidential Treatment to be effective 12/31/9998.

Filed Date: 5/19/22.

Accession Number: 20220519–5148.

Comment Date: 5 p.m. ET 6/9/22.

Docket Numbers: ER22–1915–000.

Applicants: Florida Power & Light Company.

Description: § 205(d) Rate Filing: A&R Peninsular FL-So. Trans Exp. AA–FPL, Duke, JEA, and City of Tallahassee to be effective 7/20/2022.

Filed Date: 5/19/22.

Accession Number: 20220519–5150.

Comment Date: 5 p.m. ET 6/9/22.

Docket Numbers: ER22–1916–000.

Applicants: Indiana Michigan Power Company.

Description: Tariff Amendment: RS 201, 301 and 305 Concurrence Cancellation to be effective 5/22/2022.

Filed Date: 5/19/22.

Accession Number: 20220519–5151.

Comment Date: 5 p.m. ET 6/9/22.

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: May 19, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–11232 Filed 5–24–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15257–000]

Lock+™ Hydro Friends Fund X, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On February 3, 2022, Lock+™ Hydro Friends Fund X, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Melvin Price Dam Hydropower Project to be located on the Mississippi River and near the city of Alton, Illinois, in St. Charles County, Missouri. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) A 300-foot-long by 40-foot-wide reinforced concrete headrace; (2) a 300-foot-long by 40-foot-wide by 50-foot-high submersible reinforced concrete powerhouse containing ten 10-megawatt (MW) turbines; (3) ten submersible 10–MW generators rated at 6.9 kilovolts (kV) or 13 kV; (4) 50-foot-wide by 300-foot-long draft tubes; (5) 40-foot-wide by 300-foot-long reinforced concrete tailrace; (6) a 25-foot by 50-foot switchyard; (7) a 3-mile-long, 34 (kV) or 69 kV transmission line connecting to an existing transmission system; and (8) appurtenant facilities. The estimated annual generation of the Melvin Price Dam Hydropower Project would be 438,000 megawatt-hours.

Applicant Contact: Mr. Wayne Krouse; Lock+ Hydro Friends Fund X, LLC; 2901 4th Avenue South, #B 253, Birmingham, AL 35233; phone: (877) 556–6566 ext. 709.

FERC Contact: Tyrone Williams; phone: (202) 502–6331.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. 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. The first page of any filing should include docket number P–15257–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–15257) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: May 19, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–11245 Filed 5–24–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL22–44–000]

Grand River Dam Authority; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On May 19, 2022, the Commission issued an order in Docket No. EL22–44–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation into whether Grand River Dam Authority's formula rate protocols are unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. *Grand River Dam Authority,* 179 FERC ¶ 61,109 (2022).

The refund effective date in Docket No. EL22–44–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL22–44–000 must file a notice of intervention or motion to intervene, as appropriate, with the

Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2021), within 21 days of the date of issuance of the order.

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 FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFile'' link at *http://www.ferc.gov.* 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.

Dated: May 19, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–11224 Filed 5–24–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD22–9–000]

Notice of New England Winter Gas-Electric Forum

Take notice that the Federal Energy Regulatory Commission (Commission) will convene a forum on Thursday, September 8, 2022, from approximately 8:00 a.m. to 5:00 p.m. Eastern Time. The forum will be held in Burlington, Vermont and will be open to the public.

The purpose of this forum is to discuss the electricity and natural gas challenges facing the New England Region. The objective of the forum is to achieve greater understanding among stakeholders in defining the electric and natural gas system challenges in the New England Region.

Registration for in-person attendance will be required and there is no fee for attendance. The forum will also be available on webcast. A supplemental notice will be issued with further details regarding the forum agenda, as well as any updates in timing and logistics, including registration for members of the public and the nomination process for panelists. Information will also be posted on the Calendar of Events on the Commission's website, *www.ferc.gov,* prior to the event. The forum will be transcribed.

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 forum, please contact *NewEnglandForum@ferc.gov* for technical or logistical questions.

Dated: May 19, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–11241 Filed 5–24–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL22–47–000]

Omaha Public Power District; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On May 19, 2022, the Commission issued an order in Docket No. EL22–47–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation into whether Omaha Public Power District's formula rate protocols are unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. *Omaha Public Power District,* 179 FERC ¶ 61,112 (2022).

The refund effective date in Docket No. EL22–47–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL22–47–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2021), within 21 days of the date of issuance of the order.

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 FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFile'' link at *http://www.ferc.gov.* 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.

Dated: May 19, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–11234 Filed 5–24–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL22–46–000]

Nebraska Public Power District; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On May 19, 2022, the Commission issued an order in Docket No. EL22–46–000, pursuant to section 206 of the

Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation into whether Nebraska Public Power District's formula rate protocols are unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. *Nebraska Public Power District,* 179 FERC ¶ 61,111 (2022).

The refund effective date in Docket No. EL22–46–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL22–46–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2021), within 21 days of the date of issuance of the order.

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 FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFile'' link at *http://www.ferc.gov.* 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.

Dated: May 19, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–11235 Filed 5–24–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings in Existing Proceedings

Docket Numbers: RP21–340–003.

Applicants: ANR Pipeline Company.

Description: Compliance filing: Cashout Mechanism Compliance_OBA Surcharge Removal to be effective 2/1/2021.

Filed Date: 5/18/22.

Accession Number: 20220518–5070.

Comment Date: 5 p.m. ET 5/30/22.

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.

Filings Instituting Proceedings

Docket Numbers: RP22–927–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 5.18.22 Negotiated Rates—ConocoPhillips Company R–3015–05 to be effective 6/1/2022.

Filed Date: 5/18/22.

Accession Number: 20220518–5037.

Comment Date: 5 p.m. ET 5/30/22.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 19, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–11231 Filed 5–24–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP22–452–000; CP22–453–000]

Columbia Gas Transmission; KO Transmission Company; Notice of Application and Establishing Intervention Deadline

Take notice that on May 6, 2022, Columbia Gas Transmission (Columbia), 700 Louisiana Street, Suite 1300, Houston, Texas 77002, filed in Docket No. CP22–452–000, an application under section 7(c) of the Natural Gas Act (NGA), and Part 157 of the Commission's regulations requesting authorization to acquire, own and operate certain pipeline facilities and the associated capacity with those facilities from KO Transmission Company (KOT).

In addition, on May 6, 2022, KOT, 139 East 4th Street, Cincinnati, Ohio 45202, filed in Docket No. CP22–453–000, an application under section 7(b) of the NGA and Part 157 of the Commission's regulation requesting authorization to abandon by sale to Columbia all of its interests in its interstate natural gas pipeline system originating in Means, Kentucky and extending to Hamilton, Ohio and Campbell, Kentucky (the Pipeline System) and the associated capacity.

Specifically, Columbia request to acquire in total approximately 88.81 miles of interstate pipeline system and a total combined capacity of 884,058 Dekatherms per day. The estimated cost of the acquisition of the facilities is $71,482,075, all as more fully set forth in the application which is on file with the Commission and open for 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 regarding the application should be directed to David A. Alonzo, Manager, Project Authorizations, Columbia Gas Transmission, LLC 700 Louisiana Street, Suite 1300, Houston, Texas 77002–2700, ph. 832.320.5477, email: *david_alonzo@tcenergy.com.*

Any questions regarding this filing may be directed to Brian S. Heslin, Deputy General Counsel, Duke Energy Corporation, 550 S Tryon Street, Charlotte, NC 28202, (980) 373–0550, or by email at *brian.heslin@duke-energy.com.*

Pursuant to Section 157.9 of the Commission's Rules of Practice and Procedure,[1] 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 two ways to become involved in the Commission's review of this project: you can file comments on the project, and you can file a motion to intervene in the proceeding. There is no fee or cost for filing comments or intervening. The deadline for filing a motion to intervene is 5:00 p.m. Eastern Time on June 9, 2022.

Comments

Any person wishing to comment on the project may do so. Comments may include statements of support or objections to the project as a whole or specific aspects of the project. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please submit your comments on or before June 9, 2022.

There are three methods you can use to submit your comments to the Commission. In all instances, please reference the Project docket number CP22–452–000 and/or CP22–453–000 in your submission.

(1) 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;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address below.[2] Your written comments must reference the Project docket number (CP22–452–000 and/or CP22–453–000).

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

The Commission encourages electronic filing of comments (options 1 and 2 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Persons who comment on the environmental review of this project will be placed on the Commission's environmental mailing list, and will receive notification when the environmental documents (EA or EIS) are issued for this project and will be notified of meetings associated with the Commission's environmental review process.

The Commission considers all comments received about the project in determining the appropriate action to be taken. However, 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. For instructions on how to intervene, see below.

Interventions

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,[3] 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[4] and the regulations under the NGA[5] by the intervention deadline for the project, which is January 5, 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 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.*

There are two ways to submit your motion to intervene. In both instances, please reference the Project docket number CP22–452–000 and/or CP22–453–000 in your submission.

(1) You may file your motion to intervene 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 ''Intervention.'' The eFiling feature includes a document-less intervention option; for more information, visit *https://www.ferc.gov/docs-filing/efiling/document-less-intervention.pdf.;* or

(2) You can file a paper copy of your motion to intervene, along with three copies, by mailing the documents to the address below.[6] Your motion to intervene must reference the Project docket number CP22–452–000 and/or CP22–453–000.

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888

[1] 18 CFR (Code of Federal Regulations) 157.9.

[2] Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

[3] 18 CFR 385.102(d).

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

[6] Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

First Street NE, Washington, DC 20426

The Commission encourages electronic filing of motions to intervene (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: David A. Alonzo, Manager, Project Authorizations, Columbia Gas Transmission, LLC 700 Louisiana Street, Suite 1300, Houston, Texas 77002–2700, ph. 832.320.5477, email: *david_alonzo@tcenergy.com.* And Brian S. Heslin, Deputy General Counsel, Duke Energy Corporation, 550 S. Tryon Street, Charlotte, NC 28202, (980) 373–0550, or by email at *brian.heslin@duke-energy.com.* 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.

All timely, unopposed [7] motions to intervene are automatically granted by operation of Rule 214(c)(1).[8] 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.[9] 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.

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 *http://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.*

Intervention Deadline: 5:00 p.m. Eastern Time on June 9, 2022.

Dated: May 19, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–11239 Filed 5–24–22; 8:45 am]

BILLING CODE 6717–01–P

[7] The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

[8] 18 CFR 385.214(c)(1).

[9] 18 CFR 385.214(b)(3) and (d).

DEPARTMENT OF ENERGY

Western Area Power Administration

Loveland Area Projects-Rate Order No. WAPA–202

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed firm electric service and sale of surplus products formula rates.

SUMMARY: The Rocky Mountain Region (RMR) of the Western Area Power Administration (WAPA) proposes revised formula rates for the Loveland Area Projects (LAP) firm electric service and sale of surplus products. LAP consists of the Fryingpan-Arkansas Project (Fry-Ark) and the Pick-Sloan Missouri Basin Program (P–SMBP)—Western Division (WD), which were integrated for marketing and rate-making purposes in 1989. The existing formula rates for these services, under Rate Schedules L–F11 and L–M2, expire on December 31, 2022. RMR is proposing to update the formula rates for firm electric service under Rate Schedule L–F12 and sale of surplus products under Rate Schedule L–M3, effective January 1, 2023, through December 31, 2027.

DATES: A consultation and comment period will begin May 25, 2022 and end August 23, 2022. RMR will present a detailed explanation of the proposed LAP formula rates and other modifications at a public information forum that will be held on June 15, 2022, at 8:30 a.m. MDT to no later than 10:30 a.m. MDT. RMR will host a public comment forum on June 29, 2022, at 11:00 a.m. MDT to no later than noon MDT.

The public information forum and the public comment forum will be conducted via WebEx. Instructions for participating in the forums will be posted on RMR's website at least 14 days prior to the public information and comment forums at: *www.wapa.gov/regions/RM/rates/Pages/2023-Rate-Adjustment---Firm-Power.aspx.*

RMR will accept comments any time during the consultation and comment period.

ADDRESSES: Written comments and requests to be informed of Federal Energy Regulatory Commission (FERC) actions concerning the proposed formula rates submitted by RMR to FERC for approval should be sent to: Barton V. Barnhart, Regional Manager, Rocky Mountain Region, Western Area Power Administration, 5555 East Crossroads Boulevard, Loveland, CO 80538–8986, or email *lapfirmadj@wapa.gov.* RMR will post information about the proposed formula rates and written comments received to its website at: *www.wapa.gov/regions/RM/rates/Pages/2023-Rate-Adjustment---Firm-Power.aspx.*

FOR FURTHER INFORMATION CONTACT: Sheila D. Cook, Rates Manager, Rocky Mountain Region, Western Area Power Administration, 5555 East Crossroads Boulevard, Loveland, CO 80538–8986, telephone (970) 685–9562 or email *scook@wapa.gov* or *lapfirmadj@wapa.gov.*

SUPPLEMENTARY INFORMATION: On May 24, 2018, FERC confirmed and approved Rate Schedule L–F11 and Rate Schedule L–M2, under Rate Order No. WAPA–179, on a final basis through December 31, 2022.[1] These schedules apply to firm electric service and the sale of surplus products.

RMR intends the proposed formula rates to go into effect January 1, 2023. The proposed formula rates would remain in effect until December 31, 2027, or until WAPA supersedes or changes the formula rates through another public rate process pursuant to 10 CFR part 903, whichever occurs first.

The proposed formula rates would provide sufficient revenue to recover annual operation, maintenance, and replacement (OM&R) expenses, interest expense, irrigation assistance, and capital repayment requirements while ensuring repayment of the project within the cost recovery criteria set forth in Department of Energy (DOE) Order RA 6120.2. For more information on the proposed rates, please see the customer brochure located on RMR's website at: *www.wapa.gov/regions/RM/rates/Pages/2023-Rate-Adjustment---Firm-Power.aspx.*

[1] Order Confirming and Approving Rate Schedules on a Final Basis, FERC Docket No. EF18–3–000, 163 FERC ¶ 62,115 (2018).

Firm Electric Service

The P–SMBP and the Fry-Ark Fiscal Year 2021 Power Repayment Studies (PRSs) revenue requirements and current water conditions are the determining factors for this proposed rate adjustment.

The base component costs for the P–SMBP have increased primarily due to: (1) Increased OM&R from WAPA and the generating agencies; (2) increased purchase power, including during the severe winter weather event in February 2021 (Winter Storm Uri); (3) pricing volatility; and (4) the loss of certain balancing authority revenues for services that WAPA no longer provides after joining the Western Energy Imbalance Service Market. Winter Storm Uri was not a water or generation issue; therefore, its costs only impact the base component.

The base component costs for the Fry-Ark have increased primarily due to: (1) Increased OM&R from both WAPA and the Bureau of Reclamation (Reclamation); (2) increased transmission and ancillary services costs; and (3) changes in costs related to Reclamation's Mount Elbert Rehabilitation project. Increased purchase power and price volatility are also causing upward pressure.

The driver behind the P–SMBP drought adder component increase is the Army Corps of Engineers Annual Operating Plan projecting less than average generation for the next several years in the P–SMBP mainstem dams. Uncertainties with water inflows, hydro generation, and replacement energy prices continue to pose potential risks for meeting firm power contractual commitments.

The net effect of these adjustments to the base and drought adder components results in an overall increase to the LAP rate. A comparison of the current and proposed revenue requirements is shown in Table 1:

TABLE 1—SUMMARY OF CURRENT AND PROPOSED REVENUE REQUIREMENTS

Firm electric service	Current under L–F11 as of January 1, 2018 (in million $)	Proposed under L–F12 as of January 1, 2023 (in million $)	Percent change
LAP Revenue Requirement	64.1	74.7	16.5
Pick-Sloan—WD [1]	50.8	58.6	15.4
Fry-Ark	13.3	16.1	21.1

[1] Additional information on the overall P–SMBP PRS and charge components can be found under Rate Order No. WAPA–203 and on WAPA's Upper Great Plains Region's website at: *www.wapa.gov/regions/UGP/Rates/Pages/2023-firm-rate-adjustment.aspx*.

Under the current rate methodology, rates for LAP firm electric service are designed to recover an annual revenue requirement that includes investment repayment, interest, purchase power, OM&R, and other expenses within the allowable period. The annual revenue requirement continues to be allocated equally between capacity and energy.

A comparison of the current and proposed rates is shown in Table 2:

TABLE 2—SUMMARY OF CURRENT AND PROPOSED RATES

Firm electric service	Current under L–F11 as of January 1, 2018	Proposed under L–F12 as of January 1, 2023	Percent change
LAP Composite Rate	31.44	36.61	16.4
Firm Capacity Rate ($/kilowatt-month)	$4.12	$4.80	16.5
Firm Energy Rate (mills/kilowatt-hour)	15.72	18.31	16.5

As a part of the current and proposed rate schedules, RMR provides for a formula-based adjustment of the drought adder component, with an annual increase of up to 2 mills per kilowatt-hour (kWh) each year. The 2 mills/kWh cap places a limit on the amount the drought adder component can be adjusted upward relative to associated drought costs included in the drought adder formula rate for any one-year cycle. Continuing to identify the firm electric service revenue requirement using base and drought adder components will assist RMR in the presentation of future impacts of droughts, demonstrate repayment of drought-related costs in the PRSs, and allow RMR to be more responsive to changes caused by drought-related expenses. RMR will continue to charge and bill its customers firm electric service rates for energy and capacity, which are the sum of the base and drought adder components.

The proposed adjustment updates the base component with present costs from a revenue requirement of $64.1 million to $67.8 million and increases the drought adder component revenue requirement. For rate year 2023 the drought adder revenue requirement increases from zero to $6.8 million.[2]

A comparison of the current and proposed components is shown in Table 3:

[2] The exact values are $64,143,960, $67,839,200, and $6,838,720 respectively.

TABLE 3—SUMMARY OF LAP CHARGE COMPONENTS

	Current charges under rate schedule L–F11 as of January 1, 2018			Proposed charges under rate schedule L–F12 as of January 1, 2023			Percent change
	Base component	Drought adder component	Total charge	Base component	Drought adder component	Total charge	
Firm Capacity ($/kilowatt-month)	$4.12	$0	$4.12	$4.36	$0.44	$4.80	16.5
Firm Energy (mills/kWh)	15.72	0	15.72	16.63	1.68	18.31	16.5

Sale of Surplus Products

The Sale of Surplus Products rate schedule is formula-based, providing for LAP Marketing to sell LAP surplus energy and capacity products. If LAP surplus products are available, as specified in the rate schedule, the charge will be based on market rates plus administrative costs. The customer will be responsible for acquiring transmission service necessary to deliver the product(s) for which a separate charge may be incurred. The proposed Rate Schedule, L–M3, continues to allow for the sale of energy, frequency response, regulation, and reserves.

Legal Authority

Existing DOE procedures for public participation in power and transmission rate adjustments (10 CFR part 903) were published on September 18, 1985, and February 21, 2019.[3] The proposed action is a major rate adjustment, as defined by 10 CFR 903.2(d). In accordance with 10 CFR 903.15(a) and 10 CFR 903.16(a), RMR will hold public information and public comment forums for this rate adjustment. RMR will review and consider all timely public comments at the conclusion of the consultation and comment period and adjust the proposal as appropriate. The rates will then be approved on an interim basis.

WAPA is establishing the formula rates for LAP in accordance with section 302 of the DOE Organization Act (42 U.S.C. 7152).[4]

By Delegation Order No. 00–037.00B, effective November 19, 2016, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to WAPA's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, or to remand or disapprove such rates to FERC. By Delegation Order No. S1–DEL–S4–2022, effective March 14, 2022, the Secretary of Energy also delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Under Secretary for Science (and Innovation). By Redelegation Order No. S4–DEL–OE1–2021–2, effective December 8, 2021, the Under Secretary for Science (and Innovation) redelegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Assistant Secretary for Electricity. By Redelegation Order No. 00–002.10–05, effective July 8, 2020, the Assistant Secretary for Electricity further redelegated the authority to confirm, approve, and place such rates into effect on an interim basis to WAPA's Administrator. This redelegation order, despite predating the December 2021 and March 2022 delegations, remains valid.

Availability of Information

All brochures, studies, comments, letters, memorandums, or other documents that RMR initiates or uses to develop the proposed formula rates will be available for inspection and copying at the Rocky Mountain Regional Office located at 5555 East Crossroads Boulevard, Loveland, Colorado. Many of these documents and supporting information are also available on RMR's website at: *www.wapa.gov/regions/RM/rates/Pages/2023-Rate-Adjustment---Firm-Power.aspx.*

Ratemaking Procedure Requirements

Environmental Compliance

WAPA is in the process of determining whether an environmental assessment or an environmental impact statement should be prepared or if this action can be categorically excluded from those requirements.[5]

Determination Under Executive Order 12866

WAPA has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Signing Authority

This document of the Department of Energy was signed on May 4, 2022, by Tracey A. LeBeau, Administrator, Western Area Power Administration, 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 May 18, 2022.

Treena V. Garrett,

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

[FR Doc. 2022–11029 Filed 5–24–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Pick-Sloan Missouri Basin Program—Eastern Division-Rate Order No. WAPA–203

AGENCY: Western Area Power Administration, DOE.

[3] 50 FR 37835 (Sept. 18, 1985) and 84 FR 5347 (Feb. 21, 2019).

[4] This Act transferred to, and vested in, the Secretary of Energy the power marketing functions of the Secretary of the Department of the Interior and Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) and section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s); and other acts that specifically apply to the projects involved.

[5] In compliance with the National Environmental Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4321–4347; the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500–1508); and DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021).

ACTION: Notice of proposed firm power service and sale of surplus products formula rates.

SUMMARY: The Upper Great Plains Region (UGP) of the Western Area Power Administration (WAPA) proposes revised formula rates for the Pick-Sloan Missouri Basin Program—Eastern Division (P–SMBP—ED) firm power, firm peaking power service, and sale of surplus products. The existing formula rates for these services, under Rate Schedules P–SED–F13, P–SED–FP13, and P–SED–M1, expire on December 31, 2022. UGP is proposing to update the formula rates for firm power service under Rate Schedule P–SED–F14, firm peaking power service under Rate Schedule P–SED–FP14, and sale of surplus products under Rate Schedule P–SED–M2, effective January 1, 2023, through December 31, 2027.

DATES: A consultation and comment period will begin May 25, 2022 and end August 23, 2022. UGP will present a detailed explanation of the proposed P–SMBP—ED formula rates and other modifications at a public information forum that will be held on June 15, 2022, at 8:30 a.m. MDT to no later than 10:30 a.m. MDT. UGP will host a public comment forum on June 29, 2022, at 11:00 a.m. MDT to no later than noon MDT.

The public information forum and the public comment forum will be conducted via WebEx. Instructions for participating in the forums will be posted on UGP's website at least 14 days prior to the public information and comment forums at: *www.wapa.gov/regions/UGP/Rates/Pages/2023-firm-rate-adjustment.aspx.*

UGP will accept comments any time during the consultation and comment period.

ADDRESSES: Written comments and requests to be informed of Federal Energy Regulatory Commission (FERC) actions concerning the proposed rates submitted by WAPA to FERC for approval should be sent to: Lloyd Linke, Regional Manager, Upper Great Plains Region, Western Area Power Administration, 2900 4th Avenue North, 6th Floor, Billings, MT 59101–1266, or email *ugpfirmrate@wapa.gov.* UGP will post information about the proposed formula rates and written comments received to its website at: *www.wapa.gov/regions/UGP/rates/Pages/2023-firm-rate-adjustment.aspx.*

FOR FURTHER INFORMATION CONTACT: Linda Cady-Hoffman, Rates Manager, Upper Great Plains Region, Western Area Power Administration, 2900 4th Avenue North, 6th Floor, Billings, MT 59101–1266, telephone (406) 255–2920, email *cady@wapa.gov* or*ugpfirmrate@wapa.gov.*

SUPPLEMENTARY INFORMATION: On April 16, 2018, FERC confirmed and approved Formula Rate Schedules P–SED–F13, P–SED–FP13, and P–SED–M1, under Rate Order No. WAPA–180, on a final basis through December 31, 2022.[1] These schedules apply to firm power, firm peaking power service, and the sale of surplus products.

UGP intends the proposed formula rates to go into effect January 1, 2023. The proposed formula rates would remain in effect until December 31, 2027, or until WAPA supersedes or changes the formula rates through another public rate process pursuant to 10 CFR part 903, whichever occurs first.

The proposed formula rates would provide sufficient revenue to recover annual operation, maintenance, and replacement (OM&R) expenses, interest expense, irrigation assistance, and capital repayment requirements while ensuring repayment of the project within the cost recovery criteria set forth in Department of Energy (DOE) Order RA 6120.2. For more information on the proposed rates, please see the customer brochure located on UGP's website at: *www.wapa.gov/regions/UGP/rates/pages/2023-firm-rate adjustment.aspx.*

Firm Power and Firm Peaking Power Services

The P–SMBP Fiscal Year 2021 Power Repayment Study (PRS) revenue requirement and current water conditions are the determining factors for this proposed rate adjustment.

The base component costs for the P–SMBP have increased primarily due to: (1) Increased OM&R from WAPA and the generating agencies; (2) increased purchase power, including during the severe winter weather event in February 2021 (Winter Storm Uri); (3) pricing volatility; and (4) the loss of certain balancing authority revenues for services that WAPA no longer provides after joining the Western Energy Imbalance Service Market. Winter Storm Uri was not a water or generation issue; therefore, its costs only impact the base component.

The driver behind the P–SMBP drought adder component increase is the Army Corps of Engineers Annual Operating Plan projecting less than average generation for the next several years in the P–SMBP mainstem dams. Uncertainties with water inflows, hydro generation, and replacement energy prices continue to pose potential risks for meeting firm power contractual commitments.

The net effect of these adjustments to the base and drought adder components results in an overall increase to the P–SMBP—ED rate. A comparison of the current and proposed revenue requirements is shown in Table 1:

TABLE 1—SUMMARY OF CURRENT AND PROPOSED REVENUE REQUIREMENTS

Firm power service	Current under P–SED–F13 as of January 1, 2018 (in million $)	Proposed under P–SED–F14 as of January 1, 2023 (in million $)	Percent change
P–SMBP—ED Revenue Requirement)	$230.1	$268.4	16.6
Pick-Sloan—WD [1]	50.8	58.6	15.4

[1] The Pick-Sloan—WD revenue requirement is recovered by the Loveland Area Projects rate schedules, which are to be adjusted accordingly in proposed Rate Order No. WAPA–202.

Under the current rate methodology, rates for PSMBP—ED firm power and firm peaking power service are designed to recover an annual revenue requirement that includes investment repayment, interest, purchase power, OM&R, and other expenses within the allowable period. The annual revenue requirement continues to be allocated equally between demand and energy.

A comparison of the current and proposed rates is shown in Table 2:

[1] Order Confirming and Approving Rate Schedules on a Final Basis, FERC Docket No. EF18–2–000, 163 FERC ¶ 62,039 (2018).

TABLE 2—SUMMARY OF CURRENT AND PROPOSED RATES

Firm power service	Current under P–SED–F13/ P–SED–FP13 as of January 1, 2018	Proposed under P–SED–F14/ P–SED–FP14 as of January 1, 2023	Percent change
P–SMBP—ED Composite Rate (mills/kilowatt-hour)	24.00	27.91	16.3
Firm Demand ($/kilowatt-month)	$5.25	$6.20	18.1
Firm Energy (mills/kilowatt-hour)	13.27	15.27	15.1
Firm Peaking Demand ($/kilowatt-month)	$4.75	$5.70	20.0
Firm Peaking Energy [1] (mills/kilowatt-hour)	13.27	15.27	15.1

[1] Firm Peaking Energy is normally returned. This charge will be assessed in the event Firm Peaking Energy is not returned.

As a part of the current and proposed rate schedules, UGP provides a formula-based adjustment of the drought adder component, with an annual increase of up to 2 mills per kilowatt-hour (kWh) each year. The 2 mills/kWh cap places a limit on the amount the drought adder component can be adjusted upward relative to associated drought costs included in the drought adder formula rate for any one-year cycle. Continuing to identify the firm power service revenue requirement using base and drought adder components will assist UGP in the presentation of future impacts of droughts, demonstrate repayment of drought-related costs in the PRS, and allow UGP to be more responsive to changes caused by drought-related expenses. UGP will continue to charge and bill its customers firm power and firm peaking power service rates for energy and demand, which are the sum of the base and drought adder components.

The proposed adjustment updates the base component with present costs from a revenue requirement of $230.1 million to $235.4 million and increases the drought adder revenue requirement. For rate year 2023 the drought adder revenue requirement increases from zero to $33.0 million.

A comparison of the current and proposed components is shown in Table 3:

TABLE 3—SUMMARY OF P–SMBP—ED CHARGE COMPONENTS

	Current charges under rate schedules P–SED–F13 and P–SED–FP13 as of January 1, 2018			Proposed charges under rate schedules P–SED–F14 and P–SED–FP14 as of January 1, 2023			Percent change
	Base component	Drought adder component	Total charge	Base component	Drought adder component	Total charge	
Firm Demand ($/kilowatt-month)	$5.25	$0.00	$5.25	$5.45	$0.75	$6.20	18.1
Firm Energy (mills/kWh)	13.27	0.00	13.27	13.36	1.91	15.27	15.1
Firm Peaking Demand ($/kilowatt-month)	$4.75	$0.00	$4.75	$5.00	$0.70	$5.70	20
Firm Peaking Energy [1] (mills/kWh)	13.27	0.00	13.27	13.36	1.91	15.27	15.1

[1] Firm peaking energy is normally returned. This charge will be assessed in the event firm peaking energy is not returned.

Sale of Surplus Products

The Sale of Surplus Products rate schedule is formula based, providing for P–SMBP—ED Marketing to sell P–SMBP—ED surplus energy and demand products. If P–SMBP—ED surplus products are available, as specified in the rate schedule, the charge will be based on market rates plus administrative costs. The customer will be responsible for acquiring transmission service necessary to deliver the product(s) for which a separate charge may be incurred. The proposed Rate Schedule, P–SED–M2, continues to allow for the sale of energy, frequency response, regulation, and reserves.

Legal Authority

Existing DOE procedures for public participation in power and transmission rate adjustments (10 CFR part 903) were published on September 18, 1985, and February 21, 2019.[2] The proposed action is a major rate adjustment, as defined by 10 CFR 903.2(d). In accordance with 10 CFR 903.15(a) and 10 CFR 903.16(a), UGP will hold public information and public comment forums for this rate adjustment. UGP will review and consider all timely public comments at the conclusion of the consultation and comment period and adjust the proposal as appropriate. The rates will then be approved on an interim basis.

WAPA is establishing the formula rates for P–SMPB—ED in accordance with section 302 of the DOE Organization Act (42 U.S.C. 7152).[3]

By Delegation Order No. 00–037.00B, effective November 19, 2016, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to WAPA's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand or to disapprove such rates to FERC. By Delegation Order No. S1–DEL–S4–2022, effective March 14, 2022, the Secretary of Energy also delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Under Secretary for Science (and Innovation). By Redelegation Order No.S4–DEL–OE1–2021–2, effective December 8, 2021, the Under Secretary for Science (and Innovation) redelegated

[2] 50 FR 37835 (Sept. 18, 1985) and 84 FR 5347 (Feb. 21, 2019).

