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FEDERAL HOUSING FINANCE AGENCY

12 CFR Parts 1290 and 1291

RIN 2590–AB08

Affordable Housing Program—Technical Revisions

AGENCY: Federal Housing Finance Agency.

ACTION: Final rule; technical revisions.

SUMMARY: The Federal Housing Finance Agency (FHFA) is making technical revisions to its regulation governing the Federal Home Loan Banks' (Banks) Affordable Housing Program (AHP) and to related provisions in the Community Support Requirements regulation, which were both amended by a final rule published on November 28, 2018. These technical revisions are consistent with FHFA's policy intent, as reflected in the preamble discussions of the 2018 final rule, and do not involve any policy changes.

DATES: This rule is effective July 1, 2022.

FOR FURTHER INFORMATION CONTACT: Ted Wartell, Manager, Office of Housing and Community Investment, 202–649–3157, *ted.wartell@fhfa.gov;* Tiffani Moore, Supervisory Policy Analyst, Office of Housing and Community Investment, 202–649–3304, *tiffani.moore@fhfa.gov;* or Marshall Adam Pecsek, Assistant General Counsel, Office of General Counsel, 202–649–3380, *marshall.pecsek@fhfa.gov* (these are not toll-free numbers); Federal Housing Finance Agency, 400 7th Street SW, Washington, DC 20219. For TTY/TRS users with hearing and speech disabilities, dial 711 and ask to be connected to any of the contact numbers above.

SUPPLEMENTARY INFORMATION:

I. Summary of Revisions

On November 28, 2018, FHFA published a final rule (2018 final rule) (83 FR 61186) that amended its regulation governing requirements for the Banks' AHP (12 CFR part 1291). Since publication of the 2018 final rule, FHFA has identified inadvertent omissions in the regulatory text, and opportunities for clarification and streamlining of the regulatory text and preamble language. This rule makes these technical revisions, which are summarized below and further described in Sections II. and III. below.

- Clarifies that the equation in the 2018 final rule preamble illustrating the pro rata AHP subsidy repayment calculation more accurately describes the calculation if the word ''occupied'' were replaced with the word ''owned'';
- Clarifies in the regulatory text that amendments to Bank's annual Targeted Community Lending Plan (TCLP) that relate to its AHP must be published no later than the publication date of its AHP Implementation Plan, regardless of whether a Bank plans to establish any Targeted Funds, which was inadvertently omitted from the regulatory text;
- Reinserts the word ''construction'' inadvertently omitted from various places in the regulatory text related to owner-occupied units constructed with AHP subsidy, as they continue to be subject to the AHP retention agreement requirement;
- Clarifies in the regulatory text that the criteria in a Bank's scoring tie-breaker methodology for its General Fund and any Targeted Funds must be selected from the applicable Fund's scoring criteria, as in identical to the scoring criteria and not modified versions of them;
- Reinserts inadvertently omitted regulatory text exempting the Banks from the requirement to review annual certifications from owners or sponsors of Low-Income Housing Tax Credit (LIHTC) projects during the AHP long-term monitoring period;
- Clarifies in the regulatory text that a Bank must review all annual certifications from AHP project sponsors or owners during the AHP long-term monitoring period (subject to certain exceptions), *i.e.,* a Bank may not use a risk-based sampling plan to select the certifications it will review;
- Clarifies the regulatory text governing a Bank's authority to establish various maximum AHP subsidy limits for its General Fund and any Targeted Funds; and
- Streamlines the regulatory text by eliminating a superfluous regulatory provision on non-delegation regarding adoption of Bank policies on re-use of repaid AHP direct subsidies.

II. Clarification of Equation in 2018 Final Rule Preamble Illustrating Pro Rata AHP Subsidy Repayment Calculation—§ 1291.15(a)(7)(v)(A)

Section 1291.15(a)(7)(v)(A) of the 2018 final rule revised the methodology for calculating the amount of AHP subsidy to be repaid by an AHP-assisted household in the event that the household's owner-occupied unit is sold or refinanced during the AHP five-year retention period. One component of this calculation, retained but modified from the predecessor AHP regulation, is a requirement that the amount of AHP subsidy to be repaid be ''reduced on a pro rata basis per month until the unit is sold, transferred, or its title or deed transferred, or is refinanced, during the AHP five-year retention period.'' Consistent with this requirement, the preamble of the 2018 final rule stated that the AHP subsidy amount is to be ''reduced on a pro rata basis for the time that the household *owned* the unit until its sale or refinancing.'' 83 FR 61203 (emphasis added). An equation in the preamble illustrating this pro rata calculation used the word ''occupied'' rather than ''owned.'' *Id.* While ownership and occupancy are typically coextensive for AHP-assisted households, this may not always be the case. Accordingly, the equation reads more accurately if the word ''occupied'' is replaced with the word ''owned'', as follows:

$$\left(1 - \frac{\#\ of\ Months\ AHP\text{-}Assisted\ Homebuyer\ Owned\ Home}{Retention\ Period\ (60\ months)}\right) X\ Original\ AHP\ Subsidy$$

$$= Pro\ Rata\ Subsidy\ Amount$$

III. Revisions to Regulatory Text

A. Requirement To Publish Targeted Community Lending Plan No Later Than Publication of AHP Implementation Plan—§§ 1290.6(c), 1291.13(a)(2)

The 2018 final rule requires that a Bank publish its current TCLP on its publicly available website, and publish any amendments to its TCLP on the website within 30 days after the date of their adoption by the Bank's board of directors. The final rule further states that if a Bank plans to establish any Targeted Funds under its AHP, the Bank must publish its TCLP (as amended) on its website on or before the date of publication of its annual AHP Implementation Plan, and at least 90 days before the first day that applications may be submitted to the Targeted Fund, unless the Targeted Fund is specifically targeted to address a Federal- or state-declared disaster. 12 CFR 1290.6(c), 1291.13(a)(2).

The preamble to the 2018 final rule stated that ''. . . the final rule requires the Banks to publish their TCLPs no later than the publication date of their AHP Implementation Plans.'' 83 FR 61197. The 2018 final rule's regulatory text inadvertently omitted this TCLP publication timing requirement when a Bank does not plan to establish any Targeted Funds. Accordingly, to align the regulatory text with FHFA's stated intent, FHFA is amending § 1290.6(c) of the Community Support Requirements regulation and § 1291.13(a)(2) of the AHP regulation to require that a Bank's TCLP (as amended) must be published no later than the date of publication of the Bank's AHP Implementation Plan (as amended), regardless of whether a Bank plans to establish any Targeted Funds. Because a Bank's TCLP also addresses Bank activity and plans not related to its AHP (*e.g.,* establishment of quantitative targeted community lending performance goals under § 1290.6(a)(5)(iv)), these amendments to the rule text specify that only those TCLP amendments related to the Bank's AHP must be published on or before publication of the annual AHP Implementation Plan.

B. Retention Agreements on Owner-Occupied Units Constructed With AHP Subsidy—§§ 1291.1 (Definition of ''Retention Period''), 1291.15(a)(7), 1291.23(d)(1)

In several places in the 2018 final rule's regulatory text, the rule requires or references a requirement that an AHP-assisted owner-occupied unit be subject to an AHP retention agreement if the AHP subsidy is used for the purchase, or purchase in conjunction with rehabilitation, of the unit, but inadvertently omits the word ''construction'' in these provisions. This omission would suggest that AHP retention agreements are not required where AHP subsidy is used for construction of the unit. Omission of the word ''construction'' is correct with respect to households that receive AHP subsidy under the Bank's homeownership set-aside programs, as AHP subsidy may not be used for construction under those programs. However, the omission is not correct where AHP subsidy is used for construction under the Banks' competitive application programs (*i.e.,* the General Fund and any Targeted Funds), a permissible use under those programs. As further discussed below, FHFA did not intend to eliminate this requirement for AHP retention agreements for the competitive application programs. In a July 2019 ''Questions and Answers'' document posted on FHFA's website and sent to the Banks, FHFA acknowledged this inadvertent omission and stated its intent to correct the error in a future rule.[1]

The predecessor AHP regulation required retention agreements for all owner-occupied units for which AHP subsidy use was authorized—*i.e.,* purchase, rehabilitation, or construction of units in projects awarded subsidies under a Bank's competitive application program, and purchase or rehabilitation of units by households funded under a Bank's homeownership set-aside program(s). 12 CFR 1291.9(a)(7) (Jan. 1, 2018 edition). In its proposed rule to amend the AHP regulation, FHFA proposed eliminating the requirement for retention agreements for all AHP-assisted owner-occupied units, regardless of how the AHP subsidy was used. 83 FR 11351. However, in the 2018 final rule, FHFA decided to eliminate the requirement for retention agreements only where the AHP subsidy is used solely for rehabilitation without an accompanying purchase. In reinserting the retention agreement language in the final rule, FHFA inadvertently omitted the existing regulatory references to ''construction.''

FHFA's intent in this regard is clear in the preamble discussion in the 2018 final rule. Where the preamble first summarizes the effect of the final rule, it states that the rule's effect is to ''remove the requirement for retention agreements for owner-occupied units where the AHP subsidy is used solely for rehabilitation,'' and includes no indication of an intent to remove the requirement under any other circumstances. *Id.* at 61186. The preamble further states that ''[i]n a change from the proposed rule, the final rule eliminates the current requirement for owner-occupied retention agreements where households use the AHP subsidy solely for rehabilitation of a unit, *but retains it in other circumstances.*'' *Id.* at 61192 (emphases added). This is further indicated by the subsequent analysis in the preamble, which acknowledges commenters' claims about the benefits of owner-occupied retention agreements, but only includes a justification for eliminating the requirement where the subsidy is used solely for rehabilitation without an accompanying purchase. *See id.* at 61193 (concluding that abuse, in the form of ''flipping,'' is unlikely ''where the AHP subsidy is used solely for rehabilitation of homes, with no accompanying purchase.'') Had FHFA intended to eliminate the requirement for retention agreements for owner-occupied units where the AHP subsidy is used for construction, the preamble would have included an acknowledgment of this change as well as a rationale, neither of which appears in the preamble.

Accordingly, to align the regulatory text with FHFA's intent, FHFA is amending § 1291.23(d)(1) to reinsert construction as a use of AHP subsidy in owner-occupied projects for which AHP retention agreements are required, and

[1] *See* Questions and Answers on the November 28, 2018 Final Rule—Part I (July 2019), *available at https://www.fhfa.gov/PolicyProgramsResearch/Programs/AffordableHousing/Documents/OHCI%20-%20QA.pdf.*

also making conforming revisions to §§ 1291.1 (definition of ''retention period'') and 1291.15(a)(7) (introductory text).

C. Scoring Tie-Breaker Methodology—§ 1291.25(c)(3)

The 2018 final rule requires a Bank to establish and implement a scoring tie-breaker policy for selecting between or among project applications receiving identical scores under its General Fund and any Targeted Funds in the same funding round when there is insufficient AHP subsidy to approve all of the tied applications but sufficient subsidy to approve one of them. The Bank is required to meet certain requirements specified in the final rule in establishing its scoring tie-breaker policy, including that the methodology used to break a scoring tie, which may differ for each Fund, must be ''drawn from'' the particular Fund's scoring criteria adopted in the Bank's AHP Implementation Plan. 12 CFR 1291.25(c)(3). The preamble to the 2018 final rule states that, with one limited exception, the scoring tie-breaker requirements are ''consistent with guidance FHFA has provided to the Banks and with the proposed rule.'' 83 FR 61212. That guidance, Advisory Bulletin 2013–06, provided examples of permitted scoring tie-breaker methodologies that a hypothetical Bank could adopt, each of which incorporated scoring criteria identical to those included in the hypothetical Bank's AHP Implementation Plan.

A question has arisen as to whether the scoring tie-breaker provision in the 2018 final rule permits a Bank to adopt a scoring tie-breaker methodology that incorporates scoring criteria similar, but not identical, to specific scoring criteria for the applicable Fund in the Bank's AHP Implementation Plan. As indicated in the preamble to the 2018 final rule, in light of the relevant guidance in Advisory Bulletin 2013–06, FHFA intended that a Bank's scoring tie-breaker methodology for a particular Fund be *identical to* one or more scoring criteria for that Fund in the Bank's AHP Implementation Plan. The phrase ''drawn from'' was intended to indicate that a Bank would select, from all of the existing scoring criteria in its AHP Implementation Plan, one or more of those scoring criteria to serve as the scoring tie-breaker(s). It was not intended that a Bank could use modified versions of its existing scoring criteria.

Accordingly, to more closely align the regulatory text with FHFA's intent, FHFA is amending § 1291.25(c)(3) by replacing the phrase ''drawn from'' with the phrase ''selected from.''

D. Exception to Annual Certification Requirement for LIHTC Projects During Long-Term Monitoring; Clarification That a Bank May Not Conduct Risk-Based Sampling of Annual Project Sponsor or Owner Certifications During the Long-Term Monitoring Period—§ 1291.50(c)(1)(i), (c)(2)(ii); Exception to Annual Certification Requirement for LIHTC Projects

Section 1291.50(c)(1) of the 2018 final rule requires generally that each Bank conduct long-term monitoring of AHP-assisted rental projects for the duration of the AHP 15-year retention period. This monitoring includes Bank review of annual certifications by project sponsors or owners of compliance with the AHP household income and rent requirements and ongoing project financial viability (paragraph (c)(1)(i)). The predecessor AHP regulation provided for an exception to this annual certification requirement where the project received LIHTCs under paragraph (a)(2), or where the project received funds from a Federal, state or local government entity under paragraph (a)(3). 12 CFR 1291.7(a)(2), (3) (Jan. 1, 2018 edition). The 2018 final rule retained the exception for projects receiving funds from such government entities in § 1291.50(b), but in reorganizing the various monitoring provisions, inadvertently omitted the exception for LIHTC projects from § 1291.50(c)(1)(i). FHFA's intent to retain this exception for LIHTC projects is clearly indicated in the preamble of the 2018 final rule, which states that: ''[c]onsistent with the current regulation and proposed rule, the final rule does not require the Banks to conduct long-term monitoring of AHP projects that received LIHTCs during the AHP 15-year retention period.'' 83 FR 61201. In the above-referenced ''Questions and Answers'' guidance document, FHFA acknowledged this inadvertent omission and stated its intent to correct it in a future rule.[2]

Accordingly, to align the regulatory text with FHFA's stated intent, FHFA is amending § 1291.50(c)(1)(i) to provide that during long-term monitoring of AHP-assisted rental projects, a Bank is not required to review annual certifications by sponsors or owners of LIHTC projects.

Scope of risk-based sampling. Section 1291.50(c)(1)(ii) of the 2018 final rule requires that a Bank's written monitoring policies also include requirements for Bank review of back-up project documentation regarding household incomes and rents maintained by the project sponsor or owner, except for LIHTC projects and projects that received funds from a Federal, state or local government entity under § 1291.50(b)(1) and (2) as specified in separate FHFA guidance. Section 1291.50(c)(2)(ii) provides that a Bank may use a reasonable, risk-based sampling plan to select the rental projects ''to be monitored under this paragraph (c),'' and to review the back-up project documentation and any other project documentation. The corresponding provision in the predecessor AHP regulation included annual project sponsor or owner certifications as eligible for risk-based sampling, but this option was removed by the 2018 final rule because, in practice, as noted in the preamble to the 2018 AHP proposed rule, the Banks review all annual project sponsor or owner certifications (subject to the exceptions discussed above), consistent with FHFA's expectation. 83 FR 11364. However, the phrase ''to be monitored under this paragraph (c)'' in § 1291.50(c)(2)(ii) might be misread to suggest that a Bank may use a risk-based sampling plan to select the annual project sponsor or owner certifications it will review.

Accordingly, to better align the regulatory text with FHFA's intent, FHFA is amending § 1291.50(c)(1)(i) to provide that during AHP long-term monitoring, a Bank must review *all* annual project sponsor or owner certifications (subject to the exceptions discussed above), *i.e.,* a Bank may not use a risk-based sampling plan under § 1291.50(c)(2)(ii) to select the annual project sponsor or owner certifications it will review.

E. Maximum Subsidy Limits—§ 1291.24(c)(1)

Section 1291.24(c)(1) of the 2018 final rule authorizes a Bank to establish, in its discretion, a limit on the maximum amount of AHP subsidy available per member, per project sponsor, per project, or per project unit in a single AHP funding round under its General Fund and any Targeted Funds. The provision further states that a Bank may establish only one maximum subsidy limit per such entity for the General Fund and for each Targeted Fund, which must apply to all applicants to the specific Fund, but the maximum subsidy limit per project or per project unit may differ among the Funds.

[2] *See* Questions and Answers on the November 28, 2018 Final Rule—Part I (July 2019), *available at https://www.fhfa.gov/PolicyProgramsResearch/Programs/AffordableHousing/Documents/OHCI%20-%20QA.pdf.*

The text of § 1291.24(c)(1) accurately reflects FHFA's intent, but prompted a request for clarification of the language, specifically, how many different AHP subsidy limits may a Bank establish within each General Fund and Targeted Fund, or across multiple Funds. FHFA's intent was not to prohibit a Bank from establishing more than one type of limit per Fund, but to require that for each type established, the quantitative subsidy limit be applied uniformly across such Fund.[3] Nor did the predecessor AHP regulatory text, which was located at § 1291.5(c)(15)(i), prohibit a Bank from applying more than one type of subsidy limit to its competitive application program, and FHFA did not propose such a prohibition in the 2018 proposed rule.

Accordingly, to provide greater clarity, FHFA is adding explanatory language in § 1291.24(c)(1) stating that each General Fund or Targeted Fund may contain up to all four of these optional AHP subsidy limits, each of which must apply to all applicants to the specific Fund. A Bank's AHP subsidy limit per member must be the same for each of its Funds and its AHP subsidy limit per project sponsor must be the same for each of its Funds, but a Bank's AHP subsidy limit per project and per project unit may differ among the Funds.

F. Removal of Superfluous Provision on Non-Delegation of Authority To Adopt AHP Subsidy Re-Use Policies—§ 1291.64(b)(2)

Section 1291.64(b)(2) of the 2018 final rule, which was retained from the predecessor AHP regulation (12 CFR 1291.8(f)(2)(ii) (Jan. 1, 2018 edition)), prohibits a Bank's board of directors from delegating to Bank officers or other Bank employees the responsibility to adopt any Bank policies on re-use of repaid AHP direct subsidies in the same project. Sections 1291.13(b)(12) and 1291.64(b)(1) of the 2018 final rule, also retained from the predecessor AHP regulation (12 CFR 1291.3(a)(7); 1291.8(f)(2)(i) (Jan. 1, 2018 edition)), require that these AHP subsidy re-use policies be included in the Bank's AHP Implementation Plan. Section 1291.13(b) of the 2018 final rule (introductory text) prohibits a Bank's board of directors from delegating to a committee of the board, Bank officers, or other Bank employees the responsibility for adopting or amending the Bank's AHP Implementation Plan, which, thus, includes adopting any AHP subsidy re-use policies in the Plan. The non-delegation provision for AHP subsidy re-use policies in § 1291.64(b)(2) is, therefore, superfluous.

Accordingly, to streamline the regulatory text, FHFA is removing the non-delegation provision in § 1291.64(b)(2), and making technical changes to the paragraph numbering in § 1291.64(b) to reflect this removal.

IV. Public Notice and Comment

The Administrative Procedures Act provides that when an agency for good cause finds that public notice and comment on a rule are impracticable, unnecessary, or contrary to the public interest, the agency may publish the rule in final form without prior public notice and comment. 5 U.S.C. 553(b)(B). Because this rule makes technical revisions that do not reflect any changes in the policy intent of the 2018 final rule, publication of proposed amendments with an opportunity for public comment would serve no useful public purpose. Accordingly, FHFA finds that public notice and comment on this rule is unnecessary and is proceeding directly to a final rule.

V. Consideration of Differences Between the Banks and Enterprises

Section 1313(f) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 requires the FHFA Director, when promulgating regulations ''of general applicability and future effect'' relating to the Banks, to consider the differences between the Banks and Fannie Mae and Freddie Mac (the Enterprises) as they may relate to the Banks' cooperative ownership structure, mission of providing liquidity to members, affordable housing and community development mission, capital structure, and joint and several liability. 12 U.S.C. 4513(f). This rule applies only to the Banks. It makes technical revisions to align the 2018 final rule with FHFA's policy intent in that rule. In preparing the 2018 final rule, the Director considered the differences between the Banks and the Enterprises as they relate to the above factors, and determined that the amendments in the 2018 final rule were positive for the affordable housing mission of the Banks and neutral regarding the other statutory factors. Because this rule makes only technical revisions, none of which involves policy changes, no further analysis is needed under section 1313(f).

VI. Regulatory Determinations

A. Paperwork Reduction Act

This rule does not contain any information collection requirement that would require the approval of the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*). Therefore, FHFA has not submitted any information to OMB for review for PRA purposes.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA certified that the 2018 final rule was not likely to have a significant economic impact on a substantial number of small entities because it applied to the Banks, which are not small entities for purposes of the Regulatory Flexibility Act. 83 FR 61231. For these same reasons, and also because this rule makes only technical revisions to align the 2018 final rule with FHFA's policy intent in that rule, FHFA certifies that this rule is unlikely to have a significant economic impact on a substantial number of small entities.

C. Congressional Review Act

In accordance with the Congressional Review Act (5 U.S.C. 801 *et seq.*), FHFA has determined that this rule is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the OMB.

List of Subjects

12 CFR Part 1290

Banks and banking, Credit, Federal home loan banks, Housing, Mortgages, Reporting and recordkeeping requirements.

12 CFR Part 1291

Community development, Credit, Federal home loan banks, Housing, Low- and moderate-income housing, Mortgages, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, FHFA amends parts 1290 and 1291 of title 12 of the Code of Federal Regulations as follows:

[3] FHFA provided clarifying guidance in an April 2020 ''Questions and Answers'' document posted on its website and sent to the Banks. *See* Questions and Answers on the November 28, 2018 Final Rule—Part II (April 2020), *available at https://www.fhfa.gov/PolicyProgramsResearch/Programs/AffordableHousing/Documents/AHP-FAQs-4-6-2020.pdf.*

PART 1290–COMMUNITY SUPPORT REQUIREMENTS

■ 1. The authority citation for part 1290 continues to read as follows:

Authority: 12 U.S.C. 1430(g).

■ 2. Amend § 1290.6 by revising paragraph (c) to read as follows:

§ 1290.6 Bank community support programs.

* * * * *

(c) *Public access.* A Bank shall publish its current Targeted Community Lending Plan on its publicly available website, and shall publish any amendments to its Targeted Community Lending Plan on the website within 30 days after the date of their adoption by the Bank's board of directors and no later than the date of publication on the website of its annual Affordable Housing Program Implementation Plan (as amended). If such amendments relate to the Bank's Affordable Housing Program, the Bank shall publish them no later than the date of publication on its website of its annual Affordable Housing Program Implementation Plan (as amended). If a Bank plans to establish any Targeted Funds under its Affordable Housing Program, the Bank must publish its Targeted Community Lending Plan (as amended) on the website at least 90 days before the first day that applications may be submitted to the Targeted Fund, unless the Targeted Fund is specifically targeted to address a Federal- or State-declared disaster.

PART 1291—FEDERAL HOME LOAN BANKS' AFFORDABLE HOUSING PROGRAM

■ 3. The authority citation for part 1291 continues to read as follows:

Authority: 12 U.S.C. 1430(j).

§ 1291.1 [Amended]

■ 4. Amend § 1291.1 in paragraph (1) of the definition of ''Retention period'' by:
■ a. Removing ''unit or'' and adding in its place ''unit,''; and
■ b. Adding '', or for construction of the unit'' before ''; and''.

■ 5. Amend § 1291.13 by revising paragraph (a)(2) to read as follows:

§ 1291.13 Targeted Community Lending Plan; AHP Implementation Plan.

(a) * * *

(2) *Public access.* A Bank shall publish its current Targeted Community Lending Plan on its publicly available website, and shall publish any amendments to its Targeted Community Lending Plan on the website within 30 days after the date of their adoption by the Bank's board of directors and no later than the date of publication on the website of its annual AHP Implementation Plan (as amended). If such amendments relate to the Bank's AHP, the Bank shall publish them no later than the date of publication on its website of its annual AHP Implementation Plan (as amended). If a Bank plans to establish any Targeted Funds under its AHP, the Bank must publish its Targeted Community Lending Plan (as amended) on the website at least 90 days before the first day that applications may be submitted to the Targeted Fund, unless the Targeted Fund is specifically targeted to address a Federal- or State-declared disaster.

* * * * *

§ 1291.15 [Amended]

■ 6. Amend § 1291.15 in paragraph (a)(7) introductory text by:
■ a. Removing ''or purchase'' and adding in its place ''for purchase''; and
■ b. Adding ''or for construction'' after ''rehabilitation,''.

§ 1291.23 [Amended]

■ 7. Amend § 1291.23 in paragraph (d)(1) by:
■ a. Removing ''or for purchase'' and adding in its place ''for purchase''; and
■ b. Adding ''or for construction'' after ''rehabilitation,''.

■ 8. Amend § 1291.24 in paragraph (c)(1) by revising the second sentence and adding a third sentence to read as follows:

§ 1291.24 Eligible uses.

* * * * *

(c) * * *

(1) * * * Each General Fund or Targeted Fund may contain up to all four of these optional AHP subsidy limits, each of which must apply to all applicants to the specific Fund. A Bank's AHP subsidy limit per member must be the same for each of its Funds and its AHP subsidy limit per project sponsor must be the same for each of its Funds, but a Bank's AHP subsidy limit per project and per project unit may differ among the Funds * * *

* * * * *

§ 1291.25 [Amended]

■ 9. Amend § 1291.25 in paragraph (c)(3) by removing the word ''drawn'' and adding in its place the word ''selected''.

§ 1291.50 [Amended]

■ 10. Amend § 1291.50 in paragraph (c)(1)(i) by removing the words ''Bank review of annual certifications by project sponsors or owners to the Bank'' and adding in their place the words ''Bank review of all annual certifications to the Bank by project sponsors or owners, other than sponsors or owners of projects that have been allocated LIHTCs,''.

§ 1291.64 [Amended]

■ 11. Amend § 1291.64 by:
■ a. Removing paragraph (b)(2) and the heading for paragraph (b)(1).
■ b. Redesignating paragraphs (b)(1) introductory text and (b)(1)(i), (ii), and (iii) as paragraphs (b) introductory text and (b)(1), (2), and (3), respectively.

Sandra L. Thompson,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2022–11543 Filed 5–31–22; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0517; Project Identifier MCAI–2021–00356–R; Amendment 39–22047; AD 2022–10–09]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Airbus Helicopters Model SA–365C1 and SA–365C2 helicopters. This AD was prompted by a Model EC225 helicopter accident and subsequent investigation that determined that the level of particles in certain main gearboxes (MGB) could lead to a planet gear seizure. This AD requires inspecting the MGB magnetic plugs and oil filter for particles and, depending on the outcome of the inspections, further inspections and replacing certain parts, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective June 16, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of June 16, 2022.

The FAA must receive comments on this AD by July 18, 2022.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For EASA material incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* For Airbus Helicopters service information identified in this final rule, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax 972–641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. Service information that is incorporated by reference is also available in the AD Docket at *https://www.regulations.gov* by searching for and locating Docket FAA–2022–0517.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0517; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the EASA AD, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Kristin Bradley, Aerospace Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *Kristin.Bradley@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, issued EASA AD No. 2020–0156, dated July 14, 2020 (EASA AD 2020–0156), to correct an unsafe condition for all serial-numbered Airbus Helicopters (formerly Eurocopter, Eurocopter France, Aerospatiale) Model SA 365 C1, SA 365 C2, and SA365 C3 helicopters. EASA advised of an investigation that was conducted on the MGB's design following an EC 225 helicopter accident. EASA further advised that investigation results determined that the level of detectability of particles linked to a planet gear spalling needs improvement. EASA stated this condition, if not detected and corrected, could lead to a planet gear seizure possibly resulting in the loss of the MGB and subsequent reduced control of the helicopter.

Accordingly, EASA AD 2020–0156 required inspecting the MGB magnetic plug and MGB oil filter for particles and depending on the results of the inspection, conducting further inspections or removing certain parts from service. EASA AD 2020–0156 also required modification of certain helicopters by replacing certain part-numbered magnetic plugs with other part-numbered magnetic plugs and prohibited the installation of an affected magnetic plug on any helicopter. EASA considered EASA AD 2020–0156 to be an interim action and stated that further AD action may follow.

After EASA issued EASA AD 2020–0156, further investigation results determined the planet gears installed in the epicyclic module of the MGB are subject to higher outer race contact pressures, which may cause spalling and cracking. Accordingly, EASA issued EASA AD No. 2021–0016, dated January 13, 2021 (EASA AD 2021–0016), which superseded EASA AD 2020–0156. EASA AD 2021–0016 retains the requirements of EASA AD 2020–0156 and requires replacing the second stage planet gears at reduced intervals. EASA AD 2021–0016 also prohibits the installation of an affected MGB on any helicopter, unless the planetary gears are replaced as required by the EASA AD.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0016 specifies procedures for inspecting the MGB magnetic plug and oil filter and depending on the results, corrective action. EASA AD 2021–0016 also specifies procedures for modifying the helicopter by replacing the non-electrical magnetic plug with an improved non-electrical magnetic plug. EASA AD 2021–0016 specifies procedures for replacing all second stage planet gears at specified intervals. EASA AD 2021–0016 also prohibits installing a certain part-numbered magnetic plug on any helicopter and permits the installation of an affected MGB provided that no planet gear installed has exceeded 300 flight hours since new and the planetary gears have been replaced as required following the installation of the MGB.

Other Related Service Information

The FAA reviewed Airbus Helicopters Alert Service Bulletin (ASB) No. SA365–05.33, Revision 1, dated December 15, 2020, which establishes a new maintenance criterion following the detection of particles during the scheduled periodic check of the MGB magnetic plug.

The FAA also reviewed Airbus Helicopters ASB No. SA365–65.53, Revision 0, dated May 28, 2020. This service information specifies procedures for installing modification 0763B19 to improve the performance in collecting metal particles in the new non-electrical magnetic plug.

FAA's Determination

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA is issuing this AD after evaluating all known relevant information and determining that the unsafe condition described previously is likely to exist or develop on other products of the same type designs.

Requirements of This AD

This AD requires accomplishing the actions specified in EASA AD 2021–0016, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD and except as discussed under ''Differences Between this AD and the EASA AD.''

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities to use this process. As a result, EASA AD 2021–0016 will be incorporated by reference in the FAA final rule. This AD would, therefore, require compliance with EASA AD 2021–0016 in its entirety,

through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in the EASA AD. Service information specified in EASA AD 2021–0016 that is required for compliance with EASA AD 2021–0016 is available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0517.

Differences Between This AD and the EASA AD

The EASA AD applies to Airbus Helicopters Model SA 365 C3 helicopters, whereas this AD does not because that model is not FAA type-certificated. The EASA AD requires sending oil samples to Airbus Helicopters, contacting Airbus Helicopters to determine the characterization of certain particles collected or for details on the MGB history, and reporting certain information to Airbus Helicopters, whereas this AD does not. The EASA AD 2021–0016 specifies to contact Airbus Helicopters if further particles are collected during close monitoring, whereas this AD requires, before further flight, accomplishing repair in accordance with a method approved by the Manager, General Aviation & Rotorcraft Section, International Validation Branch, FAA; or EASA; or Airbus Helicopters' EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature. The EASA AD requires inspections after the last flight of each day, whereas this AD requires those inspections prior to the first flight of each day. Where the service information referenced in EASA AD 2021–0016 specifies that certain requirements can be performed by a mechanical technician or pilot, this AD requires that the visual check of the MGB magnetic plugs be performed by a qualified mechanic.

Interim Action

The FAA considers this AD to be an interim action. If final action is later identified, the FAA might consider further rulemaking then.

FAA's Justification and Determination of the Effective Date

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

There are no helicopters with this type certificate on the U.S. Registry. Accordingly, notice and opportunity for prior public comment are unnecessary, pursuant to 5 U.S.C. 553(b)(3)(B).

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

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–0517; Project Identifier MCAI–2021–00356–R'' at the beginning of your comments. The most helpful comments reference a specific portion of the AD, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this AD because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Kristin Bradley, Aerospace Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *Kristin.Bradley@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Regulatory Flexibility Act (RFA)

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

Costs of Compliance

Currently, there are no affected U.S.-registered helicopters. If an affected helicopter is imported and placed on the U.S. Register in the future and labor costs are estimated at $85 per work-hour, the FAA provides the following cost estimates to comply with this AD:

Inspecting the magnetic plugs and oil filter for particle deposits will take about 1 work-hour for an estimated cost of $85 per helicopter per inspection cycle.

Replacing the magnetic plugs will take about 5 hours and parts will cost about $1,877 for a total cost of $2,302 per helicopter.

Replacing the planetary gear assembly will take about 48 work-hours and parts will cost about $58,009 for a total cost of $62,089 per helicopter.

Replacing an MGB will take about 42 work-hours and parts will cost about $295,000 (overhauled) for a total cost of $298,570 per helicopter.

Authority for This Rulemaking

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

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section

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

Regulatory Findings

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

For the reasons discussed above, I certify this regulation:

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–10–09 Airbus Helicopters: Amendment 39–22047; Docket No. FAA–2022–0517; Project Identifier MCAI–2021–00356–R.

(a) Effective Date

This airworthiness directive (AD) becomes effective June 16, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Helicopters Model SA–365C1 and SA–365C2 helicopters, certificated in any category,

(d) Subject

Joint Aircraft Service Component (JASC) Code: 6320, Main Rotor Gearbox.

(e) Unsafe Condition

This AD was prompted by an accident involving a Model EC225LP helicopter in which the main rotor hub detached from the main gearbox (MGB). The FAA is issuing this AD to detect particles in the MGB and prevent planet gear seizure. The unsafe condition, if not addressed, could result in planet gear seizure resulting in the loss of the MGB and subsequent reduced control of the helicopter.

(f) Compliance

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

(g) Requirements

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0016, dated January 13, 2021 (EASA AD 2021–0016).

(h) Exceptions to EASA AD 2021–0016

(1) Where EASA AD 2021–0016 refers to its effective date or July 28, 2020 (the effective date of EASA AD 2020–0156, dated July 14, 2020), this AD requires using the effective date of this AD.

(2) Where EASA AD 2021–0016 requires actions during each ''after last flight'' of the day inspection, this AD requires those actions before the first flight of each day.

(3) Where EASA AD 2021–0016 refers to flight hours, this AD requires using hours time-in-service.

(4) Where the service information referenced in EASA AD 2021–0016 specifies to discard certain parts, this AD requires removing those parts from service.

(5) Where the service information referenced in EASA AD 2021–0016 specifies to return a certain part or send a certain part to an approved workshop, this AD requires removing that part from service.

(6) Where the service information referenced in EASA AD 2021–0016 specifies to use tooling, this AD allows the use of equivalent tooling.

(7) Where the service information referenced in EASA AD 2021–0016 specifies to contact Airbus Helicopters if further particles are collected during close monitoring, this AD requires, before further flight, accomplishing a repair in accordance with a method approved by the Manager, General Aviation & Rotorcraft Section, International Validation Branch, FAA; or EASA; or Airbus Helicopters' EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(8) Where the service information referenced in EASA AD 2021–0016 specifies that certain requirements can be performed by a mechanical technician or pilot, this AD requires that the visual check of the MGB magnetic plugs be performed by a qualified mechanic.

(9) Where the service information referenced in EASA AD 2021–0016 specifies that if any 16NCD13 or 18NC16 particles are present you are to take a 1-liter sample of oil and send it to the manufacturer, this AD does not require those actions.

(10) Where the service information referenced in EASA AD 2021–0016 specifies to perform a metallurgical analysis and contact the manufacturer, this AD does require determining the characterization of particles collected but does not require contacting the manufacturer to determine the characterization of the particles collected.

(11) Where the service information referenced in EASA AD 2021–0016 specifies to contact Airbus Helicopters for details on the MGB history, this AD does not require this action.

(12) The ''Remarks'' section of EASA AD 2021–0016 does not apply to this AD.

(i) Special Flight Permit

Special flight permits, as described in 14 CFR 21.197 and 21.199, are not allowed.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (k)(1) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

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

(k) Related Information

For more information about this AD, contact Kristin Bradley, Aerospace Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *Kristin.Bradley@faa.gov.* For service information identified in this AD that is not incorporated by reference, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.*

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2021–0016, dated January 13, 2021.

(ii) [Reserved]

(3) For EASA AD EASA AD 2021–0016, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. This material may be found in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0517.

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

Issued on May 6, 2022.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–11553 Filed 5–31–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0281; Project Identifier MCAI–2021–01315–R; Amendment 39–22056; AD 2022–11–06]

RIN 2120–AA64

Airworthiness Directives; Leonardo S.p.a. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Leonardo S.p.a. Model A109S and AW109SP helicopters. This AD was prompted by a report of a protective sheath, installed around a fixed flight control rod, which should have been removed during assembly. This AD requires borescope inspecting certain parts, and removing any foreign object if detected, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective July 6, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 6, 2022.

ADDRESSES: For EASA material incorporated by reference (IBR) in this final rule, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* For Leonardo S.p.a. service information identified in this final rule, contact Leonardo S.p.A. Helicopters, Emanuele Bufano, Head of Airworthiness, Viale G.Agusta 520, 21017 C.Costa di Samarate (Va) Italy; telephone (+39) 0331–225074; fax (+39) 0331–229046; or at *https://customerportal.leonardocompany.com/en-US/.* You may find the EASA material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. Service information that is IBRed is also available in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0281.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0281; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the EASA AD, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7330; email *andrea.jimenez@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0255, dated November 15, 2021, and corrected November 24, 2021 (EASA AD 2021–0255), to correct an unsafe condition for Leonardo S.p.A. Helicopters Model A109S helicopters, serial number (S/N) 22735, 22736, and 22737, and equipped with Trekker Kit; and Model AW109SP helicopters, S/N 22407, 22408, 22409, 22412, 22414 to 22427 inclusive, and 22429.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to Leonardo S.p.a. Model A109S helicopters, S/N 22735, 22736, and 22737, and equipped with Trekker Kit; and Model AW109SP helicopters S/N 22407, 22408, 22409, 22412, 22414 through 22427 inclusive, and 22429. The NPRM published in the **Federal Register** on March 22, 2022 (87 FR 16120). The NPRM was prompted by a report of a protective sheath, installed around a fixed flight control rod, which should have been removed during assembly. The NPRM proposed to require borescope inspecting certain parts, and removing any foreign object if detected, as specified in EASA AD 2021–0255.

The FAA is issuing this AD to detect any foreign object contamination, which if not addressed, could affect the free movement of the flight controls and result in subsequent reduced control of the helicopter. See EASA AD 2021–0255 for additional background information.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these helicopters. This AD is adopted as proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0255 specifies procedures for borescope inspecting certain part-numbered parts installed on the control rods and levers of the rotors flight controls, and removing any foreign object if detected.

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

Other Related Service Information

The FAA reviewed Leonardo Helicopters Alert Service Bulletin No.

109SP–148, dated October 26, 2021 (ASB 109SP–148). This service information specifies instructions for borescope inspecting certain part-numbered parts installed on the control rods and levers of the rotors flight controls of the left-hand and right-hand forward struts and removing foreign objects.

The FAA also reviewed Leonardo Helicopters Alert Service Bulletin No.109S–104, dated October 26, 2021, which specifies the same instructions as ASB 109SP–148 but only applies to Model A109S helicopters with certain Trekker Kits installed.

Costs of Compliance

The FAA estimates that this AD affects 1 helicopter of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Borescope inspecting the control rods and levers of the rotor flight controls for any foreign object takes about 4 work-hours for an estimated cost of $340 per inspection and $340 for the U.S. fleet.

The FAA estimates the following costs to do any necessary on-condition corrective actions that are required based on the results of the inspection:

Removing any foreign object would take a minimal amount of time with a minimal parts cost.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–11–06 Leonardo S.p.a.: Amendment 39–22056; Docket No. FAA–2022–0281; Project Identifier MCAI–2021–01315–R.

(a) Effective Date

This airworthiness directive (AD) is effective July 6, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Leonardo S.p.a. Model A109S helicopters, serial number (S/N) 22735, 22736, and 22737, and equipped with Trekker Kit; and Model AW109SP helicopters S/N 22407, 22408, 22409, 22412, 22414 through 22427 inclusive, and 22429, certificated in any category.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 6700, rotorcraft Flight Control.

(e) Unsafe Condition

This AD was prompted by a report of a protective sheath, installed around a fixed flight control rod, which should have been removed during assembly. The FAA is issuing this AD to detect any foreign object contamination, which if not addressed, could affect the free movement of the flight controls and result in subsequent reduced control of the helicopter.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0255, dated November 15, 2021, and corrected November 24, 2021 (EASA AD 2021–0255).

(h) Exceptions to EASA AD 2021–0255

(1) Where EASA AD 2021–0255 requires compliance in terms of flight hours, this AD requires using hours time-in-service.

(2) Where EASA AD 2021–0255 refers to its effective date, this AD requires using the effective date of this AD.

(3) Where paragraph (1) of EASA AD 2021–0255 specifies ''inspect each affected part in accordance with the instructions of the applicable ASB,'' for this AD replace ''in accordance with the instructions of the applicable ASB'' with ''in accordance with the Accomplishment Instructions, Section 3, paragraph 5. of the applicable ASB.''

(4) Where paragraph (2) of EASA AD 2021–0255 specifies ''if, during the inspection as required by paragraph (1) this AD, any foreign object is found on an affected part, before next flight, remove that foreign object in accordance with the applicable ASB,'' this AD requires if any foreign object is found, before further flight, remove the foreign object. The instructions in the ''applicable ASB'' are for reference only and are not required for the actions in paragraph (2) of EASA AD 2021–0255.

(5) This AD does not mandate compliance with the ''Remarks'' section of EASA AD 2021–0255.

(i) Special Flight Permit

Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199, provided no passengers are onboard.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

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

(k) Related Information

For more information about this AD, contact Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance &

Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7330; email *andrea.jimenez@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2021–0255, dated November 15, 2021, and corrected November 24, 2021.

(ii) [Reserved]

(3) For EASA AD 2021–0255, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find the EASA material on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. This material may be found in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0281.

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

Issued on May 16, 2022.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–11557 Filed 5–31–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–1003; Project Identifier MCAI–2020–00962–A; Amendment 39–22059; AD 2022–11–09]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Viking Air Limited (Viking) (type certificate previously held by Bombardier Inc. and de Havilland, Inc.) Model DHC–6–1, DHC–6–100, DHC–6–200, DHC–6–300, and DHC–6–400 airplanes. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI identifies the unsafe condition as cracks and corrosion damage to the aileron internal structure. This AD requires visually inspecting the entire aileron internal structure, correcting any damage found, and reporting the inspection results to Viking. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective July 6, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 6, 2022.

ADDRESSES: For service information identified in this final rule, contact Viking Air Ltd., 1959 de Havilland Way, Sidney British Columbia, Canada V8L 5V5; phone: (800) 663–8444; email: *continuing.airworthiness@vikingair.com;* website: *https://www.vikingair.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1003.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1003; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the MCAI, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

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

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Viking Model DHC–6–1, DHC–6–100, DHC–6–200, DHC–6–300, and DHC–6–400 airplanes. The NPRM published in the **Federal Register** on January 21, 2022 (87 FR 3236). The NPRM was prompted by MCAI from Transport Canada, which is the aviation authority for Canada. Transport Canada issued AD CF–2020–05, dated March 13, 2020 (referred to after this as ''the MCAI''), to correct an unsafe condition on Viking Model DHC–6 series 1, DHC–6 series 100, DHC–6 series 110, DHC–6 series 200, DHC–6 series 210, DHC–6 series 300, DHC–6 series 310, DHC–6 series 320, and DHC–6 series 400 airplanes. The MCAI states:

Viking Air Ltd. (Viking) received reports of cracks and corrosion damage to the aileron internal structure. During a repair of an in-service aeroplane, an aileron hinge support rib was found cracked at the lower flange along the bend radius near the hinge fitting attachment at wing station 247.29. Preliminary investigation by Viking determined that the observed crack was the result of fatigue. During an inspection of another in-service aeroplane, the aileron inboard rib and the vertical flange of the inboard aileron forward spar near a fastener hole were also found cracked.

The current inspection requirements of the affected aeroplanes do not include a direct inspection of the aileron internal structure. Cracks or other damage to the aileron ribs or to the aileron spar flanges are not detectable from the aileron exterior surfaces. Undetected cracks or other damage to the aileron internal structure could lead to progressive looseness of the aileron at the hinge support rib push-pull rod attachment and subsequent flutter condition and degraded or loss of aileron control.

To detect and correct any cracking or other damage to the aileron internal structure, this [Transport Canada] AD mandates a one-time Special Detailed Inspection (SDI) of all aileron internal structure, including front and rear spars, all aileron ribs and upper and lower skins for cracks, corrosion or other damage, and rectification, as required, of the damaged parts.

This [Transport Canada] AD also mandates reporting of all inspection results to Viking. The reporting of the inspection results is necessary to assess the overall aileron internal structural condition on in-service aeroplanes and to determine additional corrective action based on the results of the inspections.

Viking has published Service Bulletin (SB) V6/0066 Revision A, dated 9 December 2019, (referred to as ''the SB'' in this [Transport Canada] AD) providing accomplishment instructions for the inspection, rectification of the damaged parts, and reporting requirements.

You may examine the MCAI in the AD docket at *https://*

www.regulations.gov by searching for and locating Docket No. FAA–2020–1003.

In the NPRM, the FAA proposed to require visually inspecting the entire aileron internal structure, correcting any damage found, and reporting the inspection results to Viking. The FAA is issuing this AD to prevent progressive looseness of the aileron at the hinge support rib push-pull rod attachment, flutter condition, and degraded or loss of aileron control, which could lead to loss of control of the airplane.

Ex Parte Contact

After the comment period closed, the FAA requested additional information from Transport Canada and Viking about the factory drilled drain holes in the ailerons. A summary of this discussion can be found in the rulemaking docket at *https://www.regulations.gov* in Docket No. FAA–2020–1003.

Discussion of Final Airworthiness Directive

Comments

The FAA received a comment from one commenter, Mile-Hi Skydiving Center (Mile-Hi). The following presents the comment received on the NPRM and the FAA's response.

Request Regarding Related Service Information

Mile-Hi requested that Viking revise DHC–6 Twin Otter Service Bulletin V6/0066, Revision A, dated December 9, 2019 (Viking SB V6/0066, Revision A), to provide instructions for enlarging the aileron drain holes. Mile-Hi stated that the existing factory-drilled aileron drain holes are 3/16 inch (0.1875 inch) in diameter and are too small to accommodate the borescope used at its facility, which has a diameter of 1/4 inch (0.232 inch). Mile-Hi concluded that the existing aileron drain holes will need to be enlarged to accommodate any borescope for the proposed inspection. Mile-Hi also requested follow-on actions such as reducing the enlarged holes to the original size to prevent ingress of nesting insects such as wasps or hornets and static balancing the ailerons. As, in the NPRM, the FAA proposed to require inspecting the aileron in accordance with steps in Viking SB V6/0066, Revision A, the FAA infers that Mile-Hi is requesting that the FAA revise the proposed AD to include these actions.

The FAA does not agree that this AD needs to mandate enlarging the aileron drain holes. The FAA contacted Transport Canada and Viking to obtain information on whether any other Model DHC–6 airplane operators have had similar issues regarding the diameter of the existing aileron drain holes. Viking advised that it has received approximately 170 service bulletin reply forms in response to Viking SB V6/0066, Revision A, and operators have successfully done the borescope inspection with no difficulty. In addition, Viking confirmed that the 0.1875-inch diameter aileron drain hole size is standard per the Model DHC–6 airplane type design, and that commercially available borescope heads fit into the standard-sized holes (as specified in the equipment list in Section II.A.1 of Viking SB V6/0066, Revision A). Based on this information, the FAA has determined that the borescope diameter is not a fleet-wide issue that needs further attention.

The FAA acknowledges field repairs to replace the aileron skins could have been completed on some airplanes where, during replacement, the drain holes were omitted or manufactured undersized. If field repairs have been done that prevent compliance with the inspection in this AD, then the operator will need approval of an alternative method of compliance. The FAA did not change this AD based on this comment.

Conclusion

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed Viking DHC–6 Twin Otter Service Bulletin V6/0066, Revision A, dated December 9, 2019. The service information specifies procedures for visually inspecting the entire aileron internal structure, including front and rear spars, all aileron ribs, and upper and lower skins; repairing or replacing any damaged part; and reporting inspection results to Viking Air Limited technical support. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Other Related Service Information

The FAA also reviewed Viking DHC–6 Twin Otter Service Bulletin V6/0066, Revision NC, dated August 29, 2019. The service information specifies procedures for visually inspecting the aileron ribs, including ribs and both sides of the hinge arm; repairing or replacing any damaged part; and reporting inspection results to Viking Air Limited technical support.

Interim Action

The FAA considers that this AD is an interim action. The inspection reports will provide the FAA and Viking additional data for determining the damage present in the fleet. After analyzing the data, the FAA may take further rulemaking action.

Differences Between This AD and the MCAI

The MCAI applies to Viking Air Limited Model DHC–6 series 110, DHC–6 series 210, DHC–6 series 310, and DHC–6 series 320, and this AD does not because these models do not have an FAA type certificate. Model DHC–6 series 1, DHC–6 series 100, DHC–6 series 200, DHC–6 series 300, and DHC–6 series 400 airplanes specified in the MCAI correspond to FAA Model DHC–6–1, DHC–6–100, DHC–6–200, DHC–6–300, and DHC–6–400 airplanes, respectively.

Costs of Compliance

The FAA estimates that this AD affects 33 airplanes of U.S. registry. The FAA also estimates that it would take about 3 work-hours per airplane to comply with the inspection and 1 work-hour to comply with the reporting requirement of this AD. The average labor rate is $85 per work-hour.

Based on these figures, the FAA estimates the cost of this AD on U.S. operators will be $11,220 or $340 per airplane.

In addition, the FAA estimates that any necessary follow-on actions to replace an aileron would take 6 work-hours and require parts costing $52,243, for a cost of $52,753 per airplane. The FAA has no way of determining the number of airplanes that may need these actions.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. The OMB

Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to take approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–11–09 Viking Air Limited (Type Certificate Previously Held by Bombardier Inc. and de Havilland, Inc.): Amendment 39–22059; Docket No. FAA–2020–1003; Project Identifier MCAI–2020–00962–A.

(a) Effective Date

This airworthiness directive (AD) is effective July 6, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Viking Air Limited (type certificate previously held by Bombardier Inc. and de Havilland, Inc.) Model DHC–6–1, DHC–6–100, DHC–6–200, DHC–6–300, and DHC–6–400 airplanes, all serial numbers, certificated in any category.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI identifies the unsafe condition as cracks and corrosion damage to the aileron internal structure. The FAA is issuing this AD to detect and correct cracks and other damage to the aileron internal structure. The unsafe condition, if not addressed, could result in progressive looseness of the aileron at the hinge support rib push-pull rod attachment, flutter condition, and degraded or loss of aileron control, which could lead to loss of control of the airplane.

(f) Compliance

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

(g) Inspection and Replacement of the Aileron

At the compliance time specified in paragraph (g)(1) or (2) of this AD, inspect the left-hand (LH) and right-hand (RH) aileron internal structures for cracks, corrosion, and other damage and take any necessary corrective actions in accordance with the Accomplishment Instructions, steps II.A. through II.A.3. of Viking DHC–6 Twin Otter Service Bulletin V6/0066, Revision A, dated December 9, 2019 (Viking SB V6/0066, Revision A).

(1) For each LH or RH aileron that has accumulated 16,000 or more hours time-in-service (TIS), 32,000 or more flight cycles (FC), or 10 or more years since first installation on an airplane, whichever occurs first: Within 6 months after the effective date of this AD.

(2) For each LH or RH aileron that has accumulated less than 16,000 hours TIS, less than 32,000 FC, and less than 10 years since first installation on an airplane: Within 6 months after accumulating 16,000 hours TIS, 32,000 FC, or 10 years, whichever occurs first.

(h) Reporting Requirement

Within 30 days after the inspection required by paragraph (g)(1) or (2) of this AD or within 30 days after the effective date of this AD, whichever occurs later, report to Viking the information requested on the Inspection Reply Form, page 7, of Viking SB V6/0066, Revision A.

(i) Credit for Previous Actions

You may take credit for the actions required by paragraphs (g)(1) and (2) of this AD if you performed those actions before the effective date of this AD using Viking DHC–6 Twin Otter Service Bulletin V6/0066, Revision NC, dated August 29, 2019.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(k) Related Information

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

(2) Refer to Transport Canada AD CF–2020–05, dated March 13, 2020, for more information. You may examine the Transport Canada AD at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1003.

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference

(IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

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

(i) Viking DHC–6 Twin Otter Service Bulletin V6/0066, Revision A, dated December 9, 2019.

(ii) [Reserved]

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

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

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

Issued on May 17, 2022.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–11559 Filed 5–31–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0387; Project Identifier AD–2021–01225–R; Amendment 39–22069; AD 2022–11–19]

RIN 2120–AA64

Airworthiness Directives; Bell Textron Inc. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bell Textron Inc. Model 212, 412, 412CF, and 412EP helicopters. This AD was prompted by a report of a cracked check valve. This AD requires inspecting certain engine oil and fuel check valves, and depending on the results, repetitively inspecting and removing the check valve from service. This AD also prohibits installing affected engine oil and fuel check valves on any helicopter. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective July 6, 2022.

ADDRESSES: For service information identified in this final rule, contact Bell Textron, Inc., P.O. Box 482, Fort Worth, TX 76101, United States; phone 1–450–437–2862 or (800) 363–8023; email: *productsupport@bellflight.com;* website: *https://www.bellflight.com/support/.* You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0387; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Kuethe Harmon, Safety Management Program Manager, Certification & Program Management Section, DSCO Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5198; email *kuethe.harmon@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to Bell Textron Inc. Model 212, 412, 412CF, and 412EP helicopters with an engine oil check valve part number (P/N) 209–062–520–001 or fuel check valve P/N 209–062–607–001 manufactured by Circor Aerospace that is marked ''Circle Seal'' and ''CORONA CA,'' except not a check valve marked with ''TQL,'' and has a manufacturing date code of, or prior to, ''9/11'' (September 2011), or does not have a manufacturing date code, installed. The NPRM published in the **Federal Register** on March 31, 2022 (87 FR 18747). The NPRM was prompted by report of a cracked check valve manufactured in 2009 by Circor Aerospace. An incorrect torque value applied on the threaded fitting at the check valve inlet end during the assembly process resulted in the crack. Indication of this condition may also include an enlarged outside diameter (O.D.) measurement of the check valve housing at the inlet end where the threaded fitting is installed or a leak. These check valves may be installed as engine oil check valve P/N 209–062–520–001 and fuel check valve P/N 209–062–607–001 on Bell Textron Inc. Model 212, 412, 412CF, and 412EP helicopters.

The FAA previously issued AD 2019–09–02, Amendment 39–19636 (84 FR 22695, May 20, 2019), which applies to the same model helicopters with the same part-numbered check valves installed, except it is only for check valves marked ''Circle Seal'' and with a manufacturing date code of ''10/11'' (October 2011) through ''03/15'' (March 2015).

In the NPRM, the FAA proposed to require measuring the O.D. of an affected (engine oil or fuel) check valve housing at the center and at the inlet end where the threaded fitting is installed. If the dimension measured at the inlet end is greater than 0.003 inch (0.0762 mm) compared to the measurement at the center, the NPRM proposed to require repetitively inspecting the check valve for a crack and leak, and depending on the results, removing the check valve from service. The NPRM also proposed to require removing the check valve from service at a longer compliance time, which would terminate the repetitive inspections. Lastly, the NPRM proposed to prohibit installing affected check valves on any helicopter.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

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

Related Service Information

The FAA reviewed Bell Alert Service Bulletin (ASB) 212–20–163, Revision B, dated April 6, 2021 (ASB 212–20–163), Bell ASB 212–20–164, Revision B, dated April 6, 2021 (ASB 212–20–164), Bell ASB 412–20–182, Revision B, dated April 6, 2021 (ASB 412–20–182), and Bell ASB 412–20–183, Revision C, dated April 6, 2021 (ASB 412–20–183). ASB 212–20–163 and ASB 412–20–182

specify procedures for inspecting and replacing engine oil check valve P/N 209–062–520–001. ASB 212–20–164 and ASB 412–20–183 specify procedures for inspecting and replacing fuel check valve P/N 209–062–607–001.

Costs of Compliance

The FAA estimates that this AD affects 169 helicopters of U.S. registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Measuring up to four check valves (two engine oil and two fuel) takes about 1 work-hour for an estimated cost of up to $85 per helicopter and $14,365 for the U.S. fleet. Inspecting up to four check valves (two engine oil and two fuel) takes about 2 work-hours for an estimated cost of up to $170 per helicopter and $28,730 for the U.S. fleet, per inspection cycle as applicable. Replacing up to four valves (two engine oil and two fuel) takes about 4 work-hours and parts cost up to about $340, for an estimated cost of up to $680 per helicopter and $114,920 for the U.S. fleet.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–11–19 Bell Textron Inc.: Amendment 39–22069; Docket No. FAA–2022–0387; Project Identifier AD–2021–01225–R.

(a) Effective Date

This airworthiness directive (AD) is effective July 6, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bell Textron Inc. Model 212, 412, 412CF, and 412EP helicopters, certificated in any category, with an engine oil check valve part number (P/N) 209–062–520–001 or fuel check valve P/N 209–062–607–001 manufactured by Circor Aerospace that:

(1) Is marked ''Circle Seal'' and ''CORONA CA,'' except not a check valve marked with ''TQL,'' and

(2) Has a manufacturing date code of, or prior to, ''9/11'' (September 2011), or does not have a manufacturing date code, installed.

(d) Subject

Joint Aircraft System Component (JASC) Code: 2800 Aircraft Fuel System and 7900 Engine Oil System (Airframe).

(e) Unsafe Condition

This AD was prompted by a report of a cracked check valve. The FAA is issuing this AD to detect a cracked check valve. The unsafe condition, if not addressed, could result in loss of lubrication or fuel to the engine, failure of the engine or a fire, and subsequent loss of control of the helicopter.

(f) Compliance

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

(g) Required Actions

(1) Within 25 hours time-in-service (TIS) or 30 days, whichever occurs first after the effective date of this AD, using a caliper or equivalent, measure the outside diameter (O.D.) of the check valve housing at the center, and the O.D. of the check valve housing at the inlet end where the threaded fitting is installed. If the dimension measured at the inlet end is greater than 0.003 inch (0.0762 mm) compared to the measurement at the center, do the following:

(i) Before further flight, and thereafter at intervals not to exceed 25 hours TIS or 30 days, whichever occurs first, using a flashlight, visually inspect the check valve for a crack and leak, paying particular attention to the area at the inlet end where the threaded fitting is installed. If there is a crack or leak, before further flight, remove the check valve from service. Removing the check valve from service terminates the repetitive inspections required by this AD for that check valve.

(ii) Within 600 hours TIS or 12 months, whichever occurs first, remove the check valve from service. Removing the check valve from service terminates the repetitive inspections required by this AD for that check valve.

(2) As of the effective date of this AD, do not install an engine oil or fuel check valve identified in paragraph (c) of this AD on any helicopter.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, DSCO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (i) of this AD. Information may be emailed to: *9-ASW-190-COS@faa.gov.*

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

(i) Related Information

For more information about this AD, contact Kuethe Harmon, Safety Management Program Manager, Certification & Program Management Section, DSCO Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5198; email *kuethe.harmon@faa.gov.*

(j) Material Incorporated by Reference

None.

Issued on May 25, 2022.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–11605 Filed 5–31–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0161; Airspace Docket No. 22–AGL–12]

RIN 2120–AA66

Amendment of Class E Airspace; Owatonna, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace at Owatonna, MN. This action as the result of an airspace review caused by the decommissioning of the Owatonna Outer Marker (OM) and Owatonna non-directional beacon (NDB). The name and geographic coordinates of the airport are also being updated to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, September 8, 2022. The Director of the Federal Register approves this incorporation by reference action under 1 CFR 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Rebecca Shelby, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5857.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the Class E airspace extending upward from 700 feet above the surface at Owatonna Degner Regional Airport, Owatonna, MN, to support instrument flight rule operations at this airport and removing the Halfway VOR/DME from the header and legal description including associated extension, which are no longer required.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (87 FR 12898; March 8, 2022) for Docket No. FAA–2022–0161 to amend the Class E airspace at Owatonna, MN. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to 14 CFR part 71 amends the Class E airspace extending upward from 700 feet above the surface to within 6.6-mile (decreased from a 6.7-mile) radius of Owatonna Degner Regional Airport, Owatonna, MN; removes the Halfway VOR/DME and associated extension from the airspace legal description as is no longer required; and updates the name (previously Owatonna Municipal Airport) and geographic coordinates of the airport to coincide with the FAA's aeronautical database.

This action is the result of an airspace review due to the decommissioning of the Owatonna NDB and the Owatonna OM, which provided guidance to the instrument procedures at this airport.

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

Lists of Subjects in 14 CFR 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AGL MN E5 Owatonna, MN [Amended]

Owatonna Degner Regional Airport, MN
(Lat. 44°07′23″ N, long. 93°15′32″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Owatonna Degner Regional Airport.

Issued in Fort Worth, Texas, on May 25, 2022.

Martin A. Skinner,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2022–11599 Filed 5–31–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0030; Airspace Docket No. 21–AAL–54]

RIN 2120–AA66

Modification of Class E Airspace, and Revocation of Class E Airspace; Sitka Rocky Gutierrez Airport, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class E airspace, designated as a surface area, to properly contain instrument flight rules aircraft descending below 1,000 feet above the surface of the Earth. Additionally, this action removes Class E airspace, designated as an extension to a Class D or Class E surface area, because it is no longer needed. Lastly, this action modifies Class E airspace extending upward from 700 feet above the surface of the earth at Sitka Rocky Gutierrez Airport, AK. This action ensures the safety and management of instrument flight rules operations at the airport.

DATES: Effective 0901 UTC, July 14, 2022. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Gerald DeVore, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–2245.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it would modify Class E airspace to support instrument flight rules operations at Sitka Rocky Gutierrez Airport, AK.

History

The FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** for FAA–2022–0030 to modify the Class E surface airspace (87 FR 6804; February 7, 2022), revoke an area that is designated as an extension to a Class D or Class E surface area, and modify the Class E airspace extending upward from 700 feet above the surface at Sitka Rocky Gutierrez Airport, AK. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. One comment was received in favor of the proposal.

Class E2, Class E4, and Class E5 airspace designations are published in paragraphs 6002, 6004, and 6005, respectively, of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

The FAA is amending 14 CFR part 71 by modifying the Class E airspace at Sitka Rocky Gutierrez Airport, AK. The Class E airspace designated as surface area is modified, the Class E airspace area designated as an extension to a Class D or Class E surface area airspace is revoked, and the Class E airspace area extending upward from 700 feet or more above the surface is modified to contain instrument flight rules operations at airport.

The Class E airspace, designated as surface area, northwest of the airport is modified to contain instrument flight rules aircraft descending below 1,000 feet above the surface of the Earth, to contain departures until reaching the Class E airspace extending upward from 700 feet or more above the surface. Additionally the Class E airspace, designated as surface area, was reduced northeast of the airspace since it was no longer needed.

This action also removes the Class E airspace, designated as an extension to a Class D or Class E surface area. This airspace is no longer required due to the removal of the LDA/DME RWY 11 approach procedure turn.

Lastly, this action modifies the Class E airspace extending upward from 700 feet or more above the surface. The areas northwest and southwest of the airport are extended to contain arriving aircraft descending below 1,500 feet above the surface. The Class E airspace extending upward from 700 feet or more above the surface to the southwest of the airport is extended to contain departing instrument flight rules aircraft until reaching 1,200 feet above the surface of the Earth. The Class E airspace extending upward from 700 feet or more above the surface area northeast of the airport is removed because it is no longer needed.

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial, and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area.

* * * * *

AAL AK E2 Sitka, AK [Amended]

Sitka Rocky Gutierrez Airport, AK
(Lat. 57°02′49″ N, long. 135°21′40″ W)

That airspace extending upward from the surface within a 4.1-mile radius of the airport beginning at the 105° bearing from the airport clockwise to the 337° bearing from the airport, then to the point of beginning 4.1 miles east of the airport, and within 2.7 miles each side of the 150° bearing from the airport extending from the 4.1-mile radius to 6.6 miles southeast of the airport, and within 1.5 miles each side of the 209° bearing from the airport extending from the 4.1-mile radius to 4.4 miles southwest of the airport, and within 1.2 miles each side of the 314° bearing from the airport extending from the 4.1-mile radius to 6 miles northwest of the airport, and within 1.1 miles each side of the 320° bearing from the airport extending from the 4.1-mile radius to 5.2 miles northwest of the airport.

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.

* * * * *

AAL AK E4 Sitka, AK [Removed]

Sitka Rocky Gutierrez Airport, AK
(Lat. 57°02′49″ N, long. 135°21′40″ W)

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or more above the Surface of the Earth.

* * * * *

AAL AK E5 Sitka, AK [Amended]

Sitka Rocky Gutierrez Airport, AK
(Lat. 57°02′49″ N, long. 135°21′40″ W)

That airspace extending upward from 700 feet above the surface within a 7.3-mile radius of the airport beginning at the 102° bearing from the airport clockwise to the 357° bearing from the airport, then to the point of beginning 7.3 miles east of the airport, and within 4.6 miles each side of the 212° bearing from the airport, extending from the 7.3-mile radius to 25.2 miles southwest of the airport, and within 4.5 miles each side of the 316° bearing from the airport extending from the 7.3-mile radius to 9.8 miles northwest of the airport; excluding that airspace that extends beyond 12 miles from the coast.

Issued in Des Moines, Washington, on April 25, 2022.

B.G. Chew,

Acting Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2022–11591 Filed 5–31–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0041; Airspace Docket No. 21–ANM–47]

RIN 2120–AA66

Establishment of Class E airspace; Limon Municipal Airport, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Limon Municipal Airport, Limon, CO. The establishment of airspace supports the airport's transition from visual flight rules (VFR) to instrument flight rule (IFR) operations.

DATES: Effective 0901 UTC, July 14, 2022. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Jonathan Epperson, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–3435.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it would establish Class E airspace to support instrument flight rule operations at Limon Municipal Airport, CO.

History

The FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** for FAA–2022–0041 to establish Class E airspace extending upward from 700 feet above the surface at Limon Municipal Airport, CO (87 FR 8754; February 16, 2022). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. Three comments were received in favor of the proposal and one comment was not germane.

The Class E5 airspace designation is published in paragraph 6005 of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in FAA Order JO 7400.11.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

The FAA is amending 14 CFR part 71 by establishing Class E airspace extending upward from 700 feet above the surface of the Earth at Limon Municipal Airport, Limon, CO. This airspace is designed to contain the new Area Navigation (RNAV) approaches into the airport and the instrument departures from the airport. The airspace supports the airport's transition from visual flight rules to instrument flight rule operations.

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial, and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or more above the Surface of the Earth.

* * * * *

ANM CO E5 Limon, CO [New]

Limon Municipal Airport, CO
(Lat. 39°16′29″ N, long. 103°39′57″ W)

That airspace extending upward from 700 feet above the surface within a 5.9-mile radius of the airport, and within a 6.6-mile radius of the airport from the 339° bearing from the airport clockwise to the 026° bearing from the airport.

Issued in Des Moines, Washington, on April 25, 2022.

B.G. Chew,

Acting Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2022–11586 Filed 5–31–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740, 743, and 748

[Docket No. 220524–0120]

RIN 0694–AI89

Adoption of Congressional Notification Requirement for Certain Semiautomatic Firearms Exports Under the Export Administration Regulations (EAR)

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Final rule.

SUMMARY: In this final rule, the Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to add a new section to the EAR to adopt a congressional notification requirement for certain license applications of semiautomatic firearms meeting certain value and destination requirements. This rule does not change the interagency license process for these firearms or how license applicants currently structure or generally apply for BIS licenses.

DATES: This rule is effective July 18, 2022.

FOR FURTHER INFORMATION CONTACT: Steven Clagett, Office of Nonproliferation Controls and Treaty Compliance, Nuclear and Missile Technology Controls Division, tel. (202) 482–1641 or email *steven.clagett@bis.doc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

In this final rule, the Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to add new § 743.6, Prior notifications to Congress of exports of semiautomatic firearms, to adopt a congressional notification requirement for certain license applications having semiautomatic firearms that are (i) classified under Export Control Classification Number (ECCN) 0A501.a and (ii) valued at $4 million or more. The congressional notification requirement will not apply if the total

value of the application is valued at $4 million or more but contains 0A501.a semiautomatic firearms valued at less than $4 million. Further, the congressional notification requirement will not apply to license applications if the 0A501.a semiautomatic firearms are destined for countries in Country Group A:5 or A:6 (see supplement no.1 to part 740 of the EAR), with the exception of Mexico, South Africa, and Turkey. The congressional notification requirement will also not apply to exports to personnel and agencies of the U.S. Government under License Exception GOV (§ 740.11(b) of the EAR) or when for the official use by an agency of the North Atlantic Treaty Organization (NATO).

This congressional notification requirement is warranted because of the unique nature of 0A501.a semiautomatic firearms and their prior jurisdiction under the International Traffic in Arms Regulations (ITAR). While the Commerce Control List (CCL) has long controlled certain firearms, the firearms subject to this congressional notification requirement are often used by military and law enforcement personnel, as well as for recreational purposes. Those items were transferred to BIS's jurisdiction in a final rule published on January 23, 2020 (85 FR 4136) identifying firearms, guns, ammunition and related articles that no longer warranted control on the U.S. Munitions List and were transferred to the CCL. Prior to the March 9, 2020 effective date for that rule, 0A501.a semiautomatic firearms required congressional notification pursuant to § 123.15(a)(3) of the ITAR for licenses in the amount of $1 million or more. Through publication of this rule, BIS is adopting congressional notifications based on the criteria in the new § 743.6 of the EAR for certain export licenses of these items.

While the ITAR's congressional notification requirement is informative for developing new § 743.6 of the EAR, BIS is utilizing a different scope for this congressional notification requirement. Under the EAR, exporters can make a good faith estimate of the quantity and value of exports needed over the standard four-year validity period of a BIS license. This can include a license covering multiple purchase orders or anticipated purchase orders. Under the ITAR, DSP–5 licenses are generally tied to a single purchase order. To account for these differences, BIS is using $4 million as the value for the congressional notification requirement under § 743.6, which is an equivalent annual average of $1 million in potential exports per year during the validity period of the license. Essentially, the value threshold in § 743.6 will be four times the value of the ITAR's value threshold in § 123.15(a)(3) reflecting the difference in licensing requirements. Additionally, because these semiautomatic firearms are less sensitive than the fully-automatic firearms that continue to be controlled under USML Category I of the ITAR, the congressional notification requirement will not apply to a group of allied countries.

This rule does not change the interagency license review process for these firearms or how license applicants currently structure or generally apply for BIS licenses. License applicants may continue to apply for prospective sales, so long as they do not break-up contract values in order to come under the $4 million dollar threshold specified in § 743.6 and are able to identify the items to be exported, country where the items will be exported, parties to the transaction and end use of the items. This rule does not change how applicants apply for licenses, except for requiring new support documents for licenses that meet the criteria in § 743.6 and as described further below under new paragraph (bb) in supplement no. 2 to part 748.

The congressional notification will be submitted for those license applications for which the interagency review process has resulted in a recommendation to approve, which is consistent with how BIS has managed the process for ''600 series Major Defense Equipment'' congressional notification process. The new congressional notification requirement will complement the existing export control requirements for 0A501.a semiautomatic firearms, which are subject to a worldwide license requirement by BIS, import certificate requirements used by foreign countries to ensure that firearms to be exported are authorized by the respective foreign government of the recipient, interagency review process with the Departments of Defense and State, and as well as BIS's extensive enforcement and compliance efforts to ensure that exports are made in accordance with U.S. national security and foreign policy interests.

B. Revisions to EAR

This rule makes the following changes to the EAR for the adoption of congressional notification requirement for certain semiautomatic firearms exports.

This rule adds § 743.6 Prior notifications to Congress of exports of certain firearms. This new section is modeled on the same type of congressional notification process as followed under § 743.5 for ''600 Major Defense Equipment.'' New § 743.6 consists of four paragraphs.

Paragraph (a) (General Requirement) specifies that any license application for the export of semiautomatic firearms controlled under ECCN 0A501.a (which includes semiautomatic rifles and semiautomatic pistols) will be notified to Congress as provided in § 743.6. Paragraph (a) includes two exclusions under paragraphs (a)(1) to (2) from the congressional notification requirement. Paragraph (a)(1) excludes exports to personnel and agencies of the U.S. Government under License Exception GOV (§ 740.11(b) of the EAR). Paragraph (a)(2) excludes applications for official use by an agency of NATO.

New paragraph (b) specifies the country scope for these congressional notifications. Paragraph (b) specifies that BIS will notify Congress prior to issuing a license authorizing the export of items to a country outside the countries listed in Country Group A:5 or A:6, with the exception of Mexico, South Africa, or Turkey. Paragraph (b) specifies that the congressional requirement will apply when the commodities are sold under a contract or are otherwise part of an export transaction that includes $4 million or more of semiautomatic firearms controlled by ECCN 0A501.a. For these reasons, BIS does not anticipate any change in the number of license applications received by BIS because license applicants are required to follow the same process they were previously in determining how to structure a license application for these semiautomatic firearms controlled under ECCN 0A501.a.

Paragraph (c) provides guidance on additional information that license applicants will need to provide as part of the license application process. Importantly, this rule does not require a purchase order to apply for a license. However, if the license application includes 0A501.a semiautomatic firearms subject to a signed contract (which may be a purchase order), paragraph (c) specifies the signed contract would need to be included as a support document for the license application. Paragraph (c) further specifies that a written explanation from the applicant will be required when the export does not include a contract and whether the application is supported by a signed contract or a written explanation by the applicant, an applicant will need to include a statement of the value of the semiautomatic firearms controlled by ECCN 0A501.a to be exported for any

proposed export described in paragraph (b) of § 743.6.

This final rule also adds two anti-circumvention sentences to the end of paragraph (c) to make license applicants aware that they are prohibited from splitting license applications in order to try to circumvent the congressional notification process. This rule specifies that any activity intended to circumvent notification requirements is prohibited. The last sentence this rule adds to paragraph (c) provides illustrative examples of such prohibited activities, such as the splitting or structuring of contracts to avoid exceeding applicable notification dollar value limits.

The dollar value threshold of $4 million or more will only be based on the portion of the license application for semiautomatic firearms controlled by ECCN 0A501.a. Paragraph (c) specifies that license applications for semiautomatic firearms controlled by ECCN 0A501.a may include other nonautomatic firearms, shotguns, other 0x5zz items, or other items subject to the EAR. As noted above, BIS does not intend for license applicants to change their behavior for how they are currently structuring licenses, so this rule adds text to paragraph (c) to make it clear to license applicants that they may and are encouraged to continue with their current license application practices of including other firearms related items on license applications. However, to make this process more manageable for BIS, this rule specifies under paragraph (c) that the applicant must clearly identify the semiautomatic firearms controlled by ECCN 0A501.a. This requirement will assist BIS in identifying whether the license application requires congressional notification under § 743.6 and identifying the information that will need to be reported to Congress. As a conforming change to paragraph (c), this final rule also adds a new paragraph (bb) to supplement no. 2 to part 748—Unique Application and Submission Requirements of the EAR, so license applicants are aware of the additional support document requirements specified under § 743.6(c).

Finally, this final rule adds paragraph (d) (Additional information), to provide an email that license applicants may use to ask questions regarding new § 743.6. As noted above, this final rule adds a new paragraph (bb) (Semiautomatic firearms controlled under ECCN 0A501.a) to supplement no. 2 to part 746 to assist public understanding of the requirement in § 743.6(c). New paragraph (bb) specifies that for export license applications that require prior notifications to Congress of exports of semiautomatic firearms controlled under ECCN 0A501.a under the criteria of § 743.6, the license applicant must include the information specified in § 743.6(c) of the EAR. This rule includes a parenthetical phrase in new paragraph (bb) to cross reference applicants back to § 743.6(c).

This rule also adds a new general restriction on the use of EAR license exceptions under § 740.2 Restrictions on all license exceptions by adding paragraph (a)(23). New paragraph (a)(23) specifies exports of semiautomatic firearms controlled by ECCN 0A501.a sold under a contract that includes $4 million or more of such items are not eligible for any license exception other than exports to personnel and agencies of the U.S. Government under License Exception GOV (§ 740.11(b) of the EAR), for official use by an agency of NATO, or destined to a country listed in Country Groups A:5 or A:6 (see supplement no. 1 to part 740 of the EAR) except Mexico, South Africa, or Turkey. BIS added this restriction consistent with a similar license exception restriction that exists in § 740.2(a)(15) and (16) for ''600 Series Major Defense Equipment'' that requires congressional notification. New paragraph (a)(23) will ensure all exports that require a congressional notification under § 743.6 will require the submission of a BIS license with limited exceptions.

BIS notes that the vast majority of firearms exported require a BIS license to be obtained. The EAR license exceptions that are available for semiautomatic firearms (as well as other firearms under 0A501.a and .b) are limited and the terms of those license exceptions, such as License Exception BAG (limited to three individually owned firearms), License Exception TMP (exporting a firearm to a trade show or sending to servicing or repair under paragraphs (a)(5) or (a)(6) is limited to 75 firearms), or License Exception RPL, impose additional conditions on the use of license exceptions. In addition, the likelihood of a semiautomatic firearm controlled under 0A501.a being exported in the limited quantity required under the license exceptions described above and meeting or exceeding the $4 million threshold would be extremely unlikely, unless each firearm was valued at a very high rate or there was some type of unusual circumstance, such as where a U.S. firearms manufacture had a defective product line that was exported to a distributor and all the firearms needed to be returned for warranty work for subsequent export. The only EAR license exception where a high dollar value export is likely would be under License Exception GOV for the United States Government under paragraphs (b)(2)(ii), but that is already excluded from the congressional notification requirement because of the U.S, government end user.

C. Clarification to Existing Requirement for ''600 Series Major Defense Equipment''

This rule also adds a new paragraph (aa) (*''600 Series Major Defense Equipment'')* to supplement no. 2 to part 748 to assist public understanding of the requirement in § 743.5(d). The longstanding requirement in § 743.5(d) was added to the EAR on April 16, 2013 (78 FR 22722), but BIS determined it would still be beneficial to license applicants to include a new paragraph (aa) in supplement no. 2 to part 748 to make it easier to find this requirement, similar to what is described above for new paragraph (bb). New paragraph (aa) specifies that for export license applications that require prior notifications to congress of exports of ''600 series major defense equipment'' under the criteria of § 743.5, the license applicant must include the information specified in § 743.5(d) of the EAR. This rule includes a parenthetical phrase to cross reference applicants back to § 743.5(d).

Lastly, as a clarification on the correct email address to use for ''600 Series Major Defense Equipment,'' this rule removes the email address of *bis.compliance@bis.doc.gov* in § 743.5(d) and adds a new email address of *mcd_compliance@bis.doc.gov* in its place.

Savings Clause

For the changes being made in this final rule, shipments of items removed from eligibility for a License Exception or export, reexport, or transfer (in-country) without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export, reexport, or transfer (in-country), on July 18, 2022, pursuant to actual orders for export, reexport, or transfer (in-country) to or within a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export, reexport, or transfer (in-country) without a license (NLR).

Only license applications received on or after July 18, 2022 may be subject to congressional notification under § 743.6 of the EAR.

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain

National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (codified, as amended, at 50 U.S.C. Sections 4801–4852). ECRA provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule.

Rulemaking Requirements

1. This final rule has been designated a ''significant regulatory action'', under Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to or be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and commodity classifications, and carries a burden estimate of 29.6 minutes for a manual or electronic submission for a total burden estimate of 33,133 hours. Total burden hours associated with the PRA and OMB control number 0694–0088 are expected to increase as a result of this rule because of the new support document requirement for license applications that require congressional notification pursuant to the § 743.6 that this rule adds to supplement no. 2 to part 748 under paragraph (bb) (*Semiautomatic firearms controlled under ECCN 0A501.a*). BIS estimates that sixty of the current license applications that are submitted to BIS annually will require the support documents specified in paragraph (bb). Specifically, for export license applications that require prior notifications to congress of exports of semiautomatic firearms controlled under ECCN 0A501.a under the criteria of § 743.6, the exporter must include a copy of the signed contract or, if there is no contract, a written explanation from the applicant (including a statement of the value of the firearms controlled by ECCN 0A501.a to be exported) for any proposed export described in § 743.6(b) of the EAR. License applications for semiautomatic firearms controlled by ECCN 0A501.a may include other nonautomatic firearms, shotguns, other 0x5zz items, or other items subject to the EAR, but the applicant must clearly identify the semiautomatic firearms controlled by ECCN 0A501.a. This support document requirement will make this process more manageable for BIS by having the applicant clearly identify the semiautomatic firearms controlled on a license application. BIS estimates the burden hours associated with this collection will increase by 20 hours (*i.e.,* 60 existing license applications that will now require these additional support documents × 20 minutes per response) for a total estimated cost increase of $1,800 (*i.e.,* 60 hours × $30 per hour). The $30 per hour cost estimate for OMB control number 0694–0088 is consistent with the salary data for export compliance specialists currently available through *glassdoor.com* (*glassdoor.com* estimates that an export compliance specialist makes $55,280 annually, which computes to roughly $26.58 per hour).

Lastly, this rule also adds a new paragraph (aa) (''*600 Series Major Defense Equipment*'') to supplement no. 2 to part 748 to assist public understanding of the requirement in § 743.5(d). The requirement in § 743.5(d) was added to the EAR on April 16, 2013 (78 FR 22722), but BIS determined it would still be beneficial to license applicants to also include a new paragraph (aa) in supplement no. 2 to part 748 to make it easier to find this requirement. BIS does not anticipate this change will result in a change in the burden hours under this collection because BIS would estimate no more than one existing license application per year would require this support document.

BIS is in the process of updating this information collection to account for the increase in burden hours and costs posed by this rule. Any comments regarding this collection of information, including suggestions for reducing the burden, may be submitted online at *https://www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by using the search function and entering the title of the collection or the OMB Control Number.

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

4. Pursuant to section 1762 of ECRA, this action is exempt from the Administrative Procedure Act (APA) (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date. While section 1762 of ECRA provides sufficient authority for such an exemption, this action is also independently exempt from these APA requirements because it involves a military or foreign affairs function of the United States (5. U.S.C. 553(a)(1)).

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

List of Subjects

15 CFR Part 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 743

Administrative practice and procedure, Reporting and recordkeeping requirements.

15 CFR Part 748

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, parts 740, 743, and 748 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

PART 740—LICENSE EXCEPTIONS

■ 1. The authority citation for 15 CFR part 740 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 7201 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

■ 2. Section 740.2 is amended by adding paragraph (a)(23) to read as follows:

§ 740.2 Restrictions on all License Exceptions.

(a) * * *

(23) Exports of semiautomatic firearms controlled by ECCN 0A501.a sold under a contract or otherwise part of an export that includes $4,000,000 or more of such items are not eligible for any license exceptions except to personnel and agencies of the U.S. Government under License Exception GOV (§ 740.11(b) of the EAR), for official use by an agency of NATO, or where a license exception would otherwise be available for the export of such items to a country listed in Country Groups A:5 or A:6 (see supplement no. 1 to part 740 of the EAR) except Mexico, South Africa, or Turkey.

* * * * *

PART 743—SPECIAL REPORTING AND NOTIFICATION

■ 3. The authority citation for 15 CFR part 743 is revised to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13637, 78 FR 16129, 3 CFR, 2014 Comp., p. 223; 78 FR 16129.

■ 4. Section 743.5(e) is amended by removing ''*bis.compliance@bis.doc.gov*'' and adding in its place ''mcd_*compliance@bis.doc.gov*.''

■ 5. Section 743.6 is added to read as follows:

§ 743.6 Prior notifications to Congress of exports of certain semiautomatic firearms.

(a) *General requirement.* Applications to export semiautomatic firearms controlled by ECCN 0A501.a will be notified to Congress as provided in this section before licenses for such items are issued, except as specified in paragraphs (a)(1) to (2) of this section.

(1) Exports of semiautomatic firearms controlled by ECCN 0A501.a to personnel and agencies of the U.S. Government under License Exception GOV (§ 740.11(b) of the EAR) do not require such notification.

(2) Exports of semiautomatic firearms controlled by ECCN 0A501.a for official use by an agency of NATO do not require such notification.

(b) *Notification criteria.* Unless excluded in paragraphs (a)(1) to (2) of this section, BIS will notify Congress prior to issuing a license authorizing the export of items to Mexico, South Africa, or Turkey or any other country not listed in Country Group A:5 or A:6 (see supplement no.1 to part 740 of the EAR) if the items are sold under a contract or are otherwise part of an export transaction that includes $4,000,000 or more of semiautomatic firearms controlled by ECCN 0A501.a.

(c) *License application information.* In addition to information required on the application, the exporter must include a copy of the signed contract or, if there is no contract, a written explanation from the applicant (including a statement of the value of the firearms controlled by ECCN 0A501.a to be exported) for any proposed export described in paragraph (b) of this section. License applications for semiautomatic firearms controlled by ECCN 0A501.a may include other nonautomatic firearms, shotguns, other 0x5zz items, or other items subject to the EAR, but the applicant must clearly identify the semiautomatic firearms controlled by ECCN 0A501.a. The applicant clearly distinguishing the semiautomatic firearms controlled by ECCN 0A501.a from any other items on the license application will assist BIS in assessing whether the license application requires congressional notification under this section and identifying the information that will need to be reported to Congress. Any activity intended to circumvent notification requirements is prohibited. Such devices include, but are not limited to, the splitting or structuring of contracts to avoid exceeding applicable notification dollar value limits described in paragraph (a) of this section.

(d) *Additional information.* For questions on this section, you may contact the Nuclear and Missile Technology Controls Division, Guns and Ammunition licensing group at *firearmsCN@bis.doc.gov*.

PART 748—APPLICATIONS (CLASSIFICATION, ADVISORY, AND LICENSE) AND DOCUMENTATION

■ 6. The authority citation for 15 CFR part 748 is revised to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 6, 2021, 86 FR 43901 (August 10, 2021).

■ 7. Supplement No. 2 to part 748 (Unique Application and Submission Requirements) is amended by adding paragraphs (aa) and (bb) to read as follows:

Supplement No. 2 to Part 748—Unique Application and Submission Requirements

* * * * *

(aa) ''*600 Series Major Defense Equipment.*'' For license applications that require prior notifications to Congress of exports of ''600 series major defense equipment'' pursuant to § 743.5, the exporter must include a copy of the signed contract (including a statement of the value of the ''600 Series Major Defense Equipment'' to be exported under the contract). (*See* § 743.5(d) of the EAR)

(bb) *Semiautomatic firearms controlled under ECCN 0A501.a.* For export license applications that require prior notifications to congress of exports of semiautomatic firearms controlled under ECCN 0A501.a under the criteria of § 743.6, the exporter must include a copy of the signed contract or, if there is no contract, a written explanation from the applicant (including a statement of the value of the firearms controlled by ECCN 0A501.a to be exported). License applications for semiautomatic firearms controlled by ECCN 0A501.a may include other nonautomatic firearms, shotguns, other 0x5zz items, or other items subject to the EAR, but the applicant must clearly identify the semiautomatic firearms controlled by ECCN 0A501.a.

Thea D. Rozman Kendler,

Assistant Secretary for Export Administration.

[FR Doc. 2022–11761 Filed 5–31–22; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

Control Policy: End-User and End-Use Based

CFR Correction

This rule is being published by the Office of the Federal Register to correct an editorial or technical error that appeared in the most recent annual revision of the Code of Federal Regulations.

■ In Title 15 of the Code of Federal Regulations, Parts 300 to 799, revised as of January 1, 2022, in supplement no. 4 to part 744, in the table under ''RUSSIA'', revise the entry for ''Kaliningradnefteprodukt OOO'' to read as follows:

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST

Country	Entity	License requirement	License review policy	**Federal Register** citation
*	*	*	*	*	*	*
RUSSIA	*	*	*	*	*	*

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	**Federal Register** citation
	Kaliningradnefteprodukt OOO, a.k.a., the following three aliases: —Kaliningradnefteprodukt LLC; —Limited Liability Company Kaliningradnefteproduct; and —LLC Kaliningradnefteproduct 22–b Komsomolskaya Ulitsa, Central District, Kaliningrad, Russia.	For all items subject to the EAR when used in projects specified in § 746.5 of the EAR.	Presumption of denial	83 FR 6952, 2/16/18. 83 FR 12479, 3/22/18.
*	*	*	*	*	*	*

[FR Doc. 2022–11614 Filed 5–31–22; 8:45 am]

BILLING CODE 099–10–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1225

Safety Standard for Hand-Held Infant Carriers

CFR Correction

This rule is being published by the Office of the Federal Register to correct an editorial or technical error that appeared in the most recent annual revision of the Code of Federal Regulations.

■ In Title 16 of the Code of Federal Regulations, Part 1000 to End, revised as of January 1, 2022, in § 1225.2, add ''email: *cpsc-os@cpsc.gov,*'' in the fifth sentence after the telephone number ''301–504–7479''.

[FR Doc. 2022–11615 Filed 5–31–22; 8:45 am]

BILLING CODE 0099–10–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 870

[Docket No. FDA–2022–N–0713]

Medical Devices; Cardiovascular Devices; Classification of the Coronary Artery Disease Risk Indicator Using Acoustic Heart Signals

AGENCY: Food and Drug Administration, HHS.

ACTION: Final amendment; final order.

SUMMARY: The Food and Drug Administration (FDA or we) is classifying the coronary artery disease risk indicator using acoustic heart signals into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for the coronary artery disease risk indicator using acoustic heart signals' classification. We are taking this action because we have determined that classifying the device into class II (special controls) will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices.

DATES: This order is effective June 1, 2022. The classification was applicable on November 24, 2020.

FOR FURTHER INFORMATION CONTACT: Kimberly Crowley, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2531, Silver Spring, MD, 20993–0002, 301–796–6017, *Kimberly.Crowley@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the coronary artery disease risk indicator using acoustic heart signals as class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness. In addition, we believe this action will enhance patients' access to beneficial innovation, in part by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as ''postamendments devices'' because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (see 21 U.S.C. 360c(i)) to a predicate device that does not require premarket approval. We determine whether a new device is substantially equivalent to a predicate device by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

FDA may also classify a device through ''De Novo'' classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act. Section 207 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115) established the first procedure for De Novo classification. Section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144) modified the De Novo application process by adding a second procedure. A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA is required to classify the device by written order

within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically placed within class III, the De Novo classification is considered to be the initial classification of the device.

When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see section 513(f)(2)(B)(i) of the FD&C Act). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application to market a substantially equivalent device (see section 513(i) of the FD&C Act, defining ''substantial equivalence''). Instead, sponsors can use the less-burdensome 510(k) process, when necessary, to market their device.

II. De Novo Classification

On November 4, 2019, FDA received Acarix A/S's request for De Novo classification of the CADScor System. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C. 360c(a)(1)(B)). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on November 24, 2020, FDA issued an order to the requester classifying the device into class II. In this final order, FDA is codifying the classification of the device by adding 21 CFR 870.1420.[1] We have named the generic type of device coronary artery disease risk indicator using acoustic heart signals, and it is identified as a device that records heart sounds including murmurs and vibrations to calculate a patient-specific risk of presence of coronary artery disease, as an aid in cardiac analysis and diagnosis.

FDA has identified the following risks to health associated specifically with this type of device and the measures required to mitigate these risks in table 1.

TABLE 1—CORONARY ARTERY DISEASE RISK INDICATOR USING ACOUSTIC HEART SIGNALS RISKS AND MITIGATION MEASURES

Identified risks	Mitigation measures
Adverse tissue reaction	Biocompatibility evaluation, Labeling, and Usability testing.
Skin burn/irritation	Electrical safety testing, and Electromagnetic compatibility testing.
False positive leading to unnecessary medical procedures.	Software verification, validation, and hazard analysis; Usability testing; Acoustic performance testing; Clinical performance testing; and Labeling.
False negative leading to failure to detect coronary artery disease.	Software verification, validation, and hazard analysis; Usability testing; Acoustic performance testing; Clinical performance testing; and Labeling.
Delay in calculation due to device failure resulting in a delay of treatment.	Software verification, validation, and hazard analysis; Clinical performance testing; Usability testing; Acoustic performance testing; and Labeling.

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness. For a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this order. This device is subject to premarket notification requirements under section 510(k) of the FD&C Act.

III. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations and guidance. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in 21 CFR part 860, subpart D, regarding De Novo classification have been approved under OMB control number 0910–0844; the collections of information in 21 CFR part 814, subparts A through E, regarding premarket approval, have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820, regarding quality system regulation, have been approved under OMB control number 0910–0073; and the collections of information in 21 CFR part 801, regarding labeling, have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 870

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 870 is amended as follows:

PART 870—CARDIOVASCULAR DEVICES

■ 1. The authority citation for part 870 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

[1] FDA notes that the ''ACTION'' caption for this final order is styled as ''Final amendment; final order,'' rather than ''Final order.'' Beginning in December 2019, this editorial change was made to indicate that the document ''amends'' the Code of Federal Regulations. The change was made in accordance with the Office of Federal Register's (OFR) interpretations of the Federal Register Act (44 U.S.C. chapter 15), its implementing regulations (1 CFR 5.9 and parts 21 and 22), and the Document Drafting Handbook.

■ 2. Add § 870.1420 to subpart B to read as follows:

§ 870.1420 Coronary artery disease risk indicator using acoustic heart signals.

(a) *Identification.* A coronary artery disease risk indicator using acoustic heart signals is a device that records heart sounds including murmurs and vibrations to calculate a patient-specific risk of presence of coronary artery disease, as an aid in cardiac analysis and diagnosis.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Clinical performance testing must fulfill the following:

(i) Testing must include a discussion of the patient population and any statistical techniques used for analyzing the data; and

(ii) Testing must be representative of the intended use population for the device. Any selection criteria or sample limitations must be fully described and justified.

(2) Acoustic performance testing must evaluate microphone sensitivity, sound acquisition bandwidth, and amplitude accuracy. The acoustic sensor specifications and mechanism used to capture heart sounds must be described.

(3) A scientific justification for the validity of the algorithm(s) must be provided. This justification must fulfill the following:

(i) All inputs and outputs of the algorithm must be fully described;

(ii) The procedure for segmenting, characterizing, and classifying the acoustic signal must be fully described; and

(iii) This justification must include verification of the algorithm calculations and validation using an independent data set.

(4) The patient-contacting components of the device must be demonstrated to be biocompatible.

(5) Software verification, validation, and hazard analysis must be performed.

(6) Human factors/usability testing must demonstrate that the user can correctly use the device, including device placement, based solely on reading the directions for use.

(7) Performance data must demonstrate the electromagnetic compatibility and electrical safety of the device.