[3] This Act transferred to, and vested in, the Secretary of Energy the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) and section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s); and other acts that specifically apply to the projects involved.

the authority to confirm, approve, and place such rates into effect on an interim basis to the Assistant Secretary for Electricity. By Redelegation Order No.00–002.10–05, effective July8, 2020, the Assistant Secretary for Electricity further redelegated the authority to confirm, approve, and place such rates into effect on an interim basis to WAPA's Administrator. This redelegation order, despite predating the December 2021 and March 2022 delegations, remains valid.

Availability of Information

All brochures, studies, comments, letters, memorandums, or other documents that UGP initiates or uses to develop the proposed formula rates will be available for inspection and copying at the Upper Great Plains Regional Office, located at 2900 4th Avenue North, 6th Floor, Billings, Montana. Many of these documents and supporting information are also available on UGP's website at: *www.wapa.gov/regions/UGP/rates/Pages/2023-firm-rate-adjustment.aspx.*

Ratemaking Procedure Requirements

Environmental Compliance

WAPA is in the process of determining whether an environmental assessment or an environmental impact statement should be prepared or if this action can be categorically excluded from those requirements.[4]

Determination Under Executive Order 12866

WAPA has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Signing Authority

This document of the Department of Energy was signed on May 4, 2022, by Tracey A. LeBeau, Administrator, Western Area Power Administration, 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 May 18, 2022.

Treena V. Garrett,

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

[FR Doc. 2022–11024 Filed 5–24–22; 8:45 am]

BILLING CODE 6450–01–P

[4] In compliance with the National Environmental Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4321–4347; the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500–1508); and DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9795–01–OECA]

NPDES Electronic Reporting Rule Implementation: Notice of Initial Recipient Designation for Oregon Department of Environmental Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of approval.

SUMMARY: This **Federal Register** document provides notice of the U.S. Environmental Protection Agency's (EPA) approval of the Oregon Department of Environmental Quality as the initial recipient for electronic data reporting under the NPDES Electronic Reporting Rule (''NPDES eRule''), effective December 6, 2021, for all National Pollutant Discharge Elimination System (NPDES) data groups except for ''No. 4—Sewage Sludge/Biosolids Annual Program Reports.'' Oregon Department of Environmental Quality cannot be the initial recipient for this data group as EPA is the authorized NPDES program for the Federal biosolids program.

DATES: This approval was effective December 6, 2021.

FOR FURTHER INFORMATION CONTACT: For additional information, please contact Mr. Carey A. Johnston, Office of Compliance (mail code 2222A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC, 20460; email address: *johnston.carey@epa.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Environmental Protection Agency (EPA) promulgated the NPDES Electronic Reporting Rule (''NPDES eRule'') in 2015 to modernize Clean Water Act reporting for municipalities, industries, and other facilities by converting to an electronic data reporting system (see 22 October 2015; 80 FR 64064). The NPDES eRule requires regulated entities and state and Federal regulators to use existing, available information technology to electronically report data required by the National Pollutant Discharge Elimination System (NPDES) permit program instead of filing written paper reports. EPA amended this rule in 2020 to provide itself and states with more time to develop and deploy electronic reporting tools (see 2 November 2020; 85 FR 69189).

This switch from paper to electronic reporting saves time and resources for permittees, states, tribes, territories, and the U.S. Government while increasing data accuracy, improving compliance, and supporting EPA's goal of providing better protection of the Nation's waters. The NPDES eRule helps provide greater clarity on who is and who is not in compliance and enhances transparency by providing a timelier, complete, more accurate, and nationally-consistent set of data about the NPDES program.

The NPDES eRule requires each authorized NPDES program to decide whether to use EPA's electronic reporting tools or to use their own electronic reporting tools.[1] Authorized states can make this decision or defer this decision to EPA. The governmental entity, either the state or EPA, that makes this decision is the ''initial recipient.'' The NPDES eRule requires EPA to publish on its website and in the **Federal Register** a listing of the initial recipients for electronic NPDES information from NPDES-regulated facilities by state, tribe, and territory and by NPDES data group. EPA published this initial listing on September 9, 2016 (see 81 FR 62395). The NPDES eRule also requires EPA to publish on its website and in the **Federal Register** a revised listing of initial recipients upon specified changes to the list of initial recipients (see 40 CFR 127.27(c)–(f)).

The NPDES eRule allows an authorized NPDES program to seek EPA approval to change the initial recipient status for one or all of the NPDES data groups from EPA to the authorized NPDES program. 40 CFR 127.27(e). To make this switch, the authorized NPDES program must send a request to EPA. This request must identify the specific NPDES data groups for which the authorized NPDES program would like to be the initial recipient of electronic NPDES information, a description of how its data system will be compliant with the NPDES eRule and the Cross-Media Electronic Reporting Rule (CROMERR) (40 CFR part 3), and the date or dates when the authorized NPDES program will be ready to start receiving this information. The Oregon

[1] EPA authorized Oregon to administer the NPDES program on September 26, 1973. *See* EPA website, ''NPDES State Program Authority,'' at *https://www.epa.gov/npdes/npdes-state-program-authority.*

Department of Environmental Quality (hereinafter Oregon DEQ) sent EPA such a request on September 23, 2020.[2]

Oregon DEQ noted in its letter to EPA that it will be using an Environmental Data Management System, which is produced by enfoTech, Inc., for all of its NPDES program data. Oregon DEQ plans to start using this new system in 2022 and will only put this system into full operation after it receives EPA's CROMERR approval.[3] Oregon DEQ stated that this new system will be implemented in stages and that each stage will include rigorous testing. Finally, Oregon DEQ confirmed that its new system will collect and share the minimum set of NPDES program data in accordance with the NPDES eRule data sharing standards (see subpart B, 40 CFR part 127).

EPA has completed its review of Oregon DEQ's request and, on December 6, 2021, approved Oregon DEQ as the ''Initial Recipient'' for all NPDES data groups except for ''No. 4—Sewage Sludge/Biosolids Annual Program Reports'' (see Table 1, appendix A to 40 CFR part 127). Oregon DEQ cannot be the initial recipient for this data group as EPA is the authorized NPDES program for the Federal biosolids program (40 CFR part 503). The effective date for this new status is December 6, 2021.[4] In accordance with the NPDES eRule, EPA is publishing the notice of this switch on its website and in the **Federal Register**. The following is the updated list of states that have elected for EPA to be the initial recipient for one or more NPDES data groups.

State	State elected for EPA to be initial recipient for general permit reports (NPDES data group No. 2)	State elected for EPA to be initial recipient for discharge monitoring reports (DMRs) (NPDES data group No. 3)	State elected for EPA to be initial recipient for program reports (NPDES data group Nos. 4 through 10)
Georgia	Yes (All)	Yes	Yes (All).
Nebraska	Yes (All)	Yes	Yes (All).
New Jersey	No	No	Yes (only for Concentrated Animal Feeding Operation (CAFO) Annual Program Report).
North Carolina	Yes (only for Low Erosivity Waivers and No Exposure Certifications).	No	No.
Rhode Island	Yes (All)	Yes	Yes (All).

Dated: May 19, 2022.

John Dombrowski,

Director, Office of Compliance, Office of Enforcement and Compliance Assurance.

[FR Doc. 2022–11247 Filed 5–24–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2022–0132; FRL–9411–02–OCSPP]

Certain New Chemicals; Receipt and Status Information for April 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 04/01/2022 to 04/30/2022.

DATES: Comments identified by the specific case number provided in this document must be received on or before June 24, 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, by one of the following methods:

- *Federal eRulemaking Portal: http://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.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 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 *http://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.*

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

[2] Oregon DEQ Letter to EPA, 2020. ''Request to Designate Oregon DEQ as eRule 'Initial Recipient' for All NPDES Data Groups,'' Signed by Justin Green, Water Quality Administrator, Oregon DEQ, September 23, 2020.

[3] *See* EPA website, ''CROMERR Overview for State, Tribal and Local Governments,'' at *https://www.epa.gov/cromerr/cromerr-overview-state-tribal-and-local-governments.*

[4] U.S. EPA Memorandum to Oregon DEQ, 2021. ''U.S. EPA Approval of Oregon as Initial Recipient for NPDES Electronic Reporting,'' Signed by John Dombrowski, Director, Office of Compliance, Office of Enforcement and Compliance Assurance, December 6, 2021.

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

A. What action is the Agency taking?

This document provides the receipt and status reports for the period from 04/01/2022 to 04/30/2022. 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.*

II. 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 04/01/2022 TO 04/30/2022

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
J–22–0012	1	04/01/2022	Danisco US, Inc	(G) Production of a chemical substance.	(G) Genetically modified microorganism for the production of a chemical substance.
J–22–0012A	2	04/20/2022	Danisco US, Inc	(G) Production of a chemical substance.	(G) Genetically modified microorganism for the production of a chemical substance.
J–22–0013	1	04/01/2022	Danisco US, Inc	(G) Production of a chemical substance.	(G) Genetically modified microorganism for the production of a chemical substance.
J–22–0013A	2	04/20/2022	Danisco US, Inc	(G) Production of a chemical substance.	(G) Genetically modified microorganism for the production of a chemical substance.
P–21–0088	4	04/18/2022	Solepoxy, Inc	(G) Molding compound	(G) Heterocyclic epoxide polymer with mixed substituted glycols and acid anhydride.
P–21–0191A	3	04/11/2022	Santolubes Manufacturing, LLC.	(S) This product will be used in gear oils & greases, wind turbines, HX–1 (incidental food contact) lubricants and EV (Electric Vehicle) motors. It will be used by OEMs in these applications as components in finished formulations. The intended use of these products is 100% industrial and not intended for use as consumer products.	(S) Fatty acids, C18-unsatd., dimers, hydrogenated, polymers with polyethylene glycol, dihexanoates.
P–21–0199A	5	04/18/2022	CBI	(G) Processing aid	(G) 1,6-Disubstituted hexane.
P–22–0059	2	04/13/2022	CBI	(S) Use of enzyme in laundry and dishwashing detergents.	(S) Thermomycolin, fermented, from a modified Trichoderma reesei.
P–22–0060	1	03/31/2022	CBI	(G) Intermediate	(G) Polyol allyl ether, homopolymer terpene ether.
P–22–0061	1	03/31/2022	CBI	(G) Intermediate	(G) Polyol allyl ether, homopolymer, alkyl ethers.
P–22–0062	1	04/01/2022	Vertellus Specialties, Inc	(G) Fuel and Oil additive for consumer, industrial, and commercial applications.	(G) Alkene, heterocycle.
P–22–0063	1	04/01/2022	Vertellus Specialties, Inc	(G) Fuel and Oil additive for consumer, industrial, and commercial applications.	(G) Alkene, heterocycle.
P–22–0064	1	04/01/2022	CBI	(G) Intermediate	(G) Polyol allyl ether, polymer with alkylene oxides, terpene ether.
P–22–0065	1	04/01/2022	CBI	(G) Intermediate	(G) Polyol allyl ether, polymer with alkylene oxides, alkyl ethers.
P–22–0066	2	04/26/2022	CBI	(G) Additive for adhesives and coatings.	(G) Polyol allyl ether, polymer with alkylene oxides, terpene ether sulfate, ammonium salt.
P–22–0067	2	04/26/2022	CBI	(G) Additive for adhesives and coatings.	(G) Polyol allyl ether, polymer with alkylene oxides, alkyl ether sulfate, ammonium salts.

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 04/01/2022 TO 04/30/2022—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P–22–0069	1	04/08/2022	CBI	(G) Component in battery	(G) fluoroheteroacid, metal salt.
P–22–0070	2	04/20/2022	CBI	(G) Dispersant polymer for coatings.	(G) Alkylaromatic sulfonic acid, alkyl ester, compds. with phenol-formaldehyde polymer with amino-poly-ethylene-polypropylene glycol-oxirane copolymer and benzoates.
P–22–0071	2	04/14/2022	Lamberti USA, Inc	(G) Industrial Surfactant	(S) D-Glucopyranose, oligomeric, maleates, C9-11-branched and linear alkyl glycosides, sulfonated, potassium salts.
P–22–0072	2	04/14/2022	Lamberti USA, Inc	(G) Industrial Surfactant	(S) D-Glucopyranose, oligomeric, maleates, decyl octyl glycosides, sulfonated, potassium salts.
P–22–0073	2	04/14/2022	Lamberti USA, Inc	(G) Industrial Surfactant	(S) D-Glucopyranose, oligomeric, maleates, C10-16-alkyl glycosides, sulfonated, potassium salts.
P–22–0076	1	04/13/2022	Earth Science Laboratories HQ.	(S) PABP–P will be used as a carrier in agricultural (non-pesticide) micronutrient products. To formulate corrosion control products used to minimize corrosion of steel pipes in industrial water towers.	(S) Phosphoric acid, ammonium salt (1:?).
P–22–0082	1	04/25/2022	CBI	(G) Component of photoresist	(G) Alkenoic acid, alkyl, carbopolycyclic alkyl ester, polymer with trihalo (trihaloalkyl) alkyl alkyl alkenoate.

* 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 04/01/2022 TO 04/30/2022

Case No.	Received date	Commencement date	If amendment, type of amendment	Chemical substance
P–16–0150A	04/04/2022	11/29/2018	Revised generic name	(G) Chlorofluoroalkane.
P–16–0532A	03/30/2022	04/17/2019	Revised generic name	(G) Carboxylic acid substituted lactam.
P–18–0013A	04/21/2022	06/30/2021	Revised generic name	(G) Sulfonium, phenolcarbopolycycle, inner salt.
P–18–0257	04/22/2022	04/20/2022	N	(S) Phosphoric acid, potassium salt (2:3).
P–19–0147A	04/29/2022	01/29/2021	Revised generic name	(G) Polyethylene glycol alkyl ether, alkyl ester.
P–19–0165	04/12/2022	03/15/2022	N	(G) Tall-oil pitch, fraction, sterol-low.
P–20–0010	04/08/2022	03/31/2022	N	(G) Thio organic substituted metal salt.
P–21–0201	04/20/2022	04/19/2022	N	(G) Tetradecyl diamine pentamethyl dichloride.
P–21–0201	04/20/2022	04/19/2022	N	(G) Oleyl diamine pentamethyl dichloride.

TABLE II—NOCS APPROVED* FROM 04/01/2022 TO 04/30/2022—Continued

Case No.	Received date	Commencement date	If amendment, type of amendment	Chemical substance
P–21–0201	04/20/2022	04/19/2022	N	(G) Hexadecyl diamine pentamethyl dichloride.
P–21–0201	04/20/2022	04/19/2022	N	(G) Octadecyl diamine pentamethyl dichloride.
P–21–0206	04/22/2022	03/28/2022	N	(G) Alkanes, branched and linear.

* 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 04/01/2022 TO 04/30/2022

Case No.	Received date	Type of test information	Chemical substance
P–14–0712	04/19/2022	Polychlorinated Dibenzodioxins and Polychlorinated dibenzofurans Testing.	(S) Waste plastics, pyrolyzed, C5-55 fraction.
P–16–0543	04/19/2022	Exposure Monitoring Report	(G) Halogenophosphoric acid metal salt.
P–20–0014	04/04/2022	Acute Inhalation Toxicity Testing (OECD Test Guideline 403).	(G) Sugars, polymer with alkanetriamine.

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: May 18, 2022.

Pamela Myrick,

Director, Project Management and Operations Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2022–11184 Filed 5–24–22; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice EIB–2022–0003]

Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of $100 million: AP089450XX

AGENCY: Export-Import Bank of the United States.

ACTION: Notice.

SUMMARY: This Notice is to inform the public, that the Export-Import Bank of the United States (''EXIM'') has received an application for final commitment for a long-term loan or financial guarantee in excess of $100 million. Comments received within the comment period specified below will be presented to the EXIM Board of Directors prior to final action on this Transaction.

Reference: **AP089450XX** *Purpose and Use:*

Brief description of the purpose of the transaction: to support the export of U.S.-manufactured jet engines and related components to Brazil.

Brief non-proprietary description of the anticipated use of the items being exported: to be used for manufacture and assembly of commercial and executive jet aircraft.

To the extent that EXIM is reasonably aware, the item(s) being exported are not expected to produce exports or provide services in competition with the exportation of goods or provision of services by a United States industry.

Parties:

Principal Supplier: GE Aviation, Inc., Cincinnati, Ohio; Honeywell, Charlotte NC, Pratt & Whitney Engine Services, Inc., East Hartford Connecticut.

Obligor: Embraer Netherlands Finance B.V., Schiphol, Netherland.

Guarantor(s): Embraer S.A., Sao Paulo, Brazil.

Description of Items Being Exported: jet engines and related components.

Information on Decision: Information on the final decision for this transaction will be available in the ''Summary Minutes of Meetings of Board of Directors'' on *http://exim.gov/newsandevents/boardmeetings/board/.*

Confidential Information: Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

DATES: Comments must be received on or before June 21, 2022 to be assured of consideration before final consideration of the transaction by the Board of Directors of EXIM.

ADDRESSES: Comments may be submitted through *Regulations.gov* at *WWW.REGULATIONS.GOV.* To submit a comment, enter EIB–2022–0003 under the heading ''Enter Keyword or ID'' and select Search. Follow the instructions provided at the Submit a Comment screen. Please include your name, company name (if any) and EIB–2022–0003 on any attached document.

Joyce B. Stone,

Assistant Corporate Secretary.

[FR Doc. 2022–11210 Filed 5–24–22; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, 800 North Capitol Street,

Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**, and the Commission requests that comments be submitted within 7 days on agreements that request expedited review. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202)-523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 201387.

Agreement Name: HLAG/ONE/Sealand USWC-Mexico and Central America Cooperative Working Agreement.

Parties: Hapag-Lloyd AG; Maersk Line A/S d/b/a Sealand; and Ocean Network Express Pte. Ltd.

Filing Party: Joshua Stein, Cozen O'Connor.

Synopsis: The Agreement authorizes the parties to share vessels and vessel space and to exchange slots on their respective vessels in the trades between ports on the West Coast of the United States, including California on the one hand, and ports on the West Coast of Mexico and Central America, including Guatemala, El Salvador, Nicaragua and Costa Rica, on the other hand.

Proposed Effective Date: 6/23/2022.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/63507.

Dated: May 20, 2022.

William Cody,

Secretary.

[FR Doc. 2022–11248 Filed 5–24–22; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551–0001, not later than June 8, 2022.

A. Federal Reserve Bank of Dallas (Karen Smith, Director, Applications) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *The Cook Memorial Trust #1, Cook Memorial Trust #4, and the Mayfair Private Trust Company, as co-trustee, all of McAllen, Texas; 15 trusts for the benefit of minor children, all of McAllen Texas, and the Mayfair Private Trust Company and Asiatrust Limited, Rarotonga, Cook Islands, as co-trustees, and Elizabeth L. Morgan, Austin, Texas;* as trust protector, for each of the aforementioned trusts, to join the Collins Family Control Group, a group acting in concert, to acquire voting shares of VBT Financial Corporation, and thereby indirectly acquire voting shares of Vantage Bank Texas, both of San Antonio, Texas.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–11188 Filed 5–24–22; 8:45 am]

BILLING CODE 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 June 23, 2022.

A. Federal Reserve Bank of St. Louis (Holly A. Rieser, Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org*:

1. *The McGehee Bank Employee Stock Ownership Plan, McGehee, Arkansas;* to acquire additional voting shares of up to 35 percent of Southeast Financial Bankstock Corp., and thereby indirectly acquire voting shares of McGehee Bank, both of McGehee, Arkansas.

B. Federal Reserve Bank of Kansas City (Jeffrey Imgarten, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Luna Parent, Inc., Sunnyvale, California;* to become a bank holding company by acquiring Lead Financial Group, Inc., and thereby indirectly acquire Lead Bank, both of Kansas City, Missouri.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–11190 Filed 5–24–22; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely

related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

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 question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the 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 June 8, 2022.

A. Federal Reserve Bank of Atlanta (Erien O. Terry, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *Capital City Bank Group, Inc., Tallahassee, Florida;* through its subsidiary bank, Capital City Bank, Tallahassee, Florida, to indirectly acquire an equity interest in SOLCAP 2022–1 LLC, Las Vegas, Nevada, and thereby engage in extending credit and servicing loans pursuant to section 225.28(b)(l) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–11189 Filed 5–24–22; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2022–0070]

Draft Guidelines for Examining Unusual Patterns of Cancer and Environmental Concerns

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), within the Department of Health and Human Services (HHS), announces the opening of a docket to obtain comment on the *Draft Guidelines for Examining Unusual Patterns of Cancer and Environmental Concerns* (2022 Draft Guidelines). The 2022 Draft Guidelines provide updates to the 2013 publication, *Investigating Suspected Cancer Clusters and Responding to Community Concerns: Guidelines from the CDC and the Council of State and Territorial Epidemiologists (CSTE)* (2013 Guidelines). The updates provide state, tribal, local, and territorial health departments guidance for a revised and expanded approach to evaluating concerns about unusual patterns of cancer in communities, including those associated with local environmental concerns. The 2022 Draft Guidelines provide recommendations only; compliance with these recommendations is voluntary.

DATES: Written comments must be received on or before July 25, 2022.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2022–0070, by either of the methods listed below.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Division of Environmental Health Science and Practice, National Center for Environmental Health, Centers for Disease Control and Prevention, Attn: Docket No. CDC–2022–0070, 4770 Buford Highway NE, Mailstop S–106–6, Atlanta, GA 30341.

Instructions: All submissions received must include the agency name and docket number. All relevant comments, including any personal information provided will be posted without change to *http://regulations.gov.* Do not submit comments by email. CDC does not accept comments by email. For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Alisha Etheredge, Centers for Disease Control and Prevention, National Center for Environmental Health, Division of Environmental Health Science and Practice, 4770 Buford Highway NE, Mailstop S–106–6, Atlanta, GA 30341; Telephone: 770–488–4024; Email: *CCGuidelines@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons or organizations are invited to participate by submitting written views, recommendations, and data related to the 2022 Draft Guidelines. In addition, CDC invites comments specifically on the following:

1. Please comment on the strengths and limitations of the enhanced approach for routine, proactive evaluation of cancer patterns.

2. Please comment on the strengths and limitations of the recommendations for enhancing communications and engagement with communities.

3. Please comment on the strengths and limitations of the enhanced phased approach for responding to community inquiries.

4. Please comment on the strengths and limitations of the new criteria for suggesting continued assessment of a report of an unusual pattern of cancer and addressing environmental concerns.

5. Please comment on the strengths and limitations of the revised definition of a cancer cluster.

6. Please comment on the strengths of the 2022 Draft Guidelines and provide suggestions to address weaknesses.

7. Please comment on whether the language in the 2022 Draft Guidelines is sufficiently clear for both the general public and state, tribal, local, and territorial public health agency staff, in terms of comprehension of the investigative process and recommendations.

8. Please provide any additional comments about the document.

CDC will carefully consider all comments submitted in preparation of the final *Guidelines for Examining Unusual Patterns of Cancer and Environmental Concerns* and may revise the final document as appropriate.

Please note that comments received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. Comments will be posted on *https://www.regulations.gov.* Therefore, do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. If you include your name, contact information, or other information that identifies you in the body of your comments, that information will be on public display. CDC will review all submissions and may choose to redact or withhold submissions containing private or proprietary information such as Social Security numbers, medical information, inappropriate language, or duplicate or near duplicate examples of a mass-mail campaign. Do not submit comments by email. CDC does not accept comment by email.

Background

CDC/ATSDR develops guidance for state, tribal, local, and territorial (STLT) public health departments on how to respond to cancer cluster concerns. The current 2013 Guidelines provide a rationale and tool to assist STLT public health agencies in applying a systematic approach when responding to inquiries about suspected unusual patterns of cancer in residential or community settings. Since publication of the 2013 Guidelines, there have been technical and scientific advancements in areas such as data availability and analytic and geospatial methods.

In the 2022 Draft Guidelines, CDC/ATSDR has updated and expanded the 2013 Guidelines to provide STLT public health agencies and other interested parties with access to information about current scientific tools and approaches to assess and respond to unusual patterns of cancer in communities. CDC/ATSDR plans to update the evidence base to include final reports associated with several of the inputs gathered to inform the 2022 Draft Guidelines.

CDC/ATSDR developed the 2022 Draft Guidelines using input from a variety of stakeholders including STLT public health agencies, subject matter experts from academia and non-governmental organizations, an internal CDC/ATSDR steering committee, public comments received from a previous announcement in the **Federal Register** (84 FR 21786, Docket No. CDC–2019–0045), and focus groups conducted with community members and organizations that have been involved with cancer concerns in their communities. CDC/ATSDR also gathered input from a literature review and media scan and evaluated advances in the field of environmental epidemiology (*e.g.,* geospatial methods) and community engagement strategies. An Environmental Media Scan Report, CSTE Workgroup Report (*https://cdn.ymaws.com/www.cste.org/resource/resmgr/environmentalhealth/CSTE_Cancer_Cluster_Guidelin.pdf*) and STLT Survey and Focus Group Report (*https://www.cdc.gov/nceh/clusters/survey-report.html*) have been developed or are in the process of being developed and will be published on the CDC Cancer Clusters website (*https://www.cdc.gov/nceh/clusters/guidelines.htm*) once available.

As a result of these inputs, key themes emerged:

1. The need for enhanced and improved engagement with communities;

2. The need to deemphasize reliance on statistical significance so that statistical significance is not the deciding factor when evaluating the criteria to address cancer rates and environmental concerns;

3. The need for routine, proactive evaluation of cancer data; and

4. The need for tools and templates for standardized information collection and data evaluation.

The 2022 Draft Guidelines address each of these themes in the following ways.

- *Theme 1:* Throughout the 2022 Draft Guidelines, the importance of communication and community engagement are addressed. Additionally, a section and one of the new recommended phases are devoted to communicating with and engaging communities, including identification of a community point of contact. These parts of the guidelines highlight and reinforce the need for establishing clear and ongoing communication channels about activities and challenges associated with the evaluation of unusual patterns of cancer and environmental concerns.
- *Theme 2:* The four-step approach to evaluate patterns of cancer and identify factors of concern to the community recommended in the 2013 Guidelines has been replaced with ten new criteria to clarify additional efforts that may be required. Statistical significance of the estimates for cancer rates is one among these criteria; however, the 2022 Draft Guidelines recommend that statistical significance alone should not be the deciding factor when evaluating the patterns of cancer. Further assessment and suggested actions are provided to include consideration of health equity and environmental justice issues when responding to community inquiries.
- *Theme 3:* The 2022 Draft Guidelines propose an approach for identifying and investigating unusual patterns of cancer as part of routine surveillance activities. The updates introduce a new section encouraging proactive evaluation of cancer registry data on a routine basis to monitor cancer trends and identify unusual patterns. The 2022 Draft Guidelines also suggest that state health officials conduct routine monitoring of cancer data in an area of concern in situations when the criteria do not suggest further action at that time.
- *Theme 4:* New standardized data collection templates are provided to assist with the uniform collection of information during an inquiry from the community. Data collected and electronically transmitted will also enable CDC/ATSDR to have a clearer understanding of types of cancer and environmental concerns nationally.

Other tools and resources included providing guidance regarding how to evaluate the new criteria. For example, decision trees are included to assist with understanding the new phases, the flow of activities, and reinforcing the proactive approach for routine evaluation of cancer surveillance data. A new tool for evaluating standardized incidence ratios (SIR) is also described. The SIR is a ratio of the number of observed cancer cases in the study population compared to the number that would be expected if the study population experienced the same cancer rates as a selected reference population (typically the state as a whole is used as a reference population). This tool will be available on the National Environmental Public Health Tracking Network (*https://ephtracking.cdc.gov/*). It will provide SIR estimates by county to enable review of cancer data by the public and STLT partners.

In addition to these updates, other proposed changes in the 2022 Draft Guidelines include the following:

- Changing the name of the guidelines to reflect consideration of environmental concerns as a factor when investigating a community inquiry about unusual patterns of cancer;
- Revising the definition of a cancer cluster;
- Including specific and standardized approaches to better engage community members;
- Explaining how to use a standardized template to better document the nature and extent of cancer and environmental concerns; and
- Enhanced appendices describing statistical and geospatial methods supporting the evaluation of unusual patterns of cancer.

For more information about the process of developing the 2022 Draft Guidelines, please visit *https://www.cdc.gov/nceh/clusters/guidelines.htm.*

Supporting and Related Material in the Docket

The 2022 Draft Guidelines can be found in the Supporting Materials tab of this docket.

Angela K. Oliver,

Executive Secretary, Centers for Disease Control and Prevention.

[FR Doc. 2022–11237 Filed 5–24–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Availability of Program Application Instructions for Long-Term Care Ombudsman Program Funds

Title: American Rescue Plan (ARP) for State Long-Term Care Ombudsman Programs under Title VII of the OAA—Response in Residential Care Communities.

Announcement Type: Initial.

Statutory Authority: American Rescue Plan (ARP) Act of 2021 [Pub. L. 117–2] for activities authorized under Title VII of the Older Americans Act of 1965, as amended through Public Law 116–131, enacted March 25, 2020.

Catalog of Federal Domestic Assistance (CFDA) Number: 93.042.

Dates: The deadline for State Agencies on Aging to submit their Program Plan for Long-Term Care Ombudsman Programs is June 24, 2022.

I. Funding Opportunity Description

The purpose of this funding opportunity for State Long-Term Care Ombudsman Programs is to enhance their capacity to respond to and resolve complaints about abuse and neglect, especially in board and care facilities and similar adult care homes, including assisted living facilities. Residents of these types of homes are less likely to have the benefit of federal oversight or regulation or clear requirements for preserving and respecting for their rights during the COVID–19 public health emergency, thus making the Ombudsman program presence essential. These funds will allow Ombudsman programs to develop capacity through activities such as hiring staff and recruiting and training volunteers to conduct visits and investigate complaints, develop resident and family councils, and provide information and assistance and education on resident rights and prevention of abuse and neglect.

To be eligible to receive this grant, each State Long-Term Care Ombudsman and State Agency on Aging must submit a co-signed plan as described in Section III of this FRN, *Eligibility Criteria and Other Requirements.* The plan will be considered an Amendment to the State Plan on Aging and must describe the State Ombudsman plans for use of these supplemental funds.

ACL seeks plans developed by State Ombudsman Programs that describe how the Ombudsman program will use American Rescue Plan Act funds to fulfill the purpose of the funding opportunity within the authority of Title VII Chapter 2 of the Older Americans Act.

II. Award Information

1. *Funding Instrument Type:* These grants are mandatory supplemental grants, appropriated through the Elder Justice Act as amended by the American Rescue Plan Act of 2021. The State Ombudsman will determine the use of the funds in accordance with the federal Ombudsman rule at 45 CFR 1324.13(f). The State Agency on Aging will assure that the funds are used consistent with the Ombudsman's determination and the plan submitted in response to this Notice.

2. *Anticipated Total Priority Area Funding:* The total available funding for this opportunity is $17,910,000. ACL intends to make available grant awards to State Agencies on Aging for their State Long-Term Care Ombudsman programs. The period of performance for these grants, during which grant activities must occur, is estimated to commence August 1, 2022 and is projected to end on September 30, 2025.