(8) Labeling must include the following:

(i) A description of what the device measures and outputs to the user;

(ii) Instructions for proper placement of the device;

(iii) Instructions on care and cleaning of the device;

(iv) Warnings identifying sensor acquisition factors that may impact measurement results and instructions for mitigating these factors; and

(v) The expected performance of the device for all intended use populations and environments.

Dated: May 25, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–11699 Filed 5–31–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1141

[Docket No. FDA–2019–N–3065]

RIN 0910–AI39

Tobacco Products; Required Warnings for Cigarette Packages and Advertisements; Delayed Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; delay of effective date.

SUMMARY: As required by an order issued by the U.S. District Court for the Eastern District of Texas, this action delays the effective date of the final rule (''Tobacco Products; Required Warnings for Cigarette Packages and Advertisements''), which published on March 18, 2020. The new effective date is July 8, 2023.

DATES: The effective date of the rule amending 21 CFR part 1141 published at 85 FR 15638, March 18, 2020, and delayed at 85 FR 32293, May 29, 2020; 86 FR 3793, January 15, 2021; 86 FR 36509, July 12, 2021; 86 FR 50855, September 13, 2021; 86 FR 70052, December 9, 2021; and 87 FR 11295, March 1, 2022, is further delayed until July 8, 2023.

FOR FURTHER INFORMATION CONTACT: Courtney Smith, Office of Regulations, Center for Tobacco Products, Food and Drug Administration, Document Control Center, 10903 New Hampshire Ave., Bldg. 71, Rm. G335, Silver Spring, MD 20993–0002, 1–877–287–1371, email: *CTPRegulations@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 18, 2020, the Food and Drug Administration (FDA or Agency) issued a final rule establishing new cigarette health warnings for cigarette packages and advertisements. The final rule implements a provision of the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) (Pub. L. 111–31) that requires FDA to issue regulations requiring color graphics depicting the negative health consequences of smoking to accompany new textual warning label statements. The Tobacco Control Act amends the Federal Cigarette Labeling and Advertising Act of 1965 (Pub. L. 89–92) to require each cigarette package and advertisement to bear one of the new required warnings. The final rule specifies the 11 new textual warning label statements and accompanying color graphics. Pursuant to section 201(b) of the Tobacco Control Act, the rule was published with an effective date of June 18, 2021, 15 months after the date of publication of the final rule.

On April 3, 2020, the final rule was challenged in the U.S. District Court for the Eastern District of Texas.[1] On May 8, 2020, the court granted a joint motion to govern proceedings in that case and postpone the effective date of the final rule by 120 days.[2] On December 2, 2020, the court granted a new motion by the plaintiffs to postpone the effective date of the final rule by an additional 90 days.[3] On March 2, 2021, the court granted another motion by the plaintiffs to postpone the effective date of the final rule by an additional 90 days.[4] On May 21, 2021, the court granted another motion by the plaintiffs to postpone the effective date of the final rule by an additional 90 days.[5] On August 18, 2021, the court issued an order to postpone the effective date of the final rule by an additional 90 days.[6] On November 12, 2021, the court issued another order to postpone the effective date of the final rule by an additional 90 days.[7] On February 10, 2022, the court issued another order to postpone the effective date of the final rule by an

[1] *R.J. Reynolds Tobacco Co. et al.* v. *United States Food and Drug Administration et al.,* No. 6:20–cv–00176 (E.D. Tex. filed April 3, 2020).

[2] *R.J. Reynolds Tobacco Co.,* No. 6:20–cv–00176 (E.D. Tex. May 8, 2020) (order granting joint motion and establishing schedule), Doc. No. 33.

[3] *R.J. Reynolds Tobacco Co.,* No. 6:20–cv–00176 (E.D. Tex. December 2, 2020) (order granting Plaintiffs' motion and postponing effective date), Doc. No. 80.

[4] *R.J. Reynolds Tobacco Co.,* No. 6:20–cv–00176 (E.D. Tex. March 2, 2021) (order granting Plaintiffs' motion and postponing effective date), Doc. No. 89.

[5] *R.J. Reynolds Tobacco Co.,* No. 6:20–cv–00176 (E.D. Tex. May 21, 2021) (order granting Plaintiffs' motion and postponing effective date), Doc. No. 91.

[6] *R.J. Reynolds Tobacco Co.,* No. 6:20–cv–00176 (E.D. Tex. August 18, 2021) (order postponing effective date), Doc. No. 92.

[7] *R.J. Reynolds Tobacco Co.,* No. 6:20–cv–00176 (E.D. Tex. November 12, 2021) (order postponing effective date), Doc. No. 93.

additional 90 days.[8] On May 10, 2022, the court issued another order to postpone the effective date of the final rule by an additional 90 days.[9] The court ordered that the new effective date of the final rule is July 8, 2023. Pursuant to the court order, any obligation to comply with a deadline tied to the effective date is similarly postponed, and those obligations and deadlines are now tied to the postponed effective date.

To the extent that 5 U.S.C. 553 applies to this action, the Agency's implementation of this action without opportunity for public comment, effective immediately upon publication today in the **Federal Register**, is based on the good cause exception in 5 U.S.C. 553(b)(B). Seeking public comment is impracticable, unnecessary, and contrary to the public interest. The 90-day postponement of the effective date, until July 8, 2023, is required by court order in accordance with the court's authority to postpone a rule's effective date pending judicial review (5 U.S.C. 705). Seeking prior public comment on this postponement would have been impracticable, as well as contrary to the public interest in the orderly issuance and implementation of regulations.

Dated: May 24, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–11568 Filed 5–31–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–990]

Schedules of Controlled Substances: Placement of Ganaxolone in Schedule V

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Interim final rule; request for comments.

SUMMARY: On March 18, 2022, the United States Food and Drug Administration approved a new drug application for ZTALMY, an oral suspension of ganaxolone, for the treatment of seizures associated with cyclin-dependent kinase-like 5 deficiency disorder in patients two years of age and older. The Department of Health and Human Services provided the Drug Enforcement Administration with a scheduling recommendation to place ganaxolone and its salts in schedule V of the Controlled Substances Act. In accordance with the Controlled Substances Act, as amended by the Improving Regulatory Transparency for New Medical Therapies Act, Drug Enforcement Administration is hereby issuing an interim final rule placing ganaxolone, including its salts in schedule V of the Controlled Substances Act.

DATES: This rule is effective June 1, 2022. Comments must be submitted electronically or postmarked on or before July 1, 2022. Interested persons may file written comments on this rulemaking in accordance with 21 U.S.C. 811(j)(3) and 21 CFR 1308.43(g). Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

Interested persons may file a request for a hearing or waiver of a hearing in accordance with 21 U.S.C. 811(j)(3) and 21 CFR 1308.44. Requests for a hearing and waivers of an opportunity for a hearing or to participate in a hearing must be received on or before July 1, 2022.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–990'' on all correspondence, including any attachments.

- *Electronic comments:* The Drug Enforcement Administration (DEA) encourages 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 *http://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon completion of your submission, you will receive a Comment Tracking Number for your comment. Submitted comments are not instantaneously available for public view on *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.
- *Paper comments:* Paper comments that duplicate electronic submissions are not necessary and are discouraged. Should you wish to mail a paper comment *in lieu of* an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, VA 22152.
- *Hearing requests:* All requests for a hearing and waivers of participation, together with a written statement of position on the matters of fact and law asserted in the hearing, must be sent to: Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing and waivers of participation should also be sent to: (1) Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

FOR FURTHER INFORMATION CONTACT: Terrence L. Boos, Drug & Chemical Evaluation Section, Diversion Control Division, Drug Enforcement Administration; Telephone: (571) 362–3249.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note, all comments received in response to this docket are considered part of the public record. The Drug Enforcement Administration (DEA) will make comments available, unless reasonable cause is given, for public inspection online at *http://www.regulations.gov*. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter. The Freedom of Information Act applies to all comments received. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want DEA to make it publicly available, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all of the personal identifying information you do not want made publicly available in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want DEA to make it publicly available, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify the confidential business information to be redacted within the comment.

DEA will generally make available in publicly redacted form comments

[8] *R.J. Reynolds Tobacco Co.,* No. 6:20–cv–00176 (E.D. Tex. February 10, 2022) (order postponing effective date), Doc. No. 94.

[9] *R.J. Reynolds Tobacco Co.,* No. 6:20–cv–00176 (E.D. Tex. May 10, 2022) (order postponing effective date), Doc. No. 96.

containing personal identifying information and confidential business information identified, as directed above. If a comment has so much confidential business information or personal identifying information that DEA cannot effectively redact it, DEA may not make available publicly all or part of that comment. Comments posted to *http://www.regulations.gov* may include any personal identifying information (such as name, address, and phone number) included in the text of your electronic submission that is not identified as confidential as directed above.

An electronic copy of this document and supplemental information to this interim final rule (IFR) are available at *http://www.regulations.gov* for easy reference.

Request for Hearing or Appearance; Waiver

Pursuant to 21 U.S.C. 811(a), this action is a formal rulemaking ''on the record after opportunity for a hearing.'' Such proceedings are conducted pursuant to the provisions of the Administrative Procedure Act (APA), 5 U.S.C. 551–559. 21 CFR 1308.41–1308.45; 21 CFR part 1316, subpart D. Interested persons may file requests for a hearing or notices of intent to participate in a hearing in conformity with the requirements of 21 CFR 1308.44(a) or (b), and such requests must include a statement of the person's interests in the proceeding and the objections or issues, if any, concerning which the person desires to be heard. 21 CFR 1316.47(a). Any interested person may file a waiver of an opportunity for a hearing or to participate in a hearing together with a written statement regarding the interested person's position on the matters of fact and law involved in any hearing as set forth in 21 CFR 1308.44(c).

All requests for hearings and waivers of participation, together with a written statement of position on the matters of fact and law involved in such hearing, must be sent to DEA using the address information provided above.

Background and Legal Authority

Under the Controlled Substances Act (CSA), as amended in 2015 by the Improving Regulatory Transparency for New Medical Therapies Act (section 2(b) of Publ. L. 114–89), DEA is required to commence an expedited scheduling action with respect to certain new drugs approved by the Food and Drug Administration (FDA). As provided in 21 U.S.C. 811(j), this expedited scheduling is required where both of the following conditions apply: (1) The Secretary of the Department of Health and Human Services (HHS) has advised DEA that a New Drug Application (NDA) has been submitted for a drug that has a stimulant, depressant, or hallucinogenic effect on the central nervous system (CNS), and that it appears that such drug has an abuse potential; and (2) the Secretary of HHS recommends that DEA control the drug in schedule II, III, IV, or V pursuant to 21 U.S.C. 811(a) and (b). In these circumstances, DEA is required to issue an interim final rule (IFR) controlling the drug within 90 days.

Subsection (j)(2) states that the 90-day timeframe starts the later of (1) the date DEA receives HHS' scientific and medical evaluation/scheduling recommendation, or (2) the date DEA receives notice of the NDA approval by HHS. Subsection (j)(3) specifies that the rulemaking shall become immediately effective as an IFR without requiring DEA to demonstrate good cause therefore. Thus, the purpose of subsection (j) is to speed the process by which DEA schedules newly approved drugs that are currently either in schedule I or not controlled (but which have sufficient abuse potential to warrant control) so that such drugs may be marketed without undue delay following FDA approval.[1]

Subsection (j)(3) further provides that the IFR shall give interested persons the opportunity to comment and to request a hearing. After the conclusion of such proceedings, DEA must issue a final rule in accordance with the scheduling criteria of 21 U.S.C. 811(b) through (d) and 812(b).

Ganaxolone (3α-hydroxy-3β-methyl-5α-pregnan-20-one) is a new molecular entity (NME) with CNS activity. Ganaxolone is a neuroactive positive allosteric modulator of gamma-aminobutyric acid type-A (GABA-A) receptors and an inhibitory neurosteroidal substance that shares structural features and a pharmacological mechanism of action with progesterone and schedule IV depressants alfaxalone and brexanolone.

On July 20, 2021, Marinus Pharmaceuticals, Inc. (Sponsor) submitted an NDA for ganaxolone to FDA. On March 18, 2022, DEA received notification that FDA, on the same date, approved the NDA for ZTALMY (ganaxolone oral suspension), under section 505(c) of the Federal Food, Drug, and Cosmetic Act (FDCA), for the treatment of seizures associated with cyclin-dependent kinase-like 5 (CDKL5) deficiency disorder (CDD) in patients two years of age and older. Pursuant to its FDA-approved prescription drug labeling, ZTALMY is to be administered orally three times daily (TID) with food on a titration schedule through a dose-escalation protocol over the first 3 weeks of drug administration. Patients weighing 28 kg or less receive a final dose of 21 mg/kg TID (63 mg/kg/day) and patients weighing more than 28 kg receive a final dose of 600 mg TID (1800 mg/day).[2]

Determination To Schedule Ganaxolone

On March 14, 2022, DEA received from HHS a scientific and medical evaluation entitled ''Basis for the Recommendation to Control Ganaxolone and its Salts in Schedule V of the Controlled Substances Act'' and a scheduling recommendation. Pursuant to 21 U.S.C. 811(b) and (c), this document contained an eight-factor analysis of the abuse potential, legitimate medical use, and dependence liability of ganaxolone, along with HHS's recommendation to control ganaxolone and its salts under schedule V of the CSA.

In response, DEA reviewed the scientific and medical evaluation and scheduling recommendation provided by HHS, along with all other relevant data, and completed its own eight-factor review pursuant to 21 U.S.C. 811(c). DEA concluded that ganaxolone meets the 21 U.S.C. 812(b)(5) criteria for placement in schedule V of the CSA.

Pursuant to subsection 811(j), and based on HHS' scheduling recommendation, the approval of the NDA by HHS/FDA, and DEA's determination, DEA is issuing this IFR to schedule ganaxolone as a schedule V controlled substance under the CSA.

Included below is a brief summary of each factor as analyzed by HHS and DEA, and as considered by DEA in its scheduling action. Please note that both DEA and HHS analyses are available in their entirety under ''Supporting Documents'' in the public docket for this IFR at *http://www.regulations.gov,* under Docket Number ''DEA–990.'' Full analysis of, and citations to, the information referenced in the summary may also be found in the supporting and related material.

1. Its Actual or Relative Potential for Abuse

Ganaxolone is an NME that has not been marketed in the United States or

[1] Given the parameters of subsection (j), in DEA's view, it would not apply to a reformulation of a drug containing a substance currently in schedules II through V for which an NDA has recently been approved.

[2] *https://www.accessdata.fda.gov/drugsatfda_docs/label/2022/215904s000lbl.pdf.* Date accessed March 28, 2022.

any country. Thus, evidence regarding its diversion, illicit manufacturing, or deliberate ingestion is currently lacking. DEA notes that there are no reports of law enforcement encounters of ganaxolone in the National Forensic Laboratory Information System (NFLIS) database,[3] which collects drug cases submitted to and analyzed by state and local forensic laboratories. Ganaxolone has sedative effects and is likely to have abuse potential, although less than that of schedule IV sedatives such as lorazepam. Thus, it is reasonable to assume that ganaxolone may be diverted from legitimate channels, used contrary to or without medical advice, and capable of creating hazards to the users and to the safety of the community. In preclinical and clinical studies, ganaxolone produced effects that are less than that of schedule IV sedative drugs such as methohexital and lorazepam. Ganaxolone produced positive subjective responses and euphoria-related adverse events (AEs) that were significantly greater than placebo, but statistically less than that of lorazepam (schedule IV) in healthy humans, nondependent with a history of recreational use of CNS depressants; thus, it is likely to be abused for its sedative effects contrary to medical advice.

2. Scientific Evidence of Its Pharmacological Effects, if Known

Ganaxolone shares a pharmacological profile with other inhibitory neurosteroids such as alfaxalone and brexanolone, both schedule IV drugs. Ganaxolone acts on GABA-A receptors to enhance the effects of GABA, a major inhibitory neurotransmitter in the CNS. Data from *in vitro* binding studies showed that ganaxolone had significant affinity (greater than 96 percent) for the GABA-chloride channels. Ganaxolone did not show significant affinity (less than 50 percent) for 47 other receptor sites, ion channels, steroid sites, and enzymes. The sites tested included abuse-related sites such as dopamine (D_1 and D_2), serotonin (1a, 2a, and 2c), cannabinoid (CB_1 and CB_2), opioid (mu, kappa, delta), glutamate (NMDA/AMPA, phencyclidine, glycine, kainite), and monoamine transporters (dopamine, serotonin, or norepinephrine). Functional activity studies showed that ganaxolone potentiated GABA-evoked chloride currents in *Xenopus* oocytes expressing human GABA-A receptor subunits.

In animal studies, orally-administered ganaxolone's effect on general behavioral profile showed that it did not produce behavioral activity that differed significantly from the saline-treated group. However, ganaxolone elicited time-dependent (6-hour post treatment) behavior changes such as abnormal gait, grasping loss, abnormal righting reflex, and low carriage indicative of the sedative and muscle relaxation properties of the drug. Ganaxolone's effect on motor coordination was evaluated in three rotarod studies in rats. The studies showed that ganaxolone produced a dose-dependent increase in the number of rats that failed to maintain themselves on the rotarod, indicative of its interference on motor coordination. Ganaxolone produced a dose-dependent decrease in locomotor activity and loss of righting reflex.

In a drug discrimination study using rats trained to discriminate midazolam (schedule IV) and saline, oral doses of ganaxolone (10 and 30 mg/kg) produced full generalization to midazolam stimuli. Ganaxolone's reinforcing properties were assessed by determining whether self-administration behavior was maintained when the drug was substituted for heroin. Data from this study showed that ganaxolone self-administration was much less than that of methohexital (schedule IV) and heroin (schedule I) and was numerically similar to saline. However, ganaxolone at 0.10 mg/kg/injection dose produced self-administration that was statistically significantly greater than saline.

A randomized, double-blind, active- and placebo-controlled, cross-over study was conducted to determine the abuse potential for ganaxolone in healthy, nondependent, recreational CNS depressant users. Oral doses of ganaxolone were compared to an oral dose of lorazepam (schedule IV, served as the positive control). The lower and middle doses of ganaxolone (400 mg and 800 mg, respectively) produced responses within or just outside the acceptable placebo range and were statistically similar to placebo. However, the highest dose of ganaxolone (2000 mg) produced a drug liking score that was significantly different from placebo. The three doses of ganaxolone tested produced drug liking scores that were significantly lower than that of lorazepam. In addition, all three oral doses of ganaxolone (400, 800, and 2000 mg) produced responses on all other positive subjective measures (bipolar visual analog scale for Overall Drug Liking, High, Good Effects, and Take Drug Again) that were statistically less than those produced by 6 mg oral dose of lorazepam.

In 23 Phase 1 clinical safety studies that were conducted using healthy individuals, eight of the studies showed that ganaxolone produced euphoria-related AEs at all doses tested. Of the eight studies, three were repeat-dose studies and five were acute-dose studies. From the three repeat-dose studies, 24 of 64 subjects who received ganaxolone reported euphoria-related AEs at any dose tested, compared to 0 of 17 subjects who received placebo. Of the five acute-dose studies, euphoria-related AEs were reported by 8 of the 101 subjects who received ganaxolone at any dose tested, compared to 1 of 12 subjects who received placebo. Most of the euphoria-related AEs following ganaxolone administration were mild in severity. In Phase 2/3 clinical studies conducted with ganaxolone in either epilepsy patients or post-traumatic stress disorder patients, the degree of euphoria-related AEs could not be determined because all subjects in these studies were concurrently taking antiepileptic drugs (epilepsy patients) or benzodiazepines (post-traumatic stress disorder patients). Because many antiepileptic drugs and benzodiazepines are known to produce euphoria and sedation, and are often controlled in schedule IV of the CSA, their use in human subjects confounds interpreting any ganaxolone euphoria-related AEs that may be reported during these clinical studies. However, in one of the three clinical studies conducted in patients with migraine, euphoria was reported in 3 of the 163 subjects who received a single 750 mg oral dose of ganaxolone (1.8 percent, 2 moderate, 1 severe), compared to 1 of 164 subjects who received placebo (0.6 percent, 1 mild).

In summary, ganaxolone produced incidence of euphoria-related AEs supportive of its abuse potential. In animal studies, ganaxolone produced interoceptive cues that were similar to those of midazolam, a schedule IV depressant, and these data are consistent with the fact that both drugs share a common mechanism of action involving positive allosteric modulation of the GABA-A receptors. In self-administration studies conducted in animals, ganaxolone produced rewarding effects, but its self-administration was lower than methohexital (schedule IV) and heroin (schedule I) injections. As mentioned by HHS, in clinical studies, ganaxolone produced an 8.8 percent incidence of

[3] NFLIS is a comprehensive information system that includes data from forensic laboratories that handle more than 96% of an estimated 1.0 million distinct annual State and local drug analysis cases. NFLIS includes drug chemistry results from completed analyses only. While NFLIS data is not direct evidence of abuse, it can lead to an inference that a drug has been diverted and abused. See 76 FR 77330, 77332, Dec. 12, 2011. NFLIS data were queried on January 18, 2022.

euphoria-like AEs, including euphoria, thinking abnormal, feeling drunk, and depersonalization, across acute doses of 300 to 1,500 mg/day and repeat doses of 400 to 2,250 mg/day, as compared to that of placebo (2.3 percent) in healthy individuals.

3. The State of Current Scientific Knowledge Regarding the Drug or Other Substance

Ganaxolone, chemically known as 3α-hydroxy-3β-methyl-5α-pregnan-20-one, is an NME. It is a structural derivative of allopregnanolone (also known as brexanolone, schedule IV). Ganaxolone is structurally different from brexanolone by the presence of an extra methyl group at the 3β-position. It is insoluble in water, slightly soluble in methanol, ethanol, isopropanol, ethyl acetate, and toluene (5 to 25 mg/mL at 20 degrees Celsius), and soluble in *N,N*-dimethylacetamide. Ganaxolone is a drug product formulated as a 50 mg/mL white to off-white immediate release oral suspension in water and is administered by mouth TID with food. Ganaxolone is absorbed with a time to peak plasma concentration of 2.0 to 3.0 hours following oral administration. It undergoes first pass metabolism following oral administration with 10 percent bioavailability. It is approximately 99 percent protein bound in serum and has a terminal half-life at steady state of about 8–10 hours.

As discussed in the background section, ganaxolone has an accepted medical use in the United States.

4. Its History and Current Pattern of Abuse

There is no information on the history and current pattern of abuse for ganaxolone, since it has not been marketed, legally or illegally, in the United States or any other country. There is no evidence of diversion of ganaxolone that has been distributed for research, such as for clinical trials. Data from preclinical and clinical studies indicate that the abuse potential of ganaxolone is less than that of schedule IV CNS depressants such as methohexital and lorazepam. Consistent with the fact that ganaxolone is an NME, the NFLIS database had no records of encounters by law enforcement.

In summary, pharmacological data on ganaxolone show that it produces abuse-related AEs and has an abuse potential less than that of schedule IV CNS depressants.

5. The Scope, Duration, and Significance of Abuse

Data from preclinical and clinical studies showed that ganaxolone has an abuse potential that is less than that of schedule IV depressants. Thus, ganaxolone has a low potential for abuse relative to substances in schedule IV. A search by DEA of the NFLIS database found no evidence of law enforcement encounters of ganaxolone in the United States. Because ganaxolone is a positive allosteric modulator of GABA-A receptors and has abuse potential, upon availability of ganaxolone in the market, it is likely to be abused.

6. What, if any, Risk There Is to the Public Health

Ganaxolone's abuse potential, although less than that of schedule IV depressants, is an indication of its public health risk. As such, upon availability for marketing, it is likely to pose risk to public health comparable to drugs in schedule V. According to information mentioned in the prescription product label for ZTALMY (ganaxolone), concomitant use of opioids, antidepressants, or other CNS depressants such as alcohol may potentiate incidence of somnolence and sedation in patients receiving ganaxolone. The abuse of ganaxolone may present risks to the public health at a level similar to those associated with the abuse of CNS depressants.

7. Its Psychic or Physiological Dependence Liability

Ganaxolone's psychic and physiological dependence liability was assessed using data from a rat physical dependence study and human data. A physical dependence study was not conducted in clinical studies because abrupt discontinuation of an antiepileptic drug in epileptic patients presents serious safety concerns. As described by HHS, data from a physiologic dependence study conducted in rats demonstrated that chronic administration of ganaxolone produced a decrease in body weight and changes in behavior that included ataxia, rearing, escape attempts from the cage, increased body tone, increased locomotor activity, increased reaction to sound, explosive movements, and piloerection. Decreases in body weight, food and water intake, and increased body temperature were observed upon discontinuation of ganaxolone. During ganaxolone discontinuation, 5 of 10 rats showed behaviors that included increased locomotor activity, increased reaction to sound, hunched posture, and piloerection. Further, since ganaxolone produced positive subjective responses and euphoria-related AEs in human subjects, it is likely that it may produce psychic dependence.

In summary, data from animal studies demonstrate that chronic administration of ganaxolone produces signs or symptoms of withdrawal upon discontinuation. Ganaxolone produces physical dependence.

8. Whether the Substance Is an Immediate Precursor of a Substance Already Controlled Under the CSA

Ganaxolone is not an immediate precursor of any controlled substance, as defined by 21 U.S.C. 802(23).

Conclusion: After considering the scientific and medical evaluation and scheduling recommendation provided by HHS, and its own eight-factor analysis, DEA has determined that these facts and all relevant data constitute substantial evidence of potential for abuse of ganaxolone. As such, DEA hereby schedules ganaxolone as a controlled substance under the CSA.

Determination of Appropriate Schedule

The CSA lists the findings required to place a drug or other substance in any particular schedule (I, II, III, IV, or V). 21 U.S.C. 812(b). After consideration of the analysis and recommendation of the Assistant Secretary for Health of HHS and review of all available data, the Administrator of DEA (Administrator), pursuant to 21 U.S.C. 812(b)(5), finds that:

(1) Ganaxolone has a low potential for abuse relative to the drugs or other substances in schedule IV.

Ganaxolone, a neuroactive steroid, is a positive allosteric modulator of GABA-A receptors and produces sedation in general behavioral studies including rotarod and locomotion studies. In a drug discrimination study in animals, ganaxolone generalized to midazolam (schedule IV), demonstrating it has GABA-A receptor agonist properties. In a self-administration study in animals, ganaxolone self-administration was significantly different from saline, but was less than that of methohexital (schedule IV) and heroin (schedule I). Ganaxolone produced positive subjective responses and euphoria-related AEs less than that of lorazepam (schedule IV), but greater than that of placebo in a human abuse potential study. Furthermore, data from pharmacokinetic clinical studies show that ganaxolone produced incidence of euphoria in 8.8 percent of healthy individuals as compared to 2.3 percent incidence following placebo. Therefore, ganaxolone has some potential for abuse, but it is low relative to lorazepam, methohexital and other substances in schedule IV.

(2) Ganaxolone has a currently accepted medical use in treatment in the United States.

FDA recently approved the NDA for ZTALMY (ganaxolone) as an oral adjunctive therapy for the treatment of an epilepsy condition, cyclin-dependent, kinase-like 5 deficiency disorder, in patients aged two years and older. Thus, ganaxolone has a currently accepted medical use in treatment in the United States.

(3) Abuse of ganaxolone may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule IV.

Ganaxolone shares a similar pharmacology profile with brexanolone (schedule IV). Data from a rat physical dependence study demonstrated that discontinuation of chronic administration of ganaxolone produced withdrawal syndrome. Thus, abuse of ganaxolone may lead to limited physical dependence. Further, because ganaxolone produced positive subjective responses and euphoria-related AEs, it may produce psychic dependence. However, there were fewer reports of euphoria-related AEs associated with ganaxolone than lorazepam (schedule IV). Ganaxolone may lead to limited physical or psychological dependence relative to other substances in schedule IV.

Based on these findings, the Administrator concludes that ganaxolone warrants control in schedule V of the CSA. 21 U.S.C. 812(b)(5).

Requirements for Handling Ganaxolone

Ganaxolone is subject to the CSA's schedule V regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, reverse distribution, dispensing, importing, exporting, research, and conduct of instructional activities and chemical analysis with, and possession involving schedule V substances, including the following:

1. *Registration.* Any person who handles (manufactures, distributes, reverse distributes, dispenses, imports, exports, engages in research, or conducts instructional activities or chemical analysis with, or possesses), or who desires to handle, ganaxolone must be registered with DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958 and in accordance with 21 CFR parts 1301 and 1312. Any person who currently handles or intends to handle ganaxolone and is not registered with DEA must submit an application for registration and may not continue to handle ganaxolone unless DEA has approved that application, pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312. These registration requirements, however, are not applicable to patients (end users) who possess ganaxolone pursuant to a lawful prescription.

2. *Disposal of stocks.* Any person unwilling or unable to obtain a schedule V registration to handle ganaxolone, but who subsequently does not desire or is not able to maintain such registration must surrender all quantities of currently held ganaxolone, or may transfer all quantities of currently held ganaxolone to a person registered with DEA. Ganaxolone is required to be disposed of in accordance with 21 CFR part 1317, in addition to all other applicable Federal, state, local, and tribal laws.

3. *Security.* Ganaxolone is subject to schedule III–V security requirements for DEA registrants, and it must be handled and stored in accordance with 21 CFR 1301.71–1301.77. Non-practitioners handling ganaxolone must also comply with the employee screening requirements of 21 CFR 1301.90–1301.93. These requirements, however, are not applicable to patients (end users) who possess ganaxolone pursuant to a lawful prescription.

4. *Labeling and Packaging.* All labels, labeling, and packaging for commercial containers of ganaxolone must comply with 21 U.S.C. 825 and 958(e), and be in accordance with 21 CFR part 1302.

5. *Inventory.* Every DEA registrant who possesses any quantity of ganaxolone must take an inventory of ganaxolone on hand, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11(a) and (d).

Any person who registers with DEA to handle ganaxolone must take an initial inventory of all stocks of controlled substances (including ganaxolone) on hand on the date the registrant first engages in the handling of controlled substances, pursuant to 21 U.S.C. 827 and 958(e), and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11(a) and (b).

After the initial inventory, every DEA registrant must take an inventory of all stocks of controlled substances (including ganaxolone) on hand every two years, pursuant to 21 U.S.C. 827 and 958(e), and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11. These requirements, however, are not applicable to patients (end users) who possess ganaxolone pursuant to a lawful prescription.

6. *Records and Reports.* DEA registrants must maintain records and submit reports for ganaxolone, pursuant to 21 U.S.C. 827, 832(a), and 958(e), and in accordance with 21 CFR 1301.74(b) and (c) and parts 1304, 1312, and 1317.

7. *Prescriptions.* All prescriptions for ganaxolone, or products containing ganaxolone, must comply with 21 U.S.C. 829, and be issued in accordance with 21 CFR parts 1306 and 1311, subpart C.

8. *Manufacturing and Distributing.* In addition to the general requirements of the CSA and DEA regulations that are applicable to manufacturers and distributors of schedule V controlled substances, such registrants should be advised that (consistent with the foregoing considerations) any manufacturing or distribution of ganaxolone may only be for the legitimate purposes consistent with the drug's labeling, or for research activities authorized by the FDCA, as applicable, and the CSA.

9. *Importation and Exportation.* All importation and exportation of ganaxolone must comply with 21 U.S.C. 952, 953, 957, and 958, and be in accordance with 21 CFR part 1312.

10. *Liability.* Any activity involving ganaxolone not authorized by, or in violation of, the CSA or its implementing regulations, is unlawful, and may subject the person to administrative, civil, and/or criminal sanctions.

Regulatory Analyses

Administrative Procedure Act

Section 553 of the APA (5 U.S.C. 553) generally requires notice and comment for rulemakings. However, 21 U.S.C. 811(j) provides that in cases where a certain new drug is (1) approved by HHS, under section 505(c) of the FDCA and (2) HHS recommends control in CSA schedule II–V, DEA shall issue an IFR scheduling the drug within 90 days. As stated in the legal authority section, the 90-day time frame is the later of: (1) The date DEA receives HHS's scientific and medical evaluation/scheduling recommendation, or (2) the date DEA receives notice of the NDA approval by HHS. Additionally, subsection (j) specifies that the rulemaking shall become immediately effective as an IFR without requiring DEA to demonstrate good cause.

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)

In accordance with 21 U.S.C. 811(a) and (j), this scheduling action is subject to formal rulemaking procedures performed ''on the record after opportunity for a hearing,'' which are

conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth the procedures and criteria for scheduling a drug or other substance. Such actions are exempt from review by the Office of Management and Budget (OMB) pursuant to section 3(d)(1) of Executive Order (E.O.) 12866 and the principles reaffirmed in E.O. 13563.

Executive Order 12988, Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132, Federalism

This rulemaking does not have federalism implications warranting the application of E.O. 13132. The rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This rule does not have tribal implications warranting the application of E.O. 13175. It does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) applies to rules that are subject to notice and comment under section 553(b) of the APA. As noted in the above discussion regarding the applicability of the APA, DEA is not required to publish a general notice of proposed rulemaking. Consequently, the RFA does not apply to this IFR.

Unfunded Mandates Reform Act of 1995

In accordance with the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1501 *et seq.,* DEA has determined that this action would not result in any Federal mandate that may result ''in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year.'' Therefore, neither a Small Government Agency Plan nor any other action is required under UMRA of 1995.

Paperwork Reduction Act of 1995

This action does not impose a new collection of information requirement under the Paperwork Reduction Act of 1995. 44 U.S.C. 3501–3521. This action would not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

Congressional Review Act

This rule is not a major rule as defined by the Congressional Review Act (CRA), 5 U.S.C. 804. However, pursuant to the CRA, DEA is submitting a copy of this IFR to both Houses of Congress and to the Comptroller General.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, DEA amends 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), 956(b) unless otherwise noted.

■ 2. In § 1308.15:

■ a. Redesignate paragraphs (e)(4) through (6) as paragraphs (e)(5) through (7); and

■ b. Add new paragraph (e)(4).

The addition reads as follows:

§ 1308.15 Schedule V.

* * * * *

(e) * * *

(4) Ganaxolone (3α-hydroxy-3β-methyl-5α-pregnan-20-one)	2401

* * * * *

Anne Milgram,

Administrator.

[FR Doc. 2022–11735 Filed 5–31–22; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–495]

Schedules of Controlled Substances: Placement of N-Ethylhexedrone, alpha-Pyrrolidinohexanophenone, 4-Methyl-alpha-ethylaminopentiophenone, 4′-Methyl-alpha-pyrrolidinohexiophenone, alpha-Pyrrolidinoheptaphenone, and 4′-Chloro-alpha-pyrrolidinovalerophenone in Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: By this rule, the Drug Enforcement Administration permanently places six synthetic cathinones, as identified in this rule, in schedule I of the Controlled Substances Act. These six substances are currently listed in schedule I pursuant to a temporary scheduling order. As a result of this rule, the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, reverse distribute, import, export, engage in research, conduct instructional activities or chemical analysis, or possess) or propose to handle these six specified controlled substances will continue to apply.

DATES: Effective June 1, 2022.

FOR FURTHER INFORMATION CONTACT: Terrence L. Boos, Drug and Chemical Evaluation Section, Diversion Control Division, Drug Enforcement Administration; Telephone: (571) 362–8207.

SUPPLEMENTARY INFORMATION: In this rule, the Drug Enforcement Administration (DEA) is permanently

scheduling the following six controlled substances, including their optical, positional, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, in schedule I of the Controlled Substances Act (CSA):

- *N*-ethylhexedrone (other names: α-ethylaminohexanophenone, 2-(ethylamino)-1-phenylhexan-1-one),
- *alpha*-pyrrolidinohexanophenone (other names: α-PHP, α-pyrrolidinohexanophenone, 1-phenyl-2-(pyrrolidin-1-yl)hexan-1-one),
- 4-methyl-*alpha*-ethylaminopentiophenone (other names: 4-MEAP, 2-(ethylamino)-1-(4-methylphenyl)pentan-1-one),
- 4′-methyl-*alpha*-pyrrolidinohexiophenone (other names: MPHP, 4′-methyl-*alpha*-pyrrolidinohexanophenone, 1-(4-methylphenyl)-2-(pyrrolidin-1-yl)hexan-1-one),
- *alpha*-pyrrolidinoheptaphenone (other names: PV8, 1-phenyl-2-(pyrrolidin-1-yl)heptan-1-one), and
- 4′-chloro-*alpha*-pyrrolidinovalerophenone (other names: 4-chloro-α-PVP, 4′-chloro-α-pyrrolidinopentiophenone, 1-(4-chlorophenyl)-2-(pyrrolidin-1-yl)pentan-1-one).

Legal Authority

The CSA provides that proceedings for the issuance, amendment, or repeal of the scheduling of any drug or other substance may be initiated by the Attorney General: (1) On his own motion; (2) at the request of the Secretary of the Department of Health and Human Services (HHS);[1] or (3) on the petition of any interested party. 21 U.S.C. 811(a). This action was initiated on the Attorney General's own motion, as delegated to the Administrator of the Drug Enforcement Administration (DEA), and is supported by, inter alia, a recommendation from the Assistant Secretary for Health of HHS (Assistant Secretary) and an evaluation of all other relevant data by DEA. The regulatory controls and administrative, civil, and criminal sanctions for schedule I controlled substances on any person who handles or proposes to handle *N*-ethylhexedrone, α-PHP, 4-MEAP, MPHP, PV8, or 4-chloro-α-PVP will continue to apply as a result of this action.

Background

The subject substances of this final rule are currently controlled in schedule I of the CSA by virtue of a temporary scheduling order (84 FR 34291, July 18, 2019) and an extension of that order (86 FR 37672, July 16, 2021). On July 16, 2021, pursuant to 21 U.S.C. 811(a), DEA published a notice of proposed rulemaking (NPRM) to permanently control these six synthetic cathinones in schedule I of the CSA. 86 FR 37719.

NPRM

DEA's July 2021 rule proposed to permanently control *N*-ethylhexedrone, α-PHP, 4-MEAP, MPHP, PV8, and 4-chloro-α-PVP, and their optical, positional, and geometric isomers, salts, and salts of isomers in schedule I of the CSA. Specifically, DEA proposed to add these six synthetic cathinones to the hallucinogenic substances list under 21 CFR 1308.11(d)(94) through (99), respectively. The proposed regulatory text provided name(s) for these six substances as follows:

- *N*-ethylhexedrone (other name: α-ethylaminohexanophenone),
- *alpha*-pyrrolidinohexanophenone (other names: α-PHP, α-pyrrolidinohexanophenone, 1-phenyl-2-(pyrrolidin-1-yl)hexan-1-one),
- 4-methyl-*alpha*-ethylaminopentiophenone (other names: 4-MEAP, 2-(ethylamino)-1-(4-methylphenyl)pentan-1-one),
- 4′-methyl-*alpha*-pyrrolidinohexiophenone (other names: MPHP, 4-methyl-*alpha*-pyrrolidino hexanophenone,, 1-(4-methylphenyl)-2-(pyrrolidin-1-yl)hexan-1-one),
- *alpha*-pyrrolidinoheptaphenone (other names: PV8, 1-phenyl-2-(pyrrolidin-1-yl)heptan-1-one), and
- 4′-chloro-*alpha*-pyrrolidinovalerophenone (other names: 4-chloro-α-PVP, 4-chloro-α-pyrrolidinopentiophenone, 1-(4-chlorophenyl)-2-(pyrrolidin-1-yl)pentan-1-one).

Regarding the substance *N*-ethylhexedrone, the preamble (Supplementary Information section) for the NPRM provided α-ethylaminohexanophenone as well as multiple other names, including 2-(ethylamino)-1-phenylhexan-1-one.[2]

The NPRM provided an opportunity for interested persons to file a request for hearing in accordance with DEA regulations on or before August 16, 2021. No requests for such a hearing were received by DEA. The NPRM also provided an opportunity for interested persons to submit comments on the proposed rule on or before August 16, 2021. DEA did not receive any comments.

Determination for Permanent Scheduling

Based on the rationale set forth in the NPRM, the Administrator makes the findings, required under 21 U.S.C. 811(a) and 812(b)(1), for permanent placement of *N*-ethylhexedrone, α-PHP, 4-MEAP, MPHP, PV8, and 4-chloro-α-PVP, including their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, in schedule I of the CSA. This final rule adds the six substances to the hallucinogenic substances list under 21 CFR 1308.11(d), and maintains their placement in schedule I. This final rule provides the same other names for all six specific substances, used in the regulatory text of the NPRM. In addition, this rule adds one other name, 2-(ethylamino)-1-phenylhexan-1-one, for the substance *N*-ethylhexedrone. As discussed above, this additional other name was provided in the preamble for the NPRM.

Requirements for Handling *N*-Ethylhexedrone, α-PHP, 4-MEAP, MPHP, PV8, and 4-Chloro-α-PVP

N-Ethylhexedrone, α-PHP, 4-MEAP, MPHP, PV8, or 4-chloro-α-PVP will continue[3] to be subject to the CSA's schedule I regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, reverse distribution, importation, exportation, research, and conduct of instructional activities involving the handling of schedule I controlled substances including the following:

1. *Registration.* Any person who handles (manufactures, distributes, reverse distributes, imports, exports, engages in research, or conducts instructional activities or chemical analysis with, or possesses) or who desires to handle *N*-ethylhexedrone, α-PHP, 4-MEAP, MPHP, PV8, or 4-chloro-α-PVP must be registered with DEA to

[1] As discussed in a memorandum of understanding entered into by the Food and Drug Administration (FDA) and the National Institute on Drug Abuse (NIDA), FDA acts as the lead agency within HHS in carrying out the Secretary's scheduling responsibilities under the CSA, with the concurrence of NIDA. 50 FR 9518, Mar. 8, 1985. The Secretary of HHS has delegated to the Assistant Secretary for Health of HHS the authority to make domestic drug scheduling recommendations. 58 FR 35460, July 1, 1993.

[2] In addition to α-ethylaminohexanophenone and 2-(ethylamino)-1-phenylhexan-1-one, the NPRM preamble provided two other names (ethyl hexedrone and HEXEN).

[3] *N*-Ethylhexedrone, α-PHP, 4-MEAP, MPHP, PV8, and 4-chloro-α-PVP have been subject to schedule I controls on a temporary basis, pursuant to 21 U.S.C. 811(h), by virtue of the temporary scheduling order (84 FR 34291, July 18, 2019) and the subsequent one year extension of that order (86 FR 37672, July 16, 2021).

conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312.

2. *Security.* *N*-Ethylhexedrone, α-PHP, 4-MEAP, MPHP, PV8, and 4-chloro-α-PVP are subject to schedule I security requirements and must be handled and stored pursuant to 21 U.S.C. 823 and in accordance with 21 CFR 1301.71–1301.76. Non-practitioners handling *N*-ethylhexedrone, α-PHP, 4-MEAP, MPHP, PV8, or 4-chloro-α-PVP must also comply with the employee screening requirements of 21 CFR 1301.90–1301.93.

3. *Labeling and Packaging.* All labels, labeling, and packaging for commercial containers of *N*-ethylhexedrone, α-PHP, 4-MEAP, MPHP, PV8, and 4-chloro-α-PVP must be in compliance with 21 U.S.C. 825, and be in accordance with 21 CFR part 1302.

4. *Quota.* Only registered manufacturers are permitted to manufacture *N*-ethylhexedrone, α-PHP, 4-MEAP, MPHP, PV8, or 4-chloro-α-PVP in accordance with a quota assigned pursuant to 21 U.S.C. 826 and in accordance with 21 CFR part 1303.

5. *Inventory.* Every DEA registrant who possesses any quantity of *N*-ethylhexedrone, α-PHP, 4-MEAP, MPHP, PV8, or 4-chloro-α-PVP was required to keep an inventory of all stocks of these substances on hand as of July 18, 2019, pursuant to 21 U.S.C. 827 and 958 and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11(a) and (d).

6. *Records and Reports.* DEA registrants must maintain records and submit reports with respect to *N*-ethylhexedrone, α-PHP, 4-MEAP, MPHP, PV8, or 4-chloro-α-PVP pursuant to 21 U.S.C. 827 and 958(e), and in accordance with 21 CFR 1301.74(b) and (c) and parts 1304, 1312, and 1317. Manufacturers and distributors must submit reports regarding these substances to the Automation of Reports and Consolidated Order System pursuant to 21 U.S.C. 827 and in accordance with 21 CFR parts 1304 and 1312.

7. *Order Forms.* Every DEA registrant who distributes *N*-ethylhexedrone, α-PHP, 4-MEAP, MPHP, PV8, or 4-chloro-α-PVP must continue to comply with the order form requirements, pursuant to 21 U.S.C. 828 and in accordance with 21 CFR part 1305.

8. *Importation and Exportation.* All importation and exportation of *N*-ethylhexedrone, α-PHP, 4-MEAP, MPHP, PV8, or 4-chloro-α-PVP must continue to be in compliance with 21 U.S.C. 952, 953, 957, and 958, and in accordance with 21 CFR part 1312.

9. *Liability.* Any activity involving *N*-ethylhexedrone, α-PHP, 4-MEAP, MPHP, PV8, or 4-chloro-α-PVP not authorized by, or in violation of the CSA or its implementing regulations, is unlawful, and may subject the person to administrative, civil, and/or criminal sanctions.

Regulatory Analyses

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)

In accordance with 21 U.S.C. 811(a), this scheduling action is subject to formal rulemaking procedures performed ''on the record after opportunity for a hearing,'' which are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth the criteria for scheduling a drug or other substance. Such actions are exempt from review by the Office of Management and Budget (OMB) pursuant to section 3(d)(1) of Executive Order (E.O.) 12866 and the principles reaffirmed in E.O. 13563.

Executive Order 12988, Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132, Federalism

This rulemaking does not have federalism implications warranting the application of E.O. 13132. The final rule does not have substantial direct effects on the states, on the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This final rule does not have tribal implications warranting the application of E.O. 13175. It does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Regulatory Flexibility Act

The Administrator, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601–612, has reviewed this final rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. On July 18, 2019, DEA published an order to temporarily place *N*-ethylhexedrone, α-PHP, 4-MEAP, MPHP, PV8, and 4-chloro-α-PVP in schedule I of the CSA pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). 84 FR 34291. DEA estimates that all entities handling or planning to handle these substances have already established and implemented the systems and processes required to handle *N*-ethylhexedrone, α-PHP, 4-MEAP, MPHP, PV8, or 4-chloro-α-PVP. There are currently 34 unique registrations authorized to handle *N*-ethylhexedrone, α-PHP, 4-MEAP, MPHP, PV8, or 4-chloro-α-PVP specifically, as well as a number of registered analytical labs that are authorized to handle schedule I controlled substances generally. From review of entity names, DEA estimates these 34 registrations represent 29 entities. Some of these entities are likely to be large entities. However, since DEA does not have information of registrant size and the majority of DEA registrants are small entities or are employed by small entities, DEA estimates a maximum of 29 entities are small entities. Therefore, DEA conservatively estimates as many as 29 small entities are affected by this proposed rule.

A review of the 34 registrations indicates that all entities that currently handle *N*-ethylhexedrone, α-PHP, 4-MEAP, MPHP, PV8, or 4-chloro-α-PVP also handle other schedule I controlled substances, and thus they have established and implemented (or maintain) the systems and processes required to handle *N*-ethylhexedrone, α-PHP, 4-MEAP, MPHP, PV8, and 4-chloro-α-PVP as a schedule I substance. Therefore, DEA anticipates that this final rule will impose minimal or no economic impact on any affected entities, and, thus, will not have a significant economic impact on any of the 29 affected small entities. Therefore, DEA has concluded that this final rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

In accordance with the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1501 *et seq.,* DEA has determined and certifies that this action would not result in any Federal mandate that may result ''in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year * * *.'' Therefore, neither a Small Government Agency Plan nor any

other action is required under UMRA of 1995.

Congressional Review Act

This rule is not a major rule as defined by the Congressional Review Act (CRA), 5 U.S.C. 804. However, pursuant to the CRA, DEA is submitting a copy of the final rule to both Houses of Congress and to the Comptroller General.

Paperwork Reduction Act of 1995

This action does not impose a new collection of information under the Paperwork Reduction Act of 1995. 44 U.S.C. 3501–3521. This action would not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

Determination To Make Rule Effective Immediately

As indicated above, this rule finalizes the schedule I control status of *N*-ethylhexedrone, α-PHP, 4-MEAP, MPHP, PV8, and 4-chloro-α-PVP that has already been in effect for over two years by virtue of the temporary scheduling order (84 FR 34291, July 18, 2019) and the subsequent one year extension of that order (86 FR 37672, July 16, 2021). The July 2019 order was effective on the date of publication, and was based on findings by the then-Acting Administrator that the temporary scheduling of these substances was necessary to avoid an imminent hazard to the public safety pursuant to 21 U.S.C. 811(h)(1).

Because this rule finalizes the control status of *N*-ethylhexedrone, α-PHP, 4-MEAP, MPHP, PV8, and 4-chloro-α-PVP that has already been in effect for over two years, it does not alter the legal obligations of any person who handles these substances. Rather, it merely makes permanent the current scheduling status and corresponding legal obligations. Therefore, DEA is making the rule effective on the date of publication in the **Federal Register**, as any delay in the effective date is unnecessary and would be contrary to the public interest. See 5 U.S.C. 553(d).

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, DEA amends 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

■ 2. In § 1308.11, add paragraphs (d)(94) through (99) and remove and reserve paragraphs (h)(42) through (47).

The additions read as follows:

§ 1308.11 Schedule I.

* * * * *

(d) * * *

(94) *N*-Ethylhexedrone (Other names: α-ethylaminohexanophenone; 2-(ethylamino)-1-phenylhexan-1-one)	7246
(95) *alpha*-Pyrrolidinohexanophenone (Other names: α-PHP; α-pyrrolidinohexanophenone; 1-phenyl-2-(pyrrolidin-1-yl)hexan-1-one)	7544
(96) 4-Methyl-*alpha*-ethylaminopentiophenone (Other names: 4-MEAP; 2-(ethylamino)-1-(4-methylphenyl)pentan-1-one)	7245
(97) 4′-Methyl-*alpha*-pyrrolidinohexiophenone (Other names: MPHP; 4′-methyl-*alpha*-pyrrolidinohexanophenone; 1-(4-methylphenyl)-2-(pyrrolidin-1-yl)hexan-1-one)	7446
(98) *alpha*-Pyrrolidinoheptaphenone (Other names: PV8; 1-phenyl-2-(pyrrolidin-1-yl)heptan-1-one)	7548
(99) 4′-Chloro-*alpha*-pyrrolidinovalerophenone (Other names: 4-chloro-α-PVP; 4′-chloro-α-pyrrolidinopentiophenone; 1-(4-chlorophenyl)-2-(pyrrolidin-1-yl)pentan-1-one)	7443

* * * * *

Anne Milgram,

Administrator.

[FR Doc. 2022–11740 Filed 5–31–22; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Occupational Safety and Health Standards

CFR Correction

This rule is being published by the Office of the Federal Register to correct an editorial or technical error that appeared in the most recent annual revision of the Code of Federal Regulations.

■ In Title 29 of the Code of Federal Regulations, Parts 1900 to 1910.999, revised as of July 1, 2021, in § 1910.95, in section II of appendix A, remove the term ''TWA 6.61'' in the formula and add the term ''TWA=16.61'' in its place.

[FR Doc. 2022–11613 Filed 5–31–22; 8:45 am]

BILLING CODE 0099–10–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 587

Publication of Russian Harmful Foreign Activities Sanctions Regulations Web General Licenses 7A, 26A, 31, and 32

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of Web General Licenses.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing four general licenses (GLs) issued pursuant to the Russian Harmful Foreign Activities Sanctions Regulations: GL 7A, GL 26A, GL 31, and GL 32, each of which was previously issued on OFAC's website.

DATES: GL 7A, GL 26A, GL 31, and GL 32 were each issued on May 5, 2022. *See* **SUPPLEMENTARY INFORMATION** of this publication for additional relevant dates.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, 202–622–2480; Assistant Director for Regulatory Affairs, 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website: *www.treas.gov/ofac.*

Background

On May 5, 2022, OFAC, in consultation with the Department of State, issued pursuant to the Russian Harmful Foreign Activities Sanctions

Regulations, 31 CFR part 587 (the ''Regulations''), GL 7A, GL 26A, GL 31, and GL 32, each of which authorize certain transactions prohibited by the Regulations. GL 7A and GL 31 do not contain expiration dates. GL 26A and GL 32 each expire at 12:01 a.m. eastern daylight time, July 12, 2022. The texts of GLs 7A, 26A, 31, and 32 are provided below.

Office of Foreign Assets Control

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

General License No. 7A

Authorizing Overflight Payments, Emergency Landings, and Air Ambulance Services

(a) Except as provided in paragraph (c) of this general license, all transactions ordinarily incident and necessary to the receipt of, and payment of charges for, services rendered in connection with overflights of the Russian Federation or emergency landings in the Russian Federation by aircraft registered in the United States or owned or controlled by, or chartered to, U.S. persons that are prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR), are authorized.

(b) Except as provided in paragraph (c) of this general license, all transactions ordinarily incident and necessary to provide air ambulance and related medical services, including medical evacuation, to individuals in the Russian Federation that are prohibited by the RuHSR are authorized.

(c) This general license does not authorize:

(1) The opening or maintaining of a correspondent account or payable-through account for or on behalf of any entity subject to Directive 2 under Executive Order 14024, *Prohibitions Related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions;* or

(2) Any debit to an account on the books of a U.S. financial institution of the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation.

(d) Effective May 5, 2022, General License No. 7, dated February 24, 2022, is replaced and superseded in its entirety by this General License No. 7A.

Bradley T. Smith,

Deputy Director, Office of Foreign Assets Control.

Dated: May 5, 2022.

Office of Foreign Assets Control

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

General License No. 26A

Authorizing the Wind Down of Transactions Involving Joint Stock Company SB Sberbank Kazakhstan, Sberbank Europe AG, or Sberbank (Switzerland) AG

(a) Except as provided in paragraph (b) of this general license, all transactions ordinarily incident and necessary to the wind down of transactions involving Joint Stock Company SB Sberbank Kazakhstan, Sberbank Europe AG, or Sberbank (Switzerland) AG (collectively, ''the blocked Sberbank subsidiaries''), or any entity in which the blocked Sberbank subsidiaries own, directly or indirectly, a 50 percent or greater interest, that are prohibited by Executive Order (E.O.) 14024 are authorized through 12:01 a.m. eastern daylight time, July 12, 2022.

(b) This general license does not authorize:

(1) Any transactions prohibited by Directive 2 under E.O. 14024, *Prohibitions Related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions;*

(2) Any transactions prohibited by Directive 4 under E.O. 14024, *Prohibitions Related to Transactions Involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation;* or

(3) Any transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR), including transactions involving any person blocked pursuant to the RuHSR other than the blocked persons described in paragraph (a) of this general license, unless separately authorized.

(c) Effective May 5, 2022, General License No. 26, dated April 12, 2022, is replaced and superseded in its entirety by this General License No. 26A.

Bradley T. Smith,

Deputy Director, Office of Foreign Assets Control.

Dated: May 5, 2022.

Office of Foreign Assets Control

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

General License No. 31

Authorizing Certain Transactions Related to Patents, Trademarks, and Copyrights

(a) Except as provided in paragraph (b) of this general license, the following transactions in connection with a patent, trademark, copyright, or other form of intellectual property protection in the United States or the Russian Federation that would be prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR), are authorized:

(1) The filing and prosecution of any application to obtain a patent, trademark, copyright, or other form of intellectual property protection;

(2) The receipt of a patent, trademark, copyright, or other form of intellectual property protection;

(3) The renewal or maintenance of a patent, trademark, copyright, or other form of intellectual property protection; and

(4) The filing and prosecution of any opposition or infringement proceeding with respect to a patent, trademark, copyright, or other form of intellectual property protection, or the entrance of a defense to any such proceeding.

(b) This general license does not authorize:

(1) The opening or maintaining of a correspondent account or payable-through account for or on behalf of foreign financial institutions determined to be subject to the prohibitions of Directive 2 under Executive Order (E.O.) 14024, *Prohibitions Related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions;*

(2) Any debit to an account on the books of a U.S. financial institution of the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation; or

(3) Any transactions prohibited by E.O. 14066 or E.O. 14068.

Bradley T. Smith,

Deputy Director, Office of Foreign Assets Control.

Dated: May 5, 2022.

Office of Foreign Assets Control

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

General License No. 32

Authorizing the Wind Down of Transactions Involving Amsterdam Trade Bank NV

(a) Except as provided in paragraph (b) of this general license, all transactions ordinarily incident and necessary to the wind down of transactions involving Amsterdam Trade Bank NV, or any entity in which Amsterdam Trade Bank NV owns, directly or indirectly, a 50 percent or greater interest, that are prohibited by Executive Order (E.O.) 14024 are authorized through 12:01 a.m. eastern daylight time, July 12, 2022.

(b) This general license does not authorize:

(1) Any transactions prohibited by Directive 2 under E.O. 14024, *Prohibitions Related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions;*

(2) Any transactions prohibited by Directive 4 under E.O. 14024, *Prohibitions Related to Transactions Involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation;* or

(3) Any transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR), including transactions involving any person blocked pursuant to the RuHSR other than the blocked persons described in paragraph (a) of this general license, unless separately authorized.

Bradley T. Smith,

Deputy Director, Office of Foreign Assets Control.

Dated: May 5, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2022–11760 Filed 5–31–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[Docket ID: DoD–2020–HA–0040; and DoD–2020–HA–0050]

RIN 0720–AB81; 0720–AB82; and 0720–AB83

TRICARE Coverage and Reimbursement of Certain Services Resulting From Temporary Program Changes in Response to the COVID–19 Pandemic

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Assistant Secretary of Defense for Health Affairs (ASD(HA)) issues this final rule related to certain provisions of three TRICARE interim final rules (IFRs) with request for comments issued in 2020 in response to the novel coronavirus disease 2019 (COVID–19) public health emergency (PHE). Temporary coverage of telephonic office visits is made permanent in this final rule, with its adoption expanded beyond the pandemic; the temporary telehealth cost-share waiver is terminated; and the temporary waiver of certain acute care hospital requirements and permanent adoption of Medicare New Technology Add-on Payments for new medical items and services are modified, as further discussed in the **SUPPLEMENTARY INFORMATION** section of this rule

DATES: This rule is effective July 1, 2022, except for instruction 4 (the provision modifying temporary hospitals) which is effective on June 1, 2022. Effective July 1, 2022 the interim final rules amending 32 CFR part 199, which were published at 85 FR 27921, May 12, 2020, and 85 FR 54914, September 3, 2020, are adopted as final with changes, except for the note to paragraph 199.4(g)(15)(i)(A), published at 85 FR 54923, September 3, 2020, which remains interim.

FOR FURTHER INFORMATION CONTACT: Erica Ferron, Defense Health Agency, Medical Benefits and Reimbursement Section, 303–676–3626 or *erica.c.ferron.civ@mail.mil.* Sharon Seelmeyer, Defense Health Agency, Medical Benefits and Reimbursement Section, 303–676–3690 or *Sharon.l.seelmeyer.civ@mail.mil,* Diagnosis Related Groups, Hospital Value Based Purchasing, Long Term Care Hospitals, and New Technology Add-On Payments.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of the Rule

In response to the novel coronavirus (SARS–CoV–2), which causes COVID–19, and the President's declared national emergency for the resulting pandemic (Proclamation 9994, 85 FR 15337 (March 18, 2020)), the ASD(HA) issued three IFRs in 2020 to make temporary modifications to TRICARE regulations in order to better respond to the pandemic. The first IFR, published in the FR on May 12, 2020 (85 FR 27921), temporarily: (1) Modified the TRICARE regulations to allow for coverage of medically necessary telephonic (audio-only) office visits; (2) permitted interstate and international practice by TRICARE providers when such practice was permitted by state, federal, or host-nation law; and (3) waived cost-shares and copayments for covered telehealth services for the duration of the COVID–19 pandemic.

The second IFR, published in the FR on September 3, 2020 (85 FR 54914) temporarily: (1) Waived the three-day prior hospital qualifying stay requirement for skilled nursing facilities (SNFs); (2) added coverage for the treatment use of investigational drugs under expanded access authorized by the U.S. Food and Drug Administration (FDA) when indicated for the treatment of COVID–19; (3) waived certain provisions for acute care hospitals in order to permit TRICARE authorization of temporary hospital facilities and freestanding ambulatory surgical centers (ASCs) providing inpatient and outpatient services to be reimbursed; (4) revised the diagnosis related group reimbursement (DRG) at a 20 percent higher rate for COVID–19 patients; and (5) waived certain requirements for long term care hospitals (LTCHs). The second IFR also included two permanent provisions adopting Medicare's NTAPs adjustment to DRGs for new medical services and technologies and adopting Medicare's Hospital Value Based Purchasing (HVBP) Program.

The third IFR, published in the FR on October 30, 2020 (85 FR 68753) added coverage of National Institute of Allergy and Infectious Disease (NIAID)-sponsored clinical trials when for the prevention or treatment of COVID–19 or its associated sequelae.

After publication of each IFR, DoD evaluated the appropriateness of each temporary measure for continued use throughout the national emergency for COVID–19, as well as to determine if it would be appropriate to make any of the provisions permanent within the

TRICARE program. After analysis of the risks, benefits, and costs of each provision, as well as a review of comments, the ASD(HA) issues this final rule to make the following changes:

a. 32 CFR 199.4(g)(52) Telephone Services: The IFR temporarily modified this regulation provision which excluded telephone services (audio-only) except for biotelemetry. This final rule revises this regulatory exclusion and permanently modifies 32 CFR 199.4(c)(1)(iii) Telehealth Services to add coverage for medically necessary telephonic office visits, in all geographic areas where TRICARE beneficiaries reside. A telephonic office visit is a reimbursable telephone call between a beneficiary, who is an established patient, and a TRICARE-authorized provider. This is considered a type of telehealth modality under the TRICARE program. Specifically, this change will allow providers to be reimbursed for medically necessary care and treatment provided to beneficiaries over the telephone, when a face-to-face, hands-on visit is not required, and a two-way audio and video telehealth visit is not possible. The telephonic office visit should be a valid medical visit in that there is an examination of the patient's history and chief complaint along with clinical decision making performed by a provider. Telephonic provider-to-provider consults which are audio-only, but otherwise meet the definition of a covered consultation service are also covered under this final rule. Telephone calls of an administrative nature (*e.g.,* appointment scheduling), routine answering of questions, prescription refills, or obtaining test results are not medical services and are not reimbursable.

DoD implemented temporary coverage of telephonic office visits effective May 12, 2020, in order to provide beneficiaries the option to obtain some medical services safely from home, reducing their exposure to COVID–19 and to minimize potential spread of the illness. In order to determine if telephonic office visits should be converted to a permanent telehealth benefit, DoD analyzed claims data from TRICARE private sector care and reviewed published industry information from: Medicare; health insurance plans; and physicians' professional organizations regarding telephonic office visits. The TRICARE claims data between mid-March and mid-September 2020 indicates beneficiary utilization of telephonic office visits is a small portion of all telehealth claims. Medicare and health insurance plans reported data indicating substantial utilization of telephonic office visits. Physicians' professional organizations including the American College of Physicians (ACP) and the American Medical Association (AMA) issued statements reporting physicians' favorable experiences with telephonic office visits. Furthermore, the DoD received positive public comments regarding telephonic office visits including multiple requests for the agency to consider it as a permanent benefit. After thoughtful consideration of these facts, and through this final rule revising the regulatory exclusion prohibiting reimbursement of telephonic (audio-only) office visits, the DoD will revise the exclusion of audio-only telephonic services and add medically necessary telephonic office visits as a covered telehealth service under the TRICARE Basic Benefit. In addition, 32 CFR 199.2 Definitions will be amended by this final rule to include definitions of ''Biotelemetry,'' ''Telephonic consultations,'' and ''Telephonic office visits'' as related to the modified telehealth service regulation provision.

b. 32 CFR 199.6(b)(4)(i)(I): The temporary waiver of certain acute care hospital requirements for temporary hospitals and freestanding ambulatory surgery centers during the COVID–19 pandemic from the second COVID IFR remains in effect, with modifications. The modification temporarily allows any entity that enrolled with Medicare as a hospital through Medicare's Hospitals Without Walls initiative to become a TRICARE-authorized hospital that may be considered to meet the requirements for an acute care hospital listed under paragraph 199.6(b)(4)(i). These entities may provide any inpatient or outpatient hospital services, when consistent with the State's emergency preparedness or COVID–19 pandemic plan and when they meet the Medicare hospital Conditions of Participation (CoP), to the extent not waived. Under Medicare's Hospitals Without Walls initiative, Centers for Medicaid and Medicare Services (CMS) relaxed certain requirements to allow ASCs and other interested entities, such as licensed independent emergency departments, to temporarily enroll as Medicare-certified hospitals and receive reimbursement for hospital inpatient and outpatient services. Although CMS ceased accepting new enrollments into the Hospitals Without Walls initiative, effective December 1, 2021, those entities that were previously enrolled under the initiative continue to be enrolled and receive reimbursement for hospital inpatient and outpatient services. The CMS memorandum eliminating future enrollments into the Hospitals Without Walls initiative, does not impact any of the changes from the initial IFR or in this final rule, as both require a provider to first be enrolled with CMS as a hospital under the initiative to register with TRICARE as a hospital and receive reimbursement as a hospital.

The ASD(HA) also recognizes the need for increased access to inpatient and outpatient care during the COVID–19 pandemic. In the IFR, we temporarily permitted temporary hospitals and freestanding ASCs that registered with Medicare as hospitals to be reimbursed as acute care hospitals (85 FR 54914). We are modifying this expanded coverage of inpatient and outpatient care by allowing any entity enrolled with Medicare as a hospital on a temporary basis to also be considered a TRICARE-authorized hospital and receive reimbursement for inpatient and outpatient institutional charges under the TRICARE DRG payment system, Outpatient Prospective Payment System (OPPS), or other applicable hospital payment system allowed under Medicare's Hospitals Without Walls initiative, to the extent practicable. In order to reduce burden on these providers during the pandemic, we are not developing any regulatory requirements for participation in TRICARE and will instead permit any entity that registers with Medicare as a hospital under their Hospitals Without Walls initiative to be considered a TRICARE-authorized hospital. To further reduce the burden on providers and the TRICARE program, this final rule will allow the Defense Health Agency (DHA) to adopt any requirement related to Medicare's Hospital without Walls initiative through administrative policy, when determined practicable, without going through the lengthy regulatory process. This provision will be effective the date published in the FR through the expiration of Medicare's Hospitals Without Walls initiative. Upon conclusion of Medicare's initiative or when a facility loses its hospital status with Medicare, whichever occurs earlier, the entity will no longer be considered an authorized hospital under TRICARE and will not be reimbursed for institutional charges unless it otherwise qualifies as an authorized institutional provider under paragraph 199.6(b)(4). While vaccination has slowed the spread of COVID–19 in many areas of the U.S., the virus remains a deadly threat for those patients who do contract it and require acute care treatment. Additionally,

access to acute care treatment for other injury and illnesses in areas where there is a COVID–19 resurgence remains essential. The ASD(HA) finds it necessary to make this provision of the final rule effective upon publication of the final rule.

c. 32 CFR 199.14(a)(1)(iv): Special Programs and Incentive Payments. This final rule creates new paragraph 199.14(a)(1)(iv) to more appropriately categorize the NTAP and HVBP payments. It moves the NTAP provisions from paragraph 199.14(a)(1)(iii)(E)(*5*) to 199.14(a)(1)(iv)(A), and moves the HVBP provision from paragraph 199.14(a)(iii)(E)(*6*) to 199.14(a)(1)(iv)(B). For the NTAP provisions, TRICARE: (1) Shall apply Medicare NTAP adjustments to TRICARE covered services and supplies, except for pediatric (defined for NTAPs as pertaining to patients under the age of 18, or who are treated in a children's hospital or in a pediatric ward) services and supplies; (2) shall modify NTAP reimbursement adjustment rates for NTAPs at 100 percent of the average cost of the technology or 100 percent of the costs in excess of the Medicare Severity-Diagnosis Related Group (MS–DRG) payment for the case for pediatric beneficiaries; and (3) may create a reimbursement adjustment for TRICARE NTAPs, specific to the TRICARE beneficiary population under age 65 in the absence of a Medicare NTAP adjustment, using criteria similar to Medicare criteria for eligible new technologies outlined in 42 CFR 412.87 and the Medicare reimbursement criteria outlined in 42 CFR 412.88. Under the statutory authority to pay like Medicare for like services and items when practicable in 10 U.S.C. 1079(i)(2), the ASD(HA) has determined that, generally, the NTAP reimbursement methodology is practicable for TRICARE to adopt for any otherwise covered services and supplies with a Medicare NTAP, under the same conditions as approved by Medicare. However, the ASD(HA) finds it impracticable to use Medicare's NTAPs for TRICARE's pediatric patients due to the lack of a significant pediatric population within Medicare. To address the unique TRICARE beneficiary population of pediatric patients, this rule establishes reimbursement of pediatric NTAPs at 100 percent of the costs in excess of the MS–DRG payment. Lastly, when TRICARE covers new technologies that are not covered by Medicare or do not have a Medicare NTAP due to differing populations (*e.g.,* biologics used solely by pediatric patients), the ASD(HA) finds it practicable to establish a TRICARE NTAP category and methodology whenever necessary. In these instances, the Director, DHA, may issue implementation instructions listing the specific TRICARE NTAPs on the website: *www.health.mil/ntap.*

d. 32 CFR 199.17(l)(3): The cost-share and copayment waiver for telehealth services during the COVID–19 pandemic was implemented in TRICARE's first COVID–19 IFR in response to efforts by federal, state, and local governments to encourage individuals to stay at home, avoid exposure, and to reduce possible transmission of the virus. When the rule was published, there was a high degree of uncertainty surrounding the potential availability of a vaccine. With the approval or emergency use authorization of several vaccines by the U.S. Food and Drug Administration, the widespread availability of such vaccines throughout the United States, and the elimination of stay-at-home orders by most States and localities, this provision is no longer necessary. As such, the ASD(HA) is terminating the waiver of cost-shares and copayments for telehealth services on the effective date of this final rule, or upon expiration of the President's national emergency for COVID–19, whichever occurs earlier.

e. The DoD continues to evaluate potential permanent adoption of the treatment use of investigational drugs under expanded access and NIAID-sponsored clinical trials and will publish a final rule at a future date; until such publication, the two benefits remain in effect without modification as temporarily implemented in the second and third IFRs. These two benefits remain in effect through the end of the President's national emergency for COVID–19, unless modified by future rulemaking. Comments received on those two provisions during the IFR comment periods will be addressed in that final rule.

f. All temporary regulation changes made by the three COVID–19-related IFRs not otherwise addressed in this final rule remain in effect as stated in the IFR under which they were implemented until such time as the conditions for their expiration are met.

g. The HVBP Program is permanently adopted and is moved from 32 CFR 199.14(a)(1)(iii)(E)(*6*) to 32 CFR 199.14(a)(1)(iv)(B); there are otherwise no modifications from the second IFR.

B. Summary of Major Provisions

a. Changes to the TRICARE Benefit

Telephonic Office Visits

A telephonic office visit is an easy-to-use telehealth modality that has many benefits. A telephonic office visit consists of a beneficiary, who is an established patient, calling his/her provider to discuss an illness (including mental illness), injury, or medical condition. During the conversation the provider will ask questions regarding the symptoms and determine if they can proceed with the telephonic office visit or if based on the information he/she reported, a face-to-face, hands-on visit is in fact medically necessary. If they proceed with the telephonic office visit, typically the provider will have the beneficiary's medical record open for review during the call, offer medical advice, and may place an order for a prescription or lab tests. During the COVID–19 pandemic, telephonic office visits have been instrumental in keeping beneficiaries safer at home with less risk of exposure to COVID–19 for conditions which a face-to-face and hands-on visit is not medically necessary. Telephonic office visits are also highly desirable for beneficiaries who reside in rural areas and/or areas where health care services are scarce. Likewise, beneficiaries without access to the internet and/or computers, smartphones, or tablets to conduct two-way audio-video telehealth visits also greatly benefit from coverage of telephonic office visits. DoD will continue to offer coverage of telephonic office visits through the end of the pandemic and with this final rule DoD will revise the telephone services (audio-only) regulatory exclusion in order to make this a permanent telehealth benefit available to beneficiaries in all geographic locations, when such care is medically necessary and appropriate.

To understand the use of telephonic office visits during the COVID–19 pandemic, the DoD analyzed claims data from TRICARE private sector care and reviewed published industry information from: Medicare; health insurance plans; and physicians' professional organizations regarding telephonic office visits. TRICARE private sector claims data from mid-March 2020 through mid-September 2020 indicates there were a total of 80,541 telephonic office visits conducted. Telephonic office visits were an average 2.1 percent of all telehealth services provided. Telehealth services were 5.7 percent of all outpatient professional visits. In August 2020, a Medicare Advantage Issue Brief

reported, ''Three million telehealth visits with Medicare beneficiaries between mid-March and mid-June were conducted via telephone indicating the preference for [telephonic office visits].'' [1] Health insurance plans including Security Health Plan and Kaiser Permanente reported 75 percent and 85 percent respectively of their telehealth visits as telephonic office visits.[2] The AMA stated, ''Doctors have reported that they have been able to conduct successful [telephonic office visits] with patients, in lieu of in-person or telehealth visits, obtaining about 90 percent of the information they would collect using audio and video capable equipment.'' [3] In March 2020, the ACP began writing letters to CMS requesting pay parity for telephonic office visits. On April 30, 2020, CMS responded to the ACP's requests announcing that it was increasing payments for telephonic office visits to match payments of similar office and outpatient visits.[4] TRICARE routinely updates its reimbursement rates in accordance with CMS updates, consistent with existing statutory requirements, when practicable. Note that CMS intends to only temporarily offer coverage for telephonic office visits for certain services during the public health emergency. However, although TRICARE is required to reimburse like Medicare to the extent practicable under the statute, TRICARE is not required to provide the exact same benefits as Medicare given the differences in populations served. Prior to the pandemic, DoD had a telehealth benefit that was more generous than what was offered under Medicare. Considering all of the data and industry information discussed, the DoD is finalizing its approach to permanently revise the telephone services (audio-only) regulatory exclusion and allow coverage of medically necessary and appropriate telephonic office visits for beneficiaries in all geographic locations.

In converting medically necessary telephonic office visits to a permanent benefit, the DoD will issue policy guidance describing coverage of medically necessary and appropriate telephonic office visits to ensure best practices and protect against fraud.

Entities Temporarily Enrolling as Hospitals

This final rule modifies the temporary waiver of certain acute care hospital requirements for TRICARE authorized hospitals in the IFR to allow any entity that has temporarily enrolled with Medicare as a hospital through their Hospitals Without Walls initiative (or enrolls in the future, should Medicare resume such enrollments) to temporarily become a TRICARE-authorized hospital under paragraph 199.6(b)(4)(i). These entities may provide any inpatient or outpatient hospital services, when consistent with the State's emergency preparedness or COVID–19 pandemic plan and when they meet the Medicare hospital CoP, to the extent not waived. While there are no direct corollaries in TRICARE regulation to the CoP being waived under Medicare, there do exist in TRICARE regulation certain requirements that would prevent allowing some facilities to be considered as acute care hospitals for the purposes of payment. Title 32 CFR 199.6(b)(3) and (4) list the requirements for providers to be considered TRICARE-authorized hospitals. It may not be possible for some entities to meet all of these requirements, such as providing primarily inpatient care or having Joint Commission (previously known as the Joint Commission on Accreditation of Hospitals) accreditation status or surveying of new facilities.

We continue to assert, as we did in the IFR, that these institutional requirements are necessary for TRICARE-authorized acute care hospitals. We also note there is no requirement to have a TRICARE benefit that matches Medicare's benefit, or for TRICARE to authorize all providers that are providers under Medicare. Both TRICARE's statutory authority and population differ from Medicare's, so it is appropriate for TRICARE to continue to manage its authorized provider program separately from Medicare's. During the COVID–19 pandemic, however, it is important for TRICARE to ensure swift access to inpatient and outpatient care, to include leveraging Medicare's flexibilities for acute care facilities. Under Medicare's Hospitals Without Walls initiative, CMS relaxed certain requirements to allow ASCs and other interested entities, such as licensed independent freestanding emergency departments, to temporarily enroll as Medicare-certified hospitals and to receive reimbursement for hospital inpatient and outpatient services. In the previously-published IFR, we extended coverage of acute care hospitals to include temporary hospitals and freestanding ASCs that registered with Medicare as hospitals to be reimbursed as hospitals under TRICARE. This final rule expands the original temporary hospital waiver by temporarily permitting any entity to qualify as an acute care hospital under TRICARE so long as it had enrolled with Medicare as a hospital under the Hospitals Without Walls initiative prior to the December 1, 2021 memorandum by which CMS terminated further enrollments (or enrolls in the future, should CMS resume enrollments).

In the IFR, it was not our intent to maintain a regulatory list of qualifying providers in § 199.6 that are eligible to enroll with Medicare under their Hospitals Without Walls initiative or to adopt such changes through the regulatory process, which imposes an unnecessary administrative burden on the DHA and delays coverage for providers and patients, as paragraph 199.6(b)(4)(i) may need to be continually updated to keep current with Medicare changes during the pandemic. Therefore, this final rule modifies the temporary regulation change from the IFR at paragraph 199.6(b)(4)(i) to allow any entity enrolled with Medicare as a hospital to temporarily become a TRICARE-authorized acute care hospital, and receive reimbursement for inpatient and outpatient institutional charges under the TRICARE DRG payment system, OPPS, or other applicable hospital payment system allowed under Medicare's Hospitals Without Walls initiative (when determined practicable). The ASD(HA) will implement Medicare's requirements for such entities through administrative guidance (*e.g.,* the TRICARE manuals) to ensure TRICARE requirements for such facilities are consistent with the most current Medicare requirements under the Hospitals Without Walls initiative.

Under this provision, facilities that convert into hospitals and are Medicare-certified hospitals through an emergency waiver authority under Section 1135 of the Social Security Act and are operating in a manner consistent with their State's emergency plan in effect during the COVID–19 pandemic will be eligible for reimbursement by TRICARE for covered inpatient and outpatient services under the applicable hospital payment system. Once an entity ends, terminates, or loses its hospital status under Medicare, the facility will no longer be considered a TRICARE-authorized acute care hospital effective the date when Medicare

[1] ''Issue Brief: Audio-only Telehealth Visits Essential for Use in Medicare Advantage Risk Adjustment'', Better Medicare Alliance. August 2020. Web. Accessed 15 Dec. 2020.

[2] *Ibid.*

[3] ''Amid pandemic, CMS should level field for phone E/M visits'', Kevin B. O'Reilly, *AMA Digital,* April 20, 2020. Web. Accessed 15 Dec. 2020

[4] ''CMS Announcement of Pay Parity for Telephone Calls Answers a TOP ACP Priority'' American College of Physicians. Statement attributable to Jacqueline Fincher, President, American College of Physicians. April 30, 2020. Web. Accessed 15 Dec. 2020.

deactivated the entity's hospital billing privileges. While we are temporarily amending the institutional provider requirements under paragraph 199.6(b)(4)(i), we are still requiring that these facilities meet Medicare's CoP (to the extent not waived) established for this Presidential national emergency. This change will improve beneficiary access to medically necessary care and may mitigate hospitals' lack of capacity and shortages of resources during the pandemic. This change is temporary for the duration of Medicare's ''Hospitals Without Walls'' initiative.

b. Reimbursement Modifications Consistent With Medicare Requirements

NTAPs

NTAP Reimbursement

As stated in the second IFR (85 FR 54914), for care rendered in an inpatient setting, TRICARE shall reimburse services and supplies with Medicare NTAPs using Medicare's NTAP payment adjustments for only those services and supplies that are an approved benefit under the TRICARE Program. Title 10 U.S.C. 1079(i)(2) requires TRICARE to reimburse covered services and supplies using the same reimbursement rules as Medicare, when practicable. However, this provision is not self-executing, so this FR permanently adopts the Medicare NTAP methodology. TRICARE shall also adopt future NTAP modifications published by CMS, including modifications to the NTAP methodology and the list of new technologies to which NTAPs are applied.

Pediatric Reimbursement

Per the authority provided in 10 U.S.C. 1079(i)(2), the ASD(HA) may determine that the Medicare NTAP methodology is not practicable for certain populations. One such population is TRICARE's pediatric population, which, as used in relation to the NTAP provisions in this final rule, is defined as individuals under the age of 18, or who are being treated in a children's hospital or in a pediatric ward. Since Medicare does not have a pediatric population to consider when establishing alternative reimbursements for new high-dollar technologies, the ASD(HA) has therefore determined it is not practicable to use Medicare's NTAPs for pediatric patients; instead, the NTAP adjustment should be modified to address the unique TRICARE beneficiary population of pediatric patients. Under this modification, TRICARE shall reimburse pediatric NTAP claims at 100 percent of the costs in excess of the MS–DRG. Paying these claims at 100 percent of the costs in excess of the MS–DRG increases the likelihood that all pediatric beneficiaries will receive medically necessary and appropriate treatment, especially pediatric beneficiaries with serious, life-threatening, and costly diseases.

High-Cost Treatments Without an NTAP

Some new, high-cost treatments are not identified as requiring an NTAP by CMS. This primarily occurs when a treatment for a rare, fatal disease may be appropriate for a beneficiary in TRICARE's population but is not appropriate for Medicare's population, which is typically age 65 and above. For example, Spinraza is a treatment for Spinal Muscular Atrophy, a rare genetic neuromuscular disease that primarily impacts infants and young children. Spinraza has a high-cost per treatment, but is reimbursed at substantially lower cost when administered in a hospital because it is included in the DRG reimbursement. CMS does not include Spinraza in its list of new technologies receiving an NTAP.

The ASD(HA) therefore finds it impracticable to reimburse such technologies using existing reimbursement methodologies, which do not allow sufficient rates for new, high-cost technologies during the first two or three years following FDA approval, after which, they are absorbed into the core DRG through the annual DRG update and calibration process. The ASD(HA) finds it practicable to establish a category of TRICARE NTAPs. This category may include services and supplies that are otherwise covered by TRICARE and that meet certain CMS eligibility criteria under 42 CFR 412.87. These eligibility criteria will ensure that DHA consistently and comprehensively evaluates new treatments when selecting which treatments may be approved for a TRICARE NTAP. Likewise, the reimbursement methodology for these TRICARE NTAPs shall follow the CMS reimbursement methodologies for Medicare NTAPs outlined in 42 CFR 412.88.

For these high-cost, new, life-saving treatments that do not qualify or otherwise have an NTAP designation from CMS but for which the existing Medicare reimbursement is not practicable for the TRICARE population, the Director, DHA, shall establish internal guidelines and policy for approving TRICARE NTAPs and adopting such adjustments together with any variations deemed necessary to address unique issues involving the beneficiary population or program administration. These include, but are not limited to the exact reimbursement methodology, the eligibility criteria, and the method for approving or denying a TRICARE specific NTAP. The approved TRICARE NTAPs shall be published at least annually on the website: *www.health.mil/ntap.*

c. Beneficiary Cost-Shares and Copayments

Termination of Cost-Share and Copayment Waivers for Telehealth During the COVID–19 Pandemic

The first IFR implemented a waiver of cost-shares and copayments (including deductibles) for all in-network authorized telehealth services for the duration of the COVID–19 pandemic (ending when the President's national emergency for COVID–19 is suspended or terminated, in accordance with applicable law and regulation). The purpose was to incentivize TRICARE beneficiaries to use telehealth services and avoid unnecessary in-person TRICARE-authorized provider visits, which could potentially bring them into contact with or aid the spread of COVID–19. The implementation of this provision was highly successful, with a significant number of beneficiaries shifting to the use of telehealth visits. Since this provision was enacted, however, several vaccines have been approved or granted emergency use authorization by the FDA and are now widely available throughout the United States. While concerns remain surrounding variants of the SARS–CoV–2 virus and herd immunity may not yet have been reached, states and localities are no longer enacting strict stay-at-home orders.

TRICARE spent approximately $20.6M on waived telehealth cost-shares and copayments in FY20 and another $71.4M through the end of September 2021. Due in part to flexibilities introduced in the IFRs discussed in this rule, and other program changes implemented via policy, the Defense Health Plan faces significant budget shortfalls. Termination of this provision will save the DoD $4.8M for every month it expires prior to the end of the national emergency, allowing DoD to focus resources on testing, vaccination efforts, and treatment for COVID–19-positive patients. We do not expect termination of this provision to have any impact on access to care, as beneficiaries will continue to have access to telehealth services and will be able to choose to continue using such services, or to visit their provider in-person, with the same cost-share applied to the service regardless of the

modality through which it was delivered.

Given the availability of vaccines, the reduction of stay-at-home orders, and the cost of waiving telehealth cost-sharing, the ASD(HA) finds it appropriate to expire the waiver on the effective date of this rule or the date of expiration of the President's national emergency for COVID–19, whichever is earlier. Telehealth services remain a covered benefit for TRICARE beneficiaries after the expiration of the cost-share/copayment waiver.

C. Legal Authority for This Program

This rule is issued under 10 U.S.C. 1073(a)(2) giving authority and responsibility to the Secretary of Defense to administer the TRICARE program. The text of 10 U.S.C. chapter 55 can be found at *https://manuals.health.mil/.*

II. Regulatory History

Each of the sections under which TRICARE is administered are revised every few years to ensure requirements continue to align with the evolving health care field. Title 32 CFR 199.4 was most recently updated on November 17, 2020 (85 FR 73193) by a final rule that added coverage of physical therapy and occupational services prescribed by a podiatrist.

The telephone services paragraph being modified by this final rule, paragraph 199.4(g)(52), was last temporarily modified with publication of the COVID–19-related IFR published on May 12, 2020 (85 FR 27921–27927), which temporarily permitted coverage of telephonic office visits for the duration of the President's national emergency for the COVID–19 pandemic. The telephone services regulatory exclusion was first published in the FR on April 4, 1977, with the comprehensive regulations implementing the ''Civilian Health and Medical Program of the Uniformed Services'' (42 FR 17972). Then, in 1984, the final rule, ''Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Cardiac Pacemaker Telephonic Monitoring'' (49 FR 35934) revised the exclusion to allow coverage of transtelephonic monitoring (a type of biotelemetry) of cardiac pacemakers. No other permanent revisions have been made to the telephone services paragraph.

Title 32 CFR 199.6 was last modified November 17, 2020 (85 FR 73196). This change updated terminology from doctors of podiatry or surgical chiropody to doctors of podiatric medicine or podiatrists and added podiatrists to the list of providers authorized to prescribe and refer beneficiaries to physical therapists and occupational therapists.

Title 32 CFR 199.14 was last permanently revised on September 3, 2020 (85 FR 54914–54924) with the addition of NTAPs and the HVBP Program under paragraph 199.14(a)(1)(iii)(E), which are being modified by this final rule.

Title 32 CFR 199.17 was last temporarily modified on May 12, 2020 (85 FR 27921–27927), with publication of the telehealth cost-share and copayment waiver being terminated by this final rule. This section was last permanently modified on February 15, 2019 (84 FR 4333), as part of the final rule implementing the TRICARE Select benefit plan. The revisions to § 199.17 included adding high-value services as a benefit under the TRICARE program, as well as copayment requirements for Group B beneficiaries. The 32 CFR 199.17(l) paragraph being modified by this IFR was created as part of the IFR that established the TRICARE Select benefit (82 FR 45438) during which a comprehensive revision of § 199.17 occurred. This paragraph did not exist prior to that revision and has only been modified once, with the addition of temporary telehealth cost-shares and copayment waivers.

III. Discussion of Comments & Changes

DoD sincerely appreciates all comments received on the IFRs published in response to the COVID–19 pandemic. We respond to comments for two of the IFRs below, separated by rule and impacted provision, except for comments on the treatment use of investigational new drugs, which will be discussed in a future final rule. We will also respond to comments related to TRICARE's third IFR published in 2020 in a future final rule. Except where otherwise modified in this final rule, we reaffirm the policies and procedures incorporated in the IFRs and incorporate the rationale presented in the preambles of the IFRs into this final rule.

A. IFR—TRICARE Coverage and Payment for Certain Services in Response to the COVID–19 Pandemic

This IFR was published in the FR (85 FR 27921) on May 12, 2020. Comments were accepted for 30 days until June 11, 2020. A total of 16 comments were received. Below is a summary of the comments and the Department's responses. Some commenters provided detailed feedback concerning the overall telehealth program, including its applicability to autism services, partial hospitalization programs, and behavioral health services, or regarding benefits outside of the scope of this rule, such as care provided in patients' homes. We thank the commenters for their feedback however, because these comments did not relate to telephonic office visits, provider licensing, or telehealth copays, we are unable to respond in detail to these comments. One commenter expressed concern about the use of nine months in the cost estimate and that provisions would expire after nine months. We note that the timeframe used for the cost estimates was based on early estimates for the pandemic and that each provision of the IFR only expires when the President's national emergency expires, except where modified by this final rule. There was no automatic expiration at nine months.

a. Telephonic Office Visits

1. Provisions of the IFR

The IFR allowed TRICARE beneficiaries to obtain telephonic office visits with providers for otherwise-covered, medically necessary care and treatment and allowed reimbursement to those providers during the COVID–19 pandemic. It provided a temporary exception to the regulatory exclusion prohibiting telephone services.

2. Analysis of Public Comments

The public comments regarding the temporary exception to the regulatory exclusion prohibiting telephone services were minimal. Commenters requested that DoD continue coverage of telephonic office visits after the COVID–19 pandemic and commenters requested telephonic office visits be expanded to a range of providers. This final rule includes regulatory text revising the prohibition on telephone services thereby allowing coverage of telephonic office visits permanently. This will include mental health and addiction treatment services when medically necessary and appropriate. Regarding the request to expand the range of providers who can provide telephonic office visits, there is nothing in TRICARE regulation or policy excluding specific provider types such as physical therapists, occupational therapists, registered dieticians, or diabetes counselors (note: Diabetes counselors must be registered dieticians to be TRICARE-authorized providers) from providing their services via telehealth, including telephonic office visits, so long as they otherwise meet program requirements, including that all care be medically necessary and appropriate.

Two commenters requested DoD make implementation of the telephonic office

visits retroactive, to either January 1, 2020, or March 1, 2020. The commenters noted that CMS adopted their allowance of telephonic office visits with a retroactive date. While DoD acknowledges that some providers may have provided telephonic office visits prior to the effective date of the IFR, DoD lacks the statutory authority to make the implementation retroactive. One commenter suggested DoD evaluate provider and patient satisfaction and health outcomes in determining whether to permanently adopt telephonic office visits. We agree that this information would be valuable but ultimately determined there was sufficient information from other sources to make a decision without it.

3. Provisions of Final Rule

No changes were made in response to public comments; however, this provision has been revised for the final rule (see next section for details).

b. Interstate and International Licensing of TRICARE-Authorized Providers

1. Provisions of the IFR

The IFR allowed providers to be reimbursed for interstate practice, both in person and via telehealth, during the global pandemic so long as the provider met the requirements for practicing in that State or under Federal law. It removed the requirement that the provider must be licensed in the state where practicing, even if that license is optional. For providers overseas, this allowed providers, both in person and via telehealth, to practice outside of the nation where licensed when permitted by the host nation.

2. Analysis of Public Comments

Comments received on the relaxation of licensing requirements for providers during the pandemic were generally supportive, with no comments received opposed. Several commenters suggested implementing the relaxed licensing requirement permanently for telehealth. DoD notes that licensing remains the purview of the States and that States generally require licensure in each State where practicing. DoD will continue to evaluate trends in licensing requirements for telehealth following the COVID–19 pandemic but will not be permanently adopting this provision at this time. We note that we continue to recognize (and recognized prior to the COVID–19 pandemic) interstate licensing agreements and reciprocal license agreements between states where a state considers a provider to be licensed at the full clinical practice level based on such an agreement.

3. Provisions of Final Rule

The final rule is consistent with the IFR.

c. Waiver of Copayments and Cost-Sharing for Telehealth Services

1. Provisions of the IFR

The IFR waived cost-shares and copayments for telehealth services for TRICARE Prime and Select beneficiaries utilizing telehealth services with an in-network, TRICARE-authorized provider during the President's declared national emergency for COVID–19.

2. Analysis of Public Comments

We received four comments regarding the waiving of telehealth cost-shares and copays, all of them supportive of the waiver, with one commenter also noting the negative effect of loss copay revenue for the DoD. Of the comments we received, three of them encouraged the DoD to continue to evaluate cost-sharing policies, and one comment also encouraged the DoD to make the telehealth copay and cost-share waiver permanent. One commenter recommended we apply the waiver of telehealth copays to copays associated with remote physiologic monitoring (RPM). RPM services of physiologic parameters including, but not limited to, monitoring of weight, blood pressure, pulse oximetry and respiratory flow rate shall be covered. RPM is considered an ancillary service and therefore ancillary copays and cost-shares shall apply.

We thank all the commenters for their support and feedback. TRICARE's temporary waiving of cost-shares and copays for all telehealth services was in line with initiatives by commercial insurers to incentivize telehealth care to help prevent the spread of COVID–19 and to reduce financial burdens on patients. TRICARE's cost-shares and copayments are set by law and require copayments and cost-sharing for telehealth services to be the same as if the service was provided in person. Section 718(d) of the National Defense Authorization Act of 2017 authorized the Secretary of Defense to reduce or eliminate copayments or cost-shares when deemed appropriate for covered beneficiaries in connection with the receipt of telehealth services under TRICARE. Given the national emergency caused by the COVID–19 pandemic, it was deemed appropriate to remove cost-shares and copayments for telehealth services during the pandemic, until there was no longer an urgent need to incentivize telehealth visits.

3. Provisions of Final Rule

The final rule is consistent with the IFR, except that this provision may terminate early. This provision of the final rule is being terminated early due to both the cost of waiving cost-shares and because there remain few, if any, stay-at-home orders for this provision to support. Defense Health Program dollars are better spent on testing, vaccination, and treatment for COVID–19, including a waiver of cost-shares for medically necessary COVID–19 testing, which remains in effect as a result of the CARES Act.

B. IFR—TRICARE Coverage of Certain Medical Benefits in Response to the COVID–19 Pandemic

This IFR was published in the FR on September 3, 2020 (85 FR 54914). Comments were accepted for 60 days until November 2, 2020. A total of four comments were received. Two were generally supportive of the provisions implemented in the IFR; we are grateful to the public for their support. Please see a summary of the comments and the DoD's responses below. Comments related to the treatment use of investigational drugs under expanded access will be discussed in a future final rule.

a. SNF 3-Day Prior Stay Waiver

1. Provisions of the IFR

The IFR temporarily waived the regulatory requirement that an individual be an inpatient of a hospital for not less than three consecutive calendar days before discharge from the hospital (three-day prior hospital stay) for coverage of a SNF admission for the duration of the COVID–19 public health emergency, consistent with a similar waiver under Medicare and TRICARE's statutory requirement to have a SNF benefit like Medicare's. The waiver will terminate when the Health and Human Services (HHS) PHE terminates.

2. Analysis of Public Comments

We received one comment on this provision of the IFR that was supportive of the waiver, but requested the DoD adopt another Medicare waiver; that is, the waiver of a 60-day wellness period.