Each State Agency on Aging/State Ombudsman is eligible to apply for and receive the amount in the table below:

Alabama	$269,337
Alaska	89,550
Arizona	411,517
Arkansas	163,153
California	1,858,433
Colorado	275,872
Connecticut	200,896
Delaware	89,550
District of Columbia	89,550
Florida	1,366,626
Georgia	494,969
Hawaii	89,550
Idaho	93,856
Illinois	650,221
Indiana	347,117
Iowa	173,554
Kansas	150,909
Kentucky	238,893
Louisiana	238,502
Maine	89,913
Maryland	309,810
Massachusetts	371,889
Michigan	562,787
Minnesota	296,560
Mississippi	154,825
Missouri	336,900
Montana	89,550
Nebraska	98,634
Nevada	159,307
New Hampshire	89,550
New Jersey	471,343
New Mexico	116,024
New York	1,039,648
North Carolina	558,290
North Dakota	89,550
Ohio	650,212
Oklahoma	201,357
Oregon	238,302
Pennsylvania	751,491
Rhode Island	89,550
South Carolina	297,034
South Dakota	89,550
Tennessee	364,274
Texas	1,226,368
Utah	118,998
Vermont	89,550
Virginia	435,370
Washington	386,796
West Virginia	112,671
Wisconsin	326,597
Wyoming	89,550
American Samoa	11,194
Guam	44,775
Northern Marianas	11,194
Puerto Rico	203,757
Virgin Islands	44,775

III. Eligibility Criteria and Other Requirements

1. Eligible entities for this award are State Agencies on Aging for use by the State Long-Term Care Ombudsman Programs according to the plan developed by the State Long-Term Care Ombudsman.

2. No Match or Cost Sharing is required.

3. State Agencies on Aging and State Ombudsmen must provide a plan no later than June 24, 2022. The plan must contain descriptions of actions and corresponding expenditure estimates that will achieve improvements as noted below, especially for Ombudsman work in congregate residential settings described in the *Funding Opportunity Description.* Alternative activities may be proposed to effectively achieve the purpose of the funding opportunity. Activities may include:

a. Staff augmentation.

b. Volunteer engagement.

c. Training for staff of board and care homes, assisted living facilities and/or similar entities and for Ombudsman representatives to enhance their ability to engage in complaint resolution and other advocacy about abuse, neglect, and exploitation; COVID–19 impact; specific needs of residents living in residential care communities, as identified through Ombudsman data, the CMS Home and Community-based Services Settings Rule, and other relevant matters.

d. Increase in visits to facilities, based on data identifying gaps.

e. Increase in work with resident and/or family councils in facilities, based on data identifying gaps.

4. A cover letter containing specified assurances must be included and signed by both the State Agency on Aging Director or designee and the State Long-Term Care Ombudsman. The letter must include the following assurances:

i. These funds must supplement, and not supplant, existing funding for the State Ombudsman program.

ii. The State Agency on Aging will timely submit to ACL semi-annual

federal financial reports and annual program reports related to the activities performed.

iii. The State Ombudsman will determine the use of the funds in accordance with the federal Ombudsman rule at 45 CFR 1324.13(f) and the State Agency on Aging will assure that the funds are used consistent with the Ombudsman's determination and the plan submitted in response to this Notice.

5. *Unique Entry ID Number:* All grant applicants must obtain and keep current a Unique Entity ID (UEI). On April 4, 2022, the unique entity identifier used across the federal government changed from the DUNS Number to the Unique Entity ID (generated by *SAM.gov*). The Unique Entity ID is a 12-character alphanumeric ID assigned to an entity by *SAM.gov.* The UEI is viewable in your *SAM.gov* entity registration record.

6. *Intergovernmental Review:* Executive Order 12372, Intergovernmental Review of Federal Programs, is not applicable to these grant applications.

IV. Submission Information

1. *Plans and cover letters should be addressed to* Alison Barkoff, Acting Administrator/Assistant Secretary for Aging, Administration for Community Living, 330 C Street SW, Washington, DC 20201.

Plans and cover letters should be submitted electronically via email to Beverley Laubert, National Ombudsman Program Coordinator at *Beverley.Laubert@acl.hhs.gov.*

2. *Submission Dates and Times:* To receive consideration, plans and cover letters must be submitted by June 24, 2022 via email and have an electronic time stamp indicating the date and time submitted.

Dated: May 19, 2022.

Alison Barkoff,

Acting Administrator and Assistant Secretary for Aging.

[FR Doc. 2022–11172 Filed 5–24–22; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Availability of Program Application Instructions for Adult Protective Services Funding

Title: American Rescue Plan Act of 2021: Grants to Enhance Adult Protective Services (FY 2022).

Announcement Type: Initial.

Statutory Authority: The statutory authority for grants under this program announcement is contained in the Elder Justice Act Section 2042(b) of Title XX of the Social Security Act [Pub. L. 74–271] [As Amended Through Pub. L. 115–123, Enacted February 9, 2018] as referenced in Section 9301of the American Rescue Plan Act of 2021 (Pub. L. 117–2).

Catalog of Federal Domestic Assistance (CFDA) Number: 93.747.

Dates: The deadline date for the submission of the American Rescue Plan Act of 2021: Grants to Enhance Adult Protective Services FY 2022 Letter of Assurance is 11:59 p.m. EST June 24, 2022.

I. Funding Opportunity Description

The Administration for Community Living (ACL) is establishing the ''American Rescue Plan Act of 2021: Grants to Enhance Adult Protective Services FY 2022'' funding opportunity in accordance with Section 2042(b) of Subtitle B of Title XX of the Social Security Act, otherwise known as the Elder Justice Act (EJA) as authorized and funded through the American Rescue Plan Act of 2021 (Pub. L. 117–2). In accordance with these statutes, the purpose of this opportunity is to enhance and improve adult protective services provided by states and local units of government.

Funds awarded under this opportunity will provide Adult Protective Services (APS) programs in the states and territories with resources to enhance, improve, and expand the ability of APS to investigate allegations of abuse, neglect, and exploitation. Examples of activities consistent with the purposes of the statute include:

- Establishing or enhancing the availability for elder shelters and other emergency, short-term housing and accompanying ''wrap-around'' services for APS clients;
- Establishing, expanding, or enhancing state-wide and local-level elder justice networks for the purpose of removing bureaucratic obstacles and improving coordination across the many state and local agencies interacting with APS clients who have experienced abuse, neglect, or exploitation;
- Working with tribal adult protective services efforts, such as conducting demonstrations on state-Tribal APS partnerships to better serve tribal elders who experience abuse, neglect, and exploitation, partnering with Tribes within the state to include tribal elder abuse data in the state's National Adult Maltreatment Reporting System (NAMRS) reporting, and undertaking demonstrations to better understand elder abuse experienced by tribal individuals living in non-tribal communities and served by state APS programs;
- Improving or enhancing existing APS processes for receiving reports, conducting intakes and investigations, planning/providing for services, making case determinations, documenting and closing cases, and continuous quality improvement;
- Improving and supporting remote work, such as the purchase of communications and technology hardware, software, or infrastructure in order to provide adult protective services;
- Improving data collection and reporting at the case worker, local-, and state-levels in a manner that is consistent with the National Adult Maltreatment Reporting System (NAMRS);
- Costs associated with establishing new, or improving existing processes for responding to alleged scams and frauds;
- Costs associated with community outreach;
- Costs associated with providing goods and services to APS clients;
- Acquiring personal protection equipment and supplies;
- Paying for extended hours/overtime for staff, hiring temporary staff, and associated personnel costs;
- Training costs;
- Costs associated with assisting APS clients secure the least restrictive option for emergency or alternative housing, and with obtaining, providing, or coordinating with care transitions as appropriate.

Awards authorized under the EJA Section 2042(b) shall be provided to the agency or unit of state government having the legal responsibility for providing adult protective services within the state. Funding under this opportunity may be used to serve any APS client who meets their state's statutory or regulatory criteria for client eligibility for APS services in the state. This funding must supplement and not supplant existing funding for APS provided by states and local units of government. Additionally, award recipients will be required to submit semi-annual federal financial reports and annual program reports related to the activities performed.

II. Award Information

A. Eligible Entity

The eligible entity for these awards is the agency or unit of state government legally responsible for providing adult protective services in each state and territory (EJA Section 2042(b)(3)(B)).

B. Funding Instrument Type

These awards will be made in the form of formula grants to the agencies and units of state government with the legal responsibility to provide adult protective services.

C. Anticipated Total Funding per Budget Period

Under this program announcement, ACL intends to make grant awards to each state, territory, and the District of Columbia. Funding will be distributed through the formula identified in Section 2042(b) of the Elder Justice Act. The amounts allocated are based upon the proportion of elders living in each state and territory, as defined in statute, and will be distributed based on the formula. There are no cost-sharing nor match requirements.

Awards made under this announcement have an estimated start date of August 1, 2022 and an estimated end date of September 30, 2024. The total available funding for this opportunity is $163,646,000. Below are the projected award amounts:

State/ territory	Projected amount
Alabama	$2,382,193
Alaska	1,227,345
Arizona	3,616,372
Arkansas	1,443,035
California	16,437,221
Colorado	2,439,994
Connecticut	1,776,855
Delaware	1,227,345
Dist. of Columbia	244,720
Florida	12,087,354
Georgia	4,377,839
Hawaii	1,227,345
Idaho	1,227,345
Illinois	5,750,992
Indiana	3,070,139
Iowa	1,535,026
Kansas	1,334,740
Kentucky	2,112,929
Louisiana	2,109,473
Maine	1,227,345
Maryland	2,740,164
Massachusetts	3,289,234
Michigan	4,977,667
Minnesota	2,622,975
Mississippi	1,369,378
Missouri	2,979,772
Montana	1,227,345
Nebraska	1,227,345
Nevada	1,409,017
New Hampshire	1,227,345
New Jersey	4,168,871
New Mexico	1,227,345
New York	9,195,346
North Carolina	4,937,892
North Dakota	1,227,345
Ohio	5,750,910
Oklahoma	1,780,936
Oregon	2,107,701
Pennsylvania	6,646,693
Rhode Island	1,227,345
South Carolina	2,627,163
South Dakota	1,227,345
Tennessee	3,221,883
Texas	10,846,822
Utah	1,227,345
Vermont	1,227,345
Virginia	3,850,700
Washington	3,421,084
West Virginia	1,227,345
Wisconsin	2,888,644
Wyoming	1,227,345
American Samoa	163,646
Guam	163,646
Commonwealth of the Northern Mariana Islands	163,646
Puerto Rico	1,802,162
Virgin Islands	163,646

III. Submission Requirements

A. Letter of Assurance

A *Letter of Assurance* is required to be submitted by the eligible entity in order to receive an award. The Letter of Assurance must include the following:

1. Assurance that the award recipient is the agency or unit of state government legally responsible for providing adult protective services in each state and territory.

2. Assurance that funds will supplement and not supplant existing APS funding.

3. Select one of the following:

a. Assurance that the award recipient's previously submitted and approved 3–5 year operational plan for improving and enhancing their APS system at the state and local level remains accurate, and that they intend to follow that plan in expending their FY 2022 grant funds; OR

b. Assurance that the award recipient has included an initial spend plan for the FY 2022 funds and will provide an updated 3–5 operational plan within 90 days of award.

4. Assurance that funds will be spent in ways consistent with the Elder Justice Act Section 2042(b); Section 9301 of the American Rescue Plan Act of 2021; and guidance provided by ACL, including the examples of activities consistent with the purposes of the authorizing legislation contained in the **Federal Register** Notice:

- Establishing or enhancing the availability for elder shelters and other emergency, short-term housing and accompanying ''wrap-around'' services;
- Establishing, expanding, or enhancing state-wide and local-level elder justice networks;
- Working with tribal adult protective services efforts;
- Improving or enhancing existing APS processes;
- Improving and supporting remote work;
- Improving data collection and reporting at the case worker, local-, and state-levels in a manner that is consistent with the National Adult Maltreatment Reporting System;
- Establishing new, or improving existing processes for responding to alleged scams and frauds;
- Community outreach;
- Providing goods and services to APS clients;
- Acquiring personal protection equipment and supplies;
- Paying for extended hours/overtime for staff, hiring temporary staff, and associated personnel costs;
- Training;
- Assisting APS clients secure the least restrictive option for emergency or alternative housing, and with obtaining, providing, or coordinating with care transitions as appropriate.

5. Assurance to provide semi-annual federal financial reports and annual program reports related to the activities performed.

B. Initial Spend Plan

An *Initial Spend Plan* is required only if the previously submitted and approved 3–5 year operational plan needs to be updated. The Initial Spend Plan should outline how the state/territory intends to spend their FY 2022 allotment in response to the needs and challenges to their APS program. The plan should be consistent with the purpose of the authorizing legislation and the description and examples outlined above. The Initial Spend Plan submitted in response to this opportunity is considered a preliminary framework for how the state/territory will plan to spend these funds. The Initial Spend Plan should have the following format: 3–5 pages in length, double-spaced, with 12pt font and 1″ margins, with a layout of 8.5″ x 11″ paper.

C. Unique Entity ID Number

All grant applicants must obtain and keep current a Unique Entity ID (UEI). On April 4, 2022, the unique entity identifier used across the federal government changed from the DUNS Number to the Unique Entity ID (generated by *SAM.gov*). The Unique Entity ID is a 12-character alphanumeric ID assigned to an entity by *SAM.gov.* The UEI is viewable in your *SAM.gov* entity registration record.

D. Intergovernmental Review

Executive Order 12372, Intergovernmental Review of Federal Programs, is not applicable to these grant applications.

IV. Submission Information

A. Submission Process

To receive funding, eligible entities must provide a *Letter of Assurance* and an *Initial Spend Plan* (if applicable) containing all the information outlined in Section III A. & B. above.

Materials should be addressed to: Alison Barkoff, Acting Administrator and Assistant Secretary for Aging, Administration for Community Living, 330 C Street SW, Washington, DC 20201.

Letters of Assurance and the Initial Spend Plan should be submitted electronically via email to *aps@acl.hhs.gov.*

B. Submission Dates and Times

To receive consideration, Letters of Assurance and the Initial Spend Plan must be submitted by 11:59 p.m. Eastern Time on EST June 24, 2022, Letters of Assurance and the Initial Spend Plan should be submitted electronically via email to *aps@acl.hhs.gov* and have an electronic time stamp indicating the date/time submitted.

VII. Agency Contacts

A. Programmatic Issues/Questions

Direct programmatic inquiries to: Elizabeth Petruy, Email: *elizabeth.petruy@acl.hhs.gov*, Phone: 202.260.0868.

B. Submission Issues/Questions

Direct inquiries regarding submission of applications to *aps@acl.hhs.gov.* ACL will provide a response within 2 business days.

Dated: May 19, 2022.

Alison Barkoff,

Acting Administrator and Assistant Secretary for Aging.

[FR Doc. 2022–11175 Filed 5–24–22; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request Bureau of Health Workforce Program Specific Form; OMB No. 0915–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 July 25, 2022.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or by mail to the HRSA Information Collection Clearance Officer, Room 14N136B, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Samantha Miller, the acting HRSA Information Collection Clearance Officer at (301) 443–9094.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information collection request title for reference.

Information Collection Request Title: Bureau of Health Workforce (BHW) Program Specific Form OMB No. 0915–XXXX–New

Abstract: HRSA seeks to collect disparity related data on two forms, the Bureau of Health Workforce (BHW) Program Specific Form and the Scholarships for Disadvantaged Students (SDS) Application Program Specific Form. This clearance request is for approval of both forms. The SDS Application Program Specific Form is currently approved under OMB Approval No. 0915–0149 with the expiration date of November 30, 2022. For programmatic efficiency, HRSA is consolidating this previous separate ICR with this new ICR and will be discontinuing OMB No. 0915—0149.

Need and Proposed Use of the Information: Currently, disparity related data is not uniformly collected from applicants across all BHW programs. Historically, only the SDS Program collects disparity related data from applicants. In addition to the SDS data, HRSA seeks to obtain general demographic data for its other health workforce programs to assess the experience and performance of applicants in strengthening the health workforce and the populations in which they serve. Examples of this data include but are not limited to:

- *Demographic Information:* Students/trainees gender, race, and ethnicity;
- *Class Enrollment Information:* Student/trainees from disadvantaged backgrounds; and
- *Graduate Service Information:* Graduates or program completers serving in Medically Underserved Communities, rural communities and in primary care.

Collecting disparity related data from BHW applicants will close an important data gap.

The Public Health Service Act authorizes the Secretary of Health and Human Services (Secretary) to collect data for workforce information and analysis activities for BHW's Title VII and VIII programs in sections 799(c) and 806(b) and (f) (42 U.S.C. 295o–1(c); 42 U.S.C 296e(b) and (f)). The Public Health Service Act section 799(c) specifically authorizes the Secretary to ensure that such data collection takes into account age, sex, race, and ethnicity and sections 806(b) and (f) specifically provides the Secretary with authority to collect information and carry out workforce analytical activities. Collecting these data in the HRSA Electronic Handbook will help grant reviewers, policy makers, and HRSA staff make decisions that promote the health equity mission of the Department.

The SDS Application Program Specific Form seeks to assist HRSA in assessing applicants for the SDS Program, which makes grant awards to eligible schools to provide scholarships to full-time, financially needy students from disadvantaged backgrounds enrolled in health professions programs. To qualify for participation in the SDS program, a school must be carrying out a program for recruiting and retaining students from disadvantaged backgrounds, including students who are members of racial and ethnic minority groups, as required by section 737(d)(1)(B) of the Public Health Service Act (42 U.S.C 293a(d)(1)(B)). To meet this requirement, a school must provide data via the SDS Application Program Specific Form that at least 20 percent of the school's full-time enrolled students and graduates are from a disadvantaged background.

The SDS Application Program Specific form previously approved under OMB Control No. 0915–0149 does not include substantive changes. Both forms will be used to collect 3 years of student and participant data from BHW program applicants only.

Likely Respondents: Respondents vary by the specific program and are determined by each program's eligibility, to include but are not limited to the following: Accredited schools of

nursing with advanced education nursing programs; accredited allopathic schools of medicine; accredited schools of osteopathic medicine, dentistry, pharmacy, and graduate programs in behavioral or mental health; schools of nursing; nurse managed health clinics/centers; academic health centers; state or local governments; public or private nonprofit entities determined appropriate by the Secretary; and consortiums and partnerships of eligible entities when applicable.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
BHW Program Specific Form	2,069	1	2,069	14	28,966
SDS Application Program Specific Form	323	1	323	31	10,013
Total	2,392		2,392		38,979

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. 2022–11230 Filed 5–24–22; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics

AGENCY: Centers for Disease Control and Prevention, HHS.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting. This meeting is open to the public. The public is welcome to obtain the link to attend this meeting by following the instructions posted on the Committee website: *https://ncvhs.hhs.gov/meetings/standards-subcommittee-meeting-3/.*

NAME: National Committee on Vital and Health Statistics (NCVHS), Meeting of the Subcommittee on Standards.

DATES: The meeting will be held Thursday, June 9, 2022: 10:00 a.m.–5:30 p.m. EDT.

ADDRESSES: Virtual open meeting.

FOR FURTHER INFORMATION CONTACT: Substantive program information may be obtained from Rebecca Hines, MHS, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Hyattsville, Maryland 20782, or via electronic mail to *vgh4@cdc.gov;* or by telephone (301) 458–4715. Summaries of meetings and a roster of Committee members are available on the home page of the NCVHS website *https://ncvhs.hhs.gov/,* where further information including an agenda and instructions to access the broadcast of the meeting will be posted.

Should you require reasonable accommodation, please telephone the CDC Office of Equal Employment Opportunity at (770) 488–3210 as soon as possible.

SUPPLEMENTARY INFORMATION:

Purpose: As outlined in its Charter, the National Committee on Vital and Health Statistics assists and advises the Secretary of HHS on health data, data standards, statistics, privacy, national health information policy, and the Department's strategy to best address those issues. This includes the adoption and implementation of transaction standards, unique identifiers, and code sets adopted under the Health Insurance Portability and Accountability Act of 1996 (HIPAA),[1] and operating rules adopted under the Patient Protection and Affordable Care Act (ACA).[2]

Based on input and information gathered during its current project, ''Standardization of Information for Burden Reduction and Post-Pandemic America'' (Convergence 2.0), NCVHS is working to finalize strategic concepts for health information technology standards to support more expansive health data flows than are currently encompassed under HIPAA and other federal legislation.[3] Data flows common today did not exist at the time the HIPAA frameworks were adopted in regulation, *e.g.,* HIPAA is statutorily limited to Covered Entities, but patient data now flows routinely to other parties who are not Covered Entities. The NCVHS Subcommittee on Standards' Convergence 2.0 work also assessed the strengths and weaknesses of the current standards development and federal rulemaking processes and would set the

[1] Public Law 104–191, 110 Stat. 1936 (Aug. 21, 1996), available at: *https://www.congress.gov/104/plaws/publ191/PLAW-104publ191.pdf.*

[2] Public Law 111–148, 124 Stat. 119 (Mar. 23, 2010), available at *https://www.congress.gov/111/plaws/publ148/PLAW-111publ148.pdf.*

[3] NCVHS Standards Subcommittee Project Scope: Standardization of Information for Burden Reduction and Post-Pandemic America (''Convergence 2.0''), available at *https://ncvhs.hhs.gov/wp-content/uploads/2021/07/NCVHS-SS-project-scoping-convergence-2021-06-21-508.pdf.* NCVHS Predictability Roadmap work, which addressed the need for the HIPAA standards to be adopted on a regular cadence, has evolved into a convergence project with a broader scope. The Subcommittee has been considering whether opportunities exist for updates to the HIPAA regulatory framework as well as standards adoption. In addition to these foundational topics, the Committee has incorporated the harmonization of public health and clinical standards in its scope, particularly with their relevance to interoperable data exchange. Underlying the data flows are privacy and security considerations.

stage for future directions toward the strategic vision.

The Subcommittee on Standards drafted a suite of potential actions for consideration for near-term improvement of the current standards development and rulemaking processes informed by the August 21, 2021, Listening Session.[4] The Committee is seeking reaction to this draft set of actions from potential end-users, standards development organizations (SDOs), trade and professional organizations, and other members of the public. The purpose of this meeting is to provide a public forum to obtain this feedback. Based on that input, the Subcommittee anticipates developing recommendations for consideration by the full Committee. The draft considerations and supporting context may be viewed on the NCVHS website at *https://ncvhs.hhs.gov/Draft-Convergence-2-dot-0.*

Summary

Subtitle F (Administrative Simplification) of HIPAA promoted the transition of routine business processes of health care from mailing and faxing of paper documents to electronic exchange of standardized data. Health data flows, standards, technology, and communications infrastructure have all evolved radically since HIPAA introduced the concept of national standards to health care administration. Consistent with the Office of the National Coordinator for Health Information Technology's (ONC) Federal Health Information Technology Strategic Plan,[5] the Subcommittee is investigating what would be necessary to prepare the U.S. health care system for its next leap forward. The Subcommittee is proposing for industry feedback actions to further a comprehensive, integrated health information ecosystem that incorporates claims, administrative records, digital medical records, public health data, and data about a patient's social risk. These proposed actions include specific updating of standardization processes under HIPAA to accommodate new business models, technologies, and information needs, while protecting investments in legacy standards that have demonstrably succeeded in producing HIPAA's intended efficiencies and cost reductions.

As noted above, to inform this rethinking and updating, NCVHS' Convergence 2.0 project solicited input from industry on the HIPAA regulatory framework and the standards update processes in a public Listening Session on August 25, 2021. During the Listening Session, representatives of industry testified that current processes do not fit with the cadence needed to meet their business needs. They further advocated that options and alternatives for a modernized framework should be considered to support current and future needs, including additional harmonization of clinical, public health (including vital records), and other standards with HIPAA standards. The implication is that options or alternatives would need to consider significant portions of work done by ONC and its Health Information Technology Advisory Committee on electronic health records, data exchange networks, and an interoperability framework.

Based on its analysis of the input of expert panels and members of the public who responded to a Request for Public Comment,[6] the Committee continues to investigate whether the HIPAA framework is in need of modernization.

The Committee will invite statements from representatives of stakeholder organizations, and the agenda also will include time for public comment. Meeting times and topics are subject to change. Please refer to the agenda posted at the NCVHS website for this meeting for updates at: *https://ncvhs.hhs.gov/meetings/standards-subcommittee-meeting-3/.*

Sharon Arnold,

Associate Deputy Assistant Secretary, Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 2022–11251 Filed 5–24–22; 8:45 am]

BILLING CODE 4150–05–P

[4] NCVHS Listening Session on Healthcare Standards Development, Adoption and Implementation, Aug. 25, 2021. Agenda, audio recording, transcript, and other meeting materials are available at: *https://ncvhs.hhs.gov/meetings/standards-subcommittee-listening-session/.*

[5] ONC, Ofc. of the Sec'y, U.S. Dept. of Health & Human Services, 2020–2025 Federal Health IT Strategic Plan (Oct. 2020), available at *https://www.healthit.gov/topic/2020-2025-federal-health-it-strategic-plan.*

[6] See U.S. Dept. of Health & Human Svcs., NCVHS, Notice of Meeting and Request for Public Comment, 86 FR 33318 (June 24, 2021), available at *https://www.govinfo.gov/content/pkg/FR-2021-06-24/pdf/2021-13334.pdf*; ''Comments Received in Response to Request for Comment: **Federal Register** Notice: 86 FR 33318,'' available at *https://ncvhs.hhs.gov/wp-content/uploads/2021/08/Public-Comments-Standards-Subcommittee-Listening-Session-August-25-2021.pdf.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Microbiology, Infectious Diseases and AIDS Initial Review Group; Microbiology and Infectious Diseases Research Study Section Microbiology and Infectious Diseases Research Study Section.

Date: June 16–17, 2022.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F40A, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Robert C. Unfer, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F40A, Rockville, MD 20852, (240) 669–5035, *robert.unfer@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 19, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–11220 Filed 5–24–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Identification and Characterization of Persistence Mechanisms of Select Protozoan Pathogens (R01 Clinical Trials Not Allowed).

Date: June 21–22, 2022.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F36, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Noton K. Dutta, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F36, Rockville, MD 20852, 240–669–2857, *noton.dutta@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 19, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–11219 Filed 5–24–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; National Institutes of Health (NIH) Loan Repayment Programs, (Office of the Director)

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 NIH will publish periodic summaries of proposed 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: Matthew Lockhart, Acting Director, Division of Loan Repayment (DLR), National Institutes of Health, 6700B Rockledge Dr., Room 2300 (MSC 6904), Bethesda, Maryland 20892–6904 or email your request, including your address to: *matthew.lockhart@nih.gov* or call (240) 380–3062. 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: National Institutes of Health (NIH) Loan Repayment Programs (LRP), 0925–0361, expiration date 10/31/2022, EXTENSION, Office of the Director (OD), National Institutes of Health (NIH).

Need and Use of Information Collection: The NIH makes available financial assistance, in the form of educational loan repayment, to M.D., Ph.D., Pharm.D., Psy.D., D.O., D.D.S., D.M.D., D.P.M., DC, N.D., O.D., D.V.M, or equivalent doctoral degree holders who perform biomedical or behavioral research in NIH intramural laboratories or as extramural grantees or scientists funded by domestic non-profit organizations for a minimum of two years (three years for the General Research subcategory) in research areas supporting the mission and priorities of the NIH. The information proposed for collection will be used by the DLR to determine an applicant's eligibility for the program.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 23,952.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hours
Initial Extramural Applicants	1,300	1	8	10,400
Renewal Extramural Applicants	1,000	1	8	8,000
Initial Intramural Applicants	40	1	8	320
Renewal Intramural Applicants	40	1	8	320
Recommenders	9,360	1	30/60	4,680
Institutional Contacts	2,300	1	5/60	192
NIH LRP Coordinators	80	1	30/60	40
Total	14,120	14,120	.....	23,952

Dated: May 17, 2022.

Tara A. Schwetz,

Acting Principal Deputy Director, National Institutes of Health.

[FR Doc. 2022–11262 Filed 5–24–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Extended Clinical Trial (R01 Clinical Trial Required).

Date: July 12, 2022.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F52, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Lindsey M. Pujanandez, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F52, Rockville, MD 20852, (240) 627–3206, *lindsey.pujanandez@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 19, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–11221 Filed 5–24–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS—2022–0033]

Homeland Security Advisory Council

AGENCY: The Office of Partnership and Engagement (OPE), The Department of Homeland Security (DHS).

ACTION: Notice of a closed Federal advisory committee meeting.

SUMMARY: The Homeland Security Advisory Council (HSAC) will meet virtually on Monday, May 23, 2022. The meeting will be closed to the public.

DATES: The meeting will take place from 10:30 a.m. to 11:15 a.m. ET on Monday, May 23, 2022.

Public participation: The meeting will be closed to the public.

FOR FURTHER INFORMATION CONTACT: Michael Miron at 202–282–8000 or *HSAC@hq.dhs.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under Section 10(a) of the Federal Advisory Committee Act (FACA), Public Law 92–463 (5 U.S.C. Appendix), which requires a portion of each FACA committee meeting to be open to the public unless the President, or the head of the agency to which the advisory committee reports, determines that a portion of the meeting may be closed to the public in accordance with 5 U.S.C. 552b(c).

The HSAC provides organizationally independent, strategic, timely, specific, actionable advice, and recommendations to the Secretary of Homeland Security on matters related to homeland security. The Council consists of senior executives from government, the private sector, academia, law enforcement, and non-governmental organizations.

The HSAC will meet in a closed session from 10:30 a.m. to 11:15 a.m. ET to participate in a sensitive discussion with DHS Secretary Alejandro N. Mayorkas regarding DHS operations.

Basis for Closure: In accordance with Section 10(d) of FACA, the Secretary of Homeland Security has determined this meeting must be closed during this session as the disclosure of the information relayed would be detrimental to the public interest for the following reasons:

The HSAC will participate in a sensitive operational discussion containing For Official Use Only and Law Enforcement Sensitive information. This discussion will include information regarding threats facing the United States and how DHS plans to address those threats. The session is closed pursuant to 5 U.S.C. 552b(c)(7) and(9)(B).

Dated: May 20, 2022.

Michael J. Miron,

Deputy Executive Director, Homeland Security Advisory Council, Department of Homeland Security.

[FR Doc. 2022–11278 Filed 5–20–22; 4:15 pm]

BILLING CODE 4412–FN–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6329–N–01]

Section 8 Housing Assistance Payments Program—Fiscal Year (FY) 2022 Inflation Factors for Public Housing Agency (PHA) Renewal Funding

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: This notice establishes Renewal Funding Inflation Factors (RFIFs) to adjust Fiscal Year (FY) 2022 renewal funding for the Housing Choice Voucher (HCV) Program of each public housing agency (PHA), as required by the Consolidated Appropriations Act, 2022. The notice apportions the expected percent change in national Per Unit Cost (PUC) for the HCV program, 4.68 percent, to each PHA based on the change in Fair Market Rents (FMRs) for their operating area to produce the FY 2022 RFIFs. HUD's FY 2022 methodology is the same as that which was used in FY 2021.

DATES: *Applicability date:* May 25, 2022.

FOR FURTHER INFORMATION CONTACT: Miguel A. Fontanez, Director, Housing Voucher Financial Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, telephone number 202–402–4212; or Adam Bibler, Program Parameters and Research Division, Office of Policy Development and Research, telephone number 202–402–6057, for technical information regarding the development of the schedules for specific areas or the methods used for calculating the inflation factors. Their mailing address is Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410. Hearing- or speech-impaired persons may contact the toll-free Federal Relay Service at 800–877–8339 (TTY). (Other than the ''800'' TTY number, the above-listed telephone numbers are not toll free.)