We thank the commenter for their support and feedback. TRICARE is primary payer for Medicare/TRICARE dual eligible beneficiaries that have exhausted the Medicare 100-day SNF benefit (meeting TRICARE coverage requirements without any other forms of other health insurance (OHI)), and TRICARE is also primary payer for non-Medicare TRICARE beneficiaries who have no OHI and who meet the

TRICARE SNF coverage requirements. Because TRICARE covers patients immediately after benefits are exhausted, there is no current requirement for a 60-day wellness period under TRICARE.

3. Provisions of Final Rule

The final rule is consistent with the IFR.

b. Waiving of Acute Care Hospital Requirements for Temporary Hospital Facilities and Freestanding ASCs

1. Provisions of the IFR

The IFR temporarily exempted temporary hospital facilities and freestanding ASCs that enrolled as hospitals with Medicare from the institutional provider requirements for acute care hospitals described in paragraph 199.6(b)(4)(i). This allowed these facilities to provide inpatient and outpatient hospital services to improve the access of beneficiaries to medically necessary care. This change was consistent with 10 U.S.C. 1079(i)(2) to reimburse hospitals and other institutional providers in accordance with the same reimbursement methodology as Medicare, when practicable. This waiver remains in effect through the end of Medicare's ''Hospitals Without Walls'' initiative.

2. Analysis of Public Comments

No public comments were received on this provision.

3. Provisions of Final Rule

No changes were made in response to public comments; however, this provision has been modified for the final rule (see next section for details).

c. 20 Percent Increase in DRG Rates for COVID–19 Patients

1. Provisions of the IFR

The IFR temporarily adopted the Medicare Hospital Inpatient Prospective Payment Add-On Payment for COVID–19 patients during the COVID–19 PHE period. The add-on payment for COVID–19 patients increased the weighting factor that would otherwise apply to the DRG to which the discharge is assigned by 20 percent.

2. Analysis of Public Comments

We received one comment regarding this provision of the IFR. The commenter noted that sole community hospitals (SCHs) are not subject to reimbursement under the DRG system and, as such, would not be eligible for the 20 percent increased reimbursement rate in the IFR. The commenter requested TRICARE modify reimbursement for SCHs to make them eligible for the 20 percent increased payment.

We appreciate the feedback from the commenter regarding a 20 percent increase for acute inpatient reimbursement for SCHs treating COVID–19 patients. We would note that while SCHs are not eligible for the 20 percent increased DRG reimbursement, we do an aggregate comparison of SCH claims paid with what we would have paid under the DRG methodology (which would include the 20 percent DRG increase) and if the SCH payments are lower than what would have been paid under the DRG methodology, we then pay the SCH the difference. So, while we are not adding 20 percent to the SCH calculation, it is added to the DRG and then used in the annual adjustment payment calculation.

3. Provisions of Final Rule

The final rule is consistent with the IFR.

d. LTCH Reimbursement at the Federal Rate

1. Provisions of the IFR

The IFR adopted the Medicare waiver of site neutral payment provisions for LTCHs during the COVID–19 PHE period, waiving the site neutral payment provisions and reimbursing all LTCH cases at the LTCH PPS standard Federal rate for claims within the COVID–19 PHE period.

2. Analysis of Public Comments

No public comments were received on this provision.

3. Provisions of Final Rule

The final rule is consistent with the IFR.

e. Adoption of Medicare's NTAPs for New Medical Services

1. Provisions of the IFR

The IFR permanently added coverage of Medicare's NTAP payments for new medical services, adding an additional payment to the DRG payment for new and emerging technologies approved by Medicare.

2. Analysis of Public Comments

No public comments were received on this provision.

3. Provisions of Final Rule

No changes were made in response to public comments; however, this provision has been revised in the final rule (see next section for details).

f. Adoption of Medicare's HVBP Program

1. Provisions of the IFR

The IFR permanently added coverage of Medicare's HVBP Program. The HVBP Program provides incentives to hospitals that show improvement in areas of health care delivery, process improvement, and increased patient satisfaction.

2. Analysis of Public Comments

No comments were received on this provision.

3. Provisions of Final Rule

The final rule content is consistent with the IFR content; however the HVBP provision has been moved from 199.14(a)(1)(iii)(E)(*6*) to 199.14(a)(1)(iv)(B) to account for the changes to the NTAP provisions.

IV. Summary of Changes From IFRs

A. Telephonic Office Visits

Telephonic office visits temporarily adopted in the IFR are permanently adopted in this final rule. The Director, DHA shall issue subsequent policy guidance of medically necessary and appropriate telephonic office visits to ensure best practices and protect against fraud.

B. Temporary Hospitals

The final rule modifies the waiver of acute care hospital requirements at paragraph 199.6(b)(4)(i) by expanding the waiver to include any facility registered with Medicare under its Hospitals Without Walls initiative, not just temporary hospitals and freestanding ASCs as were authorized by the IFR.

C. NTAPs

This final rule permanently adopts the Medicare NTAP methodology and future NTAP modifications published by CMS, for those otherwise approved benefits under the TRICARE Program. This rule also creates a pediatric NTAP reimbursement methodology based on 100 percent of the costs in excess of the MS–DRG. Finally, this rule provides a mechanism to establish a TRICARE-specific NTAP for those high-cost treatments that do not have an NTAP designation because the population affected and treated by these new technologies are outside of Medicare's beneficiary population.

D. Adoption of Medicare's HVBP Program

This final rule moves the HVBP provision from 32 CFR 199.14(a)(1)(iii)(E)(*6*) to 32 CFR

199.14(a)(1)(iv)(B) to account for the changes to the NTAP provisions; there are no changes to the content of the HVBP provision.

E. Telehealth Cost-Share/Copayment Waiver

This final rule finalizes the cost-share/copayment waiver provision as written in the IFR, except that it now terminates on the effective date of this rule, or the date of termination of the President's national emergency for COVID–19, whichever is earlier.

V. Regulatory Analysis

A. Regulatory Planning and Review

a. Executive Orders

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

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, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB) under the requirements of these Executive Orders. This rule has been designated a significant regulatory action, although, not determined to be economically significant, under section 3(f) of Executive Order 12866.

b. Summary

The modifications to paragraph 199.4(g)(52) in this FR will revise the regulatory exclusion prohibiting coverage of telephone services and thereby allow permanent coverage of medical necessary and appropriate telephonic office visits for all TRICARE beneficiaries in all geographic locations.

The modification to paragraph 199.6(b)(4)(i) in this FR will allow any entity that temporarily enrolled with Medicare as a hospital through the Hospitals Without Walls initiative to be deemed to meet the requirements for acute care hospitals established under TRICARE for the duration of the COVID–19 pandemic. This will allow more entities to provide inpatient and outpatient hospital services, increasing access to medically necessary care for beneficiaries.

The modifications to paragraph 199.14(a)(1)(iv)(A) (previously 199.14(a)(1)(iii)(E)(*5*) in the IFR and re-designated in this final rule) will: (1) Adopt the Medicare NTAP methodology and future NTAP modifications published by CMS, (2) create a pediatric NTAP reimbursement methodology based on 100 percent of the costs in excess of the MS–DRG, and (3) provide a mechanism to reimburse high-cost treatments that do not have a Medicare NTAP designation (due to beneficiary population differences).

The modifications to paragraph 199.17(l)(3) in this rule will provide for an earlier termination of the temporary waiver of cost-sharing and copayments for telehealth.

c. Affected Population

The modifications in this rule impact all TRICARE beneficiaries, TRICARE-authorized providers, the TRICARE program staff and contractors. Beneficiaries will be impacted by the permanent addition of telephonic office visits, the elimination of the telehealth cost-share/copayment waivers, increased access to new technologies afforded by the pediatric NTAPs reimbursement methodology, and increased access to acute care in temporary hospitals. TRICARE-authorized providers will be minimally impacted in that telephonic office visit will give them a new means to provide care and treatment to beneficiaries and generate revenue. TRICARE-authorized providers who administer Medicare approved NTAPs to pediatric patients will be reimbursed at a higher rate. Acute care facilities that qualify under Medicare's Hospitals Without Walls initiative will benefit by automatically qualifying as a TRICARE-authorized provider for the duration of the pandemic. TRICARE program staff and contractors who administer the TRICARE benefit will be minimally impacted as this change will require them to update their systems to accommodate the change.

d. Costs [5]

The new incremental costs associated with this final rule are $20.88M through FY24, not including savings resulting from early termination of the telehealth cost-share/copayment waiver (approximately $4.8M savings per month). For context, this section also provides updated cost estimates for temporary benefit and reimbursement changes implemented in prior IFRs that are finalized in this FR ($278.0M through September 30, 2022), including the telehealth cost-share/copayment waiver being terminated by the FR (estimated cost $149.7M through September 30, 2022), and updated cost estimates associated with permanent reimbursement changes implemented in prior IFRs that are finalized in this FR ($13.0M through FY24). Administrative costs to implement all provisions are $0.67M in one-time costs for both previously implemented provisions and modifications in this final rule.

This estimate assumes the President's national emergency for COVID–19 would expire by September 2022. The number and severity of COVID–19 cases for TRICARE patients, along with the length of the President's declared national emergency for COVID–19 and the associated HHS PHE would impact the estimates provided in this section.

1. New Incremental Costs

The incremental health care impact of new permanent benefit and reimbursement changes implemented in the final rule is $20.88M through FY24, and includes coverage of telephonic office visits, expanded coverage of temporary hospitals, the reimbursement methodology for pediatric NTAP cases, and the addition of TRICARE NTAPs. These amounts are the only new costs associated with the FR (*i.e.,* costs for benefits and reimbursement changes that have not already been implemented).

TABLE 1—NEW COSTS DUE TO MODIFICATIONS IN THE FINAL RULE

Provision	Through FY2024
Paragraph 199.4(g)(52)—Permanent Coverage of Telephonic Office Visits	$19.6M
Paragraph 199.6(b)(4)(i)—Expanded Coverage for Temporary Hospitals	0M
Paragraph 199.14(a)(1)(iv)(A)(*2*)—Methodology for Pediatric NTAPs Cases	0.04M

[5] Most costs associated with this final rule are technically considered to be transfers, *i.e.,* an income transfer between taxpayers and program beneficiaries. The only true ''costs'' of this rule are administrative costs, and all other costs should be considered to be transfer payments.

TABLE 1—NEW COSTS DUE TO MODIFICATIONS IN THE FINAL RULE—Continued

Provision	Through FY2024
Paragraph 199.14(a)(1)(iv)(A)(*3*)—Addition of TRICARE NTAPs	1.2M
Total	20.88M

Telephonic Office Visits. Government expenditures for TRICARE first-pay and second pay claims for identifiable telephonic office visits amounted to approximately $7.6 million in Fiscal Year (FY) 2020 and $15.4 million in FY21. Also, the average government cost per service for telephonic office visits was $56, which is 19 percent less than the overall telehealth average of $81. This estimate assumes telephonic office visits will decrease after the pandemic, as beneficiaries become more comfortable or even prefer in-person visits. Additionally, the elimination of the telehealth cost-share/copayment waiver may shift some visits that could have been performed virtually to in-person as there will no longer be a financial incentive to obtain services virtually. After the drop in visits following the pandemic, we assume a modest (5 percent) increase in cost for telephonic office visits each subsequent FY. Lastly, as this provision was originally set to expire upon the expiration of the national emergency, and this estimate assumes that the national emergency declaration will terminate September 30, 2022, the incremental costs of this provision include only the costs in FY23 and FY24.

Expanded Coverage of Temporary Hospitals. This estimate assumes that care received at facilities that register with Medicare as hospitals would have been provided in other TRICARE-authorized hospitals but for the regulation change. We do not anticipate any induced demand for hospital care due to the authorization of new facilities. As such, there are no incremental costs associated with expanding coverage of temporary hospitals.

NTAP Pediatric Reimbursement Methodology. An analysis of claims data for FY20 and FY21 found 23 pediatric cases which would have qualified under this methodology. This estimate is based on an average of what would have been paid for those cases, along with calculations for increases in health care costs each year. This estimate includes only the difference between the standard NTAP rate (65 percent of the cost of treatment) and the NTAP Pediatric reimbursement rate (100 percent). This estimate is highly uncertain as the number of pediatric patients receiving an NTAP each year will vary (we assumed 15 cases or fewer per year), the costs of those NTAPs are unknown, and because the number of NTAPs approved by Medicare increases each year.

TRICARE NTAP Approval Process and Reimbursement Methodology. The costs of this provision were estimated by identifying one drug without a Medicare NTAP due to their use by the 64 and younger population, calculating the treatment costs for that drug, applying the TRICARE NTAP adjustment methodology, and identifying how many TRICARE beneficiaries were treated with that drug each year. This estimate is highly uncertain and is dependent on the number of TRICARE NTAPs approved each year by the Director, DHA, the cost of each of those technologies, and the number of TRICARE beneficiaries receiving each technology.

2. Costs Associated With Previously-Implemented Temporary Regulatory Provisions

Provisions under this portion of the estimate have already been implemented; cost estimates provided here are updates from estimates published in the associated IFR under which they were implemented. These amounts are estimated through the end of September 2022, when we assume the President's national emergency and the HHS PHE will end. An earlier or later termination of the national emergency or HHS PHE will impact the estimates for this portion of the final rule.

TABLE 2—COSTS DUE TO TEMPORARY PROVISIONS IMPLEMENTED IN PRIOR IFRS

Provision	Through September 30, 2022 (million)	Implementation date	Planned expiration
Paragraph 199.4(b)(3)(xiv)—SNF Three-Day Prior Stay Waiver.	$1.9	March 1, 2020	Termination of President's national emergency for COVID–19.
Paragraph 199.4(g)(52)—Temporary Waiver of the Exclusion on Audio-only Telehealth.	32.1	May 12, 2020	Termination of President's national emergency for COVID–19.
Paragraph 199.6(b)(4)(i)—Temporary Hospitals and Freestanding ASCs Registering as Hospitals (as implemented in the IFR).	0	September 3, 2020	Expiration of Medicare's Hospitals Without Walls Initiative.
Paragraph 199.6(c)(2) Waiver of provider licensing requirements for interstate and international practice.	0	May 12, 2020	Termination of President's national emergency for COVID–19.
Paragraph 199.14(a)(1)(iii)(E)(*2*)—20 Percent DRG Increase for COVID–19 Patients.	76.5	January 27, 2020	Termination HHS PHE.
Paragraph 199.14(a)(9)—LTCH Site Neutral Payments	17.8	January 27, 2020	Termination HHS PHE.
Paragraph 199.17(l)(3) Temporary Telehealth Cost-Share/Copayment Waiver.	149.7	May 12, 2020	Effective date of this final rule or termination of President's national emergency for COVID–19, whichever is earlier.
Total	278.0		

SNF Three-Day Prior Stay Waiver. The nominal cost associated with this provision is due to an assumption that, as a result of the waiver, SNF admissions will increase by three percent. This estimate is consistent with the estimate in the IFR.

Temporary Waiver of the Exclusion of Audio-only Telehealth Visits. This estimate accounts for amounts related to the temporary waiver of the exclusion of audio-only telehealth visits from the first IFR, and is consistent with the factors discussed above for telephonic office visits. Included are amounts for FY20 through the end of FY22. These amounts reflect the costs had the ASD(HA) not made telephonic office visits permanent, but continued to let them expire at the end of the national emergency. If the President's national emergency expires prior to the end of September 2022, these amounts will shift to the above permanent coverage of telephonic office visits.

Temporary Hospitals and Freestanding ASCs. This zero cost estimate assumes that inpatient care provided in these alternate sites is care that would have been reimbursed under TRICARE but for a lack of acute care hospital facility space (*i.e.,* we do not estimate that there would be any induced demand because of an increase in facilities). Additionally, it assumes that while reimbursement for outpatient procedures in freestanding ASCs would be higher than had those procedures been reimbursed under the traditional reimbursement rates for freestanding ASCs, the number of facilities choosing to register as hospitals is likely to be small enough to have a negligible impact on the budget. This estimate is consistent with the estimate in the IFR.

Waiver of Interstate and International Licensing for Providers. The zero cost estimate assumes patients who are seeing providers under relaxed licensing requirements would have either seen a different provider or the same provider in a different setting (*i.e.,* in-person as opposed to via telehealth) were it not for the waiver. This estimate is consistent with the estimate in the IFR.

20 Percent DRG Increase. In the second IFR, we estimated that in an eighteen-month period, we would spend $37.1M to 51.4M on the 20 percent DRG increase. Actual spending through the end of FY21 was $41.5M, consistent with and on the low end of that estimate. This is primarily due to a lower average hospitalization cost for COVID–19 patients. This estimate extends actual costs through the end of September 30, 2022. Additional costs would be incurred beyond that date if the HHS PHE continues to be in effect. This estimate is consistent with the lower end of the estimate in the IFR.

LTCH Site Neutral Payments. TRICARE is in the process of phasing in Medicare's site-neutral payment rates. The phase-in has been halted as a result of the IFR; this estimate assumes TRICARE LTCH claims will be paid at the full LTCH PPS rate through the end of the HHS PHE. This estimate is consistent with the estimate in the IFR.

Temporary Waiver of Cost-Shares and Copayments for Telehealth Services. The largest cost-driver for provisions in the previously published IFRs is the temporary waiver of cost-shares and copayments for telehealth, which is expected to cost $149.7M from implementation on May 12, 2020, through September 30, 2022. These costs are associated with the benefit as implemented in the previous IFR; because we are terminating the benefit early in the final rule, we expect to realize a cost savings of approximately $4.8M per month prior to the end of the President's national emergency for COVID–19. The IFR only estimated a 9-month cost ($66M). The estimate in this IFR is largely consistent with the original estimate (approximately $7.3M per month), with an expected decrease in per-month spend further from the initial days of the pandemic and the stay-at-home orders that prompted this provision.

3. Costs Associated With Previously-Implemented Permanent Regulatory Provisions

The second COVID–19 IFR implemented two permanent provisions, NTAPs and HVBP. Both are finalized in this FR. The costs associated with the changes to NTAPs implemented in this FR are provided in the first section of the cost estimate. This section provides costs associated with NTAPs as implemented in the IFR, as well as costs associated with the HVBP Program.

TABLE 3—COSTS DUE TO PERMANENT REIMBURSEMENT CHANGES IMPLEMENTED IN THE SECOND IFR

Provision	Through FY2024
Paragraph 199.14(a)(1)(iv)(A)—NTAPs (not including the new pediatric reimbursement methodology provided in table 1)	$9.1M
Paragraph 199.14(a)(1)(iv)(B)—HVBP Program	3.9M
Total	13.0M

NTAPs. The IFR included the cost estimate through September 30, 2021 (a range of $5.7M to $11.6M), while this estimate provides an updated five-year costing using actual TRICARE claims data for utilization and reimbursement of NTAPS. In creating this estimate, we identified TRICARE claims containing a treatment with a Medicare NTAP in either FY2020 or FY2021 and identified the total estimated add-on payment amounts and the total estimated Medicare cases each year, as published in the **Federal Register**. In FY2020, there were 18 treatments with NTAPs and 78 TRICARE claims containing one of these treatments; in FY2021, there were 23 NTAP treatments and 145 TRICARE claims with NTAPs, although the average NTAP maximum add-on amount decreased dramatically from FY2020 to FY2021 due to the average costs of the respective treatments.

For FY2022, there are a total of 38 Medicare treatments with NTAPs, 15 of which are new and represent a new traditional technology, Qualified Infectious Disease Products, or breakthrough technology. Consistent with the IFR, this estimate assumes TRICARE NTAPs would continue to be a similar percentage of inpatient spending to Medicare's NTAP usage and that TRICARE would adopt all of Medicare's NTAPs. This amount will vary depending on the number of new NTAPs adopted by Medicare each year, the extent to which Medicare-identified emerging technologies are covered under TRICARE's statutory and regulatory requirements, and the extent to which TRICARE's population utilizes these technologies. The costs for this provision may overestimate the incremental costs of this regulatory change, because many of these claims were being approved on a case-by-case basis by the Director, DHA, under waiver authority. In those cases, adopting NTAPs was likely to reflect a cost savings compared to the estimated costs, as waivers are typically paid at billed charges.

HVBP Program. The HVBP Program was implemented retroactive to January 1, 2020; we anticipated that those hospitals qualifying for a positive adjustment for prior claims would do so, while those with negative adjustments or adjustments close to zero dollars would not. This would result in a cost in the first year, with claims in following years assumed to be budget neutral. This cost estimate is higher than the cost estimate published in the IFR ($2.5M), as there was more real-world data available to us on hospitals eligible for a positive adjustment for the initial implementation year.

e. Benefits

The addition of telephonic office visits as a permanent benefit will positively impact beneficiaries, particularly beneficiaries with limited access to broadband and other technology required for video telehealth visits, as this change will provide them better access to the existing telehealth benefit. This will result in avoided travel time and time spent in the provider's waiting room (a benefit of approximately one hour per beneficiary per visit, at a monetized value to the beneficiary of $20.00 per hour). Providers will benefit from telephonic office visits by being able to better treat their patients, particularly patients who might not come into the office for regular office visits. The implementation of a distinct pediatric reimbursement methodology for pediatric NTAPs will positively impact beneficiaries and providers, as providers will be able to offer beneficiaries access to new treatments knowing full reimbursement will be provided. Expansion of coverage of temporary hospitals will benefit beneficiaries, who will have access to more acute care facilities during the pandemic.

f. Alternatives

DoD considered several alternatives to this rulemaking. The first option considered not publishing a final rule or publishing a final rule finalizing the IFR provisions listed without any changes. The temporary changes would have expired as planned without modification. Under this option: Telephonic office visits would not have become a permanent benefit, the coverage of hospitals under Medicare's Hospitals Without Walls initiative benefit would have remained as published in the IFR (meaning facilities other than temporary hospitals and freestanding ambulatory surgical centers, such as freestanding emergency rooms, would have continued to be ineligible for temporary status as an acute care facility), a new pediatric reimbursement methodology for NTAPs would not have been implemented, and the temporary waiver of telehealth cost-shares and copayments would not have been potentially terminated early (at a potential cost of around $4.8M per month). Each of the modifications in this final rule addresses a concern or further develops the benefit based on information we have gathered since the IFRs were published. This option was determined to be insufficient to meet the needs of the TRICARE Program.

DoD also considered publishing this final rule as is, but restricting telephonic office visits to only those TRICARE beneficiaries without access to conventional two-way audio-video equipment. We determined such a restriction would be impractical, unnecessary, and difficult and costly to administer. This option would have been inconsistent with modern practices in the health care field and would have placed an unnecessary burden on providers and beneficiaries. This option was not selected because its benefits did not outweigh the administrative burden on DHA, providers, and the potential cost of reduced access on beneficiaries.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

The Assistant Secretary of Defense for Health Affairs certifies that this final rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

DoD anticipates that permanent coverage of telephonic office visits will impact approximately 133,000 individual professional providers. The provisions impacting inpatient facilities (the 20 percent DRG increase for COVID–19 patients, NTAPs, and the HVBP Program) will impact between 3,400 and 3,800 hospitals. The number of LTCHs impacted by site neutral payments will be between 200 and 300. 1,300 SNFs will be impacted by the three-day prior hospital stay waiver. We are unable to estimate the number of providers impacted by the interstate and international licensing waiver, but expect it will be fairly small as a percentage of total TRICARE providers. We are similarly unable to estimate how many facilities will be eligible as TRICARE-authorized acute care facilities by registering with Medicare's Hospitals Without Walls initiative who would not have been otherwise eligible under TRICARE, but expect this to be a small number as well.

The provisions of this IFR that are most likely to have an economic impact on hospitals and other health care providers are the reimbursement provisions adopted to meet the statutory requirement that TRICARE reimburse like Medicare. As its measure of significant economic impact on a substantial number of small entities, HHS uses an adverse change in revenue of more than 3 to 5 percent. While TRICARE is not required to follow this guidance in the issuance of our rules, we provide this metric for context, given that these temporary and permanent changes align with similar changes made by Medicare.

Given that the temporary reimbursement provisions of this IFR increase reimbursement for hospitals and LTCHs, we find that these provisions would not have an adverse impact on revenue for hospitals and, therefore, would not have a significant impact on these hospitals and other providers meeting the definition of small businesses. We also find that NTAPs, given that they increase revenue under the DRG system, would not have an adverse impact on hospitals and providers. The HVBP program would not reduce revenue for a hospital being penalized under the system beyond the HHS threshold. Lastly, coverage of telephonic office visits and temporary hospitals are not expected to result in any adverse economic impact on hospitals or other health care providers.

C. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

D. Sec. 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532) requires agencies to 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. This final rule will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

E. Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been determined that 32 CFR part 199 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

F. Executive Order 13132, ''*Federalism*''

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This final rule will not have a substantial effect on State and local governments.

G. Executive Order 13175, ''*Consultation and Coordination With Indian Tribal Governments*''

It has been determined that this rule does not have a substantial effect on Indian tribal governments. This rule does not impose substantial direct compliance costs on one or more Indian tribes, preempt tribal law, or effect the distribution of power and responsibilities between the federal government and Indian tribes.

List of Subjects in 32 CFR Part 199

Administrative practice and procedure, Claims, Dental, Fraud, Health care, Health insurance, Individuals with disabilities, Mental health programs, and Military personnel.

For the reasons stated in the preamble, the interim final rules amending 32 CFR part 199, which were published at 85 FR 27921–27927, May 12, 2020, and 85 FR 54914–54924, September 3, 2020, are adopted as final with changes, except for the note to paragraph 199.4(g)(15)(i)(A), published at 85 FR 54923, September 3, 2020, which remains interim, and DoD further amends 32 CFR part 199 as follows:

PART 199—CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS)

■ 1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

■ 2. Amend § 199.2 by adding definitions for ''Biotelemetry,'' ''Telephonic consultations'' and ''Telephonic office visits'' in alphabetical order to read as follows:

§ 199.2 Definitions.

* * * * *

Biotelemetry. A diagnostic or monitoring procedure for the detection or measurement of human physiologic functions from a distance using a biotelemetry device to remotely monitor various vital signs of ambulatory patients. Biotelemetry may also be referred to as remote physiologic monitoring of physiologic parameters. See § 199.4.

* * * * *

Telephonic consultations: A covered consultation service conducted via telephone call between TRICARE-authorized providers, including a verbal and written report to the patient's treating/requesting physician or other TRICARE-authorized provider.

Telephonic office visits. A covered service provided via a telephone call between a beneficiary who is an established patient and a TRICARE-authorized provider. See § 199.4.

* * * * *

■ 3. Amend § 199.4 by revising paragraphs (c)(1)(iii), (g)(52) introductory text and (g)(52)(i) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(c) * * *

(1) * * *

(iii) *Telehealth services.* Health care services covered by TRICARE and provided through the use of telehealth modalities including telephone services for: telephonic office visits; telephonic consultations; electronic transmission of data or biotelemetry or remote physiologic monitoring services and supplies, are covered services to the same extent as if provided in person at the location of the patient if those services are medically necessary and appropriate for such modalities. The Director will establish special procedures for payment for such services. Additionally, where appropriate, in order to incentive the use of telehealth services, the Director may modify the otherwise applicable beneficiary cost-sharing requirements in paragraph (f) of this section which otherwise apply.

* * * * *

(g)(52) *Telephone services.* Services or advice rendered by telephone are excluded. Exceptions:

(i) Medically necessary and appropriate Telephonic office visits are covered as authorized in paragraph (c)(1)(iii) of this section.

* * * * *

■ 4. Effective June 1, 2022 amend § 199.6 by revising the note to paragraph (b)(4)(i)(I) to read as follows:

§ 199.6 TRICARE-authorized providers.

* * * * *

(b) * * *

(4) * * *

(i) * * *

(I) * * *

Note to paragraph (b)(4)(i)(I): For the duration of Medicare's ''Hospitals Without Walls'' initiative for the coronavirus disease 2019 (COVID–19) outbreak, any entity that temporarily enrolls with Medicare as a hospital may be temporarily exempt from certain institutional requirements for acute care hospitals under TRICARE. To the extent practicable, the Director, Defense Health Agency (DHA), will adopt by administrative policy any process requirement related to Medicare's Hospitals Without Walls initiative.

* * * * *

■ 5. Amend § 199.14 by:

■ a. Adding a sentence at the end of paragraph (a)(1)(iii)(E) introductory text;

■ b. Adding paragraph (a)(1)(iv);

■ c. Redesignating paragraph (a)(1)(iii)(E)(*5*) as paragraph (a)(1)(iv)(A) and revising newly redesignated paragraph (a)(1)(iv)(A);

■ d. Redesignating paragraph (a)(1)(iii)(E)(*6*) as paragraph (a)(1)(iv)(B).

The revision and addition read as follows:

§ 199.14 Provider reimbursement methods.

(a) * * *

(1) * * *

(iii) * * *

(E) *** Additional adjustments to DRG amounts are included in paragraph (a)(1)(iv) of this section.

* * * * *

(iv) *Special Programs and Incentive Payments.* (A) *Additional payment for new medical services and technologies.* TRICARE will make New Technology Add On Payments (NTAPs) adjustments to DRGs as provided in paragraphs (a)(1)(iv)(A)(*1*) through (a)(1)(iv)(A)(*11*) of this section. The Director, Defense Health Agency (DHA), shall provide notice of the issuance of policies and guidelines adopting such adjustments together with any variations deemed necessary to address unique issues involving the beneficiary population or program administration.

(*1*) *Adoption of Medicare NTAPs.* For TRICARE covered services and supplies, TRICARE will adopt Medicare NTAPs as implemented under 42 CFR 412.87 under the same conditions as published by the Centers for Medicare & Medicaid Services, except for pediatric cases.

(*2*) *Pediatric cases.* For pediatric NTAP DRGs, the TRICARE NTAP adjustment shall be modified to be set at 100 percent of the costs in excess of the Medicare Severity-Diagnosis Related Group (MS–DRG) payment. As used in this paragraph, pediatric is defined as services and supplies provided to individuals under the age of 18, or who are being treated in a children's hospital or in a pediatric ward.

(*3*) *TRICARE designated NTAP adjustments.* For categories of TRICARE covered services and supplies for which Medicare has not established an NTAP adjustment for DRGs, the Director, DHA may designate a TRICARE NTAP adjustment through a process using criteria to identify and select such new technology services/supplies similar to that utilized by Medicare under 42 CFR 412.87. The Director, DHA may then designate a TRICARE NTAP reimbursement adjustment through a process using a methodology similar to the Medicare methodology outlined in 42 CFR 412.88. This discretionary authority to designate TRICARE NTAP adjustments shall apply to services and supplies typically provided to TRICARE beneficiaries age 64 or younger when Medicare has not established an NTAP adjustment for such services/supplies. As with other discretionary authority under this part, a decision to designate a TRICARE category of services/supplies for an NTAP adjustment to DRGs and the amount of such an adjustment are not subject to the appeal and hearing procedures of § 199.10. The Director, DHA, shall select which new technologies may be designated as TRICARE NTAPs and will publish this list based on the eligibility criteria and reimbursement methodology provided in paragraphs (a)(1)(iv)(A)(*4*) through (a)(1)(iv)(A)(*11*) of this section.

(*4*) *Eligibility requirements and reimbursement methodology for TRICARE designated NTAP adjustments.* A new medical service or technology represents an advance that substantially improves, relative to technologies previously available, the diagnosis or treatment of TRICARE beneficiaries. The totality of the circumstances is considered when making a determination that a new medical service or technology represents an advance that substantially improves, relative to services or technologies previously available, the diagnosis or treatment of TRICARE beneficiaries.

(*5*) *Criteria for improvement.* A determination that a new medical service or technology represents an advance that substantially improves, relative to services or technologies previously available, the diagnosis or treatment of TRICARE beneficiaries means one or more of the following:

(*i*) The new medical service or technology offers a treatment option for a patient population unresponsive to, or ineligible for, currently available treatments.

(*ii)* The new medical service or technology offers the ability to diagnose a medical condition in a patient population where that medical condition is currently undetectable, or offers the ability to diagnose a medical condition earlier in a patient population than allowed by currently available methods and there must also be evidence that use of the new medical service or technology to make a diagnosis affects the management of the patient.

(*iii*) The use of the new medical service or technology significantly improves clinical outcomes relative to services or technologies previously available as demonstrated by one or more of the following seven outcomes: A reduction in at least one clinically significant adverse event, including a reduction in mortality or a clinically significant complication; A decreased rate of at least one subsequent diagnostic or therapeutic intervention; A decreased number of future hospitalizations or physician visits; A more rapid beneficial resolution of the disease process treatment including, but not limited to, a reduced length of stay or recovery time; An improvement in one or more activities of daily living; An improved quality of life; or A demonstrated greater medication adherence or compliance.

(*iv*) The totality of the information otherwise demonstrates that the new medical service or technology substantially improves, relative to technologies previously available, the diagnosis or treatment of TRICARE beneficiaries.

(*6*) *Evidence.* Evidence from scientific literature may be sufficient to establish that a new medical service or technology represents an advance that substantially improves, relative to services or technologies previously available, the diagnosis or treatment of TRICARE beneficiaries.

(*7*) *Prevalence.* The medical condition diagnosed or treated by the new medical service or technology may have a low prevalence among TRICARE beneficiaries.

(*8*) *Subpopulation.* The new medical service or technology may represent an advance that substantially improves, relative to services or technologies previously available, the diagnosis or treatment of a subpopulation of patients with the medical condition diagnosed or treated by the new medical service or technology.

(*9*) *Newness criteria.* A medical service or technology may be considered new within 2 or 3 years after the point at which data begin to become available reflecting the inpatient hospital code assigned to the new service or technology (depending on when a new code is assigned and data on the new service or technology becomes available for DRG recalibration). After TRICARE has recalibrated the DRGs, based on available data, to reflect the costs of an otherwise new medical service or technology, the medical service or technology will no longer be considered ''new'' under the criterion of this section.

(*10*) *Payment methodology.* For discharges involving new medical services or technologies that meet the criteria specified in paragraphs (a)(1)(iv)(A)(*4*) through (a)(1)(iv)(A)(*9*) and that are approved as TRICARE NTAPs per paragraph (a)(1)(iv)(A)(*11*) of this section, TRICARE payment will be the lesser of:

(*i*) The CMS designated percentage of the estimated costs of the new technology or medical service, as published in 42 CFR 412.88; or

(*ii*) The CMS designated percentage of the difference between the full DRG payment and the hospital's estimated cost for the case, as published in 42 CFR 412.88.

(*11*) *Publication and timing.* TRICARE may consider whether a new medical service or technology meets the eligibility criteria specified in paragraphs (a)(1)(iv)(A)(*4*) through (a)(1)(iv)(A)(*9*) of this section and announce the results on the NTAP website. In doing so, TRICARE only considers, for add-on payments for a particular fiscal year, an application for which the new medical device or product has received FDA marketing authorization by July 1 prior to the particular fiscal year; or the application is submitted under an alternative pathway to the FDA for which conditional NTAP approval for FDA marketing authorization is granted before July 1 of the fiscal year for which the applicant applied for new technology add-on payments.

* * * * *

■ 6. Amend § 199.17 by adding a second sentence at the end of paragraph (l)(3)(iii) to read as follows:

§ 199.17 TRICARE program.

* * * * *

(l) * * *

(3) * * *

(iii) * * * This temporary waiver provision terminates July 1, 2022 or the date of termination of the President's declared national emergency for COVID–19, whichever is earlier.

* * * * *

Dated: May 12, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–10545 Filed 5–31–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2022–0171]

RIN 1625–AA08

Special Local Regulation; Tampa Bay, St. Petersburg, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising the existing special local regulations within the Seventh Coast Guard District Captain of the Port (COTP) St. Petersburg Zone by removing an event that no longer takes place, and by updating the location of an existing event. These changes are being made because one event sponsor halted the event for the forseeable future, and the other changed the event details.

DATES: This final rule is effective July 1, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0171 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 Marine Science Technician Second Class Regina L. Cuevas, Sector St. Petersburg Prevention Department, Coast Guard; telephone (813) 228–2191, email *Regina.L.Cuevas@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

On March 29, 2022, the Coast Guard published a notice of proposed rulemaking (NPRM) in the **Federal Register** titled, ''Special Local Regulations; Recurring Marine Events, Sector St. Petersburg.'' [1] In the NPRM we stated the purpose of the rulemaking was to remove one existing recurring marine event that is no longer held and to change the location and date of an existing recurring marine event within the Seventh Coast Guard District Captain of the Port (COTP) St. Petersburg Zone that are listed in 33 CFR 100.703, Table 1 to § 100.703. With the postponement of one event for the forseeable future, and the change in date and location of another, the changes proposed in the NPRM were necessary to ensure that Table 1 to § 100.703 accurately reflected the events taking place within the COTP St. Petersburg Zone, and in the order the events occur. The NPRM invited comments on the proposed changes to Table 1 to § 100.703. During the comment period that ended April 28, 2022, we received no comments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041. The COTP St. Petersburg has determined it necessary to revise the existing regulations in order to avoid confusion regarding the special local regulations (SLR) in the COTP St. Petersburg Zone.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published April 1, 2022.

This rule makes the following changes in 33 CFR 100.703:

1. Move the event listed in Table 1 to § 100.703, Line No. 5, ''Sarasota Powerboat Grand Prix/Powerboat P–1 USA, LLC to Line No. 4. We are not making any other changes to this event.

2. Move Table 1 to § 100.703, Line No. 4, to Line No. 5, and revise the event to reflect a name change, course location, and date and time for the event.

3. Delete the event listed in Table 1 to § 100.703, Line No. 6, ''Battle of the Bridges/Sarasota Scullers Youth Rowing Program.''

Marine events listed in Table 1 to § 100.703 are listed as recurring over a particular time, during each month and each year. Exact dates are intentionally omitted since calendar dates for specific events change from year to year. Once dates for a marine event are known, the Coast Guard notifies the public it intends to enforce the special local regulation through various means including a notice of enforcement published in the **Federal Register**, Local Notice to Mariners, and Broadcast Notice to Mariners.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and duration of the special local regulations. These areas are limited in size and duration, and usually do not affect high vessel traffic areas. Moreover, the Coast Guard will provide advance notice of the regulated areas to the local maritime community via Notice of Enforcement published in the **Federal Register**, by Local Notice to Mariners, Broadcast to Mariners via VHF–FM marine channel 16, and the rule will allow vessels to seek permission to enter the regulated area.

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 0 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

[1] 87 FR 17957.

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 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.

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 removing one event from the list of recurring marine events in the COTP St. Petersburg Zone, and revising an existing recurring event to reflect a name change, course location, and date and time for the event. Normally such actions are categorically excluded from further review under paragraphs L61 in Table 3–1 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1, because it involves a revised special local regulation related to a marine event permit for marine parades, regattas, and other marine events.

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

Harbors, Marine Safety, Navigation (water), Reporting and Record keeping requirements, Security measures, 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. In § 100.703, revise Table 1 to read as follows:

§ 100.703 Special Local Regulations; Recurring Marine Events, Sector St. Petersburg.

* * * * *

TABLE 1 TO § 100.703—SPECIAL LOCAL REGULATIONS; RECURRING MARINE EVENTS, SECTOR ST. PETERSBURG

[Datum NAD 1983]

Date/time	Event/sponsor	Location	Regulated area
1. One Saturday in January; Time (Approximate): 11:30 a.m. to 2 p.m.	Gasparilla Invasion and Parade/Ye Mystic Krewe of Gasparilla.	Tampa, Florida	Location: A regulated area is established consisting of the following waters of Hillsborough Bay and its tributaries north of 27°51′18″ N and south of the John F. Kennedy Bridge: Hillsborough Cut "D" Channel, Seddon Channel, Sparkman Channel and the Hillsborough River south of the John F. Kennedy Bridge. Additional Regulation: (1) Entrance into the regulated area is prohibited to all commercial marine traffic from 9 a.m. to 6 p.m. EST on the day of the event. (2) The regulated area will include a 100 yard Safety Zone around the vessel JOSE GASPAR while docked at the Tampa Yacht Club until 6 p.m. EST on the day of the event. (3) The regulated area is a "no wake" zone. (4) All vessels within the regulated area shall stay 50 feet away from and give way to all officially entered vessels in parade formation in the Gasparilla Marine Parade. (5) When within the marked channels of the parade route, vessels participating in the Gasparilla Marine Parade may not exceed the minimum speed necessary to maintain steerage. (6) Jet skis and vessels without mechanical propulsion are prohibited from the parade route. (7) Vessels less than 10 feet in length are prohibited from the parade route unless capable of safely participating. (8) Vessels found to be unsafe to participate at the discretion of a present Law Enforcement Officer are prohibited from the parade route. (9) Northbound vessels in excess of 65 feet in length without mooring arrangement made prior to the date of the event are prohibited from entering Seddon Channel unless the vessel is officially entered in the Gasparilla Marine Parade. (10) Vessels not officially entered in the Gasparilla Marine Parade may not enter the parade staging area box within the following coordinates: 27°53′53″ N, 082°27′47″ W; 27°53′22″ N, 082°27′10″ W; 27°52′36″ N, 082°27′55″ W; 27°53′02″ N, 082°28′31″ W.
2. One Saturday in February; Time (Approximate): 9:00 a.m. to 9:00 p.m.	Bradenton Area River Regatta/City of Bradenton.	Bradenton, FL	Location(s) *Enforcement Area #1.* All waters of the Manatee River between the Green Bridge and the CSX Train Trestle contained within the following points: 27°30′43″ N, 082°34′20″ W, thence to position 27°30′44″ N, 082°34′09″ W, thence to position 27°30′ 00″ N, 082°34′04″ W, thence to position 27°29′58″ N, 082°34′15″ W, thence back to the original position, 27°30′43″ N, 082°34′20″ W. *Enforcement Area #2.* All waters of the Manatee River contained within the following points: 27°30′35″ N, 082°34′37″ W, thence to position 27°30′35″ N, 082°34′26″ W, thence to position 27°30′26″ N, 082°34′26″ W, thence to position 27°30′26″ N, 082°34′37″ W, thence back to the original position, 27°30′35″ N, 082°34′37″ W.
3. One weekend (Friday, Saturday, and Sunday) in March; Time (Approximate): 8:00 a.m. to 5:00 p.m.	Gulfport Grand Prix/Gulfport Grand Prix LLC.	Gulfport, FL	Location(s): (1) Race *Area.* All waters of Boca de Ciego contained within the following points: 27°44′10″ N, 082°42′29″ W, thence to position 27°44′07″ N, 082°42′40″ W, thence to position 27°44′06″ N, 082°42′40″ W, thence to position 27°44′04″ N, 082°42′29″ W, thence to position 27°44′07″ N, 082°42′19″ W, thence to position 27°44′08″ N, 082°42′19″ W, thence back to the original position, 27°44′10″ N, 082°42′29″ W. (2) *Buffer Zone.* All waters of Boca de Ciego encompassed within the following points: 27°44′10″ N, 082°42′47″ W, thence to position 27°44′01″ N, 082°42′44″ W, thence to position 27°44′01″ N, 082°42′14″ W, thence to position 27°44′15″ N, 082°42′14″ W.
4. One weekend (Saturday and Sunday) in July; Time (Approximate): 8:00 a.m. to 5:00 p.m.	Sarasota Powerboat Grand Prix/Powerboat P–1 USA, LLC.	Sarasota, FL ..	Location: All waters of the Gulf of Mexico contained within the following points: 27°18′44″ N, 082°36′14″ W, thence to position 27°19′09″ N, 082°35′13″ W, thence to position 27°17′42″, N, 082°34′00″ W, thence to position 27°16′43″ N, 082°34′49″ W, thence back to the original position, 27°18′44″ N, 082°36′14″ W.

TABLE 1 TO § 100.703—SPECIAL LOCAL REGULATIONS; RECURRING MARINE EVENTS, SECTOR ST. PETERSBURG—Continued

[Datum NAD 1983]

Date/time	Event/sponsor	Location	Regulated area
5. One weekend (Saturday and Sunday) in September; Time (Approximate): 8:00 a.m. to 4:00 p.m.	St.Petersburg P–1 Powerboat Grand Prix.	St. Petersburg, FL.	Location: All waters of the Tampa Bay encompassed within the following points: 27°46′56.22″ N, 082°36′55.50″ W, thence to position 27°47′08.82″ N, 082°34′33.24″ W, thence to position 27°46′06.96″ N, 082°34′29.04″ W, thence to position 27°45′59.22″ N, 082°37′02.88″ W, thence back to the original position 27°46′24.24″ N, 082°37′30.24″ W.
6. One Sunday in September; Time (Approximate): 11:30 a.m. to 4:00 p.m.	Clearwater Offshore Nationals/Race World Offshore.	Clearwater, FL	Locations: (1) *Race Area.* All waters of the Gulf of Mexico contained within the following points: 27°58′34″ N, 82°50′09″ W, thence to position 27°58′32″ N, 82°50′02″ W, thence to position 28°00′12″ N, 82°50′10″ W, thence to position 28°00′13″ N, 82°50′10″ W, thence back to the original position, 27°58′34″ N, 82°50′09″ W. (2) *Spectator Area.* All waters of Gulf of Mexico seaward no less than 150 yards from the race area and as agreed upon by the Coast Guard and race officials. (3) *Enforcement Area.* All waters of the Gulf of Mexico encompassed within the following points: 28°58′40″ N, 82°50′37″ W, thence to position 28°00′57″ N, 82°49′45″ W, thence to position 27°58′32″ N, 82°50′32″ W, thence to position 27°58′23″ N, 82°49′53″ W, thence back to position 28°58′40″ N, 82°50′37″ W.
7. One Thursday, Friday, and Saturday in October; Time (Approximate): 10:00 a.m. to 5:00 p.m.	Roar Offshore/OPA Racing LLC.	Fort Myers Beach, FL.	Locations: All waters of the Gulf of Mexico west of Fort Myers Beach contained within the following points: 26°26′27″ N, 081°55′55″ W, thence to position 26°25′33″ N, longitude 081°56′34″ W, thence to position 26°26′38″ N, 081°58′40″ W, thence to position 26°27′25″ N, 081°58′8″ W, thence back to the original position 26°26′27″ N, 081°55′55″ W.
8. One weekend (Friday, Saturday, and Sunday) in November; Time (Approximate): 8:00 a.m. to 6:00 p.m.	OPA World Championships/ Englewood Beach Waterfest.	Englewood Beach, FL.	Locations: (1) Race *Area.* All waters of the Gulf of Mexico contained within the following points: 26°56′00″ N, 082°22′11″ W, thence to position 26°55′59″ N, 082°22′16″ W, thence to position 26°54′22″ N, 082°21′20″ W, thence to position 26°54′24″ N, 082°21′16″ W, thence to position 26°54′25″ N, 082°21′17″ W, thence back to the original position, 26°56′00″ N, 082°21′11″ W. (2) *Spectator Area.* All waters of the Gulf of Mexico contained with the following points: 26°55′33″ N, 082°22′21″ W, thence to position 26°54′14″ N, 082°21′35″ W, thence to position 26°54′11″ N, 082°21′40″ W, thence to position 26°55′31″ N, 082°22′26″ W , thence back to position 26°55′33″ N, 082°22′21″ W. (3) *Enforcement Area.* All waters of the Gulf of Mexico encompassed within the following points: 26°56′09″ N, 082°22′12″ W, thence to position 26°54′13″ N, 082°21′03″ W, thence to position 26°53′58″ N, 082°21′43″ W, thence to position 26°55′56″ N, 082°22′48″ W, thence back to position 26°56′09″ N, 082°22′12″ W.

Dated: May 23, 2022.

Matthew A. Thompson,

Captain, U.S. Coast Guard, Captain of the Port Sector St. Petersburg.

[FR Doc. 2022–11620 Filed 5–31–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2022–0401]

Safety Zone; Recurring Events in Captain of the Port Duluth—City of Superior 4th of July Fireworks

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone in 33 CFR 165.943 for the City of Superior 4th of July Fireworks in Superior, WI from 10 p.m. through 10:30 p.m. This action is necessary to protect participants and spectators during the City of Superior 4th of July Fireworks. During the enforcement period, entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Duluth or their designated on-scene representative.