SUPPLEMENTARY INFORMATION:

I. Background

Division L, Title II of the Consolidated Appropriations Act, 2022 requires that

the HUD Secretary, for the 2022 calendar year funding cycle, provide renewal funding for each public housing agency (PHA) based on validated voucher management system (VMS) leasing and cost data for the prior calendar year and by applying an inflation factor as established by the Secretary, by notice published in the **Federal Register**. This notice announces the FY 2022 inflation factors and describes the methodology for calculating them. Tables in PDF and Microsoft Excel formats showing RFIFs by HUD Fair Market Rent Area are available electronically from the HUD data information page at: *https://www.huduser.gov/portal/datasets/rfif/rfif.html.*

II. Methodology

RFIFs are used to adjust the allocation of Housing Choice Voucher (HCV) program renewal funds to PHAs for local changes in rents, utility costs, and tenant incomes. To calculate the RFIFs, HUD first forecasts a national inflation factor, which is the annual change in the national average PUC. HUD then calculates individual area inflation factors, which are based on the annual changes in the two-bedroom Fair Market Rent (FMR) for each area. Finally, HUD adjusts the individual area inflation factors to be consistent with the national inflation factor.

HUD's forecast of the national average PUC is based on forecasts of gross rent and tenant income. Each forecast is produced using historical and forecasted macroeconomic data as independent variables, where the forecasts are consistent with the Economic Assumptions of the Administration's FY 2022 Budget. The forecast of gross rent is itself based on forecasts of the Consumer Price Index (CPI) Rent of Primary Residence Index and the CPI Fuels and Utilities Index. Forecasted values of these series are applied to the FY 2022 national average two-bedroom FMR to produce a CY 2022 value. A ''notional'' PUC is calculated as the difference between gross rent value and 30 percent of family income (the standard for family rent contribution in the voucher program). The change between the forecasted CY 2022 notional PUC and the CY 2021 notional PUC is the expected national change in PUC, or 5.80 percent. HUD uses a notional PUC as opposed to the actual PUC to project costs that are consistent with PHAs leasing the same number and quality of units. For more information on HUD's forecast methodology, *see* 82 FR 26710.

The inflation factor for an individual geographic area is based on the annualized change in the area's FMR between FY 2021 and FY 2022. These changes in FMRs are then scaled such that the voucher-weighted average of all individual area inflation factors is equal to the national inflation factor, *i.e.,* the expected annual change in national PUC from CY 2021 to CY 2022, and such that no area has a factor less than one. For PHAs operating in multiple FMR areas, HUD calculates a voucher-weighted average inflation factor based on the count of vouchers in each FMR area administered by the PHA as captured in HUD administrative data as of December 31, 2021.

III. The Use of Inflation Factors

HUD subsequently applies the calculated individual area inflation factors to eligible renewal funding for each PHA based on VMS leasing and cost data for the prior calendar year.

IV. Geographic Areas and Area Definitions

As explained above, inflation factors based on area FMR changes are produced for all FMR areas and applied to eligible renewal funding for each PHA. The tables showing the RFIFs, available electronically from the HUD data information page, list the inflation factors for each FMR area on a state-by-state basis. The inflation factors use the same OMB metropolitan area definitions, as revised by HUD, that are used in the FY 2022 FMRs. PHAs should refer to the Area Definitions Table on the following web page to make certain that they are referencing the correct inflation factors: *http://www.huduser.org/portal/datasets/rfif/FY2022/FY2022_RFIF_FMR_AREA_REPORT.pdf.* The Area Definitions Table lists areas in alphabetical order by state, and the counties associated with each area. In the six New England states, the listings are for counties or parts of counties as defined by towns or cities. HUD is also releasing the data in Microsoft Excel format to assist users who may wish to use these data in other calculations. The Excel file is available at *https://www.huduser.gov/portal/datasets/rfif/rfif.html.* Note that, as described earlier, the actual renewal funding inflation factor applied to agency funding will be the voucher-weighted average of the FMR area factors when the PHA operates in multiple areas.

V. Environmental Impact

This notice involves a statutorily required establishment of a rate or cost determination which does not constitute a development decision 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).

Todd Richardson,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 2022–11238 Filed 5–24–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–NWRS–2022–N004; FXRS12610100000–223–FF01R00000]

Record of Decision for the Final Environmental Impact Statement for the Bighorn Sheep Management Plan, Hart Mountain National Antelope Refuge, Lake County, OR

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; record of decision.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a record of decision (ROD) for the final environmental impact statement for the Bighorn Sheep Management Plan for Hart Mountain National Antelope Refuge in Oregon. The ROD documents the Service's decision to select a preferred alternative comprised of a combination of bighorn sheep habitat improvement and population management actions.

ADDRESSES: You may obtain copies of the ROD and other documents associated with the decision by the following methods.

- *Internet: https://www.fws.gov/refuge/hart_mountain/.*
- *Upon Request:* You may request alternative formats of the documents directly from the Service (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Shannon Ludwig, by telephone at 541–947–3315, or by email at *shannon_ludwig@fws.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service),

announce the availability of a record of decision (ROD) for the final environmental impact statement for the Bighorn Sheep Management Plan at the Hart Mountain National Antelope Refuge (Refuge), in Lake County, Oregon. The ROD documents the Service's decision to select Alternative D, Comprehensive Integrated Management (Preferred), which is a combination of bighorn sheep habitat improvement and population management actions.

The bighorn sheep herd on the Refuge has declined from approximately 150 animals in 2017, to as few as 48 in 2020. Consequently, the herd is at risk of extirpation (local extinction) in the next few years without prompt management intervention. In response to the decline, the Service developed a bighorn sheep management plan and final environmental impact statement (EIS) to analyze existing data and identify alternatives and actions needed to restore the herd to a sustainable population level. The EIS analyzes four alternatives: Continuing current management; a habitat management focus; a predator control focus; and a preferred alternative, which is a combination of habitat management and predator control. The alternatives reflect the urgency to implement short-term management actions that are based on the best available science, in combination with mid-to-long-term management and monitoring.

The ROD documents the Service's decision to select Alternative D, the Comprehensive Integrated Management approach. Considering complex interactions between habitat features and demographic factors that ultimately determine the sustainability of bighorn sheep on the Refuge, we prefer an integrated management approach. Alternative D includes a long-term focus on habitat improvement and a shorter-term focus on bighorn sheep and predator population management.

We are advising the public of the availability of the ROD, developed in compliance with agency decision making requirements of the National Environmental Policy Act of 1969, as amended (NEPA; 42 U.S.C. 4321 *et seq.*). Our draft EIS and final EIS were made available to the public via Environmental Protection Agency (EPA) **Federal Register** notices on April 30, 2021 (86 FR 22963), and December 3, 2021 (86 FR 68661), respectively. In the draft and final EIS documents, we described in detail, evaluated, and analyzed all alternatives. Because we initiated the EIS process prior to the September 14, 2020, effective date for the Council on Environmental Quality's updated NEPA regulations, the final EIS and ROD were completed consistent with the previous regulations (40 CFR 1506.13).

Authority

We provide this notice in accordance with the requirements of NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6; 43 CFR part 46).

Hugh Morrison,

Acting Regional Director.

[FR Doc. 2022–11225 Filed 5–24–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2022–0051; FXES11140800000–223–FF08EVEN00]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for California Tiger Salamander and California Red-Legged Frog; Monterey County, CA; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from Mike Knoop and Michelle Wright (applicants) for an incidental take permit (ITP) under the Endangered Species Act. The applicants request the ITP to take the federally listed California tiger salamander and California red-legged frog, incidental to the development of a single-family residence in Carmel Valley, California. We request public comment on the ITP application, which includes the applicants' proposed habitat conservation plan (HCP), and on the Service's preliminary determination that this HCP qualifies as ''low effect,'' categorically excluded under the National Environmental Policy Act. To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

DATES: Written comments should be received on or before June 24, 2022.

ADDRESSES:

To obtain documents: You may obtain copies of the documents online in Docket No. FWS–R8–ES–2022–0051 at *https://www.regulations.gov,* or you may request copies of the documents by email, phone, or U.S. mail (see **FOR FURTHER INFORMATION CONTACT**).

To submit comments: If you wish to submit comments on any of the documents, you may do so in writing by any one of the following methods:

- *Online: https://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R8–ES–2022–0051.
- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS–R8–ES–2022–0051; U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Karen Sinclair, Biologist, by email at *karen_sinclair@fws.gov,* by phone at 805–677–3315, or by U.S. mail at the Ventura Fish and Wildlife Office, 2493 Portola Rd #B, Ventura, CA 93003.

Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft habitat conservation plan (HCP) and draft screening form for a low-effect incidental take permit (ITP) determination, and a National Environmental Policy Act (NEPA) environmental action statement (screening form) for activities described in an application for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The application was received from Mike Knoop and Michelle Wright (applicants). If granted, the permit would authorize take of the federally threatened California tiger salamander (*Ambystoma californiense*) and California red-legged frog (*Rana draytonii*) incidental to activities described in the HCP for the construction of a single-family residence, within Monterey County Parcels 187–021–040 and 187–021–041, and driveway improvements within adjacent parcels 187–021–028 and 187–021–013, in the northern foothills of Carmel Valley, California. The applicants developed a draft HCP as part of their application for an ITP under section 10(a)(1)(B) of the ESA. The Service prepared a draft screening form in accordance with NEPA (42 U.S.C. 4321 *et seq.*) to evaluate the potential effects to the natural and human environment resulting from issuing an ITP to the applicants. We

invite public comment on these documents.

Background

The California tiger salamander was listed as threatened on August 8, 2004 (69 FR 47212), and the California red-legged frog was listed as threatened on May 23, 1996 (61 FR 25813). Section 9 of the ESA prohibits the ''take'' of fish or wildlife species listed as endangered. Pursuant to section 4(d) of the ESA, the take prohibition was extended by regulation to certain threatened species, including, as applicable here, the California tiger salamander and California red-legged frog. ''Take'' is defined under the ESA to include the following activities: ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct'' (16 U.S.C. 1532); however, under section 10(a)(1)(B) of the ESA, we may issue permits to authorize incidental take of listed species. Incidental take is take that is incidental to, and not the purpose of, carrying out of an otherwise lawful activity. Issuance of an ITP also must not jeopardize the existence of federally listed fish, wildlife, or plant species, pursuant to section 7 of the ESA and 50 CFR 402.02. The permittee would receive assurances under our ''No Surprises'' regulations (50 CFR 17.22(b)(5)).

Applicants' Proposed Activities

The applicants have applied for a 10-year-term permit for incidental take of the California tiger salamander and the California red-legged frog. The take would occur in association with the construction of a single-family home and associated activities, such as vegetation removal, site grubbing, and grading for proposed development. The proposed development, including the home, infrastructure, driveway improvements, utility expansions, detached underground guest suite, underground garage and utility room, an equipment room, retaining wall and patios, and all associated disturbance areas, would be sited on approximately 2.39 acres (ac) of the 265-ac property. Approximately 2.60 ac would be temporarily impacted and would be restored to pre-construction conditions. To mitigate the effects of permanent impacts and the taking of California tiger salamander and the California red-legged frog, the applicants propose to purchase 9.56 ac of credits at the Sparling Ranch Conservation Bank in Santa Clara and San Benito Counties.

The HCP includes avoidance and minimization measures for the California tiger salamander and the California red-legged frog and mitigation for unavoidable loss of habitat. The applicants' conservation strategy includes an on-site re-vegetation plan to restore temporarily impacted habitat suitable for California tiger salamanders and California red-legged frogs through removal of nonnative plants, planting and seeding of locally occurring native grassland species, and a monitoring program that describes monitoring efforts and contingency plans if success criteria are not met.

Public Comments

If you wish to comment on the draft HCP and low-effect ITP screening form, you may submit comments by one of the methods in **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 publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public view, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the ESA (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Stephen Henry,

Field Supervisor, Ventura Fish and Wildlife Office, Ventura, California.

[FR Doc. 2022–11227 Filed 5–24–22; 8:45 am]

BILLING CODE 4333–15–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Universal Golf Club Shaft and Golf Club Head Connection Adaptors, Certain Components Thereof, and Products Containing the Same, DN 3622;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.*

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Club-Conex, LLC on May 19, 2022. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain universal golf club shaft and golf club head connection adaptors, certain components thereof, and products containing the same. The complainant names as respondent: Top Golf Equipment Co. Limited of China. The complainant requests that the Commission issue a limited exclusion order, a cease and desist order, and impose a bond upon respondents alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondent, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3622'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: May 19, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–11197 Filed 5–24–22; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1016]

Importer of Controlled Substances Application: Experic, LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Experic, LLC has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before June 24, 2022. Such persons may also file a written request for a hearing on the application on or before June 24, 2022.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on March 24, 2022, Experic, LLC, 2 Clarke Drive, Cranbury, New Jersey 08512–3619, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Marihuana Extract	7350	I
Marihuana	7360	I
Tetrahydrocannabinols	7370	I
Psilocybin	7437	I
Psilocyn	7438	I

The company plans to import Psilocybin (7437) and Psilocyn (7438) as bulk powder and Marihuana Extract (7350), Marihuana (7360), Tetrahydrocannabinols (7370) as finished dosage units for research and

clinical trial purposes. No other activity for these drug codes is authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Kristi N. O'Malley,

Assistant Administrator.

[FR Doc. 2022–11265 Filed 5–24–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1014]

Importer of Controlled Substances Application: Almac Clinical Services Inc. (ACSI)

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Almac Clinical Services Inc. (ACSI) has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before June 24, 2022. Such persons may also file a written request for a hearing on the application on or before June 24, 2022.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on April 14, 2022, Almac Clinical Services Inc. (ACSI), 25 Fretz Road, Souderton, Pennsylvania 18964, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Psilocybin	7437	I
Oxycodone	9143	II
Hydromorphone	9150	II
Morphine	9300	II
Tapentadol	9780	II
Fentanyl	9801	II

The company plans to import the listed controlled substances as finished dosage form units for clinical trials purposes only.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Kristi N. O'Malley,

Assistant Administrator.

[FR Doc. 2022–11261 Filed 5–24–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1010]

Bulk Manufacturer of Controlled Substances Application: PCI Synthesis

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: PCI Synthesis, has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before July 25, 2022. Such persons may also file a written request for a hearing on the application on or before July 25, 2022.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on April 1, 2022, PCI Synthesis, 9 Opportunity Way, Newburyport, Massachusetts 01952–0195, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Amphetamine	1100	II
Methamphetamine	1105	II

The company plans to develop manufacturing processes, conduct analytical method validation and conduct bulk product stability studies. No other activities for these drug codes are authorized for this registration.

Kristi N. O'Malley,

Assistant Administrator.

[FR Doc. 2022–11256 Filed 5–24–22; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1012]

Importer of Controlled Substances Application: Research Triangle Institute

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Research Triangle Institute has applied to be registered as an

importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before June 24, 2022 Such persons may also file a written request for a hearing on the application on or before June 24, 2022.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov*. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on March 11, 2022, Research Triangle Institute, 3040 East Cornwallis Road, Hermann Building, Room 106, Research Triangle Park, North Carolina 27709–0000, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
3-Fluoro-N-methylcathinone (3–FMC)	1233	I
Cathinone	1235	I
Methcathinone	1237	I
4-Fluoro-N-methylcathinone (4–FMC)	1238	I
Para-Methoxymethamphetamine (PMMA), 1-(4- 1245 I N methoxyphenyl)-N-methylpropan-2-amine	1245	I
Pentedrone (α-methylaminovalerophenone)	1246	I
Mephedrone (4-Methyl-N-methylcathinone)	1248	I
4-Methyl-N-ethylcathinone (4–MEC)	1249	I
Naphyrone	1258	I
N-Ethylamphetamine	1475	I
N,N-Dimethylamphetamine	1480	I
Fenethylline	1503	I
Aminorex	1585	I
4-Methylaminorex (cis isomer)	1590	I
4,4′-Dimethylaminorex (4,4′-DMAR; 4,5-dihydro-4- 1595 I N methyl-5-(4-methylphenyl)-2-oxazolamine; 4-methyl-5- (4-methylphenyl)-4,5-dihydro-1,3-oxazol-2-amine).	1595	I
Gamma Hydroxybutyric Acid	2010	I
Methaqualone	2565	I
Mecloqualone	2572	I
JWH–250 (1-Pentyl-3-(2-methoxyphenylacetyl) indole)	6250	I
SR–18 (Also known as RCS–8) (1-Cyclohexylethyl-3-(2-methoxyphenylacetyl) indole)	7008	I
ADB–FUBINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide)	7010	I
5-Fluoro-UR–144 and XLR11 [1-(5-Fluoro-pentyl)1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone	7011	I
AB–FUBINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide)	7012	I
FUB–144 (1-(4-fluorobenzyl)-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone)	7014	I
JWH–019 (1-Hexyl-3-(1-naphthoyl)indole)	7019	I
MDMB–FUBINACA (Methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate)	7020	I
FUB–AMB, MMB- FUBINACA, AMB–FUBINACA (2-(1-(4-fluorobenzyl)-1Hindazole-3-carboxamido)-3-methylbutanoate)	7021	I
AB–PINACA (N-(1-amino-3-methyl-	7023	I
1-oxobutan-2-yl)-1-pentyl-1H-indazole-		
3-carboxamide)		
THJ–2201 ([1-(5-fluoropentyl)-1H-indazol-3-	7024	I
yl](naphthalen-1-yl)methanone)		
5F–AB–PINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluropentyl)-1H-indazole-3-carboximide)	7025	I
AB–CHMINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide)	7031	I
MAB–CHMINACA (N-(1-amino-3,3dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide)	7032	I
5F–AMB (Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate)	7033	I
5F–ADB, 5F–MDMB–PINACA (Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate)	7034	I
ADB–PINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide)	7035	I
5F–EDMB–PINACA (ethyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate)	7036	I
5F–MDMB–PICA (methyl 2-(1-(5-fluoropentyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate)	7041	I
MDMB–CHMICA, MMB–CHMINACA (Methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate)	7042	I
4F–MDMB–BINACA (4F–MDMB–BUTINACA or methyl 2- (1-(4-fluorobutyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate) 7043 I N.	7043	I
MMB–CHMICA, AMB–CHMICA (methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3-methylbutanoate)	7044	I
FUB–AKB48, FUB–APINACA, AKB48 N-(4–FLUOROBENZYL) (N-(adamantan-1-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboximide).	7047	I
APINACA and AKB48 (N-(1-Adamantyl)-1-pentyl-1H-indazole-3-carboxamide)	7048	I
5F–APINACA, 5F–AKB48 (N-(adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide)	7049	I
JWH–081 (1-Pentyl-3-(1-(4-methoxynaphthoyl) indole)	7081	I
5F–CUMYL–PINACA, 5GT–25 (1-(5-fluoropentyl)-N-(2-phenylpropan-2-yl)-1H-indazole-3-carboxamide)	7083	I
5F–CUMYL–P7AICA (1-(5-fluoropentyl)-N-(2-phenylpropan-2-yl)-1H-pyrrolo[2,3-b]pyridine-3-carboxamide)	7085	I

Controlled substance	Drug code	Schedule
4–CN–CUML–BUTINACA, 4-cyano-CUMYL–BUTINACA, 4–CN–CUMYL BINACA, CUMYL–4CN–BINACA, SGT–78 (1-(4-cyanobutyl)-N-(2-phenylpropan-2-yl)-1H-indazole-3-carboxamide).	7089	I
SR–19 (Also known as RCS–4) (1-Pentyl-3-[(4-methoxy)-benzoyl] indole)	7104	I
JWH–018 (also known as AM678) (1-Pentyl-3-(1-naphthoyl)indole)	7118	I
JWH–122 (1-Pentyl-3-(4-methyl-1-naphthoyl) indole)	7122	I
UR–144 (1-Pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone	7144	I
JWH–073 (1-Butyl-3-(1-naphthoyl)indole)	7173	I
JWH–200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole)	7200	I
AM2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl) indole)	7201	I
JWH–203 (1-Pentyl-3-(2-chlorophenylacetyl) indole)	7203	I
NM2201, CBL2201 (Naphthalen-1-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate	7221	I
PB–22 (Quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate)	7222	I
5F–PB–22 (Quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate)	7225	I
4-methyl-alpha-ethylaminopentiophenone (4–MEAP) 7245 I N 4–MEAP	7245	I
N-ethylhexedrone 7246 I N	7246	I
Alpha-ethyltryptamine	7249	I
Ibogaine	7260	I
CP–47,497 (5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl-phenol)	7297	I
CP–47,497 C8 Homologue (5-(1,1-Dimethyloctyl)-2-[(1R,3S)3-hydroxycyclohexyl-phenol)	7298	I
Lysergic acid diethylamide	7315	I
2C–T–7 (2,5-Dimethoxy-4-(n)-propylthiophenethylamine	7348	I
Marihuana Extract	7350	I
Parahexyl	7374	I
Mescaline	7381	I
2C–T–2 (2-(4-Ethylthio-2,5-dimethoxyphenyl) ethanamine)	7385	I
3,4,5-Trimethoxyamphetamine	7390	I
4-Bromo-2,5-dimethoxyamphetamine	7391	I
4-Bromo-2,5-dimethoxyphenethylamine	7392	I
4-Methyl-2,5-dimethoxyamphetamine	7395	I
2,5-Dimethoxyamphetamine	7396	I
JWH–398 (1-Pentyl-3-(4-chloro-1-naphthoyl) indole)	7398	I
2,5-Dimethoxy-4-ethylamphetamine	7399	I
3,4-Methylenedioxyamphetamine	7400	I
5-Methoxy-3,4-methylenedioxyamphetamine	7401	I
N-Hydroxy-3,4-methylenedioxyamphetamine	7402	I
3,4-Methylenedioxy-N-ethylamphetamine	7404	I
3,4-Methylenedioxymethamphetamine	7405	I
4-Methoxyamphetamine	7411	I
Peyote	7415	I
5-Methoxy-N–N-dimethyltryptamine	7431	I
Alpha-methyltryptamine	7432	I
Bufotenine	7433	I
Diethyltryptamine	7434	I
Dimethyltryptamine	7435	I
Psilocybin	7437	I
Psilocyn	7438	I
5-Methoxy-N,N-diisopropyltryptamine	7439	I
4-chloro-alpha-pyrrolidinovalerophenone (4-chloro-aPV	7443	I
4′-methyl-alpha-pyrrolidinohexiophenone (MPHP	7446	I
N-Ethyl-1-phenylcyclohexylamine	7455	I
1-(1-Phenylcyclohexyl)pyrrolidine	7458	I
1-[1-(2-Thienyl)cyclohexyl]piperidine	7470	I
1-[1-(2-Thienyl)cyclohexyl]pyrrolidine	7473	I
N-Ethyl-3-piperidyl benzilate	7482	I
N-Methyl-3-piperidyl benzilate	7484	I
N-Benzylpiperazine	7493	I
4-MePPP (4-Methyl-alphapyrrolidinopropiophenone)	7498	I
2C–D (2-(2,5-Dimethoxy-4-methylphenyl) ethanamine)	7508	I
2C–E (2-(2,5-Dimethoxy-4-ethylphenyl) ethanamine)	7509	I
2C–H 2-(2,5-Dimethoxyphenyl) ethanamine)	7517	I
2C–I 2-(4-iodo-2,5-dimethoxyphenyl) ethanamine)	7518	I
2C–C 2-(4-Chloro-2,5-dimethoxyphenyl) ethanamine)	7519	I
2C–N (2-(2,5-Dimethoxy-4-nitro-phenyl) ethanamine)	7521	I
2C–P (2-(2,5-Dimethoxy-4-(n)-propylphenyl) ethanamine)	7524	I
2C–T–4 (2-(4-Isopropylthio)-2,5-dimethoxyphenyl) ethanamine)	7532	I
MDPV (3,4-Methylenedioxypyrovalerone)	7535	I
25B–NBOMe (2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine)	7536	I
25C–NBOMe (2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine)	7537	I
25I–NBOMe (2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine)	7538	I
Methylone (3,4-Methylenedioxy-N-methylcathinone)	7540	I
Butylone	7541	I
Pentylone	7542	I
N-Ethypentylone, ephylone (1-(1,3-benzodioxol-5-yl)-2-(ethylamino)-pentan-1-one)	7543	I
alpha-pyrrolidinohexanophenone (a-PHP)	7544	I

Controlled substance	Drug code	Schedule
alpha-pyrrolidinopentiophenone (α-PVP)	7545	I
alpha-pyrrolidinobutiophenone (α-PBP)	7546	I
Ethylone	7547	1
alpha-pyrrolidinoheptaphenone (PV8)	7548	1
AM–694 (1-(5-Fluoropentyl)-3-(2-iodobenzoyl) indole)	7694	I
Acetyldihydrocodeine	9051	I
Benzylmorphine	9052	I
Codeine-N-oxide	9053	I
Cyprenorphine	9054	I
Desomorphine	9055	I
Etorphine (except HCl)	9056	I
Codeine methylbromide	9070	I
Brorphine (1-(1-(1-(4-bromophenyl)ethyl)piperidin-4–4l)1,3-dihydro-2H-benzo[d]imidazol-2-one)	9098	I
Dihydromorphine	9145	I
Difenoxin	9168	I
Heroin	9200	I
Hydromorphinol	9301	I
Methyldesorphine	9302	I
Methyldihydromorphine	9304	I
Morphine methylbromide	9305	I
Morphine methylsulfonate	9306	I
Morphine-N-oxide	9307	I
Myrophine	9308	I
Nicocodeine	9309	I
Nicomorphine	9312	I
Normorphine	9313	I
Pholcodine	9314	I
Thebacon	9315	I
Acetorphine	9319	I
Drotebanol	9335	I
U–47700 (3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide)	9547	I
AH–7921 (3,4-dichloro-N-[(1-dimethylamino)cyclohexylmethyl]benzamide))	9551	I
MT–45 (1-cyclohexyl-4-(1,2-diphenylethyl)piperazine))	9560	I
Acetylmethadol	9601	I
Allylprodine	9602	I
Alphacetylmethadol except levo-alphacetylmethadol	9603	I
Alphameprodine	9604	I
Alphamethadol	9605	I
Benzethidine	9606	I
Betacetylmethadol	9607	I
Betameprodine	9608	I
Betamethadol	9609	I
Betaprodine	9611	I
Clonitazene	9612	I
Dextromoramide	9613	I
Isotonotazene (N,N-diethyl-2-(2-(4 isopropoxybenzyl)-5-nitro-1H-benzimidazol-1-yl)ethan-1-amine)	9614	I
Diampromide	9615	I
Diethylthiambutene	9616	I
Dimenoxadol	9617	I
Dimepheptanol	9618	I
Dimethylthiambutene	9619	I
Dioxaphetyl butyrate	9621	I
Dipipanone	9622	I
Ethylmethylthiambutene	9623	I
Etonitazene	9624	I
Etoxeridine	9625	I
Furethidine	9626	I
Hydroxypethidine	9627	I
Ketobemidone	9628	I
Levomoramide	9629	I
Levophenacylmorphan	9631	I
Morpheridine	9632	I
Noracymethadol	9633	I
Norlevorphanol	9634	I
Normethadone	9635	I
Norpipanone	9636	I
Phenadoxone	9637	I
Phenampromide	9638	I
Phenoperidine	9641	I
Piritramide	9642	I
Proheptazine	9643	I
Properidine	9644	I
Racemoramide	9645	I
Trimeperidine	9646	I

Controlled substance	Drug code	Schedule
Phenomorphan	9647	I
Propiram	9649	I
1-Methyl-4-phenyl-4-propionoxypiperidine	9661	I
1-(2-Phenylethyl)-4-phenyl-4-acetoxypiperidine	9663	I
Tilidine	9750	I
Acryl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylacrylamide)	9811	I
Para-Fluorofentanyl	9812	I
3-Methylfentanyl	9813	I
Alpha-methylfentanyl	9814	I
Acetyl-alpha-methylfentanyl	9815	I
N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)propionamide	9816	I
Para-Methylfentanyl (N-(4-methylphenyl)-N-(1- phenethylpiperidin-4-yl)propionamide; also known as 4- methylfentanyl)	9817	I
4'-Methyl acetyl fentanyl (N-(1-(4- methylphenethyl)piperidin-4-yl)-N-phenylacetamide)	9819	I
ortho-Methyl methoxyacetyl fentanyl (2-methoxy-N-(2- methylphenyl)-N-(1-phenethylpiperidin-4-yl)acetamide)	9820	I
Acetyl Fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide)	9821	I
Butyryl Fentanyl	9822	I
Para-fluorobutyryl fentanyl	9823	I
4-Fluoroisobutyryl fentanyl (N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide)	9824	I
2-methoxy-N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide	9825	I
Para-chloroisobutyryl fentanyl	9826	I
Isobutyryl fentanyl	9827	I
Beta-hydroxyfentanyl	9830	I
Beta-hydroxy-3-methylfentanyl	9831	I
Alpha-methylthiofentanyl	9832	I
3-Methylthiofentanyl	9833	I
Furanyl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylfuran-2-carboxamide)	9834	I
Thiofentanyl	9835	I
Beta-hydroxythiofentanyl	9836	I
Para-methoxybutyryl fentanyl	9837	!
Ocfentanil	9838	I
Thiofuranyl fentanyl (N-(1-phenethylpiperidin-4-yl)-Nphenylthiophene-2-carboxamide; also known as 2- thiofuranyl fentanyl; thiophene fentanyl).	9839	I
Valeryl fentanyl	9840	I
Phenyl fentanyl (N-(1-phenethylpiperidin-4-yl)-Nphenylbenzamide; also known as benzoyl fentanyl)	9841	I
beta'-Phenyl fentanyl (N-(1-phenethylpiperidin-4-yl)-N,3- diphenylpropanamide; also known as β'-phenyl fentanyl; 3-phenylpropanoyl fentanyl).	9842	I
N-(1-phenethylpiperidin-4-yl)-N-phenyltetrahydrofuran-2-carboxamide	9843	I
Crotonyl fentanyl ((E–N-(1-phenethylpiperidin-4-yl)-N-phenylbut-2-enamide)	9844	I
Cyclopropyl Fentanyl	9845	I
ortho-Fluorobutyryl fentanyl (N-(2-fluorophenyl)-N-(1- phenethylpiperidin-4-yl)butyramide; also known as 2- fluorobutyryl fentanyl).	9846	I
Cyclopentyl fentanyl	9847	I
ortho-Methyl acetylfentanyl (N-(2-methylphenyl)-N-(1- phenethylpiperidin-4-yl)acetamide; also known as 2- methyl acetylfentanyl).	9848	I
Fentanyl related-compounds as defined in 21 CFR 1308.11(h)	9850	I
Fentanyl carbamate (ethyl (1-phenethylpiperidin-4- yl)(phenyl)carbamate)	9851	I
ortho-Fluoroacryl fentanyl (N-(2-fluorophenyl)-N-(1- phenethylpiperidin-4-yl)acrylamide)	9852	I
ortho-Fluoroisobutyryl fentanyl (N-(2-fluorophenyl)-N-(1- phenethylpiperidin-4-yl)isobutyramide)	9853	I
Para-Fluoro furanyl fentanyl (N-(4-fluorophenyl)-N-(1- phenethylpiperidin-4-yl)furan-2-carboxamide)	9854	I
2'-Fluoro ortho-fluorofentanyl (N-(1-(2- fluorophenethyl)piperidin-4-yl)-N-(2- fluorophenyl)propionamide; also known as 2'-fluoro 2- fluorofentanyl).	9855	I
beta-Methyl fentanyl (N-phenyl-N-(1-(2- phenylpropyl)piperidin-4-yl)propionamide; also known as β-methyl fentanyl)	9856	I
Phenmetrazine	1631	II
Methylphenidate	1724	II
Amobarbital	2125	II
Pentobarbital	2270	II
Secobarbital	2315	II
Glutethimide	2550	II
Dronabinol in an oral solution in a drug product approved for marketing by the U.S. Food and Drug Administration	7365	II
Nabilone	7379	II
1-Phenylcyclohexylamine	7460	II
Phencyclidine	7471	II
ANPP (4-Anilino-N-phenethyl-4-piperidine)	8333	II
Norfentanyl (N-phenyl-N-(piperidin-4-yl) propionamide)	8366	II
Phenylacetone	8501	II
1-Piperidinocyclohexanecarbonitrile	8603	II
Alphaprodine	9010	II
Anileridine	9020	II
Coca Leaves	9040	II
Cocaine	9041	II
Etorphine HCl	9059	II
Dihydrocodeine	9120	II
Diphenoxylate	9170	II
Ecgonine	9180	II

Controlled substance	Drug code	Schedule
Ethylmorphine	9190	II
Levomethorphan	9210	II
Levorphanol	9220	II
Isomethadone	9226	II
Meperidine	9230	II
Meperidine intermediate-A	9232	II
Meperidine intermediate-B	9233	II
Meperidine intermediate-C	9234	II
Metazocine	9240	II
Oliceridine (N-[(3-methoxythiophen-2yl)methyl] ({2-[9r)-9-(pyridin-2-yl)-6-oxaspiro[4.5] decan-9-yl] ethyl {time})amine fumarate).	9245	II
Metopon	9260	II
Dextropropoxyphene, bulk (non-dosage forms)	9273	II
Dihydroetorphine	9334	II
Opium tincture	9630	II
Opium, powdered	9639	II
Opium, granulated	9640	II
Noroxymorphone	9668	II
Phenazocine	9715	II
Thiafentanil	9729	II
Piminodine	9730	II
Racemethorphan	9732	II
Racemorphan	9733	II
Alfentanil	9737	II
Remifentanil	9739	II
Sufentanil	9740	II
Carfentanil	9743	II
Tapentadol	9780	II
Bezitramide	9800	II
Moramide-intermediate	9802	II

The company plans to import small quantities of the listed controlled substances for the National Institute on Drug Abuse for research activities. The company plans to import analytical reference standards for distribution to its customers for research and analytical purposes. No other activity for this drug code is authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Kristi N. O'Malley,

Assistant Administrator.

[FR Doc. 2022–11259 Filed 5–24–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1019]

Importer of Controlled Substances Application: Johnson Matthey Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Johnson Matthey Inc. has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before June 24, 2022. Such persons may also file a written request for a hearing on the application on or before June 24, 2022.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on November 2, 2020, Johnson Matthey Inc., 2003 Nolte Drive, West Deptford, New Jersey 08066–1742, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Coca Leaves	9040	II
Thebaine	9333	II
Opium, raw	9600	II
Noroxymorphone	9668	II
Poppy Straw Concentrate	9670	II
Fentanyl	9801	II

The company plans to import Coca Leaves (9040), Opium, raw (9600), and Poppy Straw Concentrate (9670) in order to bulk manufacture Active Pharmaceutical Ingredients (API) for distribution to its customers. The company plans to also import Thebaine (9333), Noroxymorphone (9668), and

Fentanyl (9801) to use as analytical reference standards, both internally and to be sold to their customers to support testing of Johnson Matthey Inc.'s API's only.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Kristi N. O'Malley,

Assistant Administrator.

[FR Doc. 2022–11267 Filed 5–24–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1013]

Importer of Controlled Substances Application: Wildlife Laboratories, LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Wildlife Laboratories, LLC has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before June 24, 2022. Such persons may also file a written request for a hearing on the application on or before June 24, 2022.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on April 6, 2022, Wildlife Laboratories, LLC, 1230 West Ash Street, Unit D, Windsor, Colorado 80550–4677, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Etorphine HCL	9059	II
Thiafentanil	9729	II

The company plans to import the listed controlled substances for distribution to its customers. No other activity for these drug codes is authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Kristi N. O'Malley,

Assistant Administrator.

[FR Doc. 2022–11260 Filed 5–24–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1018]

Importer of Controlled Substances Application: Catalent Pharma Solutions, LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: VHG Labs DBA LGC Standards has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before June 24, 2022. Such persons may also file a written request for a hearing on the application on or before June 24, 2022.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on March 17, 2022, Catalent Pharma Solutions, LLC, 3031 Red Lion Road, Philadelphia, Pennsylvania 19114, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
5-Methoxy-N-N-dimethyltryptamine.	7431	I
Tapentadol	9780	II

The company plans to import the listed controlled substances as finished dosage unit products for clinical trials, research, and analytical activities. No other activities for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-

approved finished dosage forms for commercial sale.

Kristi N. O'Malley,

Assistant Administrator.

[FR Doc. 2022–11266 Filed 5–24–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1004]

Bulk Manufacturer of Controlled Substances Application: Scottsdale Research Institute

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Scottsdale Research Institute, has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before July 25, 2022. Such persons may also file a written request for a hearing on the application on or before July 25, 2022.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on March 28, 2022, Scottsdale Research Institute, 12815 North Cave Creek Road, Phoenix, Arizona 85022, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Lysergic Acid Diethylamide.	7315	I

The company plans to bulk manufacture the listed controlled substance for internal testing to prepare a drug master file. No other activities for these drug codes are authorized for this registration.

Kristi N. O'Malley,

Assistant Administrator.

[FR Doc. 2022–11255 Filed 5–24–22; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1011]

Bulk Manufacturer of Controlled Substances Application: Royal Emerald Pharmaceuticals

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Royal Emerald Pharmaceuticals has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before July 25, 2022. Such persons may also file a written request for a hearing on the application on or before July 25, 2022.

ADDRESSES: The Drug Enforcement Administration (DEA) requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on March 25, 2022, Royal Emerald Pharmaceuticals, 14011 Palm Drive, Desert Hot Springs, California 92240–6845, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Marihuana Extract	7350	I
Marihuana	7360	I
Tetrahydrocannabinols	7370	I

The company plans to bulk manufacture the listed controlled substances to provide Marihuana (Cannabis) as botanical raw material and/or active pharmaceutical ingredients (API) to DEA research registrants and manufacturers. No other activities for these drug codes are authorized for this registration.

Kristi N. O'Malley,

Assistant Administrator.

[FR Doc. 2022–11257 Filed 5–24–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1015]

Importer of Controlled Substances Application: United States Pharmacopeial Convention

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: United States Pharmacopeial has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before June 24, 2022. Such persons may also file a written request for a hearing on the application on or before June 24, 2022.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow

the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on March 24, 2022, United States Pharmacopeial Convention, 7135 English Muffin Way, Frederick, Maryland 21704, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Cathinone	1235	I
Methcathinone	1237	I
Methaqualone	2565	I
Lysergic acid diethylamide	7315	I
4-Methyl-2,5-dimethoxyamphetamine	7395	I
3,4-Methylenedioxyamphetamine	7400	I
4-Methoxyamphetamine	7411	I
Codeine-N-oxide	9053	I
Difenoxin	9168	I
Heroin	9200	I
Morphine-N-oxide	9307	I
Norlevorphanol	9634	I
Methamphetamine	1105	II
Lisdexamfetamine	1205	II
Phenmetrazine	1631	II
Methylphenidate	1724	II
Amobarbital	2125	II
Pentobarbital	2270	II
Secobarbital	2315	II
Glutethimide	2550	II
Phencyclidine	7471	II
4-Anilino-N-phenethyl-4-piperidine (ANPP)	8333	II
Phenylacetone	8501	II
Alphaprodine	9010	II
Anileridine	9020	II
Cocaine	9041	II
Dihydrocodeine	9120	II
Diphenoxylate	9170	II
Levomethorphan	9210	II
Levorphanol	9220	II
Meperidine	9230	II
Dextropropoxyphene, bulk (non-dosage forms)	9273	II
Thebaine	9333	II
Oxymorphone	9652	II
Noroxymorphone	9668	II
Alfentanil	9737	II
Sufentanil	9740	II

The company plans to import the bulk control substances for distribution as analytical reference standards to its customers for analytical testing of raw materials. No other activities for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Kristi N. O'Malley,

Assistant Administrator.

[FR Doc. 2022–11263 Filed 5–24–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1023]

Importer of Controlled Substances Application: Curia New York Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Curia New York Inc. has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before June 24, 2022. Such persons may also file a written request for a hearing on the application on or before June 24, 2022.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on February 23, 2022, Curia New York Inc., 33 Riverside Avenue, Rensselaer, New York 12144, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
ANPP (4-Anilino-N-phenethyl-4-piperidine).	8333	II

The company plans to import the listed controlled substance for distribution to its customers.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Kristi N. O'Malley,

Assistant Administrator.

[FR Doc. 2022–11268 Filed 5–24–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1002]

Bulk Manufacturer of Controlled Substances Application: Invizyne Technologies, Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Invizyne Technologies, Inc. has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before July 25, 2022. Such persons may also file a written request for a hearing on the application on or before July 25, 2022.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on March 14, 2022, Invizyne Technologies, Inc., 750 Royal Oaks Drive, Suite 106, Monrovia, California 91016–6357, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Tetrahydrocannabinols	7370	I

The company plans to bulk manufacture the listed controlled substance for the internal use intermediates or for sale to its customers. In reference to drug code 7370 (Tetrahydrocannabinols), the company plans to bulk manufacture this drug as synthetic. No other activities for this drug code is authorized for this registration.

Kristi N. O'Malley,

Assistant Administrator.

[FR Doc. 2022–11252 Filed 5–24–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

[OMB Number1122–0023]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until July 25, 2022.

FOR FURTHER INFORMATION CONTACT: Written comments and/or suggestion regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Cathy Poston, Office on Violence Against Women, at 202–514–5430 or *Catherine.poston@usdoj.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated,

electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Grantees from the Sexual Assault Services Program—Grants to Culturally Specific Programs (SASP-Culturally Specific Program).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0023. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the approximately 11 grantees of the SASP Culturally Specific Program. This program supports projects that create, maintain and expand sustainable sexual assault services provided by culturally specific organizations, which are uniquely situated to respond to the needs of sexual assault victims within culturally specific populations.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 11 respondents (SASP-Culturally Specific Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A SASP-Culturally Specific Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 22 hours, that is 11 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Melody Braswell, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E, 405B, Washington, DC 20530.

Dated: May 19, 2022.

Melody Braswell,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2022–11208 Filed 5–24–22; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; Job Corps Application Data

ACTION: Notice.

SUMMARY: The Department of Labor's (DOL or Department) Employment and Training Administration (ETA) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''Job Corps Application Data.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by July 25, 2022.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained for free by contacting Hilda Alexander by telephone at 202–693–3843 (this is not a toll-free number), TTY 1–877–889–5627 (this is not a toll-free number), or by email at *alexander.hilda@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Employment and Training—Job Corps, 200 Constitution Ave NW, N–4459, Washington, DC 20210; by email: *alexander.hilda@dol.gov;* or by fax: 240–531–6732.

FOR FURTHER INFORMATION CONTACT: Hilda Alexander by telephone at 202–693–3843 (this is not a toll-free number) or by email at alexander.*hilda@dol.gov.*

SUPPLEMENTARY INFORMATION: DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

The Workforce Innovation and Opportunity Act authorizes the collection of information from Job Corps applicants to determine eligibility for the Job Corps program. 29 U.S.C. 3194–3195. Applicant and student data is maintained in accordance with the Department's Privacy Act System of Records Notice DOL/GOVT–2 Job Corps Student Records authorizes this information collection.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0025.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, (*e.g.,* permitting electronic submission of responses).

Agency: DOL–ETA.

Type of Review: Revision.

Title of Collection: Job Corps Application Data.

Forms: ETA–652, ETA–655.

OMB Control Number: 1205–0025.

Affected Public: Individuals or Household.

Estimated Number of Respondents: 139,814.

Frequency: Once.

Total Estimated Annual Responses: 139,814.

Estimated Average Time per Response: Varies.

Estimated Total Annual Burden Hours: 12,544 hours.

Total Estimated Annual Other Cost Burden: $90,944.

(Authority: 44 U.S.C. 3506(c)(2)(A))

Angela Hanks,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2022–11229 Filed 5–24–22; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Innovation and Opportunity Act; Native American Employment and Training Council

AGENCY: Employment and Training Administration, U. S. Department of Labor. ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10 (a)(2) of the Federal Advisory Committee Act (FACA), as amended, and Section 166 (i)(4) of the Workforce Innovation and Opportunity Act (WIOA), notice is hereby given of the next meeting of the Native American Employment and Training Council (Council), as constituted under WIOA.

DATES: The meeting will begin at 9:00 a.m. (Eastern Daylight Time) on Wednesday, June 22, 2022 and continue until 4:30 p.m. The meeting will reconvene at 9:00 a.m. on Thursday, June 23, 2022 and adjourn at 4:30 p.m. The period from 3:00 p.m., to 4:00 p.m. on June 23, 2022 is reserved for participation and comment by members of the public.

ADDRESSES: The meeting will be held in person at the U.S. Department of Labor Frances Perkins Building, Room C–5525, 200 Constitution Avenue, NW, Washington, DC 20210. The meeting will also be accessible virtually on the Zoom.gov platform. To join the meeting use the following: *https://www.zoomgov.com/j/1607244786?pwd=bVo2ZG5peEx5bm5hK1hPUXdERmsvZz09*

Meeting ID: 160 724 4786

Passcode: 195989

FOR FURTHER INFORMATION CONTACT: Athena R. Brown, DFO, Division of Indian and Native American Programs, Employment and Training Administration, U.S. Department of Labor, Room C–4311, 200 Constitution Avenue NW, Washington, DC 20210. Telephone number (202) 693–3737 (VOICE) (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Council members and members of the public are encouraged to logon to *Zoom.gov* early to allow for connection issues and troubleshooting.

Security Instructions: Meeting participants should use the visitors' entrance to access the Frances Perkins Building, one block north of Constitution Avenue at 3rd and C Streets NW. For security purposes, meeting participants must:

1. Present a valid photo ID to receive a visitor badge.

2. Know the name of the event being attended: The meeting event is the Native American Employment and Training Council (NAETC).

Visitor badges are issued by the security officer at the visitor entrance located at 3rd and C Streets NW after the visitor proceeds through the security screening. When receiving a visitor badge, the security officer will retain the visitor's photo ID until the visitor badge is returned to the security desk. Laptops and other electronic devices may be inspected and logged for identification purposes. Due to limited parking options, DC Metro's Judiciary Square station is the easiest way to access the Frances Perkins Building.

The meeting will be open to the public.

Members of the public not present may submit a written statement by Friday, June 17, 2022, to be included in the record of the meeting. Statements are to be submitted to Athena R. Brown, Designated Federal Officer (DFO), and U.S. Department of Labor at *brown.athena@dol.gov.* Persons who need special accommodations should contact Suzie Casal at (202) 309–8589 or *casal.suzie@dol.gov,* at least two business days before the meeting. The formal agenda will focus on the following topics: (1) WIOA Reauthorization and NAETC recommendations and discussion, (2) Training and Technical assistance updates and priorities, (3) NAETC Two-Year Strategic Plan update; (4) 477 update from federal partners meeting; (5) Upcoming regional/national technical assistance conferences; 6) ETA/DINAP updates; and (7) public comment.

Angela Hanks,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2022–11226 Filed 5–24–22; 8:45 am]

BILLING CODE 4510–FR–P

NATIONAL SCIENCE FOUNDATION

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Public Listening Session on Implementing Initial Findings and Recommendations of the National Artificial Intelligence Research Resource Task Force

AGENCY: White House Office of Science and Technology Policy and National Science Foundation.

ACTION: Announcement of meeting.

SUMMARY: The Office of Science and Technology Policy and the National Science Foundation are organizing a virtual listening session to seek public input on the implementation of the initial findings and recommendations contained in the interim report of the National Artificial Intelligence Research Resource (NAIRR) Task Force (''Task Force''). The Task Force has been directed by Congress to develop an implementation roadmap for a shared research infrastructure that would provide artificial intelligence (AI) researchers and students with access to computational resources, high-quality data, training tools, and user support. Perspectives gathered during the virtual session will inform the development of the Task Force's final report, which is expected to be released in December 2022.

DATES: June 23, 2022, 1:00–3:00 p.m. EDT.

ADDRESSES: Register for the virtual listening suggestion using the following link: *https://ida-org.zoomgov.com/meeting/register/vJItcO2qqjwuGalbshV1ukBtAM5EKna3M1c.*

FOR FURTHER INFORMATION CONTACT: For additional information, please contact Tess deBlanc-Knowles, 202–881–7673, *NAIIO@ostp.eop.gov.*

SUPPLEMENTARY INFORMATION: Congress directed the National Science

Foundation (NSF), in coordination with the White House Office of Science and Technology Policy (OSTP), to establish the NAIRR Task Force in the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, 15 U.S.C. 9415, and in accordance with the provisions of the Federal Advisory Committee Act. The mandate of the Task Force is to investigate the feasibility and advisability of establishing and sustaining a NAIRR, and to propose a roadmap detailing how such a resource should be established and sustained.

The Task Force was launched on June 10, 2021, as a Federal Advisory Committee co-chaired by NSF and OSTP and composed of representatives from the U.S. Government, academia, and the private sector. Its members' expertise spans foundational, use-inspired, and trustworthy AI R&D, as well as research cyberinfrastructure including data and data privacy.

The Task Force's interim report, published on May 25, 2022, provides a general vision for the NAIRR along with a preliminary set of findings and recommendations regarding the NAIRR architecture, resources, capabilities, and users. Moving forward, the Task Force will refine its findings and recommendations for the design of the NAIRR and deliberate on remaining open questions. In doing so, the Task Force will develop a detailed roadmap and implementation plan for the NAIRR.

To inform development of this implementation plan, the Task Force is organizing this public listening session to hear from members of the public on how the recommendations put forward by the Task Force in its interim report could be responsibly and effectively implemented. Perspectives gathered during the virtual session will inform the development of the Task Force's final report, which is expected to be released in December 2022.

The meeting will be recorded for use by the Task Force. Participation in the listening session will signify consent to capture participants' names, voices, and likenesses. Anything said may be recorded and transcribed for use by the Task Force. Moderators will manage the discussion and order of remarks.

Individuals unable to attend the listening session or who would like to provide more detailed information may respond to the *Request for Information (RFI) on Implementing Initial Findings and Recommendations of the National Artificial Intelligence Research Resource Task Force* posted on the **Federal Register**.

Dated: May 19, 2022.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

Stacy Murphy,

Operations Manager, White House Office of Science and Technology Policy.

[FR Doc. 2022–11222 Filed 5–24–22; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Request for Information (RFI) on Implementing Initial Findings and Recommendations of the National Artificial Intelligence Research Resource Task Force

AGENCY: White House Office of Science and Technology Policy and National Science Foundation.

ACTION: Request for information (RFI).

SUMMARY: The Office of Science and Technology Policy and the National Science Foundation are seeking comment on the initial findings and recommendations contained in the interim report of the National Artificial Intelligence Research Resource (NAIRR) Task Force (''Task Force'') and particularly on potential approaches to implement those recommendations. The Task Force has been directed by Congress to develop an implementation roadmap for a shared research infrastructure that would provide artificial intelligence (AI) researchers and students with access to computational resources, high-quality data, training tools, and user support. Comments in response to this RFI will inform the development of the Task Force's final report, which is expected to be released in December 2022.

DATES: To be considered, responses and comments must be received no later than 11:59 p.m. EDT on June 30, 2022.

ADDRESSES: Comments submitted in response to this notice may be sent by any of the following methods:

- *Email: NAIRR-responses@nitrd.gov.* Email submissions should be machine-readable and not be copy-protected. Submissions should include ''*RFI Response: National AI Research Resource Interim Report*'' in the subject line of the message.
- *Mail:* Attn: Jeri Hessman, National Coordination Office for Networking and Information Technology Research and Development, 2415 Eisenhower Avenue, Alexandria, VA 22314, USA.

Instructions: Response to this RFI is voluntary. Each individual or institution is requested to submit only one response. Submissions must be in 11 point or larger font, include a page number on each page, and not exceed 10 pages (exclusive of cover page). Responses should include the name of the person(s) or organization(s) filing the comment. Responses should refer to the particular topic letter(s), as listed below, to which the comments pertain.

Comments containing references, studies, research, and other empirical data that are not widely published should include copies or electronic links of the referenced materials; these materials, as well as a list of references, do not count toward the 10-page limit. No proprietary information, copyrighted information, or personally identifiable information (aside from that requested above) should be submitted in response to this RFI. Comments submitted in response to this RFI may be posted online at *https://www.ai.gov/nairrtf.*

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 response preparation.

FOR FURTHER INFORMATION CONTACT: Jeri Hessman and *NAIRR-responses@nitrd.gov,* (202) 459–9683. 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. EDT on Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

Congress directed the National Science Foundation (NSF), in coordination with the White House Office of Science and Technology Policy (OSTP), to establish the NAIRR Task Force in the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, 15 U.S.C. 9415, and in accordance with the provisions of the Federal Advisory Committee Act. The mandate of the Task Force is to investigate the feasibility and advisability of establishing and sustaining a NAIRR, and to propose a roadmap detailing how such a resource should be established and sustained.

The Task Force was launched on June 10, 2021, as a Federal Advisory Committee co-chaired by NSF and OSTP and composed of representatives from the U.S. Government, academia, and the private sector. Its members' expertise spans foundational, use-inspired, and trustworthy AI R&D, as

well as research cyberinfrastructure including data and data privacy.

Between its launch date and the time of publication of its interim report, the Task Force convened seven virtual public meetings to discuss and deliberate on key NAIRR uses, potential impacts, system requirements, and design elements. At these meetings, the Task Force consulted 39 expert briefers and panelists to augment the members' own expertise, and to ensure that a diversity of perspectives and experiences were considered in Task Force discussions and deliberations. The Task Force also reviewed 84 public responses to a July 2021 RFI regarding key aspects of the NAIRR. More information on the Task Force members, past meetings, prior RFI responses, and upcoming meetings is available at *https://AI.gov/nairrtf.*

The Task Force's interim report, published on May 25, 2022, provides a general vision for the NAIRR along with a preliminary set of findings and recommendations regarding the NAIRR architecture, resources, capabilities, and users. Moving forward, the Task Force will refine its findings and recommendations for the design of the NAIRR and deliberate on remaining open questions. In doing so, the Task Force will develop a detailed roadmap and implementation plan for the NAIRR. The Task Force's final report is anticipated to be released in December 2022.

This RFI seeks input from a broad array of stakeholders on the topics set forth below. Comments from the public will be used to inform the Task Force's consideration of options and development of an implementation roadmap as part of the Task Force's final report.

Responders are invited to provide feedback on the findings and recommendations put forward in the Task Force's interim report, and particularly input on how the recommendations could be responsibly and effectively implemented. Responses may address the following areas [please note the topic letter(s) to which comments pertain]:

a. Vision for the NAIRR. Including strategic goals and objectives, composition, and user base. (Chapter 2 of the report)

b. Establishment and sustainment of the NAIRR. Including agency roles, resource ownership and administration, governance and oversight, resource allocation and sustainment, and performance indicators and metrics. (Chapter 3 of the report)

c. NAIRR resource elements and capabilities. Including data, government datasets, compute resources, testbeds, user interface, and educational tools and services. (Chapter 4 of the report)

d. System security and user access controls. (Chapter 5 of the report)

e. Privacy, civil rights, and civil liberties requirements. (Chapter 6 of the report)

f. Ideas for developing a roadmap to establish and build out the NAIRR in a phased approach, and appropriate milestones for implementing the NAIRR. Including data sets, use cases, and capabilities that should be prioritized in the early stages of establishment of the resource.

g. Other areas relevant to the development of the NAIRR implementation plan.

To the extent possible, responders are asked to include alternatives for consideration when not in agreement with the initial findings and/or recommendations articulated by the Task Force. When providing input on possible implementation steps, responses should include, where possible, descriptions of best practices or existing models that the Task Force could consider in the development of an implementation roadmap.

Responders interested in providing additional information to the Task Force are invited to attend a public listening session on June 23, 2022, from 1:00 p.m. to 3:00 p.m. EDT. Further details can be found through the **Federal Register** Notice entitled *Public Listening Session on Implementing Initial Findings and Recommendations of the National Artificial Intelligence Research Resource Task Force.*

Submitted by the National Science Foundation and the White House Office of Science and Technology Policy on May 19, 2022.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

Stacy Murphy,

Operations Manager White House Office of Science and Technology Policy.

[FR Doc. 2022–11223 Filed 5–24–22; 8:45 am]

BILLING CODE 7555–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94947; File No. SR–NASDAQ–2022–027]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Modify Certain Pricing Limitations for Companies Listing in Connection With a Direct Listing With a Capital Raise

May 19, 2022.

On March 21, 2022, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to allow companies to modify certain pricing limitations for companies listing in connection with a Direct Listing with a Capital Raise in which the company will sell shares itself in the opening auction on the first day of trading on Nasdaq. The proposed rule change was published for comment in the **Federal Register** on April 8, 2022.[3] The Commission has received no comments on the proposed rule change.

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is May 23, 2022. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates July 7, 2022 as the date by which the Commission shall either approve or disapprove, or institute

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 94592 (April 4, 2022), 87 FR 20905 (April 8, 2022).

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

proceedings to determine whether to disapprove, the proposed rule change (File No. SR- NASDAQ–2022–027).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–11206 Filed 5–24–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94950; File No. SR–OCC–2022–004]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Partial Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Partial Amendment No. 1, by The Options Clearing Corporation Concerning Settlement Timing

May 19, 2022.

I. Introduction

On March 22, 2022, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–OCC–2022–004 pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 3[2] thereunder. The proposed rule change would amend various provisions of OCC's rules to revise the required settlement time from 9:00 a.m. Central Time (''CT'') to 8:00 a.m. CT.[3] The proposed rule change was published for public comment in the **Federal Register** on April 7, 2022.[4] On May 5, 2022, OCC filed Partial Amendment No. 1 to the proposed rule change.[5] The Commission has received two comments regarding the proposed rule change.[6] The Commission is publishing this notice to solicit comments on Partial Amendment No. 1 from interested persons, and is approving the proposed rule change, as modified by Partial Amendment No. 1, on an accelerated basis.[7]

II. Background[8]

OCC collects margin deposits and Clearing Fund deposits from Clearing Members in order to collateralize Clearing Members' obligations, and thus supports OCC's abilities to act as a guarantor in the event a Clearing Member is unable to fulfill its obligations with OCC. OCC's Rules currently describe various times, many of which are set to 9:00 a.m. CT, for Clearing Members to make various daily payments for satisfying their margin and Clearing Fund obligations, following a specified amount of notice that OCC provides to Clearing Members. Such daily payments are required for Clearing Members to cover margin and Clearing Fund deficits, as well as increases in the Clearing Fund cash requirement (''Settlement Funds'').

As described in more detail below, OCC is proposing to revise its By-Laws and Rules[9] to make the following three changes to its settlement processes:

(1) Aligning daily payment processes under a uniform start-of-day settlement time to reduce operational complexity;

(2) reducing the period of time a Clearing Member has to fund obligations arising out of OCC's routine processes for setting the size of its Clearing Fund to simplify OCC's financial resources monitoring processes; and

(3) increasing the period of time a Clearing Member has to fund obligations arising out of a change to OCC's rules that affects the member's Clearing Fund requirement, to provide members with more time to consider terminating membership in response to such a rule change.

A. Setting a Uniform Start-of-Day Settlement Time

OCC proposes to harmonize various daily payment processes by setting a uniform start-of-day settlement time (''Settlement Time''), as OCC believes that a uniform start-of-day settlement time would reduce operational complexities.[10] In addition to setting a single Settlement Time, OCC proposes to consolidate various settlement obligations that are due at the same time into a single obligation to further streamline OCC's processes.

Further, OCC intends to set the Settlement Time one hour earlier than the current start-of-day settlement time that applies to many of OCC's daily payment processes, as OCC believes that the earlier hour would provide OCC with additional time to address a default event and implement protective actions.[11] The proposed changes would change the Settlement Time for various daily payment processes (described below) from 9 a.m. Central Time (''CT'') to 8:00 a.m. CT. The proposed rule change would also grant OCC discretion to extend funding deadlines when warranted by the circumstances, such as operational or system difficulties that may arise.

(1) ''Settlement Time'' Definitions

Currently, two different definitions in OCC's By-Laws (Article I, Definitions; Article XV, Foreign Currency Options, Definitions) define the term ''settlement time'' as 9:00 a.m. CT (10:00 a.m. Eastern Time (''ET'')). OCC proposes to move the Article I definition to Chapter I, Rule 101 of OCC's Rules because the defined term does not appear elsewhere in the By-Laws, but appears routinely in OCC's Rules. OCC proposes to update both definitions to make the Settlement Time 8:00 a.m. CT (9:00 a.m. ET). OCC further proposes to clarify in the relocated Rule 101 definition that the Settlement Time does not include settlements related to any cross-margin program with a Participating Carrying Clearing Organization (''CCO'').[12]

(2) Daily Margin Report

OCC's margin-related rules define a specific time by which margin payments must be specified. OCC proposes to replace the time specified in the margin-related rules with a reference to the defined term ''Settlement Time,'' rather than specify settlement times at multiple locations within OCC's rules. Rule 605 currently requires Clearing Members to satisfy margin deficits by 9:00 a.m. CT (10:00 a.m. ET). OCC

[6] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Notice of Filing *infra* note 4, 87 FR 20485.

[4] Securities Exchange Act Release No. 94587 (Apr. 1, 2022), 87 FR 20485 (Apr. 7, 2022) (File No. SR–OCC–2022–004) (''Notice of Filing'').

[5] In Partial Amendment No. 1, OCC proposed conforming changes to its Liquidity Risk Management Framework, and appended new Exhibits 4 and 5D to File No. SR–OCC–2022–004 to reflect the proposed changes to the Liquidity Risk Management Framework.

[6] The Commission received two comment letters that addressed market conduct generally; however, additional discussion is unnecessary because the comment letters do not bear on the purpose or legal basis of the proposed rule change, as modified by Partial Amendment No. 1. The comments on the proposed rule change are available at *https://www.sec.gov/comments/sr-occ-2022-004/srocc2022004.htm.*

[7] References to the proposed rule change from this point forward refer to the proposed rule change as modified by Partial Amendment No. 1.

[8] Capitalized terms used but not defined herein have the meanings specified in OCC's Rules and By-Laws, available at *https://www.theocc.com/about/publications/bylaws.jsp.*

[9] OCC is also proposing to make conforming changes to its Clearing Fund Methodology Policy and Liquidity Risk Management Framework to reflect the proposed changes to its By-Laws and Rules.

[10] *See* Notice of Filing, *supra* note 4, at 20485.

[11] *Id.*

[12] Current OCC Rule 706(b) allows OCC to specify the time for settling obligations related to cross-margin accounts with Participating CCOs. As of March 22, 2022, OCC maintained cross-margin accounts with only one Participating CCO, the Chicago Mercantile Exchange (''CME''). *See* Notice of Filing, 87 FR 20485, n. 4. OCC's Operations Manual specifies that the settlement time for OCC/CME cross-margin debits is 7:30 a.m. CT. *See id.* OCC did not propose changing the start-of-day settlement time for OCC/CME cross-margin debits, which is currently 8:00 a.m. CT under Article VI, Section 25 of OCC's By-Laws.

proposes to update Rule 605 to reference the defined term ''Settlement Time,'' so that Clearing Members must now satisfy margin deficits by 8:00 a.m. CT (9:00 a.m. ET). Additionally, OCC Rule 605 currently states that prior to 9:00 a.m. CT (10:00 a.m. ET), OCC shall make available to each Clearing Member a Daily Margin Report for each account maintained by the Clearing Member. OCC proposes to update the Rule to require that the Daily Margin Report be made available prior to 8:00 a.m. CT (9:00 a.m. ET).