DATES: The regulations in 33 CFR 165.943(b) will be enforced from 10 p.m. through 10:30 p.m. on July 4, 2022.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email LT Joe McGinnis, telephone 218–725–3818, email *DuluthWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone in 33 CFR 165.943 on all waters of Superior Bay in Superior, WI bounded by the arc of a circle with a 1120-foot radius from the fireworks launch site with its center in position 46°43′28″ N, 092°03′38″ W from 10 p.m. through 10:30 p.m. on July 4, 2022. This action is necessary to protect participants and spectators during the City of Superior 4th of July Fireworks.

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Duluth or their designated on-scene representative. The Captain of the Port's designated on-scene representative may be contacted via VHF Channel 16.

This document is issued under authority of 33 CFR 165.943 and 5 U.S.C. 552 (a). In addition to this publication in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of the enforcement of this safety zone via Broadcast Notice to Mariners.

Dated: May 25, 2022.

F.M. Smith,

Captain of the Port Duluth, CDR, U.S. Coast Guard.

[FR Doc. 2022–11713 Filed 5–31–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0375]

RIN 1625–AA00

Safety Zone—Keeweenaw Waterway; Houghton, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for Bridgefest 2022 in the Keeweenaw Waterway located in Houghton, MI. This action is necessary to protect participants and spectators during the Bridgefest Boat Parade and Bridgefest Water Ski Show. During the enforcement period, entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Duluth or their designated on-scene representative.

DATES: This rule is effective from 2 p.m. through 10 p.m. on June 18th, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0375 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 about this notice of enforcement, call or email LTJG Joseph R. McGinnis, telephone 218–725–3818, email *DuluthWWM@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 the event was made with short notice to USCG.

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 a triggering event from the water ski show and boat parade.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 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. The Captain of the Port Duluth (COTP) has determined that potential hazards associated with this ski and boat parade event on June 18, 2022, will be a safety concern for anyone within the safety zone. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the event occurs.

IV. Discussion of the Rule

This rule establishes a safety zone from 2 p.m. through 10 p.m. on June 18, 2022. All waters of the Keweenaw Waterway in Hancock, MI and Houghton, MI within the enforcement area that starts at 47°07′23.5″ N 88°35′21.7″ W stretches east to 47°07′28.3″ N 88°33′31.7″ W, goes south to 47°07′23.1″ N 88°33′32.6″ W, then west 47°07′16.8″ N 88°35′18.4″ W and finally up north back to 47°07′23.5″ N 88°35′21.7″ W. No vessel or person will be permitted to enter the safety zone 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 fact that there is little commercial traffic on the Portage Canal and all commercial traffic has been in contact with the event coordinator stating they will not be getting underway that day. Coast Guard can be contacted VHF Channel 16 for any discrepencies or hazards found during the event.

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 near 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.

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. 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 only 8 hours that will prohibit entry of non-event vessels within the enforcement area that starts at 47°07′23.5″ N 88°35′21.7″ W stretches east to 47°07′28.3″ N 88°33′31.7″ W, goes south to 47°07′23.1″ N 88°33′32.6″ W, then west 47°07′16.8″ N 88°35′18.4″ W and finally up north back to 47°07′23.5″ N 88°35′21.7″ W. There is no fauna, flora, or ecosystem of concern that is in the vicinity of the display that will be catastrophically effected during a 30 minute firework show. It is categorically excluded from further review under paragraph L[60(a)] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

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. 0170.1, Revision No. 01.2.

■ 2. Add § 165.T09–0375, to read as follows:

§ 165.T09–0375 Safety Zone; Keeweenaw Waterway, Houghton, MI.

(a) *Location.* The following area is a safety zone: All waters of the Keweenaw Waterway in Hancock, MI and Houghton, MI within the enforcement area that starts at 47°07′23.5″ N 88°35′21.7″ W stretches east to 47°07′28.3″ N 88°33′31.7″ W, goes south to 47°07′23.1″ N 88°33′32.6″ W, then west 47°07′16.8″ N 88°35′18.4″ W and finally up north back to 47°07′23.5″ N 88°35′21.7″ W. These coordinates are based on North American Datum 83, NAD83.

(b) *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 Station Portage at 906–482–1520. 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.

(c) *Enforcement period.* This section will be enforced from 2 p.m. through 10 p.m. on June 18, 2022.

Dated: May 17, 2022.

F.M. Smith,

Captain of the Port Duluth, CDR, U.S. Coast Guard.

[FR Doc. 2022–11706 Filed 5–31–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2022–0379]

Safety Zones; Recurring Events in Captain of the Port Duluth—City of Bayfield 4th of July Fireworks Display

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zone for the City of Bayfield Fireworks in Bayfield, WI. This action is necessary to protect participants and spectators during the City of Bayfield Fireworks. During the enforcement period, entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Duluth or designated on-scene representative.

DATES: The regulations in 33 CFR 165.943(b) will be enforced from 9 p.m. through 10:30 p.m. on July 4, 2022, for the City of Bayfield Fireworks safety zone, § 165.943.

FOR FURTHER INFORMATION CONTACT: If you have questions on this document, call or email LTJG Joe McGinnis, telephone (218)–725–3818, email *DuluthWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone for the annual City of Bayfield 4th of July Fireworks Display in 33 CFR 165.943 from 9 p.m. through 10:30 p.m. on July 4, 2022. All waters of the Lake Superior North Channel in Bayfield, WI within the arc of a circle with a radius of no more than 1,120 feet from the launch site at position 46°48′40″ N, 090°48′32″ W.

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Duluth or their designated on-scene representative. The Captain of the Port's designated on-scene representative may be contacted via VHF Channel 16.

This document is issued under authority of 33 CFR 165.943 and 5 U.S.C. 552 (a). In addition to this publication in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of the enforcement of this safety zone via Broadcast Notice to Mariners.

Dated: May 17, 2022.

F.M. Smith,

Commander, U.S. Coast Guard, Captain of the Port Duluth.

[FR Doc. 2022–11714 Filed 5–31–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2022–0417]

Safety Zone; Recurring Events in Captain of the Port Duluth—Duluth Fourth Fest Fireworks

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zone in 33 CFR 165.943(a)(5) for the Duluth Fourth Fest Fireworks in Duluth, MN. This action is necessary to protect participants and spectators during the Duluth Fourth Fest Fireworks. During the enforcement period, entry into, transiting, or

anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Duluth or their designated on-scene representative.

DATES: The regulations in 33 CFR 165.943(a)(5) will be enforced from 9:30 p.m. through 11:00 p.m. on July 4, 2022.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email LT Joe McGinnis, U.S. Coast Guard; telephone 218–725–3818, email *DuluthWWM@uscg.mil*.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone in 33 CFR 165.943(a)(5) on all waters of Duluth Harbor bounded by the arc of a circle with a 1120-foot radius from the fireworks launch site with its center in position 46°46′14″ N, 092°06′16″ W from 9:30 p.m. through 11:00 p.m. on July 4, 2022. This action is necessary to protect participants and spectators during the Duluth Fourth Fest Fireworks. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Duluth or their designated on-scene representative.

This notice of enforcement is issued under authority of 33 CFR 165.943 and 5 U.S.C. 552 (a). In addition to this publication in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of the enforcement of this safety zone via Broadcast Notice to Mariners. The Captain of the Port Duluth or their on-scene representative may be contacted via VHF Channel 16.

Dated: May 25, 2022.

F.M. Smith,

Captain of the Port Duluth, CDR, U.S. Coast Guard.

[FR Doc. 2022–11711 Filed 5–31–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AQ65

Transplant Procedures With Live Donors and Related Care and Services

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) adopts as final, with changes, a proposed rule amending its medical regulations to implement legislation providing it stand-alone authority to provide procedures to remove a solid organ or bone marrow from a live donor for transplantation into a veteran and to furnish the live donor care or services before and after the procedure required in connection with the veteran's transplantation procedure. This rulemaking implements the mandates of section 153 of the VA MISSION Act of 2018.

DATES: This rule is effective July 1, 2022.

FOR FURTHER INFORMATION CONTACT: Mani Murugavel, DNP, NE–BC, CSSGB, RN, National Director, Clinical Services, National Surgery Office (11SURG), Veterans Health Administration, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–7130. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** (FR) on March 24, 2021, (86 FR 15628), VA proposed to amend its medical regulations to implement its authority to provide procedures to remove a solid organ or bone marrow from a live donor for transplantation into a veteran and to furnish the live donor care or services before and after the procedure. VA provided a 60-day comment period, which ended on May 24, 2021. Six comments were received.

Comments

The six comments were generally supportive of the proposed rule, and we thank the commenters for their comments. Of those six comments, four included substantive feedback, which is discussed below.

One commenter opined that live donors should be further compensated. This commenter suggested VA cover additional expenses that are deemed necessary and for which live donors submit documentation, as there are ''other factors such as emotional effects that donors sometime[s] experience'' due to the transplant procedure. However, this commenter did not specify the types of additional expenses VA should cover.

As explained in the proposed rule, VA will cover for the live donor hospital care and medical services prior to the surgical removal of the solid organ, part of a solid organ, or bone marrow; the surgical procedure to remove a solid organ, part of a solid organ, or bone marrow, and related care; and follow-up care which varies based on the type of donation. Additionally, VA will cover travel costs, including temporary lodging as VA determines to be needed. While VA acknowledges that live donors may incur additional expenses, VA believes the services and expenses covered under this rulemaking are reasonable under section 1788 of title 38, United States (U.S.C.), are consistent with how VA has administered the transplant program to date, and recognize the sacrifices that live donors make. While VA understands the commenter's support and rationale for expanding upon the additional expenses covered by VA, VA is not making any changes based on this comment.

To the extent that this commenter further suggested that live donors should be compensated for their donation, by law, VA may not knowingly acquire, receive, or otherwise transfer any human organ for valuable consideration for use in human transplantation if the transfer affects interstate commerce. 42 U.S.C. 274e(a). For purposes of this statute, the term ''valuable consideration'' ''does not include the reasonable payments associated with the removal, transportation, implantation, processing, preservation, quality control, and storage of a human organ or the expenses of travel, housing, and lost wages incurred by the donor of a human organ in connection with the donation of the organ.'' Section 274e(c)(2). Although this prohibition does not apply to a ''human organ paired donation,'' (see last sentence of section 274e(a)), that is not to say that compensation is available in these cases, because the term ''human organ paired donation,'' as defined in section 274e(c)(4), clearly bars valuable consideration from being provided for the organ in subparagraph (c)(4)(F). Thus, furnishing compensation for a human organ is legally barred. In addition, a host of ethical questions are raised by such a proposal. Transplant programs participating in the Organ Procurement Transplantation Network (OPTN) are authorized, however, to provide reimbursement for incidental non-medical expenses of donors. See 42 U.S.C. 274f, as implemented by § 121.14 of title 42, Code of Federal Regulations (CFR). This authority is discretionary, and while VA voluntarily participates and complies with OPTN requirements and is an OPTN-designated transplant program, VA will cover only the non-medical costs we have identified, as these types of non-medical costs are directly integral to the donor's transplant episode. In addition, this aligns with how very limited non-medical care benefits, or financial incentives, exist for other VA beneficiaries. Nonetheless, VA will undertake additional review and analysis to determine whether non-medical expenses other than those already covered under this rulemaking should be covered to encourage greater

donor participation. If VA determines additional non-medical expenses such as incidental non-medical costs described in 42 CFR 121.14 should also be covered, it will propose to do so in a separate future rulemaking.

VA therefore makes no changes based on this comment.

Another commenter stated that it was unclear whether the definition of kidney paired donation, in 38 CFR 17.395(b), included living donor chains, and suggested VA modify this definition to explicitly cover living donor chains. As explained in OPTN policies, a living (or live) donor chain is an approach in which a live donor without an intended recipient donates an organ, which is matched with a recipient. See OPTN, Policy 1: Administrations Rules and Definitions, and Policy 13: Kidney Paired Donation. U.S. Department of Health and Human Services, Health Resources and Services Administration. Retrieved from: *https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/optn_policies.pdf* (Accessed: 25 October 2021). That recipient's prospective live donor then donates an organ that can be matched with another recipient. Id. A chain of donations then occurs that allows for the donation and receipt of compatible organs. Id. Currently, live donor chains are widely used for the donation and receipt of kidneys.

The definition of kidney paired donation in § 17.395(b) is consistent with OPTN's definition of kidney paired donation. However, it does not specifically address live donor chains nor does it prohibit live donor chains. For the purposes of this rulemaking, VA clarifies that live donor chains are permitted, and interpreted to be included, under VA's definition of kidney paired donation. Based on this comment, VA is adding a note to the definition of kidney paired donation to state that for purposes of this section, kidney paired donation includes live donor chains. VA is also adding a definition for live donor chain to mean a set of kidney paired donation matches that begins with a donation of a kidney from a live donor without an intended recipient. Such live donor donates a kidney for transplantation into the intended recipient of a prospective live donor. The prospective live donor then donates a kidney for transplantation into a recipient other than the intended recipient. A chain continues to allow donation and receipt of compatible kidneys. VA makes no further changes based on this comment.

One commenter suggested that VA revise its rule to specify that VA bone marrow programs follow standards of care and patient safety issued by the nation's bone marrow registry, as they opined that it is critical VA and non-VA bone marrow programs align. This commenter noted that National Marrow Donor Program (NMDP) network members are held to standards of care and safety for bone marrow transplant similar to OPTN members.

As an initial matter, NMDP manages a bone marrow registry in which donors unrelated to the transplant recipient can voluntarily register to donate their bone marrow (including stem cells). These donations are then stored and managed by NMDP. While medical hospitals and facilities can become NMDP-contracted bone marrow donor centers, which are subject to NMDP Donor Center participation standards, VA does not have any such bone marrow donor centers as part of its bone marrow transplantation program. Instead, VA contracts with NMDP to obtain bone marrow for transplantation when a bone marrow match is identified (through NMDP's registry) for a veteran recipient. VA also may obtain bone marrow directly from live donors who are identified by VA as a match for the veteran recipient.

To the extent that this commenter is suggesting VA revise the rule to specify that VA's bone marrow program follows standards of care and patient safety issued by NMDP for live donors of bone marrow, NMDP maintains standards for bone marrow donor centers, specifically related to the bone marrow donor. Because VA does not operate NMDP-contracted bone marrow donor centers, related NMDP standards do not apply to VA. When VA procures bone marrow including stem cells from NMDP for transplantation into a veteran recipient, VA does not directly interact with the bone marrow donor and thus any standards about donor care would be inapplicable, particularly as VA would not know the identity of the live donor. Therefore, NDMP donor center participation standards do not apply to VA's bone marrow transplantation program because VA does not operate such donor centers. As noted earlier, VA may obtain bone marrow directly from live donors (for example, family members of the veteran) who are identified by VA as a match for the veteran recipient; however, such donations do not fall under NMDP standards for donor centers. VA believes the current language in the regulation regarding care for bone marrow donors is sufficient, particularly as it is consistent with VA current policy and practices. VA does not make any changes to the regulation based on this comment.

NMDP also maintains standards, including data reporting, relating to the unrelated allogeneic bone marrow transplant procedure. VA voluntarily complies with such standards. To the extent that this commenter is suggesting VA revise the rule to specify that VA's bone marrow program follows standards of care and patient safety issued by NMDP for transplant recipients, VA considers this outside the scope of the rulemaking as this relates to transplant recipients, not live donors. VA makes no changes to the regulation based on this comment.

That same commenter also suggested the rule be revised to specify that data reporting requirements for bone marrow transplant be submitted to the Stem Cell Therapeutic Outcomes Database (SCTOD), as that ''database allows analysis of program use, center-specific outcomes, size of donor registry and cord blood inventory, and patient access to hematopoietic cell transplantations, and per the Stem Cell Therapeutic and Research Act of 2005, VA would share outcomes data with the SCTOD.''

VA voluntarily complies with the Foundation for the Accreditation of Cellular Therapy (FACT) standards for direct allogeneic live donor care and data reporting requirements. These include submission of direct allogeneic stem cell transplant data to the SCTOD. However, VA considers this part of the comment beyond the scope of the rulemaking as these reporting requirements for bone marrow transplant mainly concern the engraftment and recipient, and not the live donor, and this comment does not pertain to the care and services available to live donors under VA's transplant program. VA believes that this is more appropriate for internal VA policy than regulation since it concerns internal VA requirements. To the extent that this commenter is suggesting non-VA providers performing bone marrow transplants under VA's transplant program comply with these same data reporting requirements, this is beyond the scope of this rulemaking and would be more appropriate for inclusion in agreements VA enters into with these non-VA providers. VA is making no changes based on this comment.

One commenter stated that OPTN requires that transplant programs only use living donor organs recovered from OPTN approved living donor recovery hospitals and noted that when VA enters into agreements with non-VA facilities for organ transplants, it should ensure that these non-VA facilities are approved for recovery of organs from living donors if the recovery will occur in such facilities. This commenter

suggested VA consider clarifying in the final rule the minimum requirements for these non-VA facilities that recover organs from living donors. Relatedly, this commenter recommended the rule be ''explicit about requirements for outcomes reporting, compliance monitoring, and other considerations between bone marrow and solid organ transplant, given their distinct contractual relationships with the federal government.''

With regards to the comment that VA should ensure that non-VA facilities with which VA enters into agreements for bone marrow or solid organ transplants are approved by OPTN, VA considers this part of the comment beyond the scope of the rulemaking since it does not pertain to the care and services available to live donors under VA's transplant program. The qualifications that VA requires non-VA facilities providing such services to possess is a separate matter that will be addressed by VA in the context of its acquisitions.

In the agreements VA would enter into with non-VA facilities for organ transplants, VA would ensure that the appropriate requirements, such as those requirements for outcomes reporting, compliance monitoring, and other requirements or considerations, are included in such agreements. This information is commonly set forth in agreements rather than regulations, especially to permit flexibility, as requirements are subject to change. Additionally, the purpose of this rulemaking is to regulate the care and services available to living donors before and after the procedure required in connection with a veteran's transplantation procedure; not to regulate the requirements for reporting, monitoring, or other similar requirements with which non-VA providers must comply.

VA is making no changes based on this comment.

Technical Changes Not Based on Comments

VA makes two technical changes not based on comments. Both technical changes are made to 38 CFR 17.395(g), which states the limitations on VA obligations in kidney paired donations. The first change is to replace the term, care, with the term, hospital care, in the introductory paragraph of § 17.395(g). The second change is to replace the term, services, with the term, medical services, in the introductory paragraph of § 17.395(g). These technical changes clarify the specific type of care and services referenced in § 17.395(g) and are consistent with how these terms are used in paragraph (c) of § 17.395. These technical changes will also avoid potential confusion with the terms, non-hospital care and non-medical services, which appear in paragraph (d) of § 17.395.

Based on the rationale set forth in the proposed rule and in this final rule, VA is adopting the proposed rule with changes as noted.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov*.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). VA has determined that this rule will not have a significant impact on a substantial number of small entities because the final rule does not directly regulate or impose costs on small entities and any effects would be indirect. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Assistance Listing

The Assistance Listing numbers and titles for the programs affected by this document are 64.009, Veterans Medical Care Benefits; 64.029, Purchased Care Program; 64.047, VHA Primary Care; 64.042, 64. 045, VHA Ancillary Outpatient Services; 64.042, VHA Inpatient Surgery; 64.040, VHA Inpatient Medicine; 64.041,VHA Outpatient Specialty Care; 64.035, Veterans Transportation Program.

Congressional Review Act

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act) (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on March 7, 2022, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Consuela Benjamin,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 17 as set forth below:

PART 17—MEDICAL

■ 1. The general authority citation for part 17 continues and an authority

citation for § 17.395 is added in numerical order to read as follows:

Authority: 38 U.S.C. 501 and as noted in specific sections.

* * * * *

Section 17.395 is also issued under 38 U.S.C. 1788.

■ 2. Add an undesignated center heading and § 17.395 to read as follows:

Hospital Care, Medical Services, and Other Services for Live Donors

§ 17.395 Transplant procedures with live donors, and related services.

(a) *Scope.* This section provides for medical and non-medical care and services of persons who volunteer to donate a solid organ, part of a solid organ, or bone marrow for transplantation into an eligible veteran transplant candidate, irrespective of a donor's eligibility to receive VA health care for any reason other than to donate a solid organ, part of a solid organ, or bone marrow. It prescribes the type, timing, and duration of hospital care and medical services VA provides, including medical care or services purchased by agreement from a non-VA facility. It also provides for non-medical care and services essential to the prospective live donor's or live donor's participation and for VA reimbursement for that care and services. The section does not provide for eligible veteran transplant candidates' VA medical benefits.

(b) *Definitions.* For purposes of this section:

Initial prospective live donor means an intended recipient's prospective live donor who volunteers to donate a kidney to a recipient other than the intended recipient through kidney paired donation.

Intended recipient means the transplant candidate who VA identifies to receive a live donor's solid organ, part of a solid organ, or bone marrow.

Kidney paired donation means one prospective live donor's voluntary donation of a kidney for transplantation into a recipient other than an intended recipient, paired with the transplantation into the intended recipient of a compatible kidney from a different live donor. Note: For purposes of this section, kidney paired donation includes live donor chains.

Live donor means an individual who is:

(i) Medically suitable for donation;

(ii) Is a compatible match to an identified veteran transplant candidate; and

(iii) Has provided informed consent to undergo elective removal of one solid organ, part of a solid organ, or of bone marrow.

Live donor chain means a set of kidney paired donation matches that begins with a donation of a kidney from a live donor without an intended recipient. Such live donor donates a kidney for transplantation into the intended recipient of a prospective live donor. The prospective live donor then donates a kidney for transplantation into a recipient other than the intended recipient. A chain continues to allow donation and receipt of compatible kidneys.

Live Donor Follow-Up Means

(i) For live donors of a solid organ or part of a solid organ, the collection of clinically relevant post-donation live donor data and the provision of recommended clinical laboratory tests and evaluations consistent with Organ Procurement and Transplantation Network policy, and the provision of direct medical care required to address reasonably foreseeable donor health complications resulting directly from the donation procedure.

(ii) For live donors of bone marrow, the provision of direct medical care required to address reasonably foreseeable donor health complications resulting directly from the donation procedure.

Prospective live donor means a person who has volunteered to donate a solid organ, part of a solid organ, or bone marrow to an intended recipient, and who has agreed to participate in any activity VA deems necessary to carry out the intended recipient's transplant procedure.

Transplant candidate means an enrolled veteran or a veteran otherwise eligible for VA's medical benefits package who VA determines has a medical need for a solid organ, part of a solid organ, or bone marrow transplant.

Transplant recipient means a transplant candidate who has undergone transplantation and received a solid organ, part of a solid organ, or bone marrow from a live donor.

(c) *Hospital care and medical services.* To obtain a solid organ, part of a solid organ, or bone marrow for a VA transplant candidate, VA may provide the following hospital care and medical services to a prospective live donor or live donor:

(1) Before removal of a solid organ, part of a solid organ, or bone marrow, VA will provide examinations, tests, and studies necessary to qualify a prospective live donor to donate a solid organ, part of a solid organ, or bone marrow.

(2) During removal of a solid organ, part of a solid organ, or bone marrow, VA will provide the surgical procedure to remove a solid organ, part of a solid organ, or bone marrow from the living donor whose solid organ, part of a solid organ, or bone marrow will be transplanted into an intended recipient.

(3) After removal of a solid organ or part of a solid organ, VA will provide all hospital care, medical services, and other services which are necessary and appropriate to live donor follow-up as defined in paragraph (b) of this section for a period not less than that which the Organ Procurement and Transplantation Network prescribes or recommends or for a period of 2 years, whichever is greater.

(4) After bone marrow removal, VA will provide direct medical care required to address reasonably foreseeable live donor health complications resulting directly from the bone marrow donation procedure for a period not greater than 2 years.

(5) A prospective live donor who is also a veteran enrolled in VA's health care system may receive care and services authorized in paragraphs (c)(1) and (2) only under this section. A live donor who is also a veteran enrolled in VA's health care system may opt to receive the care and services authorized under paragraph (c)(3) or (4) under either the medical benefits package codified at § 17.38 or under this section, but not both at the same time.

(d) *Non-hospital care and non-medical services.* If VA determines the prospective live donor's or the live donor's presence or proximity is necessary, VA will reimburse the travel costs of the prospective live donor or live donor, including one needed attendant or support person, at the rates provided in § 70.30 of this chapter, without the deductibles required by § 70.31 of this chapter, for:

(1) Travel between the prospective live donor's or live donor's residence and the site of hospital care or medical services authorized in paragraph (c) of this section; and

(2) Temporary lodging:

(i) While the live donor is hospitalized for the organ removal procedure; or

(ii) While the prospective live donor's or live donor's participation in the live donor program requires the prospective live donor's or live donor's presence away from home at least overnight and the prospective live donor's or live donor's presence or proximity is determined necessary by VA.

(e) *Use of non-VA facilities and non-VA service providers.* (1) If and only if VA and a non-VA facility or non-VA

service provider have an agreement governed by 38 U.S.C. 8153 or any other applicable authority in title 38, United States Code, a non-VA facility may provide—

(i) A surgical procedure and care and services described in paragraph (c) of this section; or

(ii) Non-hospital care or non-medical services described and otherwise reimbursable under paragraph (d) of this section.

(2) The prospective live donor or live donor is eligible for hospital care and medical services, or travel services, at a non-VA facility solely for the procedure, care, and services described in paragraphs (c) and (d) of this section as governed by an agreement described in paragraph (e)(1) of this section.

(f) *Participation terminated without completion of the intended recipient's transplantation procedure.* (1) VA will provide the prospective live donor or live donor the care and services described in this section for any VA-authorized participation in the intended recipient's organ or bone marrow transplantation process even if the transplantation procedure for which the prospective live donor or live donor volunteered to donate a solid organ, part of a solid organ, or bone marrow is not completed.

(2) A prospective live donor or a live donor may withdraw his or her informed consent at any time and for any reason. In the case of revocation of consent, VA will pay all the costs authorized under this section for the prospective live donor or live donor up until when the donor revokes consent and ends his or her participation.

(g) *Limitation on VA obligation in kidney paired donations.* In kidney paired donations, VA's obligation to provide any procedure, hospital care, or medical services under this section extends:

(1) To the initial prospective live donor who elects to participate in a kidney paired donation matching program, but only for the examinations, tests, and studies described in paragraph (c)(1) of this section for a prospective live donor before kidney removal.

(2) To the live donor whose kidney the intended recipient will receive or has received but only for the services described in paragraphs (c)(2) and (3) of this section.

[FR Doc. 2022–10764 Filed 5–31–22; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 79

RIN 2900–AR33

Legal Services for Homeless Veterans and Veterans At-Risk for Homelessness Grant Program

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: The Department of Veterans Affairs (VA) issues this rule to implement a new authority requiring VA to award grants to eligible entities that will provide certain legal services for homeless veterans and veterans at risk for homelessness. This new grant program is within the continuum of VA's homeless services programs. This rulemaking specifies grant eligibility criteria, application requirements, scoring criteria, constraints on the allocation and use of the funds, and other requirements necessary to implement this grant program.

DATES:

Effective date: This interim final rule is effective July 1, 2022.

Comment date: Comments must be received on or before August 1, 2022.

ADDRESSES: Comments must be submitted through *www.Regulations.gov.* Comments received will be available at *regulations.gov* for public viewing, inspection or copies. Comments received will be available at *regulations.gov* for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: Madolyn Gingell, National Coordinator, Legal Services for Veterans, Veterans Justice Programs, Clinical Services, Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Ave. NW, Washington, DC 20420, (239) 223–4681. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION:

Background on Governing Statute and Public Input

On January 5, 2021, the Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020, Public Law 116–315 (the Act) was enacted in law to improve the lives of veterans during the COVID–19 pandemic and beyond. Several sections, including section 4202, of the Act were created to better serve veterans who are struggling with homelessness or housing insecurity. *Id.* Section 4202 of the Act, codified at section 2022A of title 38, United States Code (U.S.C.), directs the Secretary of Veterans Affairs (Secretary) to award grants to eligible entities to provide legal services to homeless veterans and veterans at risk for homelessness.

The Act requires that VA, in establishing criteria and requirements for grants under section 4202 of the Act, consult with organizations that have experience in providing services to homeless veterans. Therefore, in March 2021, we solicited feedback from selected veteran service organizations, Equal Justice Works (EJW), and other legal services organizations with experience in providing services to homeless veterans via email. VA requested information in five areas: (1) Criteria and requirements necessary to carry out this grant program in rural communities, on trust lands, or in territories and possessions of the United States; (2) types of legal services VA should consider authorizing as part of this grant program; (3) evaluation criteria VA should consider using to assess the operational effectiveness and cost effectiveness of this grant program; (4) general criteria and requirements that VA should have for this grant program; and (5) criteria that VA require for eligible entities to receive grants under this grant program. We received input from 13 organizations. The majority of the comments centered on: (1) Definitions that should be included in the regulation (§ 79.5) and/or Notice of Funding Opportunity (NOFO); (2) the types of legal services that should be provided to eligible veterans to include an expanded view of issues impacting the veteran population that may not be seen as directly tied to housing instability, such as consumer debt issues and income support services (§ 79.20); (3) scoring criteria considerations, which focused on an applicant's connections to a community, ability to work with other organizations, and cultural competence with the affected population being served (§ 79.35); and (4) metrics the legal services programs could use for VA to determine their cost and operational effectiveness. The feedback received is publicly available online at *www.regulations.gov.*

Part 79, of Title 38, Code of Federal Regulations

Through this interim final rule, VA establishes and implements, in new part 79 of title 38, Code of Federal Regulations (CFR), the Legal Services for Homeless Veterans and Veterans At-Risk for Homelessness Grant Program (hereinafter referred to as the ''Grant Program''). Establishment of this new part ensures organization and clarity for

implementation of this new grant program. By issuance of the regulations in this new part, VA implements the Grant Program to award grants to eligible entities who will provide legal services to eligible veterans. The content of this new part is described in detail below.

Consistent with section 4202 of the Act, part 79 is titled the Legal Services for Homeless Veterans and Veterans At-Risk for Homelessness Grant Program.

Section 79.0 Purpose and Scope

Section 79.0 explains the purpose and scope of part 79. Paragraph (a) states that the purpose of this part is to implement the Legal Services for Homeless Veterans and Veterans At-Risk for Homelessness Grant Program. This Grant Program authorizes VA to award legal services grants to eligible entities to provide legal services to eligible veterans. This is consistent with the intent and purpose of section 4202 of the Act.

Paragraph (b) states that legal services covered by this part are those services that address the needs of eligible veterans who are homeless or at risk for homelessness. This is consistent with the intent and purpose of the Grant Program described in section 4202 of the Act.

Section 79.5 Definitions

Section 79.5 contains the definitions for key terms that apply to the new part 79 and to any Notice of Funding Opportunity (NOFO) for this Grant Program. The definitions are listed in alphabetical order, beginning with the definition of applicant.

VA defines applicant to mean an eligible entity that submits an application for a legal services grant announced in a NOFO. VA is defining applicant in this manner since only an eligible entity, as specified in § 79.10, may submit an application for a legal services grant under this part in accordance with § 79.25. This definition is based also on a plain language understanding of this term and is consistent with other grant programs that VA administers, such the Supportive Services for Veteran Families (SSVF) Program. *See* 38 CFR 62.2. As explained in § 79.25, VA will require submission of an application similar to other grant programs that VA administers.

VA defines at risk for homelessness to mean an individual who meets the criteria identified in § 79.15(b).

VA defines direct Federal financial assistance to mean Federal financial assistance received by an entity selected by the Government or a pass-through entity as defined in 38 CFR 50.1(d) to provide or carry out a service (*e.g.,* by contract, grant, or cooperative agreement). This term is used for purposes of § 79.80 pertaining to faith-based organizations and is consistent with how VA defines this in the SSVF Program. *See* 38 CFR 62.62.

VA defines disallowed costs as costs charged by a grantee that VA determines to be unallowable based on applicable Federal cost principles or based on this part or the legal services grant agreement. This is consistent with how VA defines this term in the SSVF Program. *See* 38 CFR 62.2. This term is used for purpose of grant closeout procedures in § 79.115.

VA defines eligible entity to mean an entity who meets the requirements of § 79.10.

VA defines eligible veteran as a veteran that meets the requirements of § 79.15(a) or (b). As discussed later in this rulemaking, § 79.15 describes the eligibility criteria to be an eligible veteran under part 79.

VA defines grantee as an eligible entity that is awarded a legal services grant under this part. This is consistent with how VA defines grantee for other VA grant programs and is consistent with the plain meaning of this term.

Consistent with 38 U.S.C. 2002(a)(1), VA defines homeless veteran to mean a veteran who is homeless as that term is defined in subsection (a) or (b) of section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302).

For the purposes of this part, Indian tribe means an Indian tribe as defined in 25 U.S.C. 4103. Section 4103(13)(A) of title 25, U.S.C., defines Indian tribe in general to mean a tribe that is a Federally or a State recognized tribe. Section 4103(13)(B) of title 25, U.S.C., further defines Federally recognized tribe to mean any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians pursuant to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.*). Section 4103(13)(C) of title 25, U.S.C., also defines State recognized tribe to mean any tribe, band, nation, pueblo, village, or community—(1) that has been recognized as an Indian tribe by any State; and (2) for which an Indian Housing Authority has, before the effective date under section 705, entered into a contract with the Secretary of Housing and Urban Development pursuant to the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) for housing for Indian families and has received funding pursuant to such contract within the 5-year period ending upon such effective date. This definition also includes certain conditions set forth in 25 U.S.C. 4103(13)(C)(ii).

VA defines indirect Federal financial assistance to mean Federal financial assistance in which a service provider receives program funds through a voucher, certificate, agreement or other form of disbursement, as a result of the genuine, independent choice of a participant. This term is used for purposes of § 79.80 and is consistent with how VA defines this in the SSVF Program. *See* 38 CFR 62.62.

VA defines legal services as those services listed in § 79.20. This is consistent with 38 U.S.C. 2022A(d) regarding the use of funds under section 4202 of the Act.

VA defines legal services grant as a grant awarded under this part. This definition is based on the plain language understanding of this term.

VA defines legal services grant agreement as the agreement executed between VA and a grantee as specified under § 79.70. This definition is based on the plain language understanding of this term and is consistent with the definition of similar terms in other VA regulations. See § 62.2.

VA defines a non-profit private entity as an entity that meets the criteria in § 79.10(c).

VA defines notice of funding opportunity (NOFO) using the meaning given to this term in 2 CFR 200.1. Section 200.1 defines NOFO to mean a formal announcement of the availability of Federal funding through a financial assistance program from a Federal awarding agency. The NOFO provides information on the award, who is eligible to apply, the evaluation criteria for selection of an awardee, required components of an application, and how to submit the application. The NOFO is any paper or electronic issuance that an agency uses to announce a funding opportunity, whether it is called a ''program announcement,'' ''notice of funding availability,'' ''broad agency announcement,'' ''research announcement,'' ''solicitation,'' or some other term. Part 200 of 2 CFR establishes the uniform administrative requirements, cost principles, and audit requirements for Federal awards to non-Federal entities. This grant program would be subject to the requirements of 2 CFR part 200.

VA defines participant to mean an eligible veteran who is receiving legal services from a grantee under this part. This definition is necessary for purposes of understanding part 79 and the Grant Program.

VA defines public entity to mean an entity that meets the criteria in § 79.10(b).

VA defines rural communities to mean those communities considered rural according to the Rural-Urban Commuting Area (RUCA) system as determined by the United States Department of Agriculture (USDA). VA will use this term and its definition for purposes of prioritizing the distribution of grants to rural communities pursuant to section 4202 of the Act. For more information on RUCA, please refer to *https://www.ers.usda.gov/data-products/rural-urban-commuting-area-codes/.*

VA defines State to mean any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. This is consistent with the definition of State as used in 38 U.S.C. 101(20) and in the SSVF Program (see § 62.2). This is also consistent with the definition of State as used in 2 CFR 200.1.

VA defines subcontractor to mean any third-party contractor, of any tier, working directly for an eligible entity.

VA defines suspension to mean an action by VA that temporarily withdraws VA funding under a legal services grant, pending corrective action by the grantee or pending a decision to terminate the legal services grant by VA. Suspension of a legal services grant is a separate action from suspension under VA regulations or guidance implementing Executive Orders 12549 and 12689, ''Debarment and Suspension.'' This definition is consistent with the SSVF Program's definition for this term. See § 62.2. However, with regards to implementing Executive Orders 12549 and 12689, VA has added the word guidance, as not all of VA's implementations of Executive Orders are regulatory.

Tribal organization has the meaning given that term in 25 U.S.C. 5304. Section 5304 defines a tribal organization as the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: Provided, that in any case where a contract is let or grant is made to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant. This definition is consistent with the reference to tribal organizations in section 4202 of the Act.

Trust land has the meaning given that term in 38 U.S.C. 3765. Section 3765 defines trust land to mean any land that (A) is held in trust by the United States for Native Americans; (B) is subject to restrictions on alienation imposed by the United States on Indian lands (including native Hawaiian homelands); (C) is owned by a Regional Corporation or a Village Corporation, as such terms are defined in section 3(g) and 3(j) of the Alaska Native Claims Settlement Act, respectively (43 U.S.C. 1602(g), (j)); or (D) is on any island in the Pacific Ocean if such land is, by cultural tradition, communally-owned land, as determined by the Secretary.

VA defines very low income to mean a veteran's income is 50 percent or less of the median income for an area or community. This is consistent with the definition of very low-income veteran family used for purposes of the SSVF Program but tailored to individuals for purposes of this program. See 38 U.S.C. 2044(f)(6). VA believes that incorporating an eligible entity's experience with low-income populations as an alternative criterion will be helpful in determining organizations' familiarity with populations similar to those targeted by the Grant Program, homeless veterans and veterans who are at risk for homelessness. We note that this term is used throughout part 79, including § 79.35 regarding scoring criteria for legal services grant applicants and § 79.40 regarding preferences for selection of grantees. We note that an individual is not required to be considered very low income to be eligible for receive legal services provided pursuant this Grant Program. See § 79.15 for eligibility criteria.

Veteran has the same meaning given that term under 38 U.S.C. 101(2). Section 101 of title 38, U.S.C., defines veteran as a person who served in the active military, naval, air, or space service, and who was discharged or released therefrom under conditions other than dishonorable. This term is used for purposes of identifying eligible veterans as defined in § 79.15 in this part.

VA defines withholding to mean that payment of a legal services grant will not be paid until such time as VA determines that the grantee provides sufficiently adequate documentation and/or actions to correct a deficiency for the legal services grant. This term is defined in this manner as it is intended to provide a general description of how this term is used in 2 CFR part 200, which governs VA grant programs including the legal services grant program. This term relates to withholding payment of a legal services grant pursuant to § 79.110, described later in this rulemaking.

Section 79.10 Eligible Entities

Consistent with 38 U.S.C. 2022A(c), § 79.10 provides the criteria for an entity to be considered an eligible entity. Paragraph (a) provides that, in order to be an eligible entity under this part, the entity must (1) be a public or nonprofit private entity with the capacity to effectively administer a grant under this part; (2) demonstrate that adequate financial support will be available to carry out the services for which the grant is sought consistent with the legal services grant application; and (3) agree to meet the applicable criteria and requirements of this part.

Paragraph (b) provides that a public entity must be a local government, State government, or federally recognized Indian tribal government. Paragraph (b)(1) states that local government consists of either a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937), school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government. Paragraph (b)(2) states that a public entity can be a State government. Paragraph (b)(3) states that federally recognized Indian tribal government means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs. Using these definitions establishes consistency and uniformity among Federal agencies in the administration of grants and cooperative

agreements to State, local, and federally recognized Indian tribal governments.

Paragraph (c) states that a non-profit private entity is an entity that meets the requirements of 26 U.S.C. 501(c)(3) or (19). We would reference 26 U.S.C. 501(c)(3) or (19) as the Internal Revenue Service determines non-profit designation for purposes of tax exemptions pursuant to such statute. Subsection 501(c)(3) includes corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation (except as otherwise provided in 26 U.S.C. 501(h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Subsection 501(c)(19) of title 26 includes a post or organization of past or present members of the Armed Forces of the United States, or an auxiliary unit or society of, or a trust or foundation for, any such post or organization—(A) organized in the United States or any of its possessions, (B) at least 75 percent of the members of which are past or present members of the Armed Forces of the United States and substantially all of the other members of which are individuals who are cadets or are spouses, widows, widowers, ancestors, or lineal descendants of past or present members of the Armed Forces of the United States or of cadets, and (C) no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 79.15 Eligible Veterans

Section 79.15 describes the criteria for individuals to receive legal services under this Grant Program. Pursuant to paragraph (a) of this section, to be eligible for legal services under this part, an individual must be a homeless veteran or a veteran at risk for homelessness.

Under paragraph (b), VA provides the criteria to be considered at risk for homelessness. At risk for homelessness in this part means an individual who does not have sufficient resources or support networks, *e.g.,* family, friends, faith-based or other social networks, immediately available to prevent them from moving to an emergency shelter or another place described in paragraph (1) in the definition of ''homeless'' found in 24 CFR 576.2 and meets one or more of the following conditions: (1) Has moved because of economic reasons two or more times during the 60 days immediately preceding the application for assistance; (2) is living in the home of another because of economic hardship; (3) has been notified in writing that their right to occupy their current housing or living situation will be terminated within 21 days after the date of application for assistance; (4) is constructively evicted from their current housing because of untenable conditions created by the landlord such as shutting off electricity and water or discriminatory acts; (5) lives in a hotel or motel and the cost of the hotel or motel stay is not paid by charitable organizations or by Federal, State, or local government programs for low-income individuals; (6) lives in a single-room occupancy or efficiency apartment unit in which there reside more than two persons or lives in a larger housing unit in which there reside more than 1.5 persons reside per room, as defined by the U.S. Census Bureau; (7) is exiting a publicly funded institution, or system of care (such as a health-care facility, a mental health facility, foster care or other youth facility, or correction program or institution); (8) is fleeing, or is attempting to flee domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual, including a child, that has either taken place within the individual's primary nighttime residence or has made the individual afraid to return to their primary nighttime residence; or (9) otherwise lives in housing that has characteristics associated with instability and an increased risk for homelessness.

As section 4202 of the Act did not define the term ''at risk of homelessness,'' we researched how VA has defined this term for other programs, such as SSVF Program. In such programs, VA has used the definition used by HUD in implementing emergency solutions grants pursuant to the McKinney-Vento Homeless Assistance Act. See 24 CFR 576.2. Thus, for purposes of this Grant Program, we are using the definition of at risk of homelessness as defined in § 576.2. However, we have made minor changes to the definition to better reflect the purpose of this Grant Program. First, we removed the criterion that the individual has an annual income below 30 percent of the median family income for the area, as determined by HUD. We do not want veterans to be unable to receive services due to income limitations. VA recognizes that there may be situations where a veteran earns an income beyond the HUD limitation in 24 CFR 576.2(i) but is still unable to maintain housing because of a high cost of living where they reside. We also did not include homelessness prevention as a qualifier for assistance found in 24 CFR 576.2(iii)(A). VA recognizes that other types of assistance exist that that may not fall specifically under homelessness prevention assistance but have the impact of preventing homelessness. We also added two new possible criteria for eligibility in § 79.15(b)(4) and (8): Constructive eviction due to untenable conditions created by the landlord; and situations involving intimate partner violence. These criteria were added in response to recommendations from legal service organizations during the consultation in March 2021. Commenters made these suggestions based on their experience providing legal services to homeless and at-risk veterans. Thus, we believe that these additional criteria would ensure legal services provided pursuant to these grants would be more responsive to the needs of these veterans. Finally, we removed the provisions related to children and family members because this Grant Program is designed to assist individual veterans. Although the ultimate outcome of the legal service provided to a veteran may positively impact that veteran's children or family, the direct impact of this grant was designed to assist individual veterans.

Section 79.20 Legal Services

Consistent with 38 U.S.C. 2022A(d), 38 CFR 79.20 enumerates allowable legal services covered under this Grant Program. These include (a) legal services related to housing, including eviction defense, representation in landlord-tenant cases, and representation in foreclosure cases; (b) legal services related to family law, including assistance in court proceedings for child support and custody, divorce, estate planning, and family reconciliation; (c) legal services related to income support, including assistance in obtaining public benefits; (d) legal services related to criminal defense, including defense in matters symptomatic of homelessness, such as outstanding warrants, fines, and driver's license revocation, and citations (to reduce recidivism and facilitate the

overcoming of reentry obstacles in employment or housing, covered legal services relating to criminal defense also include legal assistance with request to expunge or seal a criminal record); (e) legal services relating to requests to upgrade the characterization of discharge or dismissal of a former member of the Armed Forces under 10 U.S.C. 1553; and (f) other covered legal services as the Secretary determines appropriate.

Those other legal services include: Legal assistance with protective orders and other matters related to domestic or intimate partner violence; access to health care; consumer law matters, such as debt collection, garnishments, usury, fraud, deceit, and financial exploitation; employment law matters; and unmet legal needs of male and female veterans enumerated in VA's annual Community Homelessness Assessment, Local Education and Networking Groups (CHALENG) survey for the grant award year. We intentionally left the legal services categories broad enough to provide grantees with flexibility to determine the types of legal services that an organization could provide within each category. In addition, VA may periodically review the legal services enumerated above and make modifications as necessary through the rulemaking process to meet the needs of eligible veterans.

Section 79.25 Applications for Legal Services Grants

Section 79.25 sets forth the criteria for a complete application for a legal services grant under this part.

Paragraph (a) explains that applicants must submit a complete application package for a legal services grant, as described in the NOFO, and enumerates the necessary information for VA to consider the application package complete. This list of items described in paragraph (a) ensures that VA can adequately evaluate applicants for the purposes of this Grant Program.

A complete legal services grant application package includes: (1) A description of the legal services to be provided by the applicant and the identified need for such legal services among eligible veterans; (2) a description of how the applicant will ensure that services are provided to eligible veterans, including women veterans; (3) a description of the characteristics of eligible veterans who will receive legal services provided by the applicant; (4) an estimate with supporting documentation of the number of eligible veterans who will receive legal services provided by the applicant, including an estimate of the number of eligible women veterans, who will receive legal services provided by the applicant; (5) a plan for how the applicant will use at least ten percent of the grant funds to serve eligible women veterans; (6) documentation describing the experience of the applicant and any identified subcontractors in providing legal services to eligible veterans; (7) documentation relating to the applicant's ability to coordinate with any identified subcontractors; (8) documentation of the applicant's capacity to effectively administer a grant under this section that describes the applicant's: (i) Accounting practices and financial controls; (ii) capacity for data collection and reporting required under this part; and (iii) experience administering other Federal, State, or county grants similar to the Grant Program under this part; (9) documentation of the managerial capacity of the applicant to: (i) Coordinate the provision of legal services by the applicant or by other organizations on a referral basis; (ii) assess continuously the needs of eligible veterans for legal services; (iii) coordinate the provision of legal services with services provided by VA; (iv) customize legal services to the needs of eligible veterans; and (v) comply with and implement the requirements of this part throughout the term of the legal services grant; (10) documentation that demonstrates that adequate financial support will be available to carry out the legal services for which the grant is sought consistent with the application; and (11) any additional information as deemed appropriate by VA. VA plans to offer technical assistance to help prospective applicants clarify any aspects of the application package.

We note that the requirement in § 79.25(a)(5) that applicants provide in their application a plan for how they will use at least ten percent of the grant funds to serve eligible women veterans is included in order to meet the requirement in 38 U.S.C. 2022A(e). Subsection (e) requires that for any fiscal year, not less than ten percent of the amount authorized to be appropriated for grants under section 2022A be used to provide legal services under this part to women veterans.