Interpretation and Policy .01 to Rule 605 currently provides that the Daily Margin Report will not include the amount of margin required for variance futures, and requires OCC to advise Clearing Members of margin requirements for variance futures by 9:00 a.m. CT (10:00 a.m. ET). OCC proposes to delete Interpretation and Policy .01 to Rule 605 on the basis that margin requirements for variance futures, as for other products, will be included in the Daily Margin Report.

(3) General Clearing Fund Deficits

OCC proposes to set the time for settlement of Clearing Fund-related obligations related to general deficits [13] by referring to the defined term ''Settlement Time,'' and to consolidate Clearing Member payment obligations due at the Settlement Time into a single obligation. OCC Rule 1005(a) currently requires that Clearing Members must satisfy general Clearing Fund deficits within one hour of being notified of the deficit. As a practical matter, OCC generally collects these deficits during the morning of each business day, but outside of the start-of-day settlement cycle, resulting in two separate collections, at similar times, from Clearing Members.

OCC proposes to revise its Rules to align the general Clearing Fund deficit collection time with the proposed Settlement Time. The proposed rule change would revise Rule 1005(a) to state that OCC would collect a general deficit arising under Rule 1005(a) at the Settlement Time, provided that OCC notifies the Clearing Member of such deficit at least one hour prior to the Settlement Time on the day the notice was provided. OCC typically provides notice to Clearing Members of general deficits under Rule 1005(a) through OCC's overnight reporting process, but may also issue notices in response to market conditions or adjustments arising from mergers, consolidations, position transfers, business expansions, membership approval, or other similar events. OCC believes that it would achieve operational efficiency by revising Rule 1005(a) to align the general Clearing Fund deficit collection time to the Settlement Time.[14] OCC intends to continue to provide Clearing Members with one hour to satisfy a deficit if OCC does not provide notice at least one hour before the Settlement Time on a particular day.[15] Additionally, OCC proposes to change Rule 1005(a) to provide OCC with discretion to extend funding deadlines when warranted by the circumstances (*e.g.,* operational or system difficulties).

(4) Clearing Fund Replenishments and Assessments

OCC also proposes to set the time for settlement of Clearing Fund-related obligations related to replenishments and assessments by referring to the defined term ''Settlement Time.'' Rule 1006(h) currently requires that Clearing Members cover any charges to the Clearing Fund, whether in the form of replenishments or assessments, by 9:00 a.m. CT (10:00 a.m. ET) on the following business day. OCC proposes to amend Rule 1006(h) to align the replenishments and assessments collection time with the proposed Settlement Time. OCC believes that using the revised ''Settlement Time'' definition, rather than stating a specific time in Rule 1006(h), would help to achieve consistency and reduce operational complexity.[16] OCC also believes that a move to the earlier time of 8:00 a.m. CT would provide OCC with more time to address a default event and implement necessary protective actions, including securing funds from its liquidity providers.[17] OCC also proposes to make corresponding changes to Rule 1006(h)(B), which reiterates that each Clearing Member shall have, and shall at all times maintain, the ability to make good any deficiency described in Rule 1006(h) during a cooling-off period. OCC also proposes to amend Rule 1006(h)(A) and Rule 1006(h)(B) to allow OCC to specify a later time for which Clearing Members must make good on any charges to the Clearing Fund.

(5) Clearing Fund Deficits Due to Rule Amendments

Additionally, OCC proposes to set the time for settlement of Clearing Fund-related obligations related to changes to OCC's rules by referring to the defined term ''Settlement Time.'' Under current Rule 1002(e), if a Clearing Member's Clearing Fund contribution increases due to an amendment of OCC's Rules, the increase shall not become effective until the Clearing Member is given at least two business days prior written notice of the amendment. Clearing Members that do not notify OCC that they intend to terminate their clearing membership must satisfy the increased contribution by 9:00 a.m. CT (10:00 a.m. ET) on the second business day following notification of the amendment.

OCC proposes to revise Rule 1002(e) to align with the proposed Settlement Time, so that Clearing Members must satisfy the increased contribution by the earlier time of 8:00 a.m. CT (9:00 a.m. ET). As with the other proposed Settlement Time alignments, this change is intended to reduce operational complexity by creating a more uniform settlement time for Clearing Fund deficits, including those described in Rule 1002(e).[18]

(6) Temporary Increase in Clearing Fund Cash Requirement

Finally, OCC proposes to set the time for settlement of Clearing Fund-related obligations related to increases in the Clearing Fund Cash Requirement by reference to the defined term ''Settlement Time.'' Under current Interpretation and Policy .03 to Rule 1002, Clearing Members must satisfy any Clearing Fund Cash Requirement-related increase in their required cash contributions no later than the second business day following notification of the increase. OCC proposes to revise Rule 1002 Interpretation and Policy .03 to require that Clearing Members satisfy a required cash contribution increase by the first Settlement Time following notification of the increase. OCC believes that this proposed change would reduce operational complexity by creating a more uniform settlement time that aligns with the current collection period for other obligations to OCC.[19]

[13] General deficits include deficits resulting from a decrease in the value of a Clearing Member's contribution or by an adjusted contribution pursuant to Rule 1004. OCC Rule 1004 describes how the required Clearing Fund contribution of a Clearing Member may be adjusted by the Corporation due to mergers, consolidations, position transfers, business expansions, membership approval, or other similar events in connection with the calculations made in respect of a particular calendar month or at any other time.

[14] *See* Notice of Filing, *supra* note 4, at 20486.

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *See* Notice of Filing, *supra* note 4, at 20487.

[19] *Id.*

B. Shortening Collection Period Following Clearing Fund Resizing

In addition to harmonizing the time by which settlement occurs on a given day, OCC proposes to shorten the number of days a Clearing Member has to meet certain routine funding obligations related to the Clearing Fund. Currently, OCC allows members two business days to meet routine funding obligations. As described below, OCC is proposing changes designed to require funding by the next Settlement Time, effectively requiring funding by the business day following notice of an obligation. OCC stated that shortening the collection period would reduce operational complexity related to the monitoring of OCC's prefunded credit and liquidity resources by providing transparency and certainty to OCC around OCC's available liquidity resources during the resizing process.[20]

(1) Deficits From Monthly and Intra-Month Clearing Fund Resizing

OCC Rule 1005(b) currently requires that for any deficits resulting from a monthly or intra-month Clearing Fund resizing, Clearing Members must satisfy them by 9:00 a.m. CT (10:00 a.m. ET) on the second business day following notification of the resizing. According to OCC, the two-day collection period was intended to provide Clearing Members with sufficient notice of any changes to their Clearing Fund contribution requirements. However, OCC notes that this two-day collection period complicates the monitoring of OCC's prefunded credit and liquidity resources.[21]

The proposed rule change would amend Rule 1005(b) to require that deficits resulting from the standard monthly Clearing Fund resizing must be satisfied by the Settlement Time on the first business day of each month. OCC believes that the proposed change would reduce the time to collect Clearing Fund deficits required to meet the new Clearing Fund size, and would reduce operational complexity of the monitoring of OCC's prefunded credit and liquidity resources by providing certainty to OCC on the available liquidity resources during the resizing process.[22] The proposed rule change would also shorten the collection period for intra-month resizing to the next Settlement Time following notification of the re-sizing, which would align it with the monthly resizing period and other Clearing Fund deficit collection times. OCC also proposes to modify Rule 1005(b) so that OCC has the discretion to extend funding deadlines when warranted by the circumstances (*e.g.,* operational or system difficulties).

(2) Adjustment to Clearing Fund Contributions

Rule 1004 provides that any deficiency arising from an adjustment due to a Clearing Member merger, consolidation, position transfer, business expansion, membership approval or other similar event shall be satisfied in accordance with Rule 1005(a). Rule 1004 currently provides an exception that allows a Clearing Member to satisfy an obligation, typically due on the first business day of a calendar month, on the second business day if the deficit coincides with a regular monthly sizing collection. The proposed rule change would remove this exception because under the proposed revision of Rule 1005, regular monthly sizing deficits would no longer be collected two business days after notification.

C. Increasing Notification Period For Clearing Fund Deficits Due to Rule Amendments

In contrast to the reduction of time for funding routine obligations, OCC proposes increasing the number of days a Clearing Member has to meet Clearing Fund obligations related to changes in OCC's rules. Currently, OCC allows members two business days to meet funding obligations arising out of rule changes. As described below, OCC is proposing to give Clearing Members five business days notice of such obligations to allow Clearing Members additional time to determine whether to terminate clearing membership as a result of any such rule change.[23]

As previously noted, under current Rule 1002(e), if a Clearing Member's Clearing Fund contribution increases due to an amendment of OCC's Rules, the increase shall not become effective until the Clearing Member is given at least two business days prior written notice of the amendment. This notification period provides Clearing Members with the time to notify OCC in writing that it wishes to terminate its clearing membership if desired, and close out or transfer its open positions before the effective date of the amendment. Clearing Members that do not notify OCC of such termination must satisfy the increased contribution by 9:00 a.m. CT (10:00 a.m. ET) on the second business day following notification of the amendment.

The proposed rule change would increase the notification period from two business days to five business days, to provide Clearing Members with additional time to determine whether or not to terminate their clearing memberships and close out or transfer all open positions before the effective date of the amendment.[24]

D. Conforming Changes to Policies

The proposed rule change would also make conforming changes to the Clearing Fund Methodology Policy and Liquidity Risk Management Framework. These changes would amend the Clearing Fund Methodology Policy to reflect the revised timing for satisfying Clearing Fund Cash Requirement-related increases, and eliminating the policy language describing the exception set forth in Rule 1004 as described above. These changes are intended to conform the Clearing Fund Methodology Policy with the proposed changes to OCC's Rules and support the reduced operational complexity that OCC expects to achieve by creating a more uniform settlement time.[25] The proposed changes to the Liquidity Risk Management Framework would note that Clearing Members will have until no later than the first start-of-day settlement time following the day on which notice is provided by OCC, or an alternative time established by an OCC officer to meet their minimum Clearing Fund cash contribution.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Exchange Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to such organization.[26] After carefully considering the proposed rule change, the Commission finds that the proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to OCC. More specifically, the Commission finds that the proposal, is consistent with Section 17A(b)(3)(F) of the

[20] *See* Notice of Filing, *supra* note 4, at 20486.

[21] *Id.*

[22] *Id.*

[23] *See* Notice of Filing, *supra* note 4, at 20487.

[24] According to OCC, the purpose of this update to Rule 1002(e) would be to better reflect OCC's current practice, where Clearing Members are generally afforded more than five business days' notice of any change in Clearing Fund requirements that result from an amendment of OCC's Rules. *Id.* As this change codifies an existing practice, OCC does not believe it will modify Clearing Member behavior or otherwise have an adverse impact on OCC. *Id.*

[25] *Id.*

[26] 15 U.S.C. 78s(b)(2)(C).

Exchange Act [27] and Rule 17Ad–22(e)(8) under the Exchange Act [28] as described in detail below.

A. Consistency With Section 17A(b)(3)(F) of the Exchange Act

Section 17A(b)(3)(F) of the Exchange Act requires, among other things, that a clearing agency's rules are designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions; and the rules are designed, in general, to protect investors and the public interest.[29] Based on its review of the record, and for the reasons described below, the Commission believes that the proposed changes are consistent with facilitating the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which OCC is responsible, and protecting investors and the public interest.

The Commission believes that OCC, in amending its By-Laws and Rules to set a uniform time for satisfying start-of-day settlement at 8:00 a.m. CT (9:00 a.m. ET) and applying the updated Settlement Time to the Daily Margin Report (Rule 605), general Clearing fund deficits (Rule 1005(a)), Clearing Fund replenishments and assessments (Rule 1006(h)), Rule amendment-related Clearing Fund deficits (Rule 1002(e)), and temporary increases in the Clearing Fund Cash Requirement (Rule 1002.03) will remove any potential confusion or ambiguity for Clearing Members that could result from having different start-of-day settlement times depending on the nature of the Settlement Fund collection type. The alignment to a single Settlement Time would therefore facilitate the prompt and accurate clearance and settlement of transactions for which OCC is responsible.

Further, the Commission believes that OCC, in amending Rule 1005(b) to shorten the collection period for deficits due to Clearing Fund monthly and intra-month resizings, will ensure that such Clearing Fund deficits are covered earlier than before. This would in turn reduce any existing liquidity risk and provide greater certainty regarding OCC's liquidity resources, thereby supporting OCC's ability to meet its obligations. Strengthening OCC's ability to meet its payment obligations would, in turn, promote its ability to ensure prompt settlement of securities transactions for which OCC is responsible.

OCC also proposed changes to Rule 1002(e) to increase the notification period for Clearing Member deficits due to Rule amendments from two business days to five business days. The Commission believes that this proposed change would benefit Clearing Members by giving them additional time to consider canceling their clearing membership with OCC in the event of a Clearing Fund contribution increase created by amendments to OCC's Rules. Clearing Members could use the additional time to consider their ability to cover such increases with greater deliberation, which could allow members to unwind positions in an orderly fashion rather than defaulting on obligations to OCC. The promotion of an orderly unwinding of positions, as opposed to a potentially more disruptive Clearing Member default scenario, would in turn promote the protection of investors and the public interest.

OCC also proposed conforming changes to its Clearing Fund Methodology Policy and its Liquidity Resource Management Framework to ensure consistency of the policy and framework with the changes described above. The Commission believes, therefore, that the conforming changes are consistent with the requirements of Section 17A(b)(3)(F) for the reasons described above.

The Commission believes, therefore, that the proposal is consistent with the requirements of Section 17A(b)(3)(F) of the Exchange Act.[30]

B. Consistency With Rule 17Ad–22(e)(8) Under the Exchange Act

Rule 17Ad–22(e)(8) under the Exchange Act requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to define the point at which settlement is final no later than the end of the day on which the payment or obligation is due and, where necessary or appropriate, intraday or in real time.[31] Based on its review of the record, the Commission believes that the proposed rule change is consistent with this requirement.

OCC's proposal to modify its rules to change the definitions of ''settlement time'' from 9:00 a.m. CT to 8:00 a.m. CT would move the start-of-day settlement time up by one hour, but would provide no less clear a time by which settlement is due than OCC's current rules. As proposed, settlement finality for cleared transactions would continue to occur when a settlement bank either accepts or confirms the settlement instruction. Similarly, OCC's proposed changes to reduce or increase the number of days a Clearing Member has to meet certain Clearing Fund obligations would provide no less certainty regarding the time by which settlement must occur than is provided by OCC's current rules.

The Commission believes, therefore, that the proposal is consistent with the requirements of Rule 17Ad–22(e)(8) under the Exchange Act.[32]

IV. Solicitation of Comments on Partial Amendment No. 1 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Partial Amendment No. 1, is consistent with the Exchange 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–OCC–2022–004 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–OCC–2022–004. 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

[27] 15 U.S.C. 78q–1(b)(3)(F).

[28] 17 CFR 240.17Ad–22(e)(8).

[29] 15 U.S.C. 78q–1(b)(3)(F).

[30] 15 U.S.C. 78q–1(b)(3)(F).

[31] 17 CFR 240.17Ad–22(e)(8).

[32] 17 CFR 240.17Ad–22(e)(8).

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–OCC–2022–004 and should be submitted on or before June 15, 2022.

V. Accelerated Approval of Proposed Rule Change, as Modified by Partial Amendment No. 1

The Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,[33] to approve the proposed rule change prior to the 30th day after the date of publication of notice of the filing of Partial Amendment No. 1 in the **Federal Register**. As discussed above, Partial Amendment No. 1 modified the original proposed rule change by making conforming changes to OCC's Liquidity Risk Management Framework consistent with the initial filing. Partial Amendment No. 1 does not change the purpose of or basis for the proposed changes.

For similar reasons as discussed above, the Commission finds that Partial Amendment No. 1 is consistent with the requirement that OCC's rules be designed to promote the prompt and accurate clearance and settlement of securities transactions under Section 17A(b)(3)(F) of the Exchange Act.[34] Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act, to approve the proposed rule change, as modified by Partial Amendment No. 1, on an accelerated basis, pursuant to Section 19(b)(2) of the Exchange Act.[35]

VI. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change, as modified by Partial Amendment No. 1, is consistent with the requirements of the Exchange Act, and in particular, the requirements of Section 17A of the Exchange Act [36] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[37] that the proposed rule change (SR–OCC–2022–004), as modified by Partial Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–11205 Filed 5–24–22; 8:45 am]

BILLING CODE 8011–01–P

[33] 15 U.S.C. 78s(b)(2).

[34] 15 U.S.C. 78q–1(b)(3)(F).

[35] 15 U.S.C. 78s(b)(2).

[36] In approving this proposed rule change, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[37] 15 U.S.C. 78s(b)(2).

[38] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94951; File No. SR–CTA/CQ–2021–02]

Consolidated Tape Association; Notice of Designation of a Longer Period for Commission Action on the Thirty-Seventh Substantive Amendment to the Second Restatement of the CTA Plan and Twenty-Eighth Substantive Amendment to the Restated CQ Plan

May 19, 2022.

On November 5, 2021,[1] the Participants [2] in the Second Restatement of the Consolidated Tape Association (''CTA'') Plan and Restated Consolidated Quotation (''CQ'') Plan (collectively ''CTA/CQ Plans'' or ''Plans'') [3] filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'') [4] and Rule 608 of Regulation National Market System (''NMS'') thereunder,[5] a proposal (''Proposed Amendments'') to amend the Plans. The Proposed Amendments were published for comment in the **Federal Register** on November 29, 2021.[6]

On February 24, 2022, the Commission instituted proceedings pursuant to Rule 608(b)(2)(i) of Regulation NMS [7] to determine whether to approve or disapprove the Proposed Amendments or to approve the Proposed Amendments with any changes or subject to any conditions the Commission deems necessary or appropriate after considering public comment.[8] Rule 608(b)(2)(i) of Regulation NMS provides that such proceedings shall be concluded within 180 days of the date of publication of notice of the plan or amendment and that the time for conclusion of such proceedings may be extended for up to 60 days (up to 240 days from the date of notice publication) if the Commission determines that a longer period is appropriate and publishes the reasons for such determination or the plan participants consent to a longer period.[9] The 180th day after publication of the Notice for the Proposed Amendments is May 28, 2022. The Commission is extending this 180-day period.

The Commission finds that it is appropriate to designate a longer period within which to conclude proceedings regarding the Proposed Amendments so that it has sufficient time to consider the Proposed Amendments and the comments received. Accordingly, pursuant to Rule 608(b)(2)(i) of Regulation NMS,[10] the Commission designates July 27, 2022 as the date by which the Commission shall conclude the proceedings to determine whether to approve or disapprove the Proposed Amendments or to approve the Proposed Amendments with any changes or subject to any conditions the Commission deems necessary or appropriate (File No. SR–CTA/CQ–2021–02).

[1] *See* Letter from Robert Books, Chair, CTA/CQ Operating Committee, to Vanessa Countryman, Secretary, Commission (Nov. 5, 2021).

[2] The Participants are: Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., The Investors' Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, MIAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq ISE, LLC, Nasdaq PHLX, Inc., The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (collectively, the ''Participants'').

[3] The CTA Plan, pursuant to which markets collect and disseminate last-sale price information for non-Nasdaq-listed securities, is a ''transaction reporting plan'' under Rule 601 of Regulation NMS, 17 CFR 242.601, and a ''national market system plan'' under Rule 608 of Regulation NMS, 17 CFR 242.608. The CQ Plan, pursuant to which markets collect and disseminate bid/ask quotation information for non-Nasdaq-listed securities, is a ''national market system plan'' under Rule 608 under the Act, 17 CFR 242.608. *See* Securities Exchange Act Release Nos. 10787 (May 10, 1974), 39 FR at 17799 (May 20, 1974) (declaring the CTA Plan effective); 15009 (July 28, 1978), 43 FR at 34851 (Aug. 7, 1978) (temporarily authorizing the CQ Plan); and 16518 (Jan. 22, 1980), 45 FR at 6521 (Jan. 28, 1980) (permanently authorizing the CQ Plan).

[4] 15 U.S.C 78k–1.

[5] 17 CFR 242.608.

[6] *See* Securities Exchange Act Release No. 93615 (Nov. 29, 2021), 86 FR 67800 (Nov. 29, 2021) (''Notice''). Comments received in response to the Notice can be found on the Commission's website at *https://www.sec.gov/comments/sr-ctacq-2021-02/srctacq202102.htm*.

[7] 17 CFR 242.608(b)(2)(i).

[8] *See* Securities Exchange Act Release No. 94310 (Feb. 24, 2022), 87 FR 11748 (Mar. 2, 2022) (''OIP''). Comments received in response to the OIP can be found on the Commission's website at *https://www.sec.gov/comments/sr-ctacq-2021-02/srctacq202102.htm*.

[9] 17 CFR 242.608(b)(2)(i).

[10] *Id.*

[11] 17 CFR 200.30–3(a)(85).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–11204 Filed 5–24–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94953; File No. S7–24–89]

Joint Industry Plan; Notice of Designation of a Longer Period for Commission Action on the Fifty-Second Amendment to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis

May 19, 2022.

On November 5, 2021,[1] certain participants in the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (''Nasdaq/UTP Plan'' or ''Plan'') [2] filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'') [3] and Rule 608 of Regulation National Market System (''NMS'') thereunder,[4] a proposal (''Proposed Amendment'') to amend the Nasdaq/UTP Plan.[5] The Proposed Amendment was published for comment in the **Federal Register** on November 26, 2021.[6]

On February 24, 2022, the Commission instituted proceedings pursuant to Rule 608(b)(2)(i) of Regulation NMS,[7] to determine whether to approve or disapprove the Proposed Amendment or to approve the Proposed Amendment with any changes or subject to any conditions the Commission deems necessary or appropriate after considering public comment.[8] Rule 608(b)(2)(i) of Regulation NMS provides that such proceedings shall be concluded within 180 days of the date of the publication of notice of the plan or amendment and that the time for conclusion of such proceedings may be extended for up to 60 days (up to 240 days from the date of notice publication) if the Commission determines that a longer period is appropriate and publishes the reasons for such determination or the plan participants consent to a longer period.[9] The 180th day after publication of the Notice for the Proposed Amendment is May 25, 2022. The Commission is extending this 180-day period.

The Commission finds that it is appropriate to designate a longer period within which to conclude proceedings regarding the Proposed Amendment so that it has sufficient time to consider the Proposed Amendment and the comments received. Accordingly, pursuant to Rule 608(b)(2)(i) of Regulation NMS,[10] the Commission designates July 24, 2022, as the date by which the Commission shall conclude the proceedings to determine whether to approve or disapprove the Proposed Amendment or to approve the Proposed Amendment with any changes or subject to any conditions the Commission deems necessary or appropriate (File No. S7–24–89).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–11202 Filed 5–24–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94952; File No. SR–CTA/CQ–2021–03]

Consolidated Tape Association; Notice of Designation of a Longer Period for Commission Action on the Twenty-Fifth Charges Amendment to the Second Restatement of the CTA Plan and Sixteenth Charges Amendment to the Restated CQ Plan

May 19, 2022.

On November 5, 2021,[1] certain participants in the Second Restatement of the Consolidated Tape Association (''CTA'') Plan and Restated Consolidated Quotation (''CQ'') Plan (collectively ''CTA/CQ Plans'' or ''Plans'') [2] filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'') [3] and Rule 608 of Regulation National Market System (''NMS'') thereunder,[4] a proposal (''Proposed Amendments'') to amend the Plans.[5] The Proposed Amendments

[1] *See* Letter from Robert Books, Chair, UTP Operating Committee, to Vanessa Countryman, Secretary, Commission (Nov. 5, 2021).

[2] The Plan governs the collection, processing, and dissemination on a consolidated basis of quotation information and transaction reports in Eligible Securities for its Participants. The Plan serves as the required transaction reporting plan for its Participants, which is a prerequisite for their trading Eligible Securities. *See* Securities Exchange Act Release No. 55647 (Apr. 19, 2007), 72 FR 20891 (Apr. 26, 2007).

[3] 15 U.S.C 78k–1.

[4] 17 CFR 242.608.

[5] The Proposed Amendment was approved and executed by more than the Plan's required two-thirds of the self-regulatory organizations (''SROs'') that are participants of the UTP Plan. The participants that approved and executed the amendment (the ''Participants'') are: Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Nasdaq ISE, LLC, Nasdaq PHLX, Inc., The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc.. The other SROs that are participants in the UTP Plan are: Financial Industry Regulatory Authority, Inc., The Investors' Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, MIAX PEARL, LLC, and Nasdaq BX, Inc.

[6] *See* Securities Exchange Act Release No. 93618 (Nov. 19, 2021), 86 FR 67562 (Nov. 26, 2021) (''Notice''). Comments received in response to the Notice are available at *https://www.sec.gov/comments/s7-24-89/s72489.shtml.*

[7] 17 CFR 242.608(b)(2)(i).

[8] *See* Securities Exchange Act Release No. 94307 (Feb. 24, 2022), 87 FR 11787 (Mar. 2, 2022) (''OIP''). Comments received in response to the OIP can be found on the Commission's website at *https://www.sec.gov/comments/s7-24-89/s72489.htm.*

[9] 17 CFR 242.608(b)(2)(i).

[10] *Id.*

[11] 17 CFR 200.30–3(a)(85).

[1] *See* Letter from Robert Books, Chair, CTA/CQ Operating Committee, to Vanessa Countryman, Secretary, Commission (Nov. 5, 2021).

[2] The CTA Plan, pursuant to which markets collect and disseminate last-sale price information for non-Nasdaq-listed securities, is a ''transaction reporting plan'' under Rule 601 of Regulation NMS, 17 CFR 242.601, and a ''national market system plan'' under Rule 608 of Regulation NMS, 17 CFR 242.608. The CQ Plan, pursuant to which markets collect and disseminate bid/ask quotation information for non-Nasdaq-listed securities, is a ''national market system plan'' under Rule 608 under the Act, 17 CFR 242.608. *See* Securities Exchange Act Release Nos. 10787 (May 10, 1974), 39 FR at 17799 (May 20, 1974) (declaring the CTA Plan effective); 15009 (July 28, 1978), 43 FR at 34851 (Aug. 7, 1978) (temporarily authorizing the CQ Plan); and 16518 (Jan. 22, 1980), 45 FR at 6521 (Jan. 28, 1980) (permanently authorizing the CQ Plan).

[3] 15 U.S.C 78k–1.

[4] 17 CFR 242.608.

[5] The Proposed Amendments were approved and executed by more than the required two-thirds of the self-regulatory organizations (''SROs'') that are participants of the UTP Plan. The participants that approved and executed the amendments (the ''Participants'') are: Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Nasdaq ISE, LLC, Nasdaq PHLX, Inc., The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc.. The other

Continued

were published for comment in the **Federal Register** on November 26, 2021.[6]

On February 24, 2022, the Commission instituted proceedings pursuant to Rule 608(b)(2)(i) of Regulation NMS,[7] to determine whether to approve or disapprove the Proposed Amendments or to approve the Proposed Amendments with any changes or subject to any conditions the Commission deems necessary or appropriate after considering public comment.[8] Rule 608(b)(2)(i) of Regulation NMS provides that such proceedings shall be concluded within 180 days of the date of the publication of notice of the plan or amendment and that the time for conclusion of such proceedings may be extended for up to 60 days (up to 240 days from the date of notice publication) if the Commission determines that a longer period is appropriate and publishes the reasons for such determination or the plan participants consent to a longer period.[9] The 180th day after publication of the Notice for the Proposed Amendments is May 25, 2022. The Commission is extending this 180-day period.

The Commission finds that it is appropriate to designate a longer period within which to conclude proceedings regarding the Proposed Amendments so that it has sufficient time to consider the Proposed Amendments and the comments received. Accordingly, pursuant to Rule 608(b)(2)(i) of Regulation NMS,[10] the Commission designates July 24, 2022, as the date by which the Commission shall conclude the proceedings to determine whether to approve or disapprove the Proposed Amendments or to approve the Proposed Amendments with any changes or subject to any conditions the Commission deems necessary or appropriate (File No. SR–CTA/CQ–2021–03).

SROs that are participants in the UTP Plan are: Financial Industry Regulatory Authority, Inc., The Investors' Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, MIAX PEARL, LLC, and Nasdaq BX, Inc.

[6] *See* Securities Exchange Act Release No. 93625 (Nov. 19, 2021), 86 FR 67517 (Nov. 26, 2021) (''Notice''). Comments received in response to the Notice are available at *https://www.sec.gov/comments/sr-ctacq-2021-03/srctacq202103.htm.*

[7] 17 CFR 242.608(b)(2)(i).

[8] *See* Securities Exchange Act Release No. 94310 (Feb. 24, 2022), 87 FR 11748 (Mar. 2, 2022) (''OIP''). Comments received in response to the OIP can be found on the Commission's website at *https://www.sec.gov/comments/sr-ctacq-2021-03/srctacq202103.htm.*

[9] 17 CFR 242.608(b)(2)(i).

[10] *Id.*

[11] 17 CFR 200.30–3(a)(85).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–11203 Filed 5–24–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94954; File No. S7–24–89]

Joint Industry Plan; Notice of Designation of a Longer Period for Commission Action on the Fifty-First Amendment to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis

May 19, 2022.

On November 5, 2021,[1] the Participants[2] in the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (''Nasdaq/UTP Plan'' or ''Plan'')[3] filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'')[4] and Rule 608 of Regulation National Market System (''NMS'') thereunder,[5] a proposal (''Proposed Amendment'') to amend the Nasdaq/UTP Plan. The Proposed Amendment was published for comment in the **Federal Register** on November 26, 2021.[6]

[1] *See* Letter from Robert Books, Chair, UTP Operating Committee, to Vanessa Countryman, Secretary, Commission (Nov. 5, 2021).

[2] The Participants are: Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., The Investors' Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, MIAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq ISE, LLC, Nasdaq PHLX, Inc., The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (collectively, the ''Participants'').

[3] The Plan governs the collection, processing, and dissemination on a consolidated basis of quotation information and transaction reports in Eligible Securities for its Participants. The Plan serves as the required transaction reporting plan for its Participants, which is a prerequisite for their trading Eligible Securities. *See* Securities Exchange Act Release No. 55647 (Apr. 19, 2007), 72 FR 20891 (Apr. 26, 2007).

[4] 15 U.S.C. 78k–1.

[5] 17 CFR 242.608.

[6] *See* Securities Exchange Act Release No. 93620 (Nov. 19, 2021), 86 FR 67541 (Nov. 26, 2021) (''Notice''). Comments received in response to the Notice can be found on the Commission's website at *https://www.sec.gov/comments/s7-24-89/s72489.htm.*

On February 24, 2022, the Commission instituted proceedings pursuant to Rule 608(b)(2)(i) of Regulation NMS[7] to determine whether to approve or disapprove the Proposed Amendment or to approve the Proposed Amendment with any changes or subject to any conditions the Commission deems necessary or appropriate after considering public comment.[8] Rule 608(b)(2)(i) of Regulation NMS provides that such proceedings shall be concluded within 180 days of the date of the publication of notice of the plan or amendment and that the time for conclusion of such proceedings may be extended for up to 60 days (up to 240 days from the date of notice publication) if the Commission determines that a longer period is appropriate and publishes the reasons for such determination or the plan participants consent to a longer period.[9] The 180th day after publication of the Notice for the Proposed Amendment is May 25, 2022. The Commission is extending this 180-day period.

The Commission finds that it is appropriate to designate a longer period within which to conclude proceedings regarding the Proposed Amendment so that it has sufficient time to consider the Proposed Amendment and the comments received. Accordingly, pursuant to Rule 608(b)(2)(i) of Regulation NMS,[10] the Commission designates July 24, 2022 as the date by which the Commission shall conclude the proceedings to determine whether to approve or disapprove the Proposed Amendment or to approve the Proposed Amendment with any changes or subject to any conditions the Commission deems necessary or appropriate (File No. S7–24–89).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–11201 Filed 5–24–22; 8:45 am]

BILLING CODE 8011–01–P

[7] 17 CFR 242.608(b)(2)(i).

[8] *See* Securities Exchange Act Release No. 94308 (Feb. 24, 2022), 87 FR 11755 (Mar. 2, 2022) (''OIP''). Comments received in response to the OIP can be found on the Commission's website at *https://www.sec.gov/comments/s7-24-89/s72489.htm.*

[9] 17 CFR 242.608(b)(2)(i).

[10] *Id.*

[11] 17 CFR 200.30–3(a)(85).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17453 and #17454; Kentucky Disaster Number KY–00091]

Administrative Declaration of a Disaster for the Commonwealth of Kentucky

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of Kentucky dated 05/16/2022.

Incident: Severe Storms, Straight-Line Winds, Tornadoes, Flooding, Landslides, Mudslides.

Incident Period: 12/31/2021 through 01/01/2022.

DATES: Issued on 05/18/2022.

Physical Loan Application Deadline Date: 07/18/2022.

Economic Injury (EIDL) Loan Application Deadline Date: 02/21/2023.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Christian, Pike.

Contiguous Counties:

Kentucky: Caldwell, Floyd, Hopkins, Knott, Letcher, Martin, Muhlenberg, Todd, Trigg.

Tennessee: Montgomery, Stewart.

Virginia: Buchanan, Dickenson, Wise.

West Virginia: Mingo.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	2.875
Homeowners without Credit Available Elsewhere	1.438
Businesses with Credit Available Elsewhere	5.660
Businesses without Credit Available Elsewhere	2.830
Non-Profit Organizations with Credit Available Elsewhere	1.875
Non-Profit Organizations without Credit Available Elsewhere	1.875
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	2.830
Non-Profit Organizations without Credit Available Elsewhere	1.875

The number assigned to this disaster for physical damage is 17453 B and for economic injury is 17454 0.

The States which received an EIDL Declaration # are Kentucky, Tennessee, Virginia, West Virginia.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2022–11275 Filed 5–24–22; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF STATE

[Public Notice 11737]

Notice of Department of State Sanctions Actions

SUMMARY: The Secretary of State has imposed sanctions on 16 individuals.

DATES: The Secretary of State's determination regarding the 16 individuals and imposition of sanctions on the entities, individuals, and vessel identified in the **SUPPLEMENTARY INFORMATION** section were effective on April 20, 2022.

FOR FURTHER INFORMATION CONTACT: Anthony Musa, *mussad@state.gov,* Phone: (202) 647–1925.

SUPPLEMENTARY INFORMATION: Pursuant to Section 1 of E.O. 14024, all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in: (a) Any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, and, with respect to subsection (a)(ii) of this section, in consultation with the Attorney General, or by the Secretary of State, in consultation with the Secretary of the Treasury, and, with respect to subsection (a)(ii) of this section, in consultation with the Attorney General: (iii) To be or have been a leader, official, senior executive officer, or member of the board of directors of: (C) An entity whose property and interests in property are blocked pursuant to this order.

The Secretary of State has determined, pursuant to Section 1(a)(iii)(C) of E.O. 14024, that Kseniya Valentinovna Yudayeva, Mikhail Yurevich Alekseev, Anatoly Mikhailovich Karachinskiy, Vladimir Vladimirovich Kolychev, Alexey Yurevich Simanovskiy, Andrey Fedorovich Golikov, Elena Borisovna Titova, Mikhail Mikhaylovich Zadornov, Dmitriy Olegovich Levin, Svetlana Petrovna Emelyanova, Tatyana Gennadevna Nesterenko, Irina Vladimirovna Kremleva, Viktor Andreevich Nikolaev, Sergey Georgievich Rusanov, Nadia Narimanovna Cherkasova and Paul Andrew Goldfinch are or have been leaders, officials, senior executive officers, or members of the board of directors of an entity whose property and interests in property are blocked pursuant to E.O. 14024.

Pursuant to E.O. 14024 these entities and individuals have been added to the Specially Designated Nationals and Blocked Persons List. All property and interests in property of these entities subject to U.S. jurisdiction are blocked.

Whitney Baird,

Principal Deputy Assistant Secretary of State, Bureau of Economic and Business Affairs, Department of State.

[FR Doc. 2022–11183 Filed 5–24–22; 8:45 am]

BILLING CODE 4710–AE–P

DEPARTMENT OF STATE

[Public Notice 11739]

Notice of Department of State Sanctions Actions Pursuant to the Protecting Europe's Energy Security Act (PEESA), as Amended

SUMMARY: The Secretary of State has terminated the waiver of sanctions on certain persons under the Protecting Europe's Energy Security Act (PEESA), as amended and imposed sanctions on one entity and one individual pursuant to PEESA.

DATES: The Secretary of State's determination regarding termination of the waiver of sanctions regarding the one entity and one individual, and imposition of sanctions on the one entity and one individual are identified in the **SUPPLEMENTARY INFORMATION** section. These sanctions were effective on February 23, 2022. See Supplementary Information section.

FOR FURTHER INFORMATION CONTACT: Anthony Musa, *mussad@state.gov,* Phone: (202) 647–1925.

SUPPLEMENTARY INFORMATION: Pursuant to Section 7503(a)(1)(A) of PEESA, as amended, the Secretary of State, in consultation with the Secretary of the Treasury, shall submit every 90 days a report to the appropriate congressional committees that identifies vessels that engaged in pipe-laying or pipe-laying activities at depths of 100 feet or more below sea level for the construction of the Nord Stream 2 pipeline project, the Turkstream pipeline project, or any project that is a successor to either such project. Pursuant to Section 7503(a)(1)(B) of PEESA, as amended, the Secretary of State, in consultation with the Secretary of the Treasury, shall also include in the report foreign persons that the Secretary of State, in consultation with the Secretary of the Treasury, determines have knowingly sold, leased, or provided, or facilitated selling, leasing, or providing, those vessels for the construction of such a project. Pursuant to Section 7503(c) of PEESA, as delegated, the Secretary of the Treasury, in consultation with the Secretary of State, shall exercise all powers granted to the President by the International Emergency Economic Powers Act to the extent necessary to block and prohibit all transactions in all property and interests in property of any person identified under subsection (a)(1)(B) of PEESA if such property and interests in property are in the United States, come within the United States, or are or come within the possession or control of a United States person. Pursuant to Section 7503(f) of PEESA, as delegated, the Secretary of State, in consultation with the Secretary of the Treasury, may waive application of sanctions under PEESA if the Secretary of State determines that the waiver is in the national interests of the United States and submits to the appropriate congressional committees a report on the waiver and the reasons for the waiver. Pursuant to E.O. 13049, with respect to any foreign person identified by the Secretary of State, in consultation with the Secretary of the Treasury, in a report to the Congress pursuant to section 7503(a)(1)(B) of PEESA, all property and interests in property of such person that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in.

On May 19, 2021 The Secretary of State determined, pursuant to Section 7503(a)(1)(B)(ii) of PEESA, as amended, that Nord Stream 2 AG and Matthias Warnig had knowingly, on or after January 1, 2021, facilitated deceptive or structured transactions to provide the pipe-laying vessel FORTUNA for the construction of the Nord Stream 2 pipeline project. On May 19, 2021, pursuant to section 7503(f) of PEESA, as amended, the Secretary of State determined that it was in the national interest of the United States to waive the application of sanctions on Nord Stream 2 AG, Matthias Warnig, and Nord Stream 2 AG corporate officers and submitted a report on the waivers and the reason for the waivers to the appropriate congressional committees. On February 23, 2022, the Secretary determined that the waiver of sanctions on Nord Stream 2 AG, Matthias Warnig, and Nord Stream 2 AG corporate officers is no longer in the national interest of the United States and accordingly terminated the waivers. Therefore, on February 23, 2022, Nord Stream 2 AG and Matthias Warnig were added to the Specially Designated Nationals and Blocked Persons List (SDN List) pursuant to PEESA and E.O. 13049. All property and interests in property of these persons that is subject to U.S. jurisdiction are blocked.

On February 23, 2022, the following individual and entity were added to the SDN List:

WARNIG, Matthias (Cyrillic: ВАРНИГ, Маттиас) (a.k.a. WARNIG, Matthias Arthur (Cyrillic: МАТТИАС, Артур Варниг); a.k.a. WARNIG, Matthias Artur (Cyrillic: АРТУР, Маттиас Варниг)), Zug, Switzerland; Moscow, Russia; Saint Petersburg, Russia; Leipzig, Germany; DOB 26 Jul 1955; POB Altdobern, Brandenburg, Germany; nationality Germany; Gender Male (individual) [PEESA-EO14039].

NORD STREAM 2 AG (a.k.a. NEW EUROPEAN PIPELINE AG), Baarerstrasse 52, Zug 6300, Switzerland; Gotthardstrasse 2, Zug 6300, Switzerland; Bahnhofstrasse 10, Zug 6301, Switzerland; Identification Number CHE-444.239.548 (Switzerland); Business Registration Number CH-170.3.039.850-1 (Switzerland); Business Registration Number CH-170.3.039.850-1 (Switzerland) [PEESA-E-14039].

Whitney Baird,

Principal Deputy Assistant Secretary of State, Bureau of Economic and Business Affairs, Department of State.

[FR Doc. 2022–11186 Filed 5–24–22; 8:45 am]

BILLING CODE 4710–AE–P

DEPARTMENT OF STATE

[Public Notice: 11750]

Notice of Public Meeting in Preparation for the International Maritime Organization NCSR 9 Meeting

The Department of State will conduct a public meeting at 12:00 p.m. on Wednesday, June 8, 2022, by way of teleconference. The primary purpose of this meeting is to prepare for the ninth session of the International Maritime Organization's (IMO) Sub-Committee on Navigation, Communication, and Search and Rescue (NCSR 9) to be held

virtually from Tuesday, June 21, 2022 to Thursday, June 30, 2022.

Members of the public may participate up to the capacity of the teleconference phone line, which can handle 500 participants. To access the teleconference line, participants should call 202–475–4000 and use Participant Code 877 239 87#.

The agenda items to be considered at this meeting mirror those to be considered at NCSR 9 and include:

—Adoption of the agenda
—Decisions of other IMO bodies
—Routeing measures and mandatory ship reporting systems
—Updates to the LRIT system
—Development of generic performance standards for shipborne satellite navigation system receiver equipment
—Safety measures for non-SOLAS ships operating in polar waters
—Consideration of descriptions of Maritime Services in the context of e-navigation
—Revision of the *Guidelines on places of refuge for ships in need of assistance* (resolution A.949(23))
—Development of revisions and amendments to existing instruments relating to the amendments to the 1974 SOLAS Convention for modernization of the GMDSS
—Developments in GMDSS services, including guidelines on maritime safety information (MSI)
—Revision of the *Criteria for the provision of mobile satellite communication services in the Global Maritime Distress and Safety System (GMDSS)* (resolution A.1001(25))
—Response to matters related to the ITU–R Study Groups and ITU World Radiocommunication Conference
—Development of global maritime SAR services, including harmonization of maritime and aeronautical procedures
—Amendments to the IAMSAR Manual
—Guidance on the training on and operation of emergency personal radio devices in multiple casualty situations
—Revision of *ECDIS Guidance for good practice* (MSC.1/Circ.1503/Rev.1) and amendments to *ECDIS performance standards* (resolution MSC.232(82))
—Development of amendments to VDR performance standards and carriage Requirements
—Development of SOLAS amendments for mandatory carriage of electronic inclinometers on container ships and bulk carriers
—Unified interpretation of provisions of IMO safety, security, environment, facilitation, liability and compensation-related conventions
—Validated model training courses
—Biennial status report and provisional agenda for NCSR 10
—Election of Chair and Vice-Chair for 2023
—Any other business

Please note: The Sub-Committee may on short notice, adjust the NCSR 9 agenda to accommodate the constraints associated with the virtual meeting format. Any changes to the agenda will be reported to those who RSVP.

Those who plan to participate may contact the meeting coordinator, George Detweiler, by email at *George.H.Detweiler@uscg.mil,* by phone at (202) 372–1566, or in writing at 2703 Martin Luther King Jr. Ave. SE, Stop 7418, Washington, DC 20593–7418. Members of the public needing reasonable accommodation should advise Mr. Detweiler not later than June 1, 2022. Requests made after that date will be considered, but might not be possible to fulfill.

Additional information regarding this and other IMO public meetings may be found at: *https://www.dco.uscg.mil/IMO.*

(Authority: 22 U.S.C. 2656.)

Emily A. Rose,

Coast Guard Liaison Officer, Office of Ocean and Polar Affairs, Department of State.

[FR Doc. 2022–11199 Filed 5–24–22; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 11735]

Notice of Department of State Sanctions Actions

SUMMARY: The Secretary of State has imposed sanctions on eight entities, 19 individuals, and one aircraft.

DATES: The Secretary of State's determination regarding the eight entities and 19 individuals, and imposition of sanctions on the entities, individuals, and aircraft identified in the **SUPPLEMENTARY INFORMATION** section were effective on March 3, 2022.

FOR FURTHER INFORMATION CONTACT: Anthony Musa, *mussad@state.gov,* Phone: (202) 647–1925.

SUPPLEMENTARY INFORMATION: Pursuant to Section 1 of E.O. 14024, all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in: (a) Any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, and, with respect to subsection (a)(ii) of this section, in consultation with the Attorney General, or by the Secretary of State, in consultation with the Secretary of the Treasury, and, with respect to subsection (a)(ii) of this section, in consultation with the Attorney General: (i) To operate or have operated in the technology sector or the defense and related materiel sector of the Russian Federation economy, or any other sector of the Russian Federation economy as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State. The Secretary of the Treasury, in consultation with the Secretary of State, determined that section 1(a)(i) of E.O. 14024 shall apply to the financial services sector of the Russian Federation economy.

Pursuant to Section 1 of E.O. 14024, all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in: (a) Any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, and, with respect to subsection (a)(ii) of this section, in consultation with the Attorney General, or by the Secretary of State, in consultation with the Secretary of the Treasury, and, with respect to subsection (a)(ii) of this section, in consultation with the Attorney General: (ii) To be responsible for or complicit in, or to have directly or indirectly engaged or attempted to engage in, any of the following for or on behalf of, or for the benefit of, directly or indirectly, the Government of the Russian Federation: (F) Activities that undermine the peace, security, political stability, or territorial integrity of the United States, its allies, or its partners.

Pursuant to Section 1 of E.O. 14024, all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in: (a) Any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, and, with respect to subsection (a)(ii) of this section, in consultation with the Attorney General, or by the Secretary of State, in consultation with the Secretary of the Treasury, and, with respect to subsection (a)(ii) of this section, in consultation with the Attorney General:

(iii) To be or have been a leader, official, senior executive officer, or member of the board of directors of: (A) The Government of the Russian Federation.

Pursuant to Section 1 of E.O. 14024, all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in: (a) Any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, and, with respect to subsection (a)(ii) of this section, in consultation with the Attorney General, or by the Secretary of State, in consultation with the Secretary of the Treasury, and, with respect to subsection (a)(ii) of this section, in consultation with the Attorney General: (iii) To be or have been a leader, official, senior executive officer, or member of the board of directors of: (C) An entity whose property and interests in property are blocked pursuant to this order.

Pursuant to Section 1 of E.O. 14024, all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in: (a) Any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, and, with respect to subsection (a)(ii) of this section, in consultation with the Attorney General, or by the Secretary of State, in consultation with the Secretary of the Treasury, and, with respect to subsection (a)(ii) of this section, in consultation with the Attorney General: (v) To be a spouse or adult child of any person whose property and interests in property are blocked pursuant to subsection (a)(ii) or (iii) of this section.

Pursuant to Section 1 of E.O. 14024, all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in: (a) Any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, and, with respect to subsection (a)(ii) of this section, in consultation with the Attorney General, or by the Secretary of State, in consultation with the Secretary of the Treasury, and, with respect to subsection (a)(ii) of this section, in consultation with the Attorney General: (vii) To be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, the Government of the Russian Federation or any person whose property and interests in property are blocked pursuant to this order.

The Secretary of State has determined, pursuant to Section 1(a)(i) of E.O. 14024, that SMP Bank is operating or has operated in the financial services sector of the Russian Federation economy.

The Secretary of State has determined, pursuant to Section 1(a)(ii)(F) of E.O. 14024, that Arkady Romanovich Rotenberg is responsible for or complicit in, or has directly or indirectly engaged or attempted to engage in, activities that undermine the peace, security, political stability, or territorial integrity of the United States, its allies, or its partners for or on behalf of, or for the benefit of, directly or indirectly, the Government of the Russian Federation.

The Secretary of State has determined, pursuant to Section 1(a)(iii)(A) of E.O. 14024, that Dmitriy Sergeevich Peskov, Sergei Chemezov, and Igor Ivanovich Shuvalov are or have been leaders, officials, senior executive officers, or members of the board of directors of the Government of the Russian Federation.

The Secretary of State has determined, pursuant to Section 1(a)(iii)(C) of E.O. 14024, that Boris Romanovich Rotenberg is or has been a leader, official, senior executive officer, or member of the board of directors of an entity whose property and interests in property are blocked pursuant to E.O. 14024.

The Secretary of State has determined, pursuant to Section 1(a)(v) of E.O. 14024, that Yekaterina Sergeyevna Ignatova, Stanislav Sergeyevich Chemezov, Alexander Sergeevich Chemezov, Sergey Sergeevich Chemezov, Anastasia Mikhailovna Ignatova, Igor Arkadyevich Rotenberg, Liliya Arkadievna Rotenberg, Pavel Arkadyevich Rotenberg, Boris Borisovich Rotenberg, Roman Borisovich Rotenberg, Karina Yurevna Rotenberg, Olga Viktorovna Shuvalova, Evgeny Igorevich Shuvalov, and Maria Igorevna Shuvalova are spouses or adult children of persons blocked whose property and interests in property are blocked pursuant to subsection (a)(ii) or (iii) of Section 1 of E.O. 14024.

The Secretary of State has also determined, pursuant to Section 1(a)(vii) of E.O. 14024, that Otkrytye Aktivy OOO, Sova Nedvizhimost OOO, Avanfort OOO, Firma Veardon OOO, Zareche-4 OOO, Limited Liability Company Nemchinovo Investments, and Altitude X3 Ltd. are owned or controlled by, or have acted or purported to act for or on behalf of, directly or indirectly, the Government of the Russian Federation or any person whose property and interests in property are blocked pursuant to E.O. 14024.

Pursuant to E.O. 14024 these entities and individuals have been added to the Specially Designated Nationals and Blocked Persons List. All property and interests in property of these entities subject to U.S. jurisdiction are blocked.

The following aircraft subject to U.S. jurisdiction is blocked: LX–MOW (Linked To: Altitude X3 Ltd).

Whitney Baird,

Principal Deputy Assistant Secretary of State, Bureau of Economic and Business Affairs, Department of State.

[FR Doc. 2022–11179 Filed 5–24–22; 8:45 am]

BILLING CODE 4710–AE–P

DEPARTMENT OF STATE

[Public Notice 11738]

Notice of Department of State Sanctions Actions

SUMMARY: The Secretary of State has imposed sanctions on two entities, 22 individuals, and one vesse.

DATES: The Secretary of State's determination regarding the two entities and 22 individuals, and imposition of sanctions on the entities, individuals, and vessel identified in the **SUPPLEMENTARY INFORMATION** section were effective on March 24, 2022.

FOR FURTHER INFORMATION CONTACT: Anthony Musa, *mussad@state.gov,* Phone: (202) 647–1925.

SUPPLEMENTARY INFORMATION: Pursuant to Section 1 of E.O. 14024, all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in: (a) Any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, and, with respect to subsection (a)(ii) of this section, in consultation with the Attorney General, or by the Secretary of State, in consultation with the Secretary of the Treasury, and, with respect to subsection (a)(ii) of this section, in consultation with the Attorney General: (i) To operate or have operated in the

technology sector or the defense and related materiel sector of the Russian Federation economy, or any other sector of the Russian Federation economy as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State. The Secretary of the Treasury, in consultation with the Secretary of State, determined that section 1(a)(i) of E.O. 14024 shall apply to the financial services sector of the Russian Federation economy.

Pursuant to Section 1 of E.O. 14024, all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in: (a) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, and, with respect to subsection (a)(ii) of this section, in consultation with the Attorney General, or by the Secretary of State, in consultation with the Secretary of the Treasury, and, with respect to subsection (a)(ii) of this section, in consultation with the Attorney General: (iii) To be or have been a leader, official, senior executive officer, or member of the board of directors of: (C) an entity whose property and interests in property are blocked pursuant to this order.

Pursuant to Section 1 of E.O. 14024, all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in: (a) Any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, and, with respect to subsection (a)(ii) of this section, in consultation with the Attorney General, or by the Secretary of State, in consultation with the Secretary of the Treasury, and, with respect to subsection (a)(ii) of this section, in consultation with the Attorney General: (v) To be a spouse or adult child of any person whose property and interests in property are blocked pursuant to subsection (a)(ii) or (iii) of this section.

Pursuant to Section 1 of E.O. 14024, all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in: (a) Any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, and, with respect to subsection (a)(ii) of this section, in consultation with the Attorney General, or by the Secretary of State, in consultation with the Secretary of the Treasury, and, with respect to subsection (a)(ii) of this section, in consultation with the Attorney General: (vii) To be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, the Government of the Russian Federation or any person whose property and interests in property are blocked pursuant to this order.

The Secretary of State has determined, pursuant to Section 1(a)(i) of E.O. 14024, that OOO Volga Group is operating or has operated in the financial services sector of the Russian Federation economy.

The Secretary of State has determined, pursuant to Section 1(a)(iii)(C) of E.O. 14024, that Gennady Nikolayevich Timchenko, Ksenia Gennadevna Frank, Dmitry Vladimirovich Gusev, Mikhail Lvovich Kuchment, Anatoly Alexandrovich Braverman, Ilya Borisovich Brodskiy, Aleksey Leonidovich Fisun, Dmitry Vladimirovich Khotimskiy, Sergey Vladimirovich Khotimskiy, Mikhail Vasilyevich Klyukin, Mikhail Olegovich Avtukhov, Albert Alexandrovich Boris, Dmitry Vladimirovich Baryshnikov, Elena Alexandrovna Cherstvova, Sergey Nikolaevich Bondarovich, Oleg Alexandrovich Mashtalyar, Alexey Valeryevich Panferov, Irina Nikolayevna Kashina, and Joel Raymond Lautier are or have been leaders, officials, senior executive officers, or members of the board of directors of entities whose property and interests in property are blocked pursuant to E.O. 14024.

The Secretary of State has determined, pursuant to Section 1(a)(v) of E.O. 14024, that Gleb Sergeevich Frank, Elena Petrovna Timchenko, and Natalya Browning are spouses or adult children of persons blocked whose property and interests in property are blocked pursuant to subsection (a)(ii) or (iii) of Section 1 of E.O. 14024.

The Secretary of State has also determined, pursuant to Section 1(a)(vii) of E.O. 14024, that OOO Transoil is owned or controlled by, or has acted or purported to act for or on behalf of, directly or indirectly, the Government of the Russian Federation or any person whose property and interests in property are blocked pursuant to E.O. 14024.

Pursuant to E.O. 14024 these entities and individuals have been added to the Specially Designated Nationals and Blocked Persons List. All property and interests in property of these entities subject to U.S. jurisdiction are blocked.

The following vessel subject to U.S. jurisdiction is blocked: Lena (IMO: 9594339) (Linked To: Gennady Nikolayevich Timchenko).

Whitney Baird,

Principal Deputy Assistant Secretary of State, Bureau of Economic and Business Affairs, Department of State.

[FR Doc. 2022–11185 Filed 5–24–22; 8:45 am]

BILLING CODE 4710–AE–P

DEPARTMENT OF STATE

[Public Notice 11736]

Notice of Department of State Sanctions Actions

SUMMARY: The Secretary of State has imposed sanctions on one entity and 12 individuals.

DATES: The Secretary of State's determination regarding the one entity and 12 individuals, and imposition of sanctions on the entity and individuals, identified in the **SUPPLEMENTARY INFORMATION** section were effective on March 11, 2022.

FOR FURTHER INFORMATION CONTACT: Anthony Musa, *mussad@state.gov,* Phone: (202) 647–1925.

SUPPLEMENTARY INFORMATION: Pursuant to Section 1 of E.O. 14024, all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in: (a) Any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, and, with respect to subsection (a)(ii) of this section, in consultation with the Attorney General, or by the Secretary of State, in consultation with the Secretary of the Treasury, and, with respect to subsection (a)(ii) of this section, in consultation with the Attorney General: (i) To operate or have operated in the technology sector or the defense and related materiel sector of the Russian Federation economy, or any other sector of the Russian Federation economy as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State. The Secretary of the Treasury, in consultation with the Secretary of State, determined that section 1(a)(i) of E.O. 14024 shall apply to the financial services sector of the Russian Federation economy.

Pursuant to Section 1 of E.O. 14024, all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in: (a) Any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, and, with respect to subsection (a)(ii) of this section, in consultation with the Attorney General, or by the Secretary of State, in consultation with the Secretary of the Treasury, and, with respect to subsection (a)(ii) of this section, in consultation with the Attorney General: (iii) To be or have been a leader, official, senior executive officer, or member of the board of directors of: (A) The Government of the Russian Federation.

Pursuant to Section 1 of E.O. 14024, all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in: (a) Any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, and, with respect to subsection (a)(ii) of this section, in consultation with the Attorney General, or by the Secretary of State, in consultation with the Secretary of the Treasury, and, with respect to subsection (a)(ii) of this section, in consultation with the Attorney General: (iii) To be or have been a leader, official, senior executive officer, or member of the board of directors of: (C) An entity whose property and interests in property are blocked pursuant to this order.

Pursuant to Section 1 of E.O. 14024, all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in: (a) Any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, and, with respect to subsection (a)(ii) of this section, in consultation with the Attorney General, or by the Secretary of State, in consultation with the Secretary of the Treasury, and, with respect to subsection (a)(ii) of this section, in consultation with the Attorney General: (v) To be a spouse or adult child of any person whose property and interests in property are blocked pursuant to subsection (a)(ii) or (iii) of this section.

The Secretary of State has determined, pursuant to Section 1(a)(i) of E.O. 14024, that AO ABR Management is operating or has operated in the financial services sector of the Russian Federation economy.

The Secretary of State has determined, pursuant to Section 1(a)(iii)(A) of E.O. 14024, that Elena Aleksandrovna Georgieva, German Valentinovich Belous, Andrey Yurievich Sapelin, and Dmitri Nikolaevich Vavulin are or have been leaders, officials, senior executive officers, or members of the board of directors of the Government of the Russian Federation.

The Secretary of State has determined, pursuant to Section 1(a)(iii)(C) of E.O. 14024, that Yuri Valentinovich Kovalchuk, Kirill Mikhailovich Kovalchuk, Dmitri Alekseevich Lebedev, and Vladimir Nikolaevich Knyaginin are or have been leaders, officials, senior executive officers, or members of the board of directors of an entity whose property and interests in property are blocked pursuant to E.O. 14024.

The Secretary of State has determined, pursuant to Section 1(a)(v) of E.O. 14024, that Tatyana Aleksandrovna Kovalchuk, Boris Yurievich Kovalchuk, Stepan Kirillovich Kovalchuk, and Kira Valentinovna Kovalchuk are spouses or adult children of persons blocked whose property and interests in property are blocked pursuant to subsection (a)(ii) or (iii) of Section 1 of E.O. 14024.

Pursuant to E.O. 14024 these entities and individuals have been added to the Specially Designated Nationals and Blocked Persons List. All property and interests in property of these entities subject to U.S. jurisdiction are blocked.

Whitney Baird,

Principal Deputy Assistant Secretary of State, Bureau of Economic and Business Affairs, Department of State.

[FR Doc. 2022–11181 Filed 5–24–22; 8:45 am]

BILLING CODE 4710–AE–P

DEPARTMENT OF STATE

[Public Notice: 11729]

Notice of Public Meeting of the U.S. President's Emergency Plan for AIDS Relief (PEPFAR) Scientific Advisory Board

SUMMARY: In accordance with the Federal Advisory Committee Act, the U.S. Department of State announces that the PEPFAR Scientific Advisory Board (SAB) will be holding a virtual meeting of the full board. The meeting will be open to the public. Pre-registration is required for public participation.

DATES: The meeting will be held on Tuesday, June 7, 2022, from approximately 11:00 a.m. to 1:00 p.m. (EDT) utilizing an online platform. Requests to attend the meeting must be received no later than May 31, 2022. Requests for reasonable accommodations must be received no later than May 31, 2022. Requests made after May 31, 2022, will be considered but might not be able to be fulfilled.

ADDRESSES: Individuals wishing to participate are asked to pre-register at *https://forms.gle/9TUWqUGjzKXFTFZ17.* The agenda be sent to all registrants and will also be posted on the PEPFAR SAB web page at *www.state.gov/scientific-advisory-board-pepfar* one week in advance of the meeting, along with instructions on how to access the meeting.

FOR FURTHER INFORMATION CONTACT: Dr. Sara Klucking, Designated Federal Officer for the SAB, Office of the U.S. Global AIDS Coordinator and Health Diplomacy at *KluckingSR@state.gov* or (202) 615–4350.

SUPPLEMENTARY INFORMATION:

Background: The SAB is established under the general authority of the Secretary of State and the Department of State (''the Department'') as set forth in 22 U.S.C. 2656, and consistent with the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix). The SAB serves the U.S. Global AIDS Coordinator solely in an advisory capacity concerning scientific, implementation, and policy issues related to the global response to HIV/AIDS.

Agenda: SAB members will be discussing considerations for PEPFAR for implementation of long-acting injectable cabotegravir (CAB for PrEP) and tools for recent infection monitoring.

Public comment: Members of the public who wish to participate are asked to register directly at the link listed in the **ADDRESSES** section or by sending an email to Dr. Sara Klucking at *KluckingSR@state.gov* not later than May 31, 2022. Individuals are required to provide their name, email address, and organization. Due to time limitations, there will not be public comment at the meeting; however, the Department will consider any written comments provided within 10 days after

the meeting to Dr. Sara Klucking at *KluckingSR@state.gov.*

Sara Klucking,

Director, Office of Research and Science, Office of the U.S. Global AIDS Coordinator and Health Diplomacy, Office of the Secretary of State, Department of State.

[FR Doc. 2022–11171 Filed 5–24–22; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 11671]

Notice of Department of State Sanctions Actions Pursuant to the Protecting Europe's Energy Security Act

SUMMARY: The Secretary of State has imposed sanctions on four entities and 13 vessels pursuant to the Protecting Europe's Energy Security Act (PEESA).