Paragraph (b) states that subject to funding availability, grantees may submit an application for renewal of a legal services grant if the grantee's program will remain substantially the same. To apply for renewal of a legal services grant, a grantee must submit to VA a complete legal services grant renewal application package, as described in the NOFO. This is consistent with how VA administers other VA grant programs, such as the SSVF Program under part 62 and will allow VA to renew grants in an efficient and timely manner so that there will be no lapse in the provision of legal services by grantees to participants from year to year.

Paragraph (c) establishes that VA may request, in writing, that an applicant or grantee, as applicable, submit other information or documentation relevant to the legal services grant application. Consistent with 38 U.S.C. 2022A(b)(1)(A), VA may then request additional information that may not be in the initial or renewal application but will be necessary for VA to properly evaluate the applicant or grantee for a legal services grant.

Section 79.30 Threshold Requirements Prior To Scoring Legal Services Grant Applicants

Section 79.30 sets forth the threshold requirements for further scoring applicants pursuant to § 79.35. This section explains that VA will only score applicants for the Grant Program if they meet certain threshold requirements as set forth in paragraphs (a) through (g).

These threshold requirements in paragraphs (a) through (g) include that the application is filed within the time period established in the NOFO, and any additional information or documentation requested by VA under § 79.25(c) is provided within the time frame established by VA; the application is completed in all parts; the activities for which the legal services grant is requested are eligible for funding under part 79; the applicant's prospective participants are eligible to receive legal services under that part; the applicant agrees to comply with the requirements of that part; the applicant does not have an outstanding obligation to the Federal Government that is in arrears and does not have an overdue or unsatisfactory response to an audit; and the applicant is not in default by failing to meet the requirements for any previous Federal assistance.

These requirements are minimum requirements that must be met before VA will score applications, and applicants will be able to understand whether they meet these threshold requirements in advance of application submission. The threshold requirements are intended to be an administrative checklist with which applicants would confirm compliance prior to submitting a legal services grant application. VA anticipates this will reduce the amount of time and resources that VA will dedicate to evaluating and scoring applicants. These threshold

requirements are consistent with other VA grant programs, such as the SSVF Program. *See* 38 CFR 62.21.

Section 79.35 Scoring Criteria for Legal Services Grant Applicants

Section 79.35 sets forth the criteria to be used to score applicants who are applying for a legal services grant. Since VA has a limited amount of funds available to distribute through the Grant Program and the number of qualified applicants may exceed available funds, VA is establishing scoring criteria for awarding legal services grants. Utilization of these scoring criteria will allow VA to distribute these grants consistent with section 4202 of the Act and VA's goals and objectives for the Grant Program which will be detailed in the NOFO. The categories are weighted differently according to their likelihood of impacting a grantee's successful development and operation of a grant program. These criteria are consistent with feedback received from commenters during our consultation with legal service providers. The criteria, which are discussed in depth below, are enumerated in paragraphs (a) through (e).

While this section does not include specific point values for each criterion, the regulation provides that such point values will be set forth in the NOFO. This will allow VA to retain flexibility in determining those point values each year of the Grant Program in the event that such point values need to change.

Paragraph (a) explains that VA will award points based on the background, qualifications, experience, and past performance, of the applicant and any subcontractors identified by the applicant in the legal services grant application, as demonstrated by the following: (1) Background and organizational history; and (2) organization and staff qualifications. These scoring criteria are important to determine whether applicants have the necessary and relevant background and experience to provide legal services consistent with this part and section 4202 of the Act.

In scoring an applicant's background and organizational history under paragraph (a)(1), VA will consider the applicant's, and any identified subcontractors', background and organizational history relevant to providing legal services; whether the applicant, and any identified subcontractors, maintain organizational structures with clear lines of reporting and defined responsibilities; and whether the applicant, and any identified subcontractors, have a history of complying with agreements and not defaulting on financial obligations.

In scoring an applicant's staff qualifications under paragraph (a)(2), VA will score applications based on the experience of the applicant and any identified subcontractors working with veterans or individuals who are homeless, at risk for homelessness, or who have very low income, as defined under part 79. Having experience and understanding of the veteran population would bring a military and veteran cultural competency that is critical for ensuring that the needs of eligible veterans are met through the Grant Program. This is consistent with the feedback received through consultation. The mix of general and specific criteria with respect to experience with veterans allows VA flexibility to award points at various levels (local, regional, State) since the types of experience entities at those levels may have can vary. Thus, pursuant to paragraph (a), VA will score applicants not only based on their experience administering programs similar to a legal services grant program and providing services to those who are homeless, at risk for homelessness, or very low-income, but also based on the applicant's experience working with veterans.

VA notes that while not required by the statute, it believes including an applicant's experience with very low-income populations as an alternative criterion will be useful to determine organizations' familiarity with populations similar to the target populations in the Grant Program, homeless veterans and veterans who are at risk for homelessness. By having low income as an option for applicants to demonstrate past experience, qualified applicants may be able to present experience administering a program similar in type and scale to the legal services contemplated by the Grant Program, if not specifically with individuals who are homeless, at risk for homelessness, or veterans. Accordingly, VA will score applications based on the experience of the applicant and identified subcontractors providing legal services, including providing such services to veterans, or individuals who are homeless, at risk for homelessness or who have very low income.

Relatedly, VA will score applicants also based on the qualifications of the applicant's staff and any identified subcontractors' staff to administer legal services. This would include, as applicable, confirmation that the applicant, and any identified subcontractor, has barred attorneys on staff or a plan to hire such attorneys who are in good standing as a member of the applicable State bar. It would also consider the experience that applicants' staff administering programs similar to this Grant Program.

Paragraph (b) explains that VA will award points based on the applicant's program concept and legal services plan. The scoring criteria under this paragraph are important for VA to use to determine whether the applicant has a fully developed program concept and plan that will meet the intent of this part and section 4202 of the Act. Points awarded in accordance with this paragraph may be demonstrated by the following: (1) Need for the program, (2) outreach and screening plan, (3) program concept, (4) program implementation timeline, (5) collaboration and communication with VA, (6) ability to meet VA's requirements, goals, and objectives for the Grant Program, and (7) capacity to undertake the program.

VA will score the need for the program under paragraph (b)(1) based on whether the applicant has shown a need amongst eligible veterans in the area or community where the program will be based and whether the applicant understands the legal service needs unique to eligible veterans in the area or community where the program will be based.

VA will score the outreach and screening plan under paragraph (b)(2) based on whether the applicant has a feasible outreach and referral plan to identify and assist eligible veterans in need of legal services, has a plan to process and receive legal services referrals for eligible veterans, and has a plan to assess and accommodate the needs of referred eligible veterans.

VA will score the applicant's program concept under paragraph (b)(3) based on whether the applicant's program concept, size, scope, and staffing plan are feasible, and the applicant's program is designed to meet the needs of eligible veterans in the area or community where the program will be based.

VA will score the program implementation timeline under paragraph (b)(4) based on whether the applicant's program will be implemented in a timely manner and legal services will be delivered to eligible veterans as quickly as possible and within a specified timeline. VA will also score this based on whether the applicant has a hiring plan in place to meet the applicant's program timeline or has existing staff to meet such timeline.

VA will score the ability of an applicant to collaborate and communicate with VA under paragraph (b)(5) based on the strength of the

applicant's plan to coordinate outreach and services with local VA facilities.

VA will score the applicant's ability to meet VA's requirements, goals and objectives for the Grant Program under paragraph (b)(6) based on whether the applicant is committed to ensuring that its program meets VA's requirements, goals, and objectives for the Grant Program as identified in the NOFO.

Lastly, VA will score the applicant's capacity to undertake its proposed legal services program under paragraph (b)(7) based on whether the applicant has sufficient capacity, including staff resources, to undertake the program.

Paragraph (c) explains that VA will award points based on the applicant's quality assurance and evaluation plan, as demonstrated by (1) program evaluation, (2) monitoring, (3) remediation, and (4) management and reporting. This scoring criterion is important to ensure that applicants can meet any requirements for evaluation, monitoring, and reporting contained in this part and will help VA ensure that grant funds are being used appropriately and will assist in the overall assessment of the program.

Under paragraph (c)(1), VA will evaluate whether the applicant has demonstrated an ability to evaluate its program through the presence of clear, realistic, and measurable metrics that align with the Grant Program's aim of addressing the legal needs of eligible veterans and through which the applicant's program performance can be continually evaluated.

Under paragraph (c)(2), VA will score the applicant's ability to monitor its proposed legal services program based on whether the applicant has adequate controls in place to regularly monitor the program, including any subcontractors, for compliance with all applicable laws, regulations, and guidelines; whether the applicant has adequate financial and operational controls in place to ensure the proper use of legal services grant funds; and the applicant has a plan for ensuring that the applicant's staff and any identified subcontractors are appropriately trained and comply with the requirements of part 79.

VA will score applicants' ability to remediate program issues under paragraph (c)(3) based on the applicant's plan or established system for remediating non-compliant aspects of the program if and when they are identified.

VA will score an applicant's ability to conduct management and reporting functions in its proposed legal services program under paragraph (c)(4) based on whether the applicant's program management team has the capability and a system in place to provide to VA timely and accurate reports at the frequency set by VA.

Paragraph (d) explains that VA will award points based on the applicant's financial capability and plan, as demonstrated by: (1) Organizational finances (based on whether applicant, and any identified subcontractors, are financially stable); and (2) financial feasibility of program (based on whether the applicant has a realistic plan for obtaining all funding required to operate the program for the period of the legal services grant; and whether applicant's program is cost-effective and can be effectively implemented on-budget). These are important to ensure that funds are not provided to an applicant that has not considered the costs and has not developed a plan to ensure they have the necessary funding for administering a legal services program.

Paragraph (e) explains that VA will award points based on the applicant's area or community linkages and relations, as demonstrated by the (1) area or community linkages, (2) past working relationships, (3) local presence and knowledge, and (4) integration of linkages and program concept. This is important for ensuring success of the applicant's proposed legal services program. VA acknowledges that applicants may not have these existing linkages and relationships but may develop them over time. VA also acknowledges that certain applicants without these existing linkages and relationships may obtain them through community partners. Area or community linkages under paragraph (e)(1) will include whether the applicant has a plan for developing or has existing linkages with Federal (including VA), State, local, and tribal governments, agencies, and private entities for the purposes of providing additional legal services to eligible veterans. Past working relationships under paragraph (e)(2) will include whether the applicant (or applicant's staff), and any identified subcontractors (or subcontractors' staff), have fostered successful working relationships and linkages with public and private organizations providing legal and non-legal supportive services to veterans who are also in need of legal services similar to those covered under the Grant Program. Local presence and knowledge under paragraph (e)(3) will be based on whether the applicant has a presence in the area or community to be served by the applicant and understands the dynamics of the area or community to be served by the applicant. Integration of linkages and program concept under paragraph (e)(4) will be based on whether the applicant's linkages to the area or community to be served by the applicant enhance the effectiveness of the applicant's program.

Section 79.40 Selection of Grantees

In accordance with the Act, § 79.40 sets forth the process for selecting applicants for legal services grants, including distribution requirements from section 4202 of the Act. The scoring criteria are enumerated in paragraphs (a) through (f).

Paragraph (a) explains that VA will score all applicants that meet the threshold requirements set forth in § 79.30 using the scoring criteria set forth in § 79.35.

Paragraph (b) explains that VA will group applicants within the applicable funding priorities if funding priorities are set forth in the NOFO. As funding priorities can change annually, VA will set forth any funding priorities in the NOFO, which will allow VA flexibility in updating priorities in a quick and efficient manner every year that funds are available under this Grant Program.

Paragraph (c) sets forth how applicants are ranked. VA will rank those applicants that receive at least the minimum amount of total points and points per category set forth in the NOFO, within their respective funding priority group, if any. VA will set forth the minimum amount of total points and points per category in the NOFO as these can change annually. Setting forth these points in the NOFO will provide VA flexibility in updating the minimum amount of points in an efficient and quick manner. The applicants will be ranked in order from highest to lowest scores, within their respective funding priority group, if any.

Paragraph (d) explains that VA will use the applicant's ranking as the primary basis for selection for funding. However, consistent with section 4202 of the Act, paragraph (d) further explains VA preferences. In paragraph (d)(1), VA will give preference to applicants that have the demonstrated ability to provide legal services to eligible veterans who are homeless, at risk for homelessness or have very low income, as defined by this part.

In paragraph (d)(2), to the extent practicable, VA will ensure that legal services grants are equitably distributed across geographic regions, including rural communities, trust lands, Native Americans, and tribal organizations, consistent with 38 U.S.C. 2022A(f).

Lastly, in paragraph (d)(3), VA will give preference to applicants with a demonstrated focus on women veterans as set forth in the NOFO. VA will set forth information in the NOFO that will

explain to applicants how this preference may be met with their application.

VA notes that legal services grant applications must include applicants' identification of the target populations and the area or community the applicant proposes to serve. VA will use this information in determining the distribution of legal services grants consistent with paragraph (d).

Paragraph (e) explains that subject to paragraph (d) of this section which sets forth the preference and distribution requirements and considerations, VA will fund the highest-ranked applicants for which funding is available, within the highest funding priority group, if any.

Similar to existing processes in other VA grant programs, such as the SSVF Program (38 CFR 62.61), paragraph (f) authorizes VA to still select an applicant for funding if that applicant is not initially selected because of a procedural error by VA. An applicant would not be required to submit a new application in this situation. This will ease any administrative burden on applications and could be used in situations where there is no material change in the information that would have resulted in the applicant's selection for a grant under this part.

Section 79.45 Scoring Criteria for Grantees Applying for Renewal of Legal Services Grants

Section 79.45 describes the criteria that VA will use to score grantees under part 79 that are applying for renewal of a grant. Such criteria will assist with VA's review and evaluation of grantees to ensure that those grantees have successful existing programs using the previously awarded grant funds and that they have complied with the requirements of part 79 and of section 4202 of the Act. Applicants applying for renewal of a legal services grant will receive a score based on the scoring criteria enumerated in paragraphs (a) through (c).

While this section does not include specific point values for the criteria, such point values will be set forth in the NOFO. This will allow VA to retain flexibility in determining those point values each year of the Grant Program.

Under paragraph (a), VA will award points based on the success of the grantee's program, as demonstrated by the following: (1) Participants were satisfied with the legal services provided by the grantee; (2) the grantee delivered legal services to participants in a timely manner; (3) the grantee implemented the program by developing and sustaining relationships with community partners to refer veterans in need of legal services; and (4) the grantee was effective in conducting outreach to eligible veterans, including to women veterans, and increased engagement of eligible veterans seeking legal services provided by the grantee.

Paragraph (b) explains that points will be awarded based on the cost-effectiveness of the grantee's program, as demonstrated by the following: (1) The cost per participant was reasonable, and (2) the grantee's program was effectively implemented within budget.

Paragraph (c) explains that VA will award points based on the extent to which the grantee complied with the Grant Program's goals and requirements, as demonstrated by the following: (1) The grantee's program was administered in accordance with VA's goals for the Grant Program as described in the NOFO; (2) the grantee's program was administered in accordance with all applicable laws, regulations, and guidelines; and (3) the grantee's program was administered in accordance with the grantee's legal services grant agreement.

These criteria in paragraphs (a) through (c) ensure that renewal of grants is awarded based on the grantee's program's success, cost-effectiveness, and compliance with VA goals and requirements for this Grant Program. This is consistent with how VA awards renewals of grants in other programs, such as the SSVF Program. *See* 38 CFR 62.24.

Section 79.50 Selecting Grantees for Renewal of Legal Services Grants

Section 79.50 describes the process for selecting grantees that are applying for renewal of such grants. VA scores renewal applicants under a simplified process based on the success and cost effectiveness of their legal services program and their program's compliance with VA requirements and programmatic goals. The scoring criteria is enumerated in paragraphs (a) through (e).

Paragraph (a) explains that so long as grantees continue to meet the threshold requirements in § 79.30, VA will score the grantee using the scoring criteria set forth in § 79.45.

Under paragraph (b), VA will rank those grantees who receive at least the minimum amount of total points and points per category set forth in the NOFO, and such grantees will be ranked in order from highest to lowest scores.

Paragraph (c) explains that VA will use the grantee's ranking as the basis for selection for funding and that VA will fund the highest-ranked grantees for which funding is available.

Paragraph (d) explains that, at its discretion, VA may award any non-renewed funds to an applicant or existing grantee. If VA chooses to award non-renewed funds to an applicant or existing grantee, VA will first offer to award the non-renewed funds to the applicant or grantee with the highest grant score under the relevant NOFO that applies for, or is awarded a renewal grant in, the same community as, or a proximate community to, the affected community. Such applicant or grantee will be required to have the capacity and agree to provide prompt services to the affected community. Under this section, the relevant NOFO means the most recently published NOFO which will cover the geographic area that includes the affected community, or for multi-year grant awards, the NOFO for which the grantee, who is offered the additional funds, received the multi-year award. If the first such applicant or grantee offered the non-renewed funds refuses the funds, VA will then offer to award the funds to the next highest-ranked such applicant or grantee, per the criteria in paragraph (d)(1) of this section, and continue on in rank order until the non-renewed funds are awarded.

Paragraph (e) authorizes VA to select an existing grantee for available funding, based on the grantee's previously submitted renewal application, if that grantee is not initially selected for renewal because of a procedural error by VA. A grantee would not be required to submit a new renewal application in this situation. This will ease any administrative burden on grantees and could be used in situations where there is no material change in the renewal application that would have resulted in the grantee's selection for renewal of a grant under part 79.

Section 79.55 General Operation Requirements

Section 79.55 establishes requirements for the general operation of legal services programs provided for under part 79. These requirements are enumerated in paragraphs (a) through (f).

Paragraph (a) address eligibility documentation. Paragraph(a)(1) explains that prior to providing legal services, grantees must verify, document, and classify each participant's eligibility for legal services. This ensures that grantees are providing services and using grant funds for those who are eligible for such services under this Grant Program and consistent with section 4202 of the Act.

In paragraph (a)(2), once the grantee initiates legal services, the grantee will continue to provide legal services to the participant through completion of the legal services so long as the participant continues to meet the eligibility criteria set forth in § 79.15. In paragraph (a)(3), if a grantee finds at any point in the grant award period that a participant is ineligible to receive legal services under part 79, or that the provider is unable to meet the legal needs of that participant, the grantee must document the reason for the participant's ineligibility or the grantee's inability to provide legal services. Then, the grantee must provide the veteran information on other available programs or resources or provide a referral to another legal services organization that is able to meet that veteran's needs.

Under paragraph (b), for each participant who receives services from the grantee, the grantee must document the legal services provided, how such services were provided, the duration of the services provided, any goals for the provision of such services, and measurable outcomes of the legal services provided as determined by the Secretary, such as whether the participant's legal issue was resolved. This is information that grantees typically maintain regarding the provision of these or similar services. Additionally, this information may be requested by VA for purposes of monitoring the grantee's operation and compliance with part 79 and will be collected as part of the grantee's reporting requirements in § 79.95 and will be required to be maintained for at least three years (consistent with the recordkeeping requirements in § 79.100), of which VA may request for auditing and evaluation purposes.

Under paragraph (c), grantees would be required to maintain the confidentiality of records kept in connection to legal services provided to participants. Grantees that provide legal services would be required to establish and implement procedures to ensure the confidentiality of records pertaining to any participant and the address or location where the legal services are provided. The confidentiality maintained should be consistent with the grantee's State bar rules of confidentiality in an attorney-client relationship.

Under paragraph (d), prior to initially providing legal services to a participant, the grantee is required to notify each participant of the following: (1) That the legal services are being paid for, in whole or in part, by VA; (2) the legal services which are available to the participant through the grantee's program; and, (3) any conditions or restrictions on the receipt of legal services by the participant.

Under paragraph (e), VA requires that grantees regularly assess how legal services grant funds can be used in conjunction with other available funds and services to ensure continuity of program operations and to assist participants. This encourages grantees to leverage other financial resources to ensure continuity of program operations and assistance to participants.

Lastly, under paragraph (f), VA requires that grantees ensure that legal services grants are administered in accordance with the requirements of part 79, the legal services grant agreement, and other applicable laws and regulations. Grantees must ensure that any subcontractors carry out activities in compliance with part 79.

Section 79.60 Fee Prohibition

Section 79.60 prohibits grantees from charging a fee to participants for providing legal services that are funded with amounts from a legal services grant under part 79. VA believes this prohibition is appropriate, as similar prohibitions have been implemented for other similar grant programs, such as the SSVF Program, and is consistent with the intent of Section 4202 of the Act. *See* 38 CFR 62.37.

Section 79.65 Notice of Funding Opportunity

Section 79.65 discusses the contents of the Notice of Funding Opportunity (NOFO). The NOFO is a notice published in the **Federal Register** and on *grants.gov* that communicates to the public when funds are available for legal services grants. As enumerated in paragraphs (a) through (j), the NOFO will identify items such as the location for obtaining legal services grant applications; the date, time, and place for submitting completed legal services grant applications; the estimated amount and type of legal services grant funding available, including the maximum grant funding available per award; any priorities for or exclusions from funding to meet the statutory mandates of 38 U.S.C. 2022A and VA goals for the Grant Program; the length of term for the legal services grant award; specific point values to be awarded for each criterion listed in §§ 79.35 and 79.45; the minimum number of total points and points per category that an applicant or grantee, as applicable, must receive in order for a legal services grant to be funded; any maximum uses of legal services grant funds for specific legal services; the timeframes and manner for payments under the legal services grant; and other information necessary for the legal services grant application process as determined by VA, including the requirements, goals, and objectives of the Grant Program, and how the preference under § 79.40(d)(3) may be met. This is consistent with how VA administers similar grant programs, such as the SSVF Program (see 38 CFR 62.40).

Section 79.70 Legal Services Grant Agreements

Section 79.70 discusses legal services grant agreements and the requirements that will be included in each agreement prior to VA obligating funds, as enumerated in paragraphs (a) through (c). This agreement will be enforceable against the grantee and provides VA assurance that the grantee will use the legal services grant funds in the manner described in the application and in accordance with the requirements of part 79.

Under paragraph (a), after an applicant is selected for a legal services grant in accordance with § 79.40, VA will draft a legal services grant agreement to be executed by VA and the grantee. Upon execution of the legal services grant agreement, VA will obligate legal services grant funds to cover the amount of the approved legal services grant, subject to the availability of funding. Such agreement will provide that the grantee agrees, and will ensure that each subcontractor agrees, to operate the program in accordance with the provisions of part 79 and the grantee's legal services grant application; comply with such other terms and conditions, including recordkeeping and reports for program monitoring and evaluation purposes, as VA may establish for purposes of carrying out the Grant Program, in an effective and efficient manner; and provide such additional information as deemed appropriate by VA.

Paragraph (b) explains the requirements to execute a legal services agreement for grant renewal grant in accordance with § 79.50. The requirements and grant agreement provisions are the same as for initial grant awards as discussed in paragraph (a) of this section.

Paragraph (c) explains that no funds provided under part 79 may be used to replace Federal, State, tribal, or local funds previously used, or designated for use, to assist eligible veterans.

Section 79.75 Program or Budget Changes and Corrective Action Plans

Section 79.75 sets forth the required process grantees must use if there are

changes to the program or budget that alter the grantee's legal services grant program. These requirements allow VA to ensure that grant funds are used appropriately and to maintain control over the quality of legal services provided by the grantee under this part. These requirements are enumerated in paragraphs (a) through (c).

Paragraph (a) states that a grantee must submit to VA a written request to modify a legal services grant program for any proposed significant change that will alter the grantee's legal services grant program. It further explains that if VA approves such change, it will issue a written amendment to the legal services grant agreement. A grantee must receive VA's approval prior to implementing a significant change. Significant changes include, but are not limited to, a change in the grantee or any subcontractors identified in the grant agreement; a change in the area or community served by the grantee; additions or deletions of legal services provided by the grantee; a change in category of participants to be served; and a change in budget line items that are more than 10 percent of the total legal services grant award.

VA's approval of changes will be contingent upon the grantee's amended application retaining a sufficient rank to have been competitively selected for funding in the year that the application was granted; and each legal services grant modification request will be required to contain a description of the revised proposed use of grant funds.

Under paragraph (b), VA may require that the grantee initiate, develop, and submit to VA for approval a Corrective Action Plan (CAP) if, on a quarterly basis, actual legal services grant expenditures vary from the amount disbursed to a grantee for that same quarter or actual legal services grant activities vary from the grantee's program description provided in the legal grant agreement. Paragraph (b) also sets forth specific requirements related to the CAP. These include that the CAP must identify the expenditure or activity source that has caused the deviation, describe the reason(s) for the variance, provide specific proposed corrective action(s), and provide a timetable for accomplishment of the corrective action. After receipt of the CAP, VA will send a letter to the grantee indicating that the CAP is approved or disapproved. If disapproved, VA will make beneficial suggestions to improve the proposed CAP and request resubmission or take other actions in accordance with this part.

Paragraph (c) explains that grantees are required to inform VA in writing of any key personnel changes (*e.g.,* new executive director, legal services grant program director, or chief financial officer) and grantee address changes within 30 days of the change.

Section 79.80 Faith-Based Organizations

As VA anticipates that religious or faith-based organizations may apply for grants under this part, § 79.80 describes the conditions for use of legal services grants provided under this part as they relate to religious activities. The conditions are enumerated in paragraphs (a) through (g). This is similar to the language used for the Homeless Providers Grant and Per Diem Program (38 CFR 61.64) and the SSVF Program (38 CFR 62.62).

Under paragraph (a), faith-based organizations are eligible, on the same basis as any other organization, to participate in the Grant Program under this part. Decisions about awards of Federal financial assistance must be free from political interference or even the appearance of such interference and must be made on the basis of merit, not on the basis of religion or religious belief or lack thereof.

Under paragraph (b)(1), no organization may use direct financial assistance from VA under this part to pay for explicitly religious activities such as religious worship, instruction, or proselytization; or equipment or supplies to be used for any of those activities. Paragraph (b)(2) states that references to financial assistance are deemed to be references to direct Federal financial assistance, unless the referenced assistance meets the definition of indirect Federal financial assistance in part 79.

Under paragraph (c), organizations that engage in explicitly religious activities, such as worship, religious instruction, or proselytization, must offer those services separately, in time or location, from any programs or services funded with direct financial assistance from VA under part 79. Furthermore, participation in any of the organization's explicitly religious activities must be voluntary for the participants of a program or service funded by direct financial assistance from VA under that part.

Under paragraph (d), a faith-based organization that participates in the Grant Program will retain its independence from Federal, State, or local governments, including the definition, practice and expression of its religious beliefs. However, organizations may not use direct financial assistance from VA under this part to support any explicitly religious activities, such as worship, religious instruction, or proselytization. Faith-based organizations may use space in their facilities to provide VA-funded services under this part, without concealing, removing, or altering religious art, icons, scripture, or other religious symbols. Additionally, a VA-funded faith-based organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members and otherwise govern itself on a religious basis, and include religious reference in its organization's mission statements and other governing documents.

Under paragraph (e), an organization that participates in the Grant Program shall not, in providing legal services, discriminate against a participant or prospective participant regarding legal services on the basis of religion or religious belief.

Under paragraph (f), if a State or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, this provision applies to all of the commingled funds.

Paragraph (g) states that to the extent otherwise permitted by Federal law, the restrictions on explicitly religious activities set forth in this section do not apply where VA funds are provided to faith-based organizations through indirect assistance as a result of a genuine and independent private choice of a participant, provided the faith-based organizations otherwise satisfy the requirements of this part. A faith-based organization may receive such funds as the result of a participant's genuine and independent choice if, for example, a participant redeems a voucher, coupon, or certificate, allowing the participant to direct where funds are to be paid, or a similar funding mechanism provided to that participant and designed to give that participant a choice among providers.

Section 79.85 Visits to Monitor Operations and Compliance

Section 79.85 governs VA's authority to conduct onsite inspections to monitor grantee operations and compliance with the Grant Program. The ability for VA to conduct inspections and monitor operations is critical for VA oversight over the grants and is set forth in paragraphs (a) and (b).

Paragraph (a) authorizes VA to make visits to all grantee locations, at all reasonable times, where a grantee is using legal services grant funds to review grantee accomplishments and

management control systems and to provide such technical assistance, as required. VA may also conduct inspections of all program locations and records of a grantee at such times as are deemed necessary to determine compliance with the provisions of this part. If a grantee delivers services in a participant's home, or at a location away from the grantee's place of business, VA may accompany the grantee. If the grantee's visit is to the participant's home, VA will only accompany the grantee with the consent of the participant. If any visit is made by VA on the premises of the grantee or a subcontractor under the legal services grant, the grantee must provide, and must require its subcontractors provide VA access to all reasonable facilities and assistance for the safety and convenience of the VA representatives in the performance of their duties. All visits and evaluations will be performed in such a manner as will not unduly delay services.

These provisions are critical for VA oversight over legal services grants and are consistent with how VA administers other grant programs. *See* 38 CFR 61.65 and 62.63.

Paragraph (b) clarifies that VA's authority to inspect does not provide VA with authority over the management or control of any applicant or grantee under part 79.

Section 79.90 Financial Management and Administrative Costs

Section 79.90 sets forth requirements with which grantees must comply regarding the financial management of approved grant funds. This provision is included in this interim final rule to ensure grantees are aware of additional requirements with which they must comply. These requirements are outlined in paragraphs (a) through (d).

Paragraph (a) requires grantees comply with applicable requirements of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards under 2 CFR part 200. Part 200 of 2 CFR establishes the uniform administrative requirements, cost principles, and audit requirements for Federal awards to non-Federal entities.

Paragraph (b) requires grantees use a financial management system that provides adequate fiscal control and accounting records and meets the requirements in 2 CFR part 200.

Paragraph (c) requires payment up to the amount specified in the legal services grant must be made only for allowable, allocable, and reasonable costs in conducting the work under the grant, and the determination of allowable costs must be made in accordance with the applicable Federal Cost Principles in 2 CFR part 200. Paragraph (d) prohibits costs for administration by a grantee from exceeding 10 percent of the total amount of the legal services grant. Administrative costs include all costs associated with the management of the program and include the administrative costs of subcontractors.

VA has determined this limitation on administrative costs to be reasonable and consistent with the purpose of the Grant Program to provide legal services to eligible veterans. This requirement ensures most of the grant funds (at least 90 percent) are used to provide legal services to participants, consistent with the purpose of the Grant Program. These requirements are also consistent with the SSVF Program, which allows only 10 percent of the grant funds to be used for specified administrative costs. See 38 CFR 62.10. VA has not identified any issues with this limitation in the context of the SSVF Program. VA believes that 10 percent is a reasonable maximum for administrative costs, and any additional funds needed by grantees to administer this Grant Program should be provided by non-VA funds.

Section 79.95 Grantee Reporting Requirements

Section 79.95 sets forth reporting requirements regarding the legal services carried out using grant funds provided under this part in paragraphs (a) through (f). Under section 4202 of the Act, VA is required to submit biennial reports to Congress about (1) the number of homeless veterans and veterans at risk for homelessness assisted; (2) a description of the legal services provided; (3) a description of the legal matters addressed; and (4) an analysis of the operational effectiveness and cost-effectiveness of the services provided. *See* 38 U.S.C. 2022A(g). In furtherance of VA's congressionally mandated reporting requirements, we require all grantees to submit reports to VA describing the legal services provided with the approved grant funds. Such reporting requirements ensure that grants funds are being properly used consistent with section 4202 of the Act and this part. These reporting requirements also ensure that VA is being a good fiscal steward of the taxpayer dollar.

In paragraph (a), VA reserves the right to require grantees to provide, in any form as may be prescribed, such reports or answers in writing to specific questions, surveys, or questionnaires as VA determines necessary to carry out the Grant Program.

In paragraph (b), at least once a year or at another frequency set by VA, each grantee must submit to VA a report containing information relating to operational effectiveness; fiscal responsibility; legal services grant agreement compliance; and legal and regulatory compliance, including a description of how the grantee used the grant funds, the number of participants assisted; information on each participant's gender, age, race, and service era; a description of the legal services provided to each participant; and any other information that VA requests. VA deems this information necessary to analyze and monitor the grantee's performance.

In paragraph (c), VA retains the discretion to request additional reports to be able to fully assess the provision of legal services under part 79. This catch-all provision allows VA to request additional reports that it may need to further assess the project and the program. These will vary on a case-by-case basis dependent on the legal services project and its progression. Additionally, if VA is required to submit additional reports to Congress on this program, VA reserves the right to obtain necessary information under this paragraph. This also provides a safeguard in instances where there may be confusing, misleading, inconsistent, or unclear statements in submitted reports. VA reserves the right to request additional reports to clarify information VA receives in other reports submitted by a grantee.

In paragraph (d), VA requires that grantees relate financial data to performance data and develop unit cost information whenever practical. This is another metric to help VA assess the strength of the grantee's legal services program.

In paragraph (e), VA requires that all pages of the reports must cite the assigned legal services grant number and be submitted in a timely manner as set forth in the grant agreement.

In paragraph (f), VA further requires that grantees provide VA with consent to post information from reports on the internet and use such information in other ways deemed appropriate by VA. Grantees must clearly redact information that is confidential based on attorney-client privilege, unless that privilege has been waived by the client. VA may post portions of the reports on the internet so that the public has a greater understanding of the Grant Program. Additionally, VA may use the information for promotional or evaluation purposes.

Section 79.100 Recordkeeping

Section 79.100 establishes a recordkeeping requirement on all grantees. Grantees are required to keep and maintain records for at least a 3-year period that document compliance with the Grant Program requirements in part 79. Grantees will need to produce these records at VA's request. This will assist VA in providing oversight over grantees. This provision is consistent with section 4202(a) of the Act requiring VA to analyze the operational effectiveness and cost effectiveness of the legal services provided by the grantees. This provision is also consistent with 2 CFR 200.334 requiring Federal award recipients to keep financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award for a 3-year period.

Section 79.105 Technical Assistance

Under § 79.105, VA will provide technical assistance to applicants and grantees, as necessary, to meet the requirements of part 79. Such technical assistance will be provided either directly by VA or through contracts with appropriate public or non-profit private entities. The technical assistance may provide applicants and grantees with resources for planning, development, and provision of legal services to homeless veterans or veterans at risk for homelessness. As part of this technical assistance, VA may offer training sessions for applicants and grantees to assist with understanding and implementing the Grant Program.

Section 79.110 Withholding, Suspension, Deobligation, Termination, and Recovery of Funds by VA

Section 79.110 explains that VA will enforce this part through such actions as may be appropriate. Appropriate actions include withholding, suspension, deobligation, termination, recovery of funds by VA, and actions in accordance with 2 CFR part 200.

Part 200 describes such actions as withholding, suspension, deobligation, termination, and recovery of funds. See 2 CFR 200.208, 200.305, and 200.339 through 200.343, and 200.346. As legal services grants are subject to the requirements of 2 CFR part 200, VA explicitly references 2 CFR part 200 in § 79.110 to ensure that grantees understand and know where to locate these requirements related to withholding, suspension, deobligation, termination, and recovery of funds. VA refers to 2 CFR part 200 rather than include those requirements in this section as those requirements in 2 CFR part 200 may change. Referencing 2 CFR part 200 provides VA the ability to implement those changes without having to conduct further rulemaking.

VA acknowledges that when certain actions (such as suspension and termination) are taken against grantees pursuant to this section and 2 CFR part 200, a disruption in services to participants may occur. While VA is not regulating responsibilities for grantees to continue to provide services or to coordinate the transfer of participants to other sources of legal support, VA will include such requirements and responsibilities in the grant agreement that VA and the grantee enter into pursuant to part 79. This will ensure that the disruption and impact upon participants is minimized as much as possible.

Section 79.115 Legal Services Grant Closeout Procedures

Section 79.115 explains that legal services grants will be closed out in accordance with 2 CFR part 200. Procedures for closing out Federal awards are currently located at 2 CFR 200.344 and 200.345. As legal services grants are subject to the requirements of 2 CFR part 200, VA explicitly references 2 CFR part 200 in § 79.115 to ensure that grantees understand and know where to locate these requirements. VA refers to 2 CFR part 200 rather than include those requirements in this section as those requirements in 2 CFR part 200 may change, and referencing 2 CFR part 200 provides VA the ability to implement those changes without having to conduct further rulemaking.

Administrative Procedure Act

The Administrative Procedure Act (APA), codified in part at 5 U.S.C. 553, generally requires agencies to publish substantive rules in the **Federal Register** for notice and comment. These notice and comment requirements generally do not apply to ''a matter relating to agency management or personnel or to public property, loans, grants, benefits or contracts.'' 5 U.S.C. 553(a)(2). However, 38 U.S.C. 501(d) requires VA to comply with the notice and comment requirements in 5 U.S.C. 553 for matters relating to grants, notwithstanding section 553(a)(2). Thus, as this rulemaking relates to the Grant Program required by section 4202 of the Act, VA is required to comply with the notice and comment requirements of 5 U.S.C. 553.

However, pursuant to 5 U.S.C. 553(b)(B) general notice and the opportunity for public comment are not required with respect to a rulemaking when an ''agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.''

In accordance with 5 U.S.C. 553(b)(B), the Secretary has concluded that there is good cause to publish this rule without prior opportunity for public comment. This rule implements the Act's mandate to establish a new grant program that will allow VA to make grants to eligible entities that provide certain legal services to homeless veterans and veterans at risk for homelessness, with at least 10 percent of funding being utilized to provide legal services to women veterans. This is the first Grant Program of this kind, as there is currently no other active Federal source of funding focused on providing legal services to veterans.

Homelessness is a national crisis, especially among the veteran population. On a single night in January 2021, there were 19,750 veterans experiencing sheltered homelessness in the United States. See, HUD, The 2021 Annual Homeless Assessment Report (AHAR) to Congress: Part 1: Point-in-Time Estimates of Homelessness (2022), *https://www.huduser.gov/portal/sites/default/files/pdf/2021-AHAR-Part-1.pdf.* Many of these veterans have unmet legal needs that impact their ability to maintain housing. These unmet legal needs are in the areas of family law, court fees/court fines, credit issues/debt collection, expungement of a criminal record, child support issues, and tax issues. See VA Fact Sheet: Community Homelessness Assessment, Local Education and Networking Groups (CHALENG), April 2021, *https://www.va.gov/HOMELESS/docs/CHALENG-2020-508.pdf.* Without the support provided by consistent legal services, individuals may not be able to find or maintain housing. It is critical that this rulemaking publish without delay, as the Grant Program will seek to help prevent and eliminate homelessness among the veteran population by distributing grants for the provision of legal services that will address barriers to housing stability, especially during the Coronavirus Disease–2019 (COVID–19) pandemic.

VA believes that the number of veterans who are homeless is likely significantly higher than HUD's recent estimates, and that more veterans are and will be at risk for homelessness due to the sustained adverse economic consequences of the COVID–19 pandemic on veterans in particular.

Recent available data focused on veteran homelessness is difficult to interpret, with varied information over the last two years of the COVID–19 pandemic that does not accurately reflect the current picture of veterans who are homeless and at risk for homelessness. After nearly a decade of steady decline, HUD's 2020 point-in-time estimate indicated an increase in veteran homelessness by 0.5 percent from 2019. See, HUD, The 2020 AHAR to Congress: Part 1: Point-in-Time Estimates of Homelessness (2021), *https://www.huduser.gov/portal/sites/default/files/pdf/2020-AHAR-Part-1.pdf.* However, in HUD's most recent AHAR, the number of veterans experiencing sheltered homelessness in 2021 decreased by ten percent from 2020. See, HUD, The 2021 AHAR to Congress: Part 1: Point-in-Time Estimates of Homelessness (2022), *https://www.huduser.gov/portal/sites/default/files/pdf/2021-AHAR-Part-1.pdf.* A comparison of the most recent AHAR to previous AHARs must take into account a complete picture of homelessness in the United States, including protective measures put in place during the COVID–19 pandemic, such as eviction moratoriums, social distancing, and space limits in homeless shelters, which have recently evaporated. This is why the 2021 AHAR is uniquely limited in scope, particularly as it lacks a full unsheltered count of people living in tents, cars, or streets throughout the country. *See* ''Findings—and Limitations—of the 2021 Point-in-Time Count | United States Interagency Council on Homelessness (USICH), *https://www.usich.gov/news/findingsand-limitationsof-the-2021-point-in-time-count/* (Citing COVID–19 concerns, 40 percent of communities—including the places with the highest levels of homelessness and almost the entire state of California—did not conduct a full unsheltered count of people living in tents, cars, or streets. Of the 20 communities with the highest unsheltered numbers in 2020, only one completed a full unsheltered count in 2021). It is worth noting that the 2021 AHAR report also found that *sheltered chronic* homelessness appears to have increased by 20 percent. This is why the actual number of homeless veterans is likely significantly higher than estimated by HUD, since the HUD point-in-time (PIT) estimate also excludes individuals staying in supportive housing paid for by Federal funds, and those moving from place-to-place among friends or family. Id. As stated by the United States Interagency Council on Homelessness, ''[a]ny comparison between this year's PIT findings and previous findings are complicated by the incompleteness of data for the 2021 count.'' Id.

Incomplete data is one of several potential reasons for HUD's 2021 finding of a ten percent decline in overall sheltered homelessness. In addition, congregate shelters limited their occupancy to comply with Centers for Disease Control and Prevention (CDC) COVID–19 recommendations and pandemic policies. This necessarily resulted in fewer veterans being counted as homeless and the exclusion of veterans who needed such sheltering but could not obtain a space. Moreover, eviction moratoriums, stimulus payments, and expanded unemployment benefits, likely also reduced the number of people counted among the sheltered homeless. Id. Given such limitations on the available data, the true number of veterans who are homeless or at risk for homelessness remains quite unclear.

Notwithstanding things like stimulus payments and expanded unemployment benefits, stay-at-home orders and reduced working hours during the COVID–19 pandemic had a profound economic effect on individuals, including members of the veteran population. U.S. Bureau of Labor Statistics, Employment Situation of Veterans Summary (March 18, 2021), *https://www.bls.gov/news.release/archives/vet_03182021.htm; see also,* Legal Services Corporation, Appropriations Supplemental Request for Legal Services Corporation Nationwide Grantee Assistance for Coronavirus Emergency Response (2021), *https://www.americanbar.org/content/dam/aba/administrative/government_affairs_office/lsc-covid-supp-request.pdf.* The veteran population experienced increased unemployment rates during the COVID–19 pandemic. See, Armstrong, N. (October 25, 2020), *Understanding the economic impacts of COVID–19 on veterans and military families,* Military Times, *https://www.militarytimes.com/opinion/commentary/2020/10/25/understanding-the-economic-impacts-of-covid-19-on-veterans-and-military-families/.* In fact, in 2020, veteran unemployment rates increased by more than twice the rates in 2019. U.S. Bureau of Labor Statistics, Employment Situation of Veterans Summary (March 18, 2021), *www.bls.gov/news.release/archives/vet_03182021.htm.*

Job loss and economic hardship due to the COVID–19 pandemic has led to increased housing precarity and risk of eviction. Eviction can have long-term, negative effects as it creates a permanent legal record that can allow landlords to screen tenants with a history of eviction and ultimately preclude them from future rental opportunities. See Benfer, A. et al (2021), *Eviction, Health Inequity, and the Spread of COVID–19: Housing Policy as a Primary Pandemic Mitigation Strategy,* Journal of Urban Health, 98, 1–12. Evictions can therefore lead to homelessness, which is connected to poverty and higher rates of arrest. Access to Justice in the Age of COVID–19: A Roundtable Report (2021), *https://www.justice.gov/ag/page/file/1445356/download.* Legal assistance to prevent eviction can eliminate potential barriers that preclude veterans at risk for homelessness from maintaining housing. See, Access to Justice in the Age of COVID–19: A Roundtable Report (2021), *https://www.justice.gov/ag/page/file/1445356/download,* (''As the pandemic continues, the need for legal services to combat evictions is ongoing.'')

To the extent that actions such as increased unemployment benefits and moratoriums against eviction, foreclosure, and utility shut-offs, helped mitigate the effects of the COVID–19 pandemic, many of these mitigation actions have recently ceased. VA is concerned that the disappearance of such protections will seriously impact the ability of some veterans to maintain stable housing or recover economically. Unemployment and loss of income are major predictors of homelessness. Trott, J., Lattimore, K., Teitelbaum, J., (2020), *Veterans Face Mounting Legal Needs Amidst the COVID–19 Pandemic,* National Center for Medical Legal Partnership. For this reason, maintaining stable housing is expected to be increasingly difficult and challenging for veterans during and in the aftermath of the COVID–19 pandemic. Id. Additionally, widespread reports of soaring rental prices (see Arnold, C. (February 14, 2022), *It's not just home prices. Rents rise sharply across the U.S.* NPR. *https://www.npr.org/2022/02/14/1080145270/its-not-just-home-prices-rents-rise-sharply-across-the-u-s*) may leave many veterans at risk for homelessness, especially in light of the economic impact of the COVID–19 pandemic on veterans.

The legal services to be provided under this Grant Program will provide direct economic support for veterans who are homeless or at-risk of becoming so as COVID–19 pandemic mitigation policies evaporate. Historically, half of homeless veterans' unmet needs consist of legal needs, specifically in the areas of family law, court fees/court fines, credit issues/debt collection,

expungement of a criminal record, child support issues, and tax issues. See, Fact Sheet, U.S. Dep't of Veterans Aff., CHALENG (April 2021), *https://www.va.gov/HOMELESS/docs/CHALENG-2020-508.pdf.* In both the 2017 and 2018 CHALENG survey responses, legal assistance with evictions/foreclosures were specifically among the top ten unmet needs of homeless veterans.

Time and time again, legal services organizations provide VA with examples of veterans they have assisted with a uniquely legal issue—such as expunging a prior conviction on one's criminal record, achieving a successful complex application for public benefits or modifying a child support order—which changed the course of the veteran's life by providing desperately needed income and stability. For many veterans, legal assistance to obtain reliable income support or to remove obstacles to income results in a critical source of income for rent for stable housing or an anchor from which the veteran can then pursue employment or VA treatment services. Without the legal assistance provided by this Grant Program, veterans who are homeless or at risk of homelessness may be unable to access compensation benefits from Veterans Benefits Administration or health care benefits from Veterans Health Administration. During the consultation in March 2021, Equal Justice Works reported that between 2018 and 2019, its Veterans Legal Corps attorneys helped obtain economic benefits of over $11.6 million for veterans by securing public benefits through the provision of legal services. The legal services covered under this Grant Program will result in veterans' ability to sustain housing and avoid homelessness, and therefore must be effective as soon as possible.

As mentioned above, we are approaching a critical point when pandemic protections are disappearing, which presents a larger risk of homelessness and legal issues for which this Grant Program will immediately be needed. There is no other current Federal source of funding that is focused on providing such legal services to veterans. It is therefore of utmost importance to have this regulation effective prior to notice and comment so that legal services can be provided to veterans who are homeless and at risk for homelessness immediately to support housing stability among this population. During the COVID–19 pandemic, legal aid funding has been limited. See, Kaplan, A. (2021), *More people than ever need legal aid services. But the pandemic has hit legal aid funding hard,* NBC News, *https://www.nbcnews.com/business/personal-finance/more-people-ever-need-legal-aid-services-pandemic-has-hit-n1264989.* Thus, there are limited legal resources available to address the needs of individuals, including veterans, that may be facing negative economic consequences from the COVID–19 pandemic. According to the Access to Justice in the Age of COVID–19: A Roundtable Report, the COVID–19 pandemic also drastically exacerbated the need for legal help and strained the resources that did exist. See, *https://www.justice.gov/ag/page/file/1445356/download.* The pandemic generated an unprecedented need for government assistance, including rental and mortgage assistance, child tax credits, unemployment benefits, and utilities payments. At the same time, applying for benefits became even more challenging in the expanded virtual environment. Id.

Through this Grant Program, those veterans who may be hit hardest by the pandemic (that is, homeless veterans and veterans at risk for homelessness) may receive critical legal services related to unemployment benefits, eviction, and those unmet legal needs as discussed earlier. During the COVID–19 pandemic, legal needs in such areas as evictions, unemployment assistance, and income maintenance have increased throughout the country. See, Legal Services Corporation (July 24, 2020), *Legal Services Corporation Survey Finds Major Impact of COVID–19 Pandemic on Legal Aid, https://www.lsc.gov/press-release/lsc-survey-finds-major-impact-covid-19-pandemic-legal-aid;* See also, Legal Services Corporation (February 9, 2021), *LSC Requests Funding to Address Surge in Demand for Legal Aid Amid COVID–19, https://www.lsc.gov/press-release/lsc-requests-funding-address-surge-demand-legal-aid-amid-covid-19;* See also, Access to Justice in the Age of COVID–19: A Roundtable Report (2021), *https://www.justice.gov/ag/page/file/1445356/download.*

Additionally, the legal services that may be provided pursuant to this Grant Program are critical to this population's health and well-being. Those who have legal problems are more likely to experience suicidal ideation and attempt suicide than those without legal problems. Pre-pandemic, veterans facing legal challenges were 86 percent more likely to have suicidal ideation, and 57 percent more likely to attempt suicide, even after adjusting for mental health conditions that are as relevant as other medical factors like depression for suicide prevention and treatment. Blosnich, J., et al. (2019), *Social Determinants and Military Veterans' Suicide Ideation and Attempt: A Cross-sectional Analysis of Electronic Health Record Data,* 35 J. General Internal Med. 1759–1767. Veterans with housing instability—whom this Grant Program would directly focus on—were 200 percent more likely to have suicidal ideation, and 118 percent more likely to attempt suicide, also after adjusting for mental health diagnoses. Id. It is therefore critical that the legal services provided by this Grant Program to assist this population are made available as soon as possible. Veterans with legal problems and housing issues alike also experience other co-occurring adverse social determinants of health including financial/employment problems, and nonspecific psychosocial needs, among others, that may contribute to suicidality. Id.

Additionally, many veterans are diagnosed with mental illnesses associated with active-duty service. In 2017, GAO reported that 62 percent of servicemembers separated for misconduct during fiscal years 2011–2015 had been diagnosed with post-traumatic stress disorder (PTSD), traumatic brain injury, or certain other conditions that could be associated with misconduct within the two years before their date of separation. U.S. Government Accountability Office (2017), GAO–17–260, *DOD Health: Actions Needed to Ensure Post-Traumatic Stress Disorder and Traumatic Brain Injury Are Considered in Misconduct Separations, https://www.gao.gov/assets/690/685052.pdf.* Without the legal assistance to be provided through this Grant Program, these veterans may be unable to properly file the complete paperwork to have their discharge upgraded. Moreover, when provided in conjunction with VA healthcare, legal services for veterans have been found to decrease veterans' PTSD symptoms, reduce veteran spending on substance abuse, and improve mental health and housing stability. Tsai, J. et al. (2017), *Medical-Legal Partnerships At Veterans Affairs Medical Centers Improved Housing and Psychosocial Outcomes For Vets,* 36 Health Aff. no.12, 2195–2203.

As the White House-Department of Justice Legal Aid Interagency Roundtable found, when someone faces a civil legal problem, such as eviction, the denial of healthcare benefits, or unemployment, it can interact with other factors and affect an individual's long-term health. Access to Justice in the Age of COVID–19: A Roundtable Report (2021), *https://www.justice.gov/ag/page/file/1445356/download.* The

Attorney General's memorandum issued on Veterans Day 2021 also noted that ''leaving [Veterans'] legal needs unaddressed exacerbates the risks [they] already face—from housing instability to homelessness and from joblessness to suicide,'' and called for ways to better meet veterans' legal needs which ''may [ ] utilize new grant authorities that provide legal services for veterans''. Attorney General Memorandum—Guarding the Rights of and Improving Access to Justice for Veterans Servicemembers and Military Families (November 10, 2021), *https://justice.gov/opa/page/file/1447636/download.*

Through programs that expand and fund veterans' legal services, such as this Grant Program, VA and other organizations may be able to address destabilizing economic, social, and health inequities among this vulnerable population. See, *Key Studies and Data about How Legal Aid Helps Veterans* (March 23, 2021), The Justice in Government Project, *https://legalaidresourcesdotorg.files.wordpress.com/2021/04/veterans.pdf.* Legal services provided under this Grant Program will assist a veteran in obtaining and maintaining housing, obtaining and sustaining gainful and satisfying employment, and obtaining crucial medical care and compensation benefits, which have both indirect and direct impacts on housing stability, and overall health and well-being. Thus, it is critical that this Grant Program be implemented prior to notice and comment so that VA can provide funding to those entities that can assist homeless veterans and those veterans at risk for homelessness who have unaddressed needs for legal services, which may create barriers to housing stability, especially during the COVID–19 pandemic. Any additional delay in implementation caused by seeking and responding to public comments prior to implementation delays VA's ability to provide direct grant funding for critical legal services specifically for homeless veterans and veterans at risk for homelessness who may be especially vulnerable and in need of these legal services during, and as a result of, the COVID–19 pandemic. Providing notice and obtaining comment in advance of implementation would add a significant delay to an already lengthy implementation process and would exacerbate a growing and increasingly urgent problem.

Additionally, this rulemaking has not been without public input. VA reiterates that as described earlier in this document, VA sought and obtained such input through a consultation with several legal services organizations experienced in aiding homeless veterans and those at risk for homelessness, as required by the Act. These organizations provided information on the types of legal services to be covered, additional considerations in dealing with rural and tribal communities, and how to determine the effectiveness of the organizations once competitively selected, among other information. This input has been reviewed and incorporated, as appropriate, in this rulemaking.

For these reasons, the Secretary has concluded that ordinary notice and comment procedures would be contrary to the public interest and is accordingly issuing this rule as an interim final rule effective. The Secretary will consider and address comments that are received within 60 days after the date that this interim final rule is published in the **Federal Register** and address them in a subsequent **Federal Register** document announcing a final rule incorporating any changes made in response to the public comments.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, is not applicable to this rulemaking because notice of proposed rulemaking is not required. 5 U.S.C. 601(2), 603(a), 604(a).

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This interim final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This interim final rule includes provisions constituting collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) that require approval by the Office of Management and Budget (OMB). Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking action to OMB for review.

OMB assigns control numbers to collections of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Section 79.25 contains application provisions for legal services grants, including renewals. Section 79.75 contains provisions for program or budget changes and submission of corrective action plans. Section 79.95 contains grantee reporting requirements. These sections are collections of information under the Paperwork Reduction Act of 1995. If OMB does not approve the collections of information as requested, VA will immediately remove the provisions containing a collection of information or take such other action as is directed by OMB.

Comments on the new collection of information contained in this rulemaking should be submitted through *www.regulations.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AR33—Legal Services for Homeless Veterans and Veterans At-Risk for Homelessness Grant Program'' and should be sent within 30 days of publication of this rulemaking. The collection of information associated with this rulemaking can be viewed at: *www.reginfo.gov/public/do/PRAMain.*

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the interim final rule.

The Department considers comments by the public on collections of information in—

- Evaluating whether the collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the collections of information, including

the validity of the methodology and assumptions used;

• Enhancing the quality, usefulness, and clarity of the information to be collected; and

• Minimizing the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

The collections of information contained in 38 CFR 79.25, 79.75, and 79.95 are described immediately following this paragraph, under their respective titles.

Title: Initial Applications for the Legal Services for Homeless Veterans and Veterans At-Risk for Homelessness Grant Program.

OMB Control No: 2900-xxxx (New/TBD).

CFR Provision: 38 CFR Section 79.25.

• *Summary of collection of information:* The new collection of information in 38 CFR 79.25 contains application provisions for the Grant Program.

• *Description of need for information and proposed use of information:* This information is needed to award legal services grants to eligible entities.

• *Description of likely respondents:* Non-profit private and public legal service entities applying for grants.

• *Estimated number of respondents per year:* 100.

• *Estimated frequency of responses:* Once annually.

• *Estimated average burden per response:* 1,440 minutes.

• *Estimated total annual reporting and recordkeeping burden:* 2,400 hours.

• *Estimated cost to respondents per year:* VA estimates the annual cost to respondents to be $133,104.00. Using VA's average annual number of respondents, VA estimates the application information collection burden cost to be $133,104.00 per year*. (2,400 burden hours for respondents × $55.46 per hour).

Title: Grant Renewal Applications for the Legal Services for Homeless Veterans and Veterans At-Risk for Homelessness Grant Program.

OMB Control No: 2900-xxxx (New/TBD).

CFR Provision: 38 CFR Section 79.25.

• *Summary of collection of information:* The new collection of information in 38 CFR 79.25 requires grantees who want renew their grant to file a renewal application.

• *Description of need for information and proposed use of information:* VA needs this information to renew legal services grants previously awarded.

• *Description of likely respondents:* Grant Program grantees seeking a renewal of funds.

• *Estimated number of respondents:* 75.

• *Estimated frequency of responses:* Once annually.

• *Estimated average burden per response:* 1,200 minutes.

• *Estimated total annual reporting and recordkeeping burden:* 1,500 hours.

• *Estimated cost to respondents per year:* VA estimates the annual cost to respondents to be $83,190.00. Using VA's average annual number of respondents, VA estimates the total information collection burden cost to be $83,109.00 per year*. (1500 burden hours for respondents × $55.46 per hour).

Title: Program or Budget Changes and Corrective Action Plans for the Legal Services for Homeless Veterans and Veterans At-Risk for Homelessness Grant Program.

OMB Control No: 2900-xxxx (New/TBD).

CFR Provision: 38 CFR Section 79.75.

• *Summary of collection of information:* The new collection of information in 38 CFR 79.75 would require grantees to inform VA of changes to their approved program through an amendment process.

• *Description of need for information and proposed use of information:* This information is needed for a grantee to inform VA of significant changes that will alter a grant program approved by VA. In addition, VA may require grantees to initiate, develop and submit to VA for approval corrective action plans if, on a quarterly basis, actual legal services grant expenditures vary from the amount disbursed to a grantee for that same quarter or actual legal services grant activities vary from the grantee's program description provided in the grant agreement.

• *Description of likely respondents:* Grantees who desire to modify their approved grant program.

• *Estimated number of respondents:* 10.

• *Estimated frequency of responses:* Once annually.

• *Estimated average burden per response:* 120 minutes.

• *Estimated total annual reporting and recordkeeping burden:* 20 hours.

• *Estimated cost to respondents per year:* VA estimates the annual cost to respondents to be $1,109.20. Using VA's average annual number of respondents, VA estimates the total information collection burden cost to be $1,109.20 per year*. (20 burden hours for respondents × $55.46 per hour).

Title: Reporting Requirements for the Legal Services for Homeless Veterans and Veterans At-Risk for Homelessness Grant Program.

OMB Control No: 2900-xxxx (New/TBD).

CFR Provision: 38 CFR Section 79.95.

• *Summary of collection of information:* The new collection of information in 38 CFR 79.95 would require the grantee to submit reports pertaining to operational and cost effectiveness, fiscal responsibility, legal services grant agreement compliance, and legal and regulatory compliance.

• *Description of need for information and proposed use of information:* VA will use this information to determine grantee program effectiveness and compliance with the requirements for the Grant Program.

• *Description of likely respondents:* Program grantees for the current grant award year.

• *Estimated number of respondents:* 75.

• *Estimated frequency of responses:* Quarterly = 4 times per year.

• *Estimated average burden per response:* 30 minutes.

• *Estimated total annual reporting and recordkeeping burden:* 150 hours.

• *Estimated cost to respondents per year:* VA estimates the annual cost to respondents to be $8,319.00. Using VA's average annual number of respondents, VA estimates the total information collection burden cost to be $8,319.00 per year*. (150 burden hours for respondents × $55.46 per hour).

* The total information collection burden cost associated with this regulation is estimated to be $225,722.20.

Assistance Listing

The Assistance Listing number and title for the program affected by this document is 64.009, Veterans Medical Care Benefits.

Congressional Review Act

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act) (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

List of Subjects in 38 CFR Part 79

Administrative practice and procedure; Disability benefits; Grant programs—health; Grant programs—social services; Grant programs—transportation; Grant programs—

veterans; Grant programs—housing and community development; Health facilities; Homeless; Housing; Housing assistance payments; Indians—lands; Individuals with disabilities; Legal services; Low and moderate income housing; Medicare; Medicaid; Public assistance programs; Public housing; Reporting and recordkeeping requirements; Rural areas; Social security; Supplemental security income (SSI); Travel and transportation expenses; Unemployment compensation; Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on May 2, 2022, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Consuela Benjamin,

Regulations Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

■ For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR Chapter I by adding part 79 to read as follows:

PART 79—LEGAL SERVICES FOR HOMELESS VETERANS AND VETERANS AT-RISK FOR HOMELESSNESS GRANT PROGRAM

Sec.

Authority: 38 U.S.C. 501, 38 U.S.C. 2022A, and as noted in specific sections.

§ 79.0 Purpose and scope.

(a) *Purpose.* This part implements the Legal Services for Homeless Veterans and Veterans At-Risk for Homelessness Grant Program to award legal services grants to eligible entities to provide legal services to eligible veterans.

(b) *Scope.* Legal services covered by this part are those services that address the needs of eligible veterans who are homeless or at risk for homelessness.

§ 79.5 Definitions.

For purposes of this part and any Notice of Funding Opportunity (NOFO) issued under this part:

Applicant means an eligible entity that submits an application for a legal services grant announced in a NOFO.

At risk for homelessness means an individual who meets the criteria identified in § 79.15(b).

Direct Federal financial assistance means Federal financial assistance received by an entity selected by the Government or a pass-through entity as defined in 38 CFR 50.1(d) to provide or carry out a service (*e.g.,* by contract, grant, or cooperative agreement).

Disallowed costs means costs charged by a grantee that VA determines to be unallowable based on applicable Federal cost principles or based on this part or the legal services grant agreement.

Eligible entity means an entity that meets the requirements of § 79.10.

Eligible veteran means a veteran that meets the requirements of § 79.15(a) or (b).

Grantee means an eligible entity that is awarded a legal services grant under this part.

Homeless veteran means a veteran who is homeless as that term is defined in subsection (a) or (b) of section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302).

Indian tribe has the meaning as given that term in in 25 U.S.C. 4103.

Indirect Federal financial assistance means Federal financial assistance in which a service provider receives program funds through a voucher, certificate, agreement or other form of disbursement, as a result of the genuine, independent choice of a participant.

Legal services means the services listed in § 79.20.

Legal services grant means a grant awarded under this part.

Legal services grant agreement means the agreement executed between VA and a grantee as specified under § 79.70.

Non-profit private entity means an entity that meets the criteria in § 79.10(c).

Notice of Funding Opportunity (NOFO) has the meaning as given to this term in 2 CFR 200.1.

Participant means an eligible veteran who is receiving legal services from a grantee under this part.

Public entity means an entity that meets the criteria in § 79.10(b).

Rural communities means those communities considered rural according to the Rural-Urban Commuting Area (RUCA) system as determined by the United States Department of Agriculture (USDA).

State means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments.

Subcontractor means any third-party contractor, of any tier, working directly for an eligible entity.

Suspension means an action by VA that temporarily withdraws VA funding under a legal services grant, pending corrective action by the grantee or pending a decision to terminate the legal services grant by VA. Suspension of a legal services grant is a separate action from suspension under VA regulations or guidance implementing Executive Orders 12549 and 12689, ''Debarment and Suspension.''

Tribal organization has the meaning given that term in 25 U.S.C. 5304.

Trust land has the meaning given that term in 38 U.S.C. 3765.

Very Low Income means a veteran's income is 50 percent or less of the median income for an area or community.

Veteran has the meaning given to that term in 38 U.S.C. 101(2).

Withholding means that payment of a legal services grant will not be paid until such time as VA determines that the grantee provides sufficiently adequate documentation and/or actions to correct a deficiency for the legal services grant.

§ 79.10 Eligible entities.

(a) To be an eligible entity under this part, the entity must:

(1) Be a public or nonprofit private entity with the capacity to effectively administer a grant under this part;

(2) Demonstrate that adequate financial support will be available to carry out the services for which the grant is sought consistent with the legal services grant application; and

(3) Agree to meet the applicable criteria and requirements of this part.

(b) A public entity includes any of the following:

(1) Local government, (that is, a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937), school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government);

(2) State government;

(3) Federally recognized Indian tribal government. The governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by the Bureau of Indian Affairs.

(c) A nonprofit private entity is an entity that meets the requirements of 26 U.S.C. 501(c)(3) or (19).

§ 79.15 Eligible veterans.

(a) To be eligible for legal services under this part, an individual must be a:

(1) Homeless veteran or

(2) Veteran at risk for homelessness.

(b) ''At risk for homelessness'' in this part means an individual who does not have sufficient resources or support networks, *e.g.,* family, friends, faith-based or other social networks, immediately available to prevent them from moving to an emergency shelter or another place described in paragraph (1) of the definition of ''homeless'' in 24 CFR 576.2 and meets one or more of the following conditions:

(1) Has moved because of economic reasons two or more times during the 60 days immediately preceding the application for assistance;

(2) Is living in the home of another because of economic hardship;

(3) Has been notified in writing that their right to occupy their current housing or living situation will be terminated within 21 days after the date of application for assistance;

(4) Is constructively evicted from their current housing because of untenable conditions created by the landlord such as shutting off electricity and water or discriminatory acts;

(5) Lives in a hotel or motel and the cost of the hotel or motel stay is not paid by charitable organizations or by Federal, State, or local government programs for low-income individuals;

(6) Lives in a single-room occupancy or efficiency apartment unit in which there reside more than two persons or lives in a larger housing unit in which there reside more than 1.5 persons reside per room, as defined by the U.S. Census Bureau;

(7) Is exiting a publicly funded institution, or system of care (such as a health-care facility, a mental health facility, foster care or other youth facility, or correction program or institution);

(8) Is fleeing, or is attempting to flee domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual, including a child, that has either taken place within the individual's primary nighttime residence or has made the individual afraid to return to their primary nighttime residence; or

(9) Otherwise lives in housing that has characteristics associated with instability and an increased risk for homelessness.

§ 79.20 Legal services.

Allowable legal services covered under this Grant Program are limited to the following:

(a) Legal services related to housing, including eviction defense, representation in landlord-tenant cases, and representation in foreclosure cases.

(b) Legal services relating to family law, including assistance in court proceedings for child support and custody, divorce, estate planning, and family reconciliation.

(c) Legal services relating to income support, including assistance in obtaining public benefits.

(d) Legal services relating to criminal defense, including defense in matters symptomatic of homelessness, such as outstanding warrants, fines, driver's license revocation, and citations. To reduce recidivism and facilitate the overcoming of reentry obstacles in employment or housing, covered legal services relating to criminal defense also include legal assistance with requests to expunge or seal a criminal record.

(e) Legal services relating to requests to upgrade the characterization of a discharge or dismissal of a former member of the Armed Forces under 10 U.S.C. 1553.

(f) Other covered legal services as determined appropriate by the Secretary, including:

(1) Legal assistance with protective orders and other matters related to domestic or intimate partner violence.

(2) Access to health care.

(3) Consumer law matters, such as debt collection, garnishments, usury, fraud, deceit, and financial exploitation.

(4) Employment law matters.

(5) The unmet legal needs of male and female veterans in VA's annual Community Homelessness Assessment, Local Education and Networking Groups (CHALENG) survey for the grant award year.

§ 79.25 Applications for legal services grants.

(a) To apply for a legal services grant, an applicant must submit to VA a complete legal services grant application package, as described in the NOFO. A complete legal services grant application package includes the following:

(1) A description of the legal services to be provided by the applicant and the identified need for such legal services among eligible veterans;

(2) A description of how the applicant will ensure that services are provided to eligible veterans, including women veterans;

(3) A description of the characteristics of eligible veterans who will receive legal services provided by the applicant;

(4) An estimate with supporting documentation of the number of eligible veterans, including an estimate of the number of eligible women veterans, who will receive legal services provided by the applicant;

(5) A plan for how the applicant will use at least ten percent of the grant funds to serve eligible women veterans;

(6) Documentation describing the experience of the applicant and any identified subcontractors in providing legal services to eligible veterans;

(7) Documentation relating to the applicant's ability to coordinate with any identified subcontractors;

(8) Documentation of the applicant's capacity to effectively administer a grant under this section that describes the applicant's:

(i) Accounting practices and financial controls;

(ii) Capacity for data collection and reporting required under this part; and

(iii) Experience administering other Federal, State, or county grants similar to the Grant Program under this part.

(9) Documentation of the managerial capacity of the applicant to:

(i) Coordinate the provision of legal services by the applicant or by other organizations on a referral basis;

(ii) Assess continuously the needs of eligible veterans for legal services;

(iii) Coordinate the provision of legal services with services provided by VA;

(iv) Customize legal services to the needs of eligible veterans; and

(v) Comply with and implement the requirements of this part throughout the term of the legal services grant.

(10) Documentation that demonstrates that adequate financial support will be available to carry out the legal services for which the grant is sought consistent with the application; and

(11) Any additional information as deemed appropriate by VA.

(b) Subject to funding availability, grantees may submit an application for renewal of a legal services grant if the grantee's program will remain substantially the same. To apply for renewal of a legal services grant, a grantee must submit to VA a complete legal services grant renewal application package, as described in the NOFO.

(c) VA may request in writing that an applicant or grantee, as applicable, submit other information or documentation relevant to the legal services grant application.

§ 79.30 Threshold requirements prior to scoring legal services grant applicants.

VA will only score applicants that meet the following threshold requirements:

(a) The application is filed within the time period established in the NOFO, and any additional information or documentation requested by VA under § 79.25(c) is provided within the time frame established by VA;

(b) The application is completed in all parts;

(c) The activities for which the legal services grant is requested are eligible for funding under this part;

(d) The applicant's prospective participants are eligible to receive legal services under this part;

(e) The applicant agrees to comply with the requirements of this part;

(f) The applicant does not have an outstanding obligation to the Federal Government that is in arrears and does not have an overdue or unsatisfactory response to an audit; and

(g) The applicant is not in default by failing to meet the requirements for any previous Federal assistance.

§ 79.35 Scoring criteria for legal services grant applicants.

VA will score applicants who are applying for a legal services grant VA will set forth specific point values to be awarded for each criterion in the NOFO. VA will use the following criteria to score these applicants:

(a) VA will award points based on the background, qualifications, experience, and past performance, of the applicant, and any subcontractors identified by the applicant in the legal services grant application, as demonstrated by the following:

(1) *Background and organizational history.* (i) Applicant's, and any identified subcontractors', background and organizational history are relevant to providing legal services.

(ii) Applicant, and any identified subcontractors, maintain organizational structures with clear lines of reporting and defined responsibilities.

(iii) Applicant, and any identified subcontractors, have a history of complying with agreements and not defaulting on financial obligations.

(2) *Organization and staff qualifications.* (i) Applicant, and any identified subcontractors, have experience working with veterans or individuals who are homeless, at risk for homelessness, or who have very low income, as defined under this part.

(ii) Applicant, and any identified subcontractors, have experience providing legal services, including providing such services to veterans, or individuals who are homeless, at risk for homelessness or who have very low income.

(iii) Applicant, and any identified subcontractors, have or plan to hire staff, who are qualified to administer legal services, and as applicable, are in good standing as a member of the applicable State bar.

(iv) Applicant's staff, and any identified subcontractors' staff, have experience administering programs similar to the Grant Program under this part.

(b) VA will award points based on the applicant's program concept and legal services plan, as demonstrated by the following:

(1) *Need for the program.* (i) Applicant has shown a need amongst eligible veterans in the area or community where the program will be based.

(ii) Applicant understands the legal services needs unique to eligible veterans in the area or community where the program will be based.

(2) *Outreach and screening plan.* (i) Applicant has a feasible outreach and referral plan to identify and assist eligible veterans in need of legal services.

(ii) Applicant has a plan to process and receive legal services referrals for eligible veterans.

(iii) Applicant has a plan to assess and accommodate the needs of referred eligible veterans.

(3) *Program concept.* (i) Applicant's program concept, size, scope, and staffing plan are feasible.

(ii) Applicant's program is designed to meet the legal needs of eligible veterans in the area or community where the program will be based.

(4) *Program implementation timeline.* (i) Applicant's program will be implemented in a timely manner and legal services will be delivered to eligible veterans as quickly as possible and within a specified timeline.

(ii) Applicant has a hiring plan in place to meet the applicant's program timeline or has existing staff to meet such timeline.

(5) *Collaboration and communication with VA.* Applicant has a plan to coordinate outreach and services with local VA facilities.

(6) *Ability to meet VA's requirements, goals, and objectives for the grant program.* Applicant is committed to ensuring that its program meets VA's requirements, goals, and objectives for the Grant Program as identified in the NOFO.

(7) *Capacity to undertake program.* Applicant has sufficient capacity, including staff resources, to undertake the program.

(c) VA will award points based on the applicant's quality assurance and evaluation plan, as demonstrated by the following:

(1) *Program evaluation.* Applicant has created clear, realistic, and measurable metrics that align with the Grant Program's aim of addressing the legal needs of eligible veterans and through which the applicant's program performance can be continually evaluated.

(2) *Monitoring.* (i) Applicant has adequate controls in place to regularly monitor the program, including any subcontractors, for compliance with all applicable laws, regulations, and guidelines.

(ii) Applicant has adequate financial and operational controls in place to ensure the proper use of legal services grant funds.

(iii) Applicant has a plan for ensuring that the applicant's staff and any subcontractors are appropriately trained and comply with the requirements of this part.

(3) *Remediation.* Applicant has a plan or establishes a system for remediating non-compliant aspects of the program if and when they are identified.

(4) *Management and reporting.* Applicant's program management team has the capability and a system in place to provide to VA timely and accurate reports at the frequency set by VA.

(d) VA will award points based on the applicant's financial capability and plan, as demonstrated by the following:

(1) *Organizational finances.* Applicant, and any identified subcontractors, are financially stable.

(2) *Financial feasibility of program.* (i) Applicant has a realistic plan for obtaining all funding required to operate the program for the period of the legal services grant.

(ii) Applicant's program is cost-effective and can be effectively implemented on-budget.

(e) VA will award points based on the applicant's area or community linkages and relations, as demonstrated by the following:

(1) *Area or community linkages.* Applicant has a plan for developing or has existing linkages with Federal (including VA), State, local, and tribal governments, agencies, and private entities for the purposes of providing additional legal services to eligible veterans.

(2) *Past working relationships.* Applicant (or applicant's staff), and any identified subcontractors (or subcontractors' staff), have fostered successful working relationships and linkages with public and private organizations providing legal and non-legal supportive services to veterans who are also in need of services similar to those covered under the Grant Program.

(3) *Local presence and knowledge.* (i) Applicant has a presence in the area or community to be served by the applicant.

(ii) Applicant understands the dynamics of the area or community to be served by the applicant.

(4) *Integration of linkages and program concept.* Applicant's linkages to the area or community to be served by the applicant enhance the effectiveness of the applicant's program.

§ 79.40 Selection of grantees.

VA will use the following process to select applicants to receive legal services grants:

(a) VA will score all applicants that meet the threshold requirements set forth in § 79.30 using the scoring criteria set forth in § 79.35.

(b) VA will group applicants within the applicable funding priorities if funding priorities are set forth in the NOFO.

(c) VA will rank those applicants who receive at least the minimum amount of total points and points per category set forth in the NOFO, within their respective funding priority group, if any. The applicants will be ranked in order from highest to lowest scores, within their respective funding priority group, if any.

(d) VA will use the applicant's ranking as the primary basis for selection for funding. However, VA will also use the following considerations to select applicants for funding:

(1) VA will give preference to applicants that have the demonstrated ability to provide the provision of legal services eligible individuals who are homeless, at risk for homelessness or have very low income, as defined by this part.

(2) To the extent practicable, VA will ensure that legal services grants are equitably distributed across geographic regions, including rural communities, trust lands, Native Americans, and tribal organizations.

(3) VA will give preference to applicants with a demonstrated focus on women veterans as set forth in the NOFO.

(e) Subject to paragraph (d) of this section, VA will fund the highest-ranked applicants for which funding is available, within the highest funding priority group, if any. If funding priorities have been established, to the extent funding is available and subject to paragraph (d) of this section, VA will select applicants in the next highest funding priority group based on their rank within that group.

(f) If an applicant would have been selected but for a procedural error committed by VA, VA may select that applicant for funding when sufficient funds become available if there is no material change in the information that would have resulted in the applicant's selection. A new application would not be required.

§ 79.45 Scoring criteria for grantees applying for renewal of legal services grants.

VA will score applicants who are applying for a renewal of a legal services grant. VA will set forth specific point values to be awarded for each criterion in the NOFO. VA will use the following criteria to score grantees applying for renewal of a legal services grant:

(a) VA will award points based on the success of the grantee's program, as demonstrated by the following:

(1) Participants were satisfied with the legal services provided by the grantee.

(2) The grantee delivered legal services to participants in a timely manner.

(3) The grantee implemented the program by developing and sustaining relationships with community partners to refer veterans in need of legal services.

(4) The grantee was effective in conducting outreach to eligible veterans, including specifically to women veterans, and increased engagement of eligible veterans seeking legal services provided by the grantee.

(b) VA will award points based on the cost effectiveness of the grantee's program, as demonstrated by the following:

(1) The cost per participant was reasonable.

(2) The grantee's program was effectively implemented within budget.

(c) VA will award points based on the extent to which the grantee complied with the Grant Program's goals and requirements, as demonstrated by the following:

(1) The grantee's program was administered in accordance with VA's goals for the Grant Program as described in the NOFO.

(2) The grantee's program was administered in accordance with all applicable laws, regulations, and guidelines.

(3) The grantee's program was administered in accordance with the grantee's legal services grant agreement.

§ 79.50 Selecting grantees for renewal of legal services grants.

VA will use the following process to select grantees applying for renewal of legal services grants:

(a) So long as the grantee continues to meet the threshold requirements set forth in § 79.30, VA will score the grantee using the scoring criteria set forth in § 79.45.

(b) VA will rank those grantees who receive at least the minimum amount of total points and points per category set forth in the NOFO. The grantees will be ranked in order from highest to lowest scores.

(c) VA will use the grantee's ranking as the basis for selection for funding. VA will fund the highest-ranked grantees for which funding is available.

(d) At its discretion, VA may award any non-renewed funds to an applicant or existing grantee. If VA chooses to award non-renewed funds to an applicant or existing grantee, funds will be awarded as follows:

(1) VA will first offer to award the non-renewed funds to the applicant or grantee with the highest grant score under the relevant NOFO that applies for, or is awarded a renewal grant in, the same community as, or a proximate community to, the affected community. Such applicant or grantee must have the capacity and agree to provide prompt services to the affected community. For the purposes of this section, the relevant NOFO is the most recently published

NOFO which covers the geographic area that includes the affected community, or for multi-year grant awards, the NOFO for which the grantee, who is offered the additional funds, received the multi-year award.

(2) If the first such applicant or grantee offered the non-renewed funds refuses the funds, VA will offer to award the funds to the next highest-ranked such applicant or grantee, per the criteria in paragraph (d)(1) of this section, and continue on in rank order until the non-renewed funds are awarded.

(e) If a grantee would have been selected but for a procedural error committed by VA, VA may select that grantee for funding when sufficient funds become available if there is no material change in the information that would have resulted in the grantee's selection. A new application would not be required.

§ 79.55 General operation requirements.

(a) *Eligibility documentation.* (1) Prior to providing legal services, grantees must verify and document each veteran's eligibility for legal services and classify the veteran based on the eligible veteran criteria as set forth in § 79.15.

(2) Once the grantee initiates legal services, the grantee will continue to provide legal services to the participant through completion of the legal services so long as the participant continues to meet the eligibility criteria set forth in § 79.15.

(3) If a grantee finds at any point in the grant award period that a participant is ineligible to receive legal services under this part, or the provider is unable to meet the legal needs of that participant, the grantee must document the reason for the participant's ineligibility or the grantee's inability to provide legal services and provide the veteran information on other available programs or resources or provide a referral to another legal services organization that is able to meet the veteran's needs.

(b) *Legal services documentation.* For each participant who receives legal services from the grantee, the grantee must document the legal services provided, how such services were provided, the duration of the services provided, any goals for the provision of such services, and measurable outcomes of the legal services provided as determined by the Secretary, such as whether the participant's legal issue was resolved.

(c) *Confidentiality.* Grantees must maintain the confidentiality of records kept in connection to legal services provided to participants. Grantees that provide legal services must establish and implement procedures to ensure the confidentiality of:

(1) Records pertaining to any participant, and

(2) The address or location where the legal services are provided.

Such confidentiality should be consistent with the grantee's State bar rules on confidentiality in an attorney-client relationship.

(d) *Notifications to participants.* Prior to initially providing legal services to a participant, the grantee must notify each participant of the following:

(1) The legal services are being paid for, in whole or in part, by VA;

(2) The legal services available to the participant through the grantee's program; and

(3) Any conditions or restrictions on the receipt of legal services by the participant.

(e) *Assessment of funds.* Grantees must regularly assess how legal services grant funds can be used in conjunction with other available funds and services to ensure continuity of program operations and to assist participants.

(f) *Administration of legal services grants.* Grantees must ensure that legal services grants are administered in accordance with the requirements of this part, the legal services grant agreement, and other applicable laws and regulations. Grantees are responsible for ensuring that any subcontractors carry out activities in compliance with this part.

§ 79.60 Fee prohibition.

Grantees must not charge a fee to participants for providing legal services that are funded with amounts from a legal services grant under this part.

§ 79.65 Notice of Funding Opportunity (NOFO).

When funds are available for legal services grants, VA will publish a NOFO in the **Federal Register** and on *grants.gov*. The notice will identify:

(a) The location for obtaining legal services grant applications;

(b) The date, time, and place for submitting completed legal services grant applications;

(c) The estimated amount and type of legal services grant funding available, including the maximum grant funding available per award;

(d) Any priorities for or exclusions from funding to meet the statutory mandates of 38 U.S.C. 2022A and VA goals for the Grant Program;

(e) The length of term for the legal services grant award;

(f) Specific point values to be awarded for each criterion listed in §§ 79.35 and 79.45;

(g) The minimum number of total points and points per category that an applicant or grantee, as applicable, must receive in order for a legal services grant to be funded;

(h) Any maximum uses of legal services grant funds for specific legal services;

(i) The timeframes and manner for payments under the legal services grant; and

(j) Other information necessary for the legal services grant application process as determined by VA, including the requirements, goals, and objectives of the Grant Program, and how the preference under § 79.40(d)(3) may be met.

§ 79.70 Legal services grant agreements.

(a) After an applicant is selected for a legal services grant in accordance with § 79.40, VA will draft a legal services grant agreement to be executed by VA and the grantee. Upon execution of the legal services grant agreement, VA will obligate legal services grant funds to cover the amount of the approved legal services grant, subject to the availability of funding. The legal services grant agreement will provide that the grantee agrees, and will ensure that each subcontractor agrees, to:

(1) Operate the program in accordance with the provisions of this part and the applicant's legal services grant application;

(2) Comply with such other terms and conditions, including recordkeeping and reports for program monitoring and evaluation purposes, as VA may establish for purposes of carrying out the Grant Program, in an effective and efficient manner; and

(3) Provide such additional information as deemed appropriate by VA.

(b) After a grantee is selected for renewal of a legal services grant in accordance with § 79.50, VA will draft a legal services grant agreement to be executed by VA and the grantee. Upon execution of the legal services grant agreement, VA will obligate legal services grant funds to cover the amount of the approved legal services grant, subject to the availability of funding. The legal services grant agreement will contain the same provisions described in paragraph (a) of this section.

(c) No funds provided under this part may be used to replace Federal, State, tribal, or local funds previously used, or designated for use, to assist eligible veterans.

§ 79.75 Program or budget changes and corrective action plans.

(a) A grantee must submit to VA a written request to modify a legal services grant for any proposed significant change that will alter its legal services grant program. If VA approves such change, VA will issue a written amendment to the legal services grant agreement. A grantee must receive VA's approval prior to implementing a significant change. Significant changes include, but are not limited to, a change in the grantee or any subcontractors identified in the legal services grant agreement; a change in the area or community served by the grantee; additions or deletions of legal services provided by the grantee; a change in category of eligible veterans to be served; and a change in budget line items that are more than 10 percent of the total legal services grant award.

(1) VA's approval of changes is contingent upon the grantee's amended application retaining a sufficient rank to have been competitively selected for funding in the year that the application was granted.

(2) Each legal services grant modification request must contain a description of the revised proposed use of legal services grant funds.

(b) VA may require that the grantee initiate, develop, and submit to VA for approval a Corrective Action Plan (CAP) if, on a quarterly basis, actual legal services grant expenditures vary from the amount disbursed to a grantee for that same quarter or actual legal services grant activities vary from the grantee's program description provided in the legal services grant agreement.

(1) The CAP must identify the expenditure or activity source that has caused the deviation, describe the reason(s) for the variance, provide specific proposed corrective action(s), and provide a timetable for accomplishment of the corrective action.

(2) After receipt of the CAP, VA will send a letter to the grantee indicating that the CAP is approved or disapproved. If disapproved, VA will make beneficial suggestions to improve the proposed CAP and request resubmission or take other actions in accordance with this part.

(c) Grantees must inform VA in writing of any key personnel changes (*e.g.,* new executive director, grant program director, or chief financial officer) and grantee address changes within 30 days of the change.

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–TBD.)

§ 79.80 Faith-based organizations.

(a) Organizations that are faith-based are eligible, on the same basis as any other organization, to participate in the Grant Program under this part. Decisions about awards of Federal financial assistance must be free from political interference or even the appearance of such interference and must be made on the basis of merit, not on the basis of religion or religious belief or lack thereof.

(b)(1) No organization may use direct financial assistance from VA under this part to pay for explicitly religious activities such as religious worship, instruction, or proselytization; or equipment or supplies to be used for any of those activities.

(2) References to financial assistance are deemed to be references to direct Federal financial assistance, unless the referenced assistance meets the definition of indirect Federal financial assistance in this part.

(c) Organizations that engage in explicitly religious activities, such as worship, religious instruction, or proselytization, must offer those services separately in time or location from any programs or services funded with direct financial assistance from VA under this part, and participation in any of the organization's explicitly religious activities must be voluntary for the participants of a program or service funded by direct financial assistance from VA under this part.

(d) A faith-based organization that participates in the Grant Program under this part will retain its independence from Federal, State, or local governments and may continue to carry out its mission, including the definition, practice and expression of its religious beliefs, provided that it does not use direct financial assistance from VA under this part to support any explicitly religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide VA-funded services under this part, without concealing, removing, or altering religious art, icons, scripture, or other religious symbols. In addition, a VA-funded faith-based organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members and otherwise govern itself on a religious basis, and include religious reference in its organization's mission statements and other governing documents.

(e) An organization that participates in the Grant Program shall not, in providing legal services, discriminate against a program participant or prospective participant regarding legal services on the basis of religion or religious belief.

(f) If a State or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, this provision applies to all of the commingled funds.

(g) To the extent otherwise permitted by Federal law, the restrictions on explicitly religious activities set forth in this section do not apply where VA funds are provided to faith-based organizations through indirect Federal financial assistance. A faith-based organization may receive such funds as the result of a participant's genuine and independent choice if, for example, a participant redeems a voucher, coupon, or certificate, allowing the participant to direct where funds are to be paid, or a similar funding mechanism provided to that participant and designed to give that participant a choice among providers.

§ 79.85 Visits to monitor operations and compliance.

(a) VA has the right, at all reasonable times, to make visits to all grantee locations where a grantee is using legal services grant funds in order to review grantee accomplishments and management control systems and to provide such technical assistance as may be required. VA may conduct inspections of all program locations and records of a grantee at such times as are deemed necessary to determine compliance with the provisions of this part. If a grantee delivers services in a participant's home, or at a location away from the grantee's place of business, VA may accompany the grantee. If the grantee's visit is to the participant's home, VA will only accompany the grantee with the consent of the participant. If any visit is made by VA on the premises of the grantee or a subcontractor under the legal services grant, the grantee must provide, and must require its subcontractors to provide, all reasonable facilities and assistance for the safety and convenience of the VA representatives in the performance of their duties. All visits and evaluations will be performed in such a manner as will not unduly delay services.

(b) The authority to inspect carries with it no authority over the management or control of any applicant or grantee under this part.

§ 79.90 Financial management and administrative costs.

(a) Grantees must comply with applicable requirements of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards under 2 CFR part 200.

(b) Grantees must use a financial management system that provides adequate fiscal control and accounting records and meets the requirements set forth in 2 CFR part 200.

(c) Payment up to the amount specified in the legal services grant must be made only for allowable, allocable, and reasonable costs in conducting the work under the legal services grant. The determination of allowable costs must be made in accordance with the applicable Federal Cost Principles set forth in 2 CFR part 200.

(d) Costs for administration by a grantee must not exceed 10 percent of the total amount of the legal services grant. Administrative costs will consist of all costs associated with the management of the program, including administrative costs of subcontractors.

§ 79.95 Grantee reporting requirements.

(a) VA may require grantees to provide, in such form as may be prescribed, such reports or answers in writing to specific questions, surveys, or questionnaires as VA determines necessary to carry out the Grant Program.

(b) At least once per year, or at the frequency set by VA, each grantee must submit to VA a report containing information relating to operational effectiveness; fiscal responsibility; legal services grant agreement compliance; and legal and regulatory compliance. This report must include a breakdown of how the grantee used the legal services grant funds; the number of participants assisted; information on each participant's gender, age, race, and service era; a description of the legal services provided to each participant; and any other information that VA requests.

(c) VA may request additional reports to allow VA to fully assess the provision legal services under this part.

(d) Grantees must relate financial data to performance data and develop unit cost information whenever practical.

(e) All pages of the reports must cite the assigned legal services grant number and be submitted in a timely manner as set forth in the grant agreement.

(f) Grantees must provide VA with consent to post information from reports on the internet and use such information in other ways deemed appropriate by VA. Grantees must clearly redact information that is confidential based on attorney-client privilege, unless that privilege has been waived by the client.

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–TBD.)

§ 79.100 Recordkeeping.

Grantees must ensure that records are maintained for at least a 3-year period to document compliance with this part. Grantees must produce such records at VA's request.

§ 79.105 Technical assistance.

VA will provide technical assistance, as necessary, to applicants and grantees to meet the requirements of this part. Such technical assistance will be provided either directly by VA or through contracts with appropriate public or non-profit private entities.

§ 79.110 Withholding, suspension, deobligation, termination, and recovery of funds by VA.

VA will enforce this part through such actions as may be appropriate. Appropriate actions include withholding, suspension, deobligation, termination, recovery of funds by VA, and actions in accordance with 2 CFR part 200.

§ 79.115 Legal services grant closeout procedures.

Legal services grants will be closed out in accordance with 2 CFR part 200.

[FR Doc. 2022–10930 Filed 5–31–22; 8:45 am]

BILLING CODE 8320–01–P

POSTAL SERVICE

39 CFR Part 111

Special Handling—Fragile Discontinued

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is amending the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) in various sections to discontinue the Special Handling—Fragile extra service.

DATES: Effective June 1, 2022.

FOR FURTHER INFORMATION CONTACT: Karen F. Key at (202) 268–7492 or Garry Rodriguez at (202) 268–7281.

SUPPLEMENTARY INFORMATION: On April 20, 2022, the Postal Service published a notice of proposed rulemaking (87 FR 23480–23482) to discontinue the Special Handling—Fragile extra service. The Postal Service did not receive any formal responses.

The Postal Service is discontinuing the Special Handling—Fragile extra service. An investigation revealed that operational procedures do not support the preferential handling of Special Handling—Fragile items.

The Postal Service continues to strive to build and maintain a loyal relationship with its customers and provide products and services with integrity. However, with the execution gaps that currently exist with Special Handling—Fragile, the Postal Service believes it is in the best interest to discontinue the Special Handling—Fragile extra service.

The decision to discontinue Special Handling—Fragile will not affect live animals tendered to the Postal Service as provided in Publication 52—*Hazardous, Restricted, and Perishable Mail.*

In addition, the Postal Service is revising the applicable Quick Service Guides (QSG), *Price List* (Notice 123), and Publication 52, to reflect this DMM revision.

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401–404, 414, 416, 3001–3018, 3201–3220, 3401–3406, 3621, 3622, 3626, 3629, 3631–3633, 3641, 3681–3685, and 5001.

■ 2. Revise the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

500 Additional Services

503 Extra Services

1.0 Basic Standards for All Extra Services

* * * * *

1.4 Eligibility for Extra Services

* * * * *

1.4.1 Eligibility—Domestic Mail

* * * * *

Exhibit 1.4.1 Eligibility—Domestic Mail

[Delete the ''Special Handling—Fragile'' extra service item in its entirety.]

[Under the ''Additional Combined Extra Services'' column delete ''Special Handling—Fragile'' from the ''Insurance'', ''Certificate of Mailing'', ''Certificate of Bulk Mailing'', ''Return Receipt'', ''Signature Confirmation'', ''Signature Confirmation Restricted Delivery'', and ''Collect on Delivery'' extra service items.]

* * * * *

[Delete section 10.0, Special Handling—Fragile, in its entirety.]

* * * * *

1.4.2 Eligibility—Other Domestic Mail

* * * * *

Exhibit 1.4.2 Eligibility—Other Domestic Mail

* * * * *

[Delete the Special Handling—Fragile line item in its entirety.]

* * * * *

507 Mailer Services

* * * * *

1.0 Treatment of Mail

* * * * *

1.3 Directory Service

USPS letter carrier offices give directory service to the types of mail listed below that have an insufficient address or cannot be delivered at the address given (the USPS does not compile a directory of any kind):

[Revise the text of item a to read as follows:]

a. Mail with extra services (certified, COD [excluding COD Hold For Pickup mailpieces], registered).

* * * * *

1.4 Basic Treatment

* * * * *

1.4.5 Extra Services

Mail with extra services is treated according to the charts for each class of mail in 1.5, except that:

* * * * *

[Delete item c in its entirety and renumber item d as item c.]

* * * * *

2.0 Forwarding

* * * * *

2.3 Postage for Forwarding

* * * * *

2.3.7 Extra Services

[Revise the text of 2.3.7 to read as follows:]

Certified, collect on delivery (COD) (excluding COD Hold For Pickup mailpieces), USPS Tracking, insured, registered, Signature Confirmation, and Adult Signature mail is forwarded to a domestic address only without additional extra service fees, subject to the applicable postage charge.

* * * * *

600 Basic Standards for All Mailing Standards

* * * * *

604 Postage Payment Methods and Refunds

1.0 Stamps

* * * * *

1.3 Postage Stamps Invalid for Use

The following are not valid to pay postage for U.S. domestic or U.S.-originated international mail:

[Revise the text of item a to read as follows:]

a. Postage due, special delivery, and Certified Mail stamps.

* * * * *

4.0 Postage Meters and PC Postage Products (''Postage Evidencing Systems'')

* * * * *

4.6 Mailings

4.6.1 Mailing Date Format

* * * The mailing date format used in the indicia is also subject to the following conditions.

a. Complete Date. Mailers must use a complete date for the following:

* * * * *

[Revise the text of item a2 to read as follows:]

2. All mailpieces with Insured Mail or COD service.

* * * * *

9.0 Exchanges and Refunds

* * * * *

9.2 Postage and Fee Refunds

* * * * *

9.2.3 Full Refund

A full refund (100%) may be made when:

* * * * *

[Revise the text of item e to read as follows:]

e. Fees are paid for Certified Mail services, USPS Tracking, or USPS Signature Services, and the article fails to receive the extra service for which the fee is paid.

* * * * *

700 Special Standards

703 Nonprofit USPS Marketing Mail and Other Unique Eligibility

* * * * *

2.0 Overseas Military