DATES: The Secretary of State's determination regarding the four entities, and imposition of sanctions on the entities and vessels identified in the **SUPPLEMENTARY INFORMATION** section were applicable on May 21, 2021. See **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Anthony Musa, *mussad@state.gov,* Phone: (202) 647–1925.

SUPPLEMENTARY INFORMATION: Pursuant to Section 7503(a)(1)(A) of PEESA, as amended, the Secretary of State, in consultation with the Secretary of the Treasury, shall submit every 90 days a report to the appropriate congressional committees that identifies vessels that engaged in pipe-laying or pipe-laying activities at depths of 100 feet or more below sea level for the construction of the Nord Stream 2 pipeline project, the Turkstream pipeline project, or any project that is a successor to either such project. Pursuant to Section 7503(a)(1)(B) of PEESA, as amended, the Secretary of State, in consultation with the Secretary of the Treasury, shall also include in the report foreign persons that the Secretary of State, in consultation with the Secretary of the Treasury, determines have knowingly sold, leased, or provided, or facilitated selling, leasing, or providing, those vessels for the construction of such a project. Pursuant to Section 7503(c) of PEESA, as delegated, the Secretary of the Treasury, in consultation with the Secretary of State, shall exercise all powers granted to the President by the International Emergency Economic Powers Act to the extent necessary to block and prohibit all transactions in all property and interests in property of any person identified under subsection (a)(1)(B) of PEESA if such property and interests in property are in the United States, come within the United States, or are or come within the possession or control of a United States person. Pursuant to E.O. 13049, with respect to any foreign person identified by the Secretary of State, in consultation with the Secretary of the Treasury, in a report to the Congress pursuant to section 7503(a)(1)(B) of PEESA, all property and interests in property of such person that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in.

The Secretary of State has determined, pursuant to Section 7503(a)(1)(B)(i) of PEESA, as amended, that Federal State Budgetary Institution Marine Rescue Service (MRS), Limited Liability Company Mortransservice (Mortransservice), Samara Heat and Energy Property Fund (STIF), and LLC Koksokhimtrans (Koksokhimtrans) have knowingly, on or after January 1, 2021, sold, leased, or provided, or facilitated selling, leasing, or providing, vessels that engaged in pipe-laying or pipe-laying activities at depths of 100 feet or more below sea level for the construction of the Nord Stream 2 pipeline project. On May 21, 2021, pursuant to section 7503(c) of PEESA, as amended, these entities were added to the Non-SDN Menu-Based Sanctions List (NS–MBS List). On August 20, 2021, pursuant to Section E.O. 13049 and section 7503(c) of PEESA, as amended, these entities were added to the Specially Designated Nationals and Blocked Persons List (SDN List). All property and interests in property of these entities subject to U.S. jurisdiction are blocked.

The following vessels subject to U.S. jurisdiction were added to the NS–MBS list on May 21, 2021. On August 20, 2021, these vessels were added to the Specially Designated Nationals and Blocked Persons List:

Akademik Cherskiy (IMO 8770261) (Linked To: Samara HEat and Eenrgy Property Fund)
Baltiyskiy Issledovatel (IMO 9572020) (Linked To: Federal State Budgetary Institution Marine Rescue Service)
Umka (IMO 9171620) (Linked To: Federal State Budgetary Institution Marine Rescue Service)
Artemis Offshore (IMO 9747194) (Linked To: Federal State Budgetary Institution Marine Rescue Service)
Finval (IMO 9272412) (Linked To: Federal State Budgetary Institution Marine Rescue Service)
Narval (IMO 9171876) (Linked To: Federal State Budgetary Institution Marine Rescue Service)
Sivuch (IMO 9157820) (Linked To: Federal State Budgetary Institution Marine Rescue Service)
Kapitan Beklemishev (IMO 8724080) (Linked To: Federal State Budgetary Institution Marine Rescue Service)
Spasatel Karev (IMO 9497531) (Linked To: Federal State Budgetary Institution Marine Rescue Service)
Bakhtemir (IMO 9797577) (Linked To: Federal State Budgetary Institution Marine Rescue Service)
Murman (IMO 9682423) (Linked To: Federal State Budgetary Institution Marine Rescue Service)
Vladislav Strizhov (IMO 9310018) (Linked To: LLC Koksokhimtrans)
Yury Topchev (IMO 9338230) (Linked To: LLC Koksokhimtrans)

Whitney Baird,

Principal Assistant Secretary of State, Bureau of Economic and Business Affairs, Department of State.

[FR Doc. 2022–11180 Filed 5–24–22; 8:45 am]

BILLING CODE 4710–AE–P

TENNESSEE VALLEY AUTHORITY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Tennessee Valley Authority (TVA).

ACTION: 30-Day notice of submission of information collection renewal approval request to OMB.

SUMMARY: Tennessee Valley Authority (TVA) provides notice of submission of this information clearance request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The general public and other federal agencies are invited to comment. TVA previously published a 60-day notice of the proposed information collection renewal for public review (March 17, 2022) and a notice of correction (March 24, 2022), and no comments were received.

DATES: The OMB will consider all written comments received on or before June 24, 2022.

ADDRESSES: Written comments for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION:

Type of Request: Renewal with minor modification.

Title of Information Collection: Section 26a Permit Application.

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 Certification 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. 2022–11182 Filed 5–24–22; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2021–0169]

Entry-Level Driver Training: SBL Truck Driving Academy, Inc.; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that it has received an application from SBL Truck Driving Academy, Inc. (SBL) to exempt two of its current employees from the theory and behind-the-wheel (BTW) instructor qualification requirements contained in the entry-level driver training (ELDT) regulations. Specifically, SBL seeks an exemption from the requirement that instructors have at least 2 years of experience driving a commercial motor vehicle (CMV) requiring a commercial driver's license (CDL) of the same or higher class and/or the same endorsement necessary to operate the CMV for which training is provided. FMCSA requests public comment on the applicant's request for exemption.

DATES: Comments must be received on or before June 24, 2022.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA–2021–0169 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* See the Public Participation and Request for Comments section below for further information.
- *Mail:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Each submission must include the Agency name and the docket number (FMCSA–2021–0169) for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice DOT/ALL 14–FDMS, which can be reviewed at *https://transportation.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards, FMCSA, at (202) 366–2722 or by e -mail at *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Dockets Operations at (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2021–0169), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *www.regulations.gov* and put the docket number (''FMCSA–2021–0169'') in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on the ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for

copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The Agency must publish its decision in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption and the regulatory provision from which the exemption is granted. The notice must specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Background

Current Regulatory Requirements

The ELDT regulations, set forth in 49 CFR part 380, subparts F and G, were implemented on February 7, 2022 established minimum training standards for individuals applying for certain CDLs and defined curriculum standards for theory and BTW training. Subpart G of Title 49 of the CFR established an online training provider registry (TPR), eligibility requirements for providers to be listed on the TPR, and qualification requirements for instructors. Under 49 CFR 380.713, a training provider must use instructors who meet the definitions of ''theory instructor'' and ''behind-the-wheel (BTW) instructor'' in 49 CFR 380.605, which require that instructors hold a CDL of the same (or higher) class, with all endorsements necessary to operate the CMV for which training is to be provided, and have either: (1) A minimum of 2 years of experience driving a CMV requiring a CDL of the same or higher class and/or the same endorsement; or (2) at least 2 years of experience as a BTW CMV instructor. Exceptions apply to both definitions.

Applicant's Request

SBL seeks an exemption from the requirement in 49 CFR 380.713 that a training provider use instructors who meet the definitions of ''theory instructor'' and ''BTW instructor'' in 49 CFR 380.605. SBL specifies that it has two employees who do not have two years of required driving experience. SBL states that the two employees meet the qualifications under current State regulations and Federal regulations in effect before implementation of the ELDT requirements, have class A CDLs with tanker endorsements, and are medically qualified.

SBL states that the instructor qualifications required by the ELDT regulations will have a severe negative impact on its business and on the driver shortage. SBL requests an exemption that would allow the two instructors to accumulate two years of experience while continuing to provide BTW and theory instruction. SBL asserts the exemption would allow for full instructor staffing, resulting in a ''50% increase of approximately 96 students annually.'' If the exemption is denied, SBL states that it would be forced to terminate the employees and replace them with less qualified individuals.

SBL also notes that FMCSA has included ''grandfathering'' provisions in the implementation of other new regulations. SBL points to the provisions in 49 CFR 380.603, which provide that individuals who obtained a Commercial Learner's Permit (CLP) before February 7, 2022 are not required to comply with the ELDT rule if they obtain a CDL before the CLP expires. SBL is requesting similar consideration for State-licensed instructors who met applicable Federal requirements prior to February 7, 2022.

IV. Equivalent Level of Safety

To ensure an equivalent level of safety, SBL's application offers a comprehensive list of the qualifications for the two driver training instructors for whom they request the exemption. Both individuals meet the qualifications required prior to implementation of the ELDT rule; both have Class A CDLs with tanker endorsements; both are medically qualified; both have graduated from a State-licensed truck driver training school; both have taught over the road driving; both have previously trained commercial drivers; one individual worked as a commercial driver; and both have the ability to instruct all topics required by the ELDT regulations.

SBL indicates that the request for the exemption ''places no known negative safety impact'' and SBL would continue to adhere to all applicable State and Federal regulations that govern the safe operation of CMVs. SBL provides the South Carolina Department of Motor Vehicles requirements for instructors that were in effect prior to implementation of the ELDT final rule. SBL asserts that both employees meet those requirements and that South Carolina-licensed schools have seen no negative safety impacts to date by using instructors with fewer than 2 years of driving experience.

A copy of SBL's application for exemption is available for review in the docket for this notice.

V. Request for Comments

In accordance with 49 U.S.C. 31315(b), FMCSA requests public comment from all interested persons on SBL's application for an exemption from the requirement in 49 CFR 380.713 to use instructors who meet the definitions of ''theory instructor'' and ''BTW instructor'' in 49 CFR 380.605. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the Addresses section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2022–11271 Filed 5–24–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Temporary Waiver of Buy America Requirements for Construction Materials

ACTION: Notice.

SUMMARY: As the Biden-Harris Administration implements the historic Bipartisan Infrastructure Law (BIL), we seek to maximize the use of American made products and materials in all federally funded projects while also successfully delivering a wide range of

critical infrastructure projects for States, local communities, counties, Tribal nations and farms, factories and businesses across the U.S. In order to deliver projects and meaningful results while ensuring robust adoption of Buy America standards, the U.S. Department of Transportation (''DOT'' or ''Department'') is establishing a temporary public interest waiver for construction materials for a period of 180 days beginning on May 14, 2022 and expiring on November 10, 2022. DOT is establishing this transitional waiver to prepare for compliance with the new Made in America standards for construction materials. During this time period, DOT expects States, industry, and other partners to begin developing procedures to document compliance. DOT will continue its engagement through the waiver period to help facilitate the creation of robust enforcement and compliance mechanisms and to rapidly encourage domestic sourcing of construction materials for transportation infrastructure improvements.

DATES: The waiver is applicable to awards that are obligated on or after May 14, 2022 and before November 10, 2022. Unless extended, the waiver expires on November 10, 2022.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Darren Timothy, DOT Office of the Assistant Secretary for Transportation Policy, at *darren.timothy@dot.gov* or at 202–366–4051. For legal questions, please contact Michael A. Smith, DOT Office of the General Counsel, 202–366–2917, or via email at *michael.a.smith@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

In January 2021, President Biden issued Executive Order (E.O.) 14005, titled ''Ensuring the Future is Made in All of America by All of America's Workers,'' launching a whole-of-government initiative to strengthen Made in America standards.

The E.O. states that the United States Government ''should, consistent with applicable law, use terms and conditions of Federal financial assistance awards and Federal procurements to maximize the use of goods, products, and materials produced in, and services offered in, the United States.'' DOT is committed to ensuring strong and effective Buy America implementation consistent with E.O. 14005 and has a long track record of successfully applying Made in America standards to support American workers and businesses through its more than $70 billion in grant programs and $700 million in direct purchases in FY2020.

On November 15, 2021, President Biden signed the Bipartisan Infrastructure Law (BIL), enacted as the Infrastructure Investment and Jobs Act, Public Law 117–58, which includes the Build America, Buy America Act (''the Act''). Public Law 117–58, div. G §§ 70901–52. The BIL not only makes a historic investment in American transportation—from roads and bridges to rail to transit—but also greatly strengthens Made in America standards. Specifically, the Act expands the coverage and application of Buy America preferences in Federal financial assistance programs for infrastructure. The Act requires that no later than May 14, 2022—180 days after the date of enactment—the head of each covered Federal agency shall ensure that ''none of the funds made available for a Federal financial assistance program for infrastructure . . . may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.'' BIL § 70914(a).

The Act provides that the preferences under Section 70914 apply only to the extent that a domestic content procurement preference as described in Section 70914 does not already apply to iron, steel, manufactured products, and construction materials. BIL § 70917(a)–(b). This provision allows Federal agencies to preserve existing Buy America policies and provisions that meet or exceed the standards required by the Act, such as FHWA's existing requirements for iron and steel.

One of the new Buy America preferences included under Section 70914 of the Act is for construction materials. By May 14, 2022, each covered Federal agency must ensure that all manufacturing processes for construction materials used in Federally assisted infrastructure projects occur in the United States. None of the specific statutes that apply particular Buy America [1] requirements to the Federal financial assistance programs administered by DOT's Operating Administrations (OAs), including 49 U.S.C. 50101 (FAA); 23 U.S.C. 313 (FHWA); 49 U.S.C. 22905(a) (FRA); 49 U.S.C. 5323(j) (FTA); and 46 U.S.C. 54101(d)(2) (MARAD), specifically cover construction materials, other than to the extent that such materials would already be considered iron, steel, or manufactured products.

In addition to establishing Buy America preferences, the Act also provides certain statutory authorities for the Made in America Office (''MIAO'') in the Office of Management and Budget (''OMB''). BIL §§ 70915(b) and 70923. MIAO was first established by Section 4 of E.O. 14005. MIAO's authorities under the BIL include issuing guidance to assist in applying the Act's requirements and issuing standards that define term ''all manufacturing processes'' in the case of construction materials. BIL § 70915.

On April 18, 2022, OMB issued memorandum M–22–11, ''Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure'' (''Implementation Guidance''). Under section VIII of the Implementation Guidance, ''Preliminary Guidance for Construction Materials,'' ''construction materials'' includes: An article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives—that is or consists primarily of:

- Non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass (including optic glass);
- lumber; or
- drywall.

Implementation Guidance at p. 13–14. The Implementation Guidance also states that ''an article, material, or supply should only be classified into one of the following categories: (1) Iron or steel; (2) a manufactured product; or (3) a construction material. For ease of administration, an article, material, or supply should not be considered to fall into multiple categories.'' *Id.* at p. 6. The Implementation Guidance also explains that ''items that consist of two or more of the listed materials that have been combined together through a manufacturing process, and items that include at least one of the listed materials combined with a material that is not listed through a manufacturing process, should be treated as manufactured products, rather than as construction materials.'' *Id.* at p. 14. OMB characterizes its guidance on which materials are construction materials as ''preliminary and non-binding guidance . . . so that agencies can begin applying Buy America

[1] In this notice, references to ''Buy America'' include domestic preference laws called ''Buy American'' that apply to DOT financial assistance programs.

requirements to those materials.'' *Id.* at p. 13.

DOT is taking appropriate steps to ensure the definition of ''construction material'' specified in the Implementation Guidance applies to each award from a financial assistance program for infrastructure projects, including by incorporating that definition in terms and conditions incorporating a Buy America preference.

Section 70915(b) of the BIL requires OMB to issue standards that define ''all manufacturing processes'' for construction materials. Section VIII of the Implementation Guidance provides that, ''[p]ending MIAO's issuance of final standards on construction materials, and absent any existing applicable standard in law or regulation that meets or exceeds these preliminary standards, agencies should consider 'all manufacturing processes' for construction materials to mean the final manufacturing process and the immediately preceding manufacturing stage for the construction material.'' Implementation Guidance at p. 14. After considering information received through stakeholder and industry outreach, MIAO will issue further guidance that identifies initial manufacturing process for each type of construction material that should be considered as part of ''all manufacturing processes.'' *Id.* Agencies are also directed to ''consult with MIAO, as needed, to ensure that any waiver issued for construction materials is explicitly targeted and time-limited, in order to send a clear market signal that additional standards for 'all manufacturing processes' in the case of construction materials will be forthcoming.'' *Id.*

The Implementation Guidance notes that a ''waiver in the public interest may be appropriate where an agency determines that other important policy goals cannot be achieved consistent with the Buy America requirements established by the Act.'' Implementation Guidance at p. 10. The guidance also recognizes several instances in which Federal agencies may consider issuing a public interest waiver and encourages agencies to consider an adjustment period where time limited waivers would allow recipients and agencies to transition to new Buy America preferences, rules, and processes. *Id.* at p. 11.

In bringing its Federal financial assistance programs for infrastructure into compliance with the Act's requirement for construction materials, DOT must also ensure that these important Federal programs for transportation infrastructure investment are able to obligate funds and complete infrastructure projects in a timely manner. For example, the new construction materials requirement will apply to capital projects funded by formula and discretionary programs of the Federal Transit Administration, including projects under the new All Stations Accessibility Program, which will upgrade the accessibility of fixed guideway public transportation systems for people with disabilities.

Because construction materials have not previously been subject to Made in America rules as have iron and steel, there is a need to gather data on domestic sourcing capacity to inform stronger standards. For example, while the exact impact on highway project construction is unknown, the Department believes that it could be significant. According to the current National Bridge Inventory, there are more than 62,588 bridges with wood or timber elements (including 16,909 bridges whose main span have wood or timber elements), 2,281 bridges with non-ferrous metal elements, and 19,562 bridges with polymer-based products elements. Additionally, construction materials are used in a wide variety of other applications, such as culverts, glass for retro-reflectivity in pavement markings, glass in fiber optics involved in utility relocations, non-ferrous metals in sign sheeting, and dry wall used in rest areas and other vertical construction applications. These are just a few examples of construction materials that may be found in highway projects.

The Department has heard from stakeholders regarding concerns about the implementation of Buy America requirements to construction materials, specifically how recipients of Federal funds will need to require contractors to source Buy America compliant construction materials and how industry will certify and demonstrate compliance. The Department recognizes both the importance of ensuring Buy America compliant construction materials and the need to implement the requirement in a way that is not overly burdensome.

Issuance of the Proposed Temporary Waiver and Discussion of Comments Received

In accordance with Section 70914(b)(1) of the Act, on April 28, 2022, DOT published a notice on its website seeking comment on whether to use its authority to provide a temporary waiver of the Buy America requirement for construction materials on DOT-assisted infrastructure projects, on the basis that applying the domestic content preference for these materials would be inconsistent with the public interest.[2] The notice explained that the waiver would be applicable to awards that are obligated on or after May 14, 2022. To maximize notice to affected stakeholders, the Department also announced the proposal on several email distribution lists related to the operating administrations' existing Buy America requirements.

The DOT received 83 separate comments in response to the publication from a wide array of stakeholders, including State transportation agencies, public transit agencies, airport operators, construction firms, manufacturers and suppliers, labor organizations, and individuals, as well as associations representing each of those groups. The vast majority of commenters supported DOT's proposal to issue a temporary waiver for construction materials. Comments opposing the waiver came from certain manufacturers and labor organizations; their key concerns relevant to the proposal are discussed in more detail below.

In the notice of proposed waiver, DOT asked whether a longer or shorter effective period than 180 days from May 14, 2022 would be warranted. Most commenters who addressed this question stated that this length of time would likely be inadequate to accomplish the goals of the transition waiver period and suggested that it be increased. Most of those commenters suggesting a longer waiver period specifically offered that it should have a duration of one year, but several others proposed even longer effective periods ranging from 18 months to 4 years. Several reasons were given for the commenters' belief that a longer period would be justified. For example, the Utah Department of Transportation described a series of steps that will need to be undertaken before the new requirements for construction materials can be implemented, including OMB issuing final standards for construction materials, as well as State DOTs updating standard specifications; establishing certification processes; working with and informing industry to demonstrate their products meet the standards; working with contractors and incorporating new contract provisions

[2] Because the application of Buy America to construction materials is required under BIL § 70914, the authority for this waiver is also based on BIL § 70914. Therefore, reference to, and reliance on, the waiver authority under specific Buy America provisions that are administered by the Department, such as 49 U.S.C. 50101 (FAA); 23 U.S.C. 313 (FHWA); 49 U.S.C. 22905(a) (FRA); 49 U.S.C. 5323(j) (FTA); and 46 U.S.C. 54101(d)(2)(MARAD), is unnecessary.

prescribing Buy America requirements; and reviewing and updating stewardship and oversight agreements with FHWA to address non-compliance with Made in America standards. The Alaska Department of Transportation and Public Facilities and the Pennsylvania Department of Transportation also noted that the 180-day period would overlap with the peak construction season in most States, and thus affect participation from the contractors, suppliers, and agencies that are needed to develop new compliance processes for construction materials.

Other commenters, such as the Greater Orlando Aviation Authority, focused on the steps needed to investigate potential domestic sources of construction materials and to build up an adequate supply base to support federally funded transportation infrastructure projects. Several commenters, such as the Associated General Contractors of America, noted that current supply chain challenges in the materials industry and the resulting volatility in those markets make it ''extremely difficult to determine at this time whether U.S. production for these newly covered materials can support the demand the IIJA's increased funding levels will place on these markets, or whether there is sufficient or existing U.S. production at all for some of these goods.''

The Wyoming Department of Transportation, however, commented that it while it ''believes the waiver may need to be extended, perhaps considerably,'' it also ''recognizes that DOT needs to move promptly to ensure at least the six-month period to minimize disruption to the current construction season,'' and noted that while compliance procedures may not currently be in place, ''the ability to certify materials will grow over time, so there should be a good faith certification process that can be refined over time.'' While recognizing the challenges that commenters noted on the steps that will ultimately be required to fully implement the new Buy America provisions for construction materials and to achieve a robust, thriving domestic supply base, DOT agrees with Wyoming DOT on the importance of moving quickly with a short-term waiver and with an approach of refining processes over time, rather than delaying the application of the new requirements for an extended period of time until those processes and domestic supply bases can be perfected.

No commenters provided evidence of an existing certification process for construction materials that is already in use and could be immediately adopted by suppliers, contractors, and project sponsors. However, the Spring City Electrical Manufacturing Company, a manufacturer of aluminum lampposts, listed five products that it believes would qualify as construction materials under the Act and noted that the aluminum production process is similar to that for iron and steel products, for which ''DOT has previously determined the 'material certification process has been adequate for determining compliance,' '' as ''contractors must provide certificates of origin to the project sponsor.'' The commenter also stated that ''notably for the [State] DOTs' interests the aluminum lampposts and bases are covered by country of origin marking requirements in 19 U.S.C. 1304(e) that should aid in origin identification.'' The Department will determine whether the company's products would be considered construction materials once OMB has issued final standards, but DOT believes that this comment supports the conclusion that some types of construction materials may be readily addressed with new Buy America compliance procedures adapted from existing procedures elsewhere in use, and that the limited 180-day duration of the waiver as proposed is appropriate to enable that adaptation.

Some commenters, including the United Steelworkers Union (USW), the Municipal Castings Association (MCA), and the Alliance for American Manufacturing (AAM) questioned the duration of the period that the Department provided to comment on the proposed waiver. USW asserted that ''BABA clearly states that agencies requesting general applicability public interests waivers allow for 30 days for public comments.'' The Department disagrees with that description of the statute. Section 70914(c)(2) of the Act requires agencies to ''provide a period of not less than 15 days for public comment on the proposed waiver.'' Section 70914(d) is a separate provision that requires a comment period of ''not less than 30 days'' when an agency conducts a review of an existing general applicability waiver. That provision is not applicable to new general applicability waivers. Accordingly, the Department's comment period satisfies the applicable statutory requirement. The Department chose not to extend the comment period beyond May 13, 2022, because the relevant Buy America requirements became effective on May 14, 2022. The Department determined that the interest in providing financial assistance recipients with certainty about applicable requirements outweighed the benefits of a longer comment period. That determination is supported by the fact that 82 commenters, representing a diverse set of stakeholders, submitted comments in the time provided.

USW, MCA, and AAM, along with the Commercial Metals Company, also expressed concern about the Department's failure to propose the waiver before April 28, 2022. USW asserted that this undermines stakeholder's confidence in the Department's capacity to efficiently implement the Act. The Department's timing was responsive to the public availability of the Implementation Guidance. As explained above, that guidance was issued on April 18, 2022; the Department proposed the waiver 8 business days later. If the Department had proposed the waiver before OMB issued the Implementation Guidance, the public would have lacked important context to inform its comments and the Department would have been at risk of needing to withdraw and re-propose a waiver that complied with the Implementation Guidance. The Department and OMB anticipate providing additional opportunities for further stakeholder input on implementation of the Act, and, as described in the proposal and this notice, the Department will consider narrowing the breadth or shortening the duration of this waiver in response to information supporting the availability of demonstrably compliant categories of construction materials.

USW and AAM also raised concerns about the issuance of a temporary general applicability waiver for construction materials on the basis of public interest. Both parties acknowledged ''that limited, narrow use of waiver authority may be necessary, including for those departments and agencies working to establish a Buy America policy for the first time.'' DOT agrees and notes that while its Operating Administrations have longstanding experience in applying Buy America preferences for iron and steel and for manufactured products, applying such policies to construction materials is a new exercise. USW also noted that ''this Administration has stated clearly that public interest waivers be used sparingly, and reserved for truly exigent circumstances.'' DOT agrees that public interest waivers should be used sparingly and has concluded that avoiding the disruption to transportation infrastructure projects that would occur without a period for deliberate development of processes needed to transition to the new requirements constitutes a rare and

appropriate use of the authority. Both USW and AAM also expressed concern about public interest waivers being used to delay the application of Buy America preferences indefinitely. DOT's purpose in limiting the temporary waiver for construction materials to only 180 days avoids such an outcome and communicates that stakeholders need to rapidly adopt the necessary procedures to ensure compliance with the new requirements.

Several commenters requested that the Department expand the scope of the proposed waiver to include items that are not construction materials, as that term is defined in the Act and Section VIII of the Implementation Guidance. The Department considers those requests to be outside the scope of its current waiver action. Likewise, for the purpose of this waiver action, DOT considers out of scope the comments that were received addressing other types of public interest waivers that DOT could issue under the Act, the application of Buy America requirements to manufactured products and to iron and steel, and the importance of complying with cargo preference (a.k.a. Ship American) requirements when transporting foreign-made materials purchased pursuant to a Buy America waiver. However, DOT values the feedback received in those comments and will consider those requests and comments as it continues implementation of the Act, including its development of guidance and reviews of existing waivers of general applicability under section 70914(d) of the Act.

Finding on the Temporary Waiver

Based on all the information available to the Agency, DOT concludes that applying the domestic content preference for construction materials under Section 70914(a) of the Act on DOT-assisted infrastructure projects now, before adequate compliance processes are in place, would be inconsistent with the public interest, and that a temporary waiver of that requirement is thus appropriate under Section 70914(b)(1). This waiver is applicable only to awards obligated on or after May 14, 2022 and before November 10, 2022. For awards obligated during that 180-day period, the waiver applies for the duration of the award. Unless extended, the waiver is inapplicable to any award obligated on or after November 10, 2022.

In issuing this temporary public interest waiver, DOT is not making a finding that any construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality. Such a finding would require a separate waiver action under section 70194(b)(2).

Ramping Up Made in America Compliance and Ongoing Request for Comments

With the goal of advancing crucial infrastructure projects in a timely manner while implementing the new Buy America requirements, the DOT is providing this notice as its finding that a waiver of Buy America requirements for construction materials is appropriate at this time. DOT continues to encourage suppliers and other stakeholders to inform DOT of any procedures that may be developed or be in place to certify the compliance of construction materials with the domestic preference requirement in the Act. That information helps DOT rapidly encourage domestic sourcing and potentially shorten the effective period or narrow the applicability of the transitional waiver. The Department also encourages supplier and other stakeholders to identify categories of construction materials that currently have sufficient domestic availability to support DOT-assisted infrastructure projects, to assist contractors and project sponsors in incorporating compliant products in their projects and to help the Department focus its activities to benefit domestic manufacturers. Comments may be submitted to the U.S. Government electronic docket site at *http://www.regulations.gov/,* Docket: DOT–OST–2022–0047.

The temporary general waiver of the Buy America requirement for construction materials under the Act will provide sufficient time for DOT to: (i) Seek information and feedback from State, local, industry, and other partners and stakeholders on challenges with and solutions for implementing the requirement; (ii) allow a reasonable adjustment period for recipients of DOT financial assistance, including States, local communities, Tribal nations, transit agencies, railroads, airports and ports and their industrial vendors to develop and transition to new compliance and certification processes for construction materials; and (iii) gather data on the sourcing of the full range of construction materials used in Federally funded transportation projects and strategies for increasing domestic capacity to produce those materials.

During the waiver period, DOT expects that implementing partners will take rapid action to prepare for compliance with the new requirements, as they currently do for iron and steel, for example. Actions to prepare for compliance with the new requirements include:

1. Establishing certification processes by grantees to determine Buy America compliance for construction materials;
2. Working with industry to ensure that manufacturers are prepared to demonstrate that their products meet applicable Buy America standards;
3. Ensuring contractors and subcontractors are prepared to certify compliance with Buy America requirements for construction materials, and provide all relevant information, including contract provisions prescribing Buy America requirements;
4. Establishing appropriate diligence by State DOTs, contracting agencies, and other relevant agencies, including audits and reviews as appropriate; and
5. Providing further data and information to DOT on the domestic availability of construction materials, in particular, through comment by suppliers on construction materials that can be sourced in the U.S. currently.

During the waiver period, DOT will also work to prepare for implementation of new Made in America requirements for construction materials by:

1. Assessing existing Made in America processes such as questions and requirements for grantees and contractors to ensure processes for reviewing construction materials are aligned with standards already in place, such as for iron and steel, as appropriate;
2. Building new Made in America requirements into forthcoming Notice of Funding Opportunities, loan programs, and other resources provided by the Department, as appropriate;
3. Reviewing DOT's enforcement processes, including stewardship and oversight agreements with States, risk-based reviews, and compliance assessment program reviews for non-compliance with Made in America standards to ensure the enforcement processes for construction materials are effective and consistent with processes for products such as iron and steel, as appropriate;
4. Reviewing data, information, and comments provided by States, industry, and other partners to further assess opportunities, challenges, and the availability of domestically sourced construction materials. Stakeholders are encouraged to provide information to DOT in response to this notice, as well as to the OMB's Listening Sessions and Request for Information on the application of Made in America requirements to construction materials.

By the end of the waiver period, DOT expects State, industry, and other partners to establish an effective compliance process appropriate for construction materials, consistent with

the BIL and relevant implementation guidance and standards. As explained above, the Department's implementation activities will continue during the waiver period. If DOT can determine, using all available information, including stakeholder comments and data, that there are currently sufficient compliance processes for certain categories of construction materials, DOT will consider shortening the period of the waiver overall, or for certain categories of product, to rapidly encourage domestic sourcing. In making any adjustments, DOT will follow the public input requirements of Section 70914(d), which provide for at least a 30-day comment period for DOT's conduct of a review of an existing general applicability waiver.

Issued in Washington, DC, on: May 19, 2022.

Polly E. Trottenberg,

Deputy Secretary.

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List May 18, 2022

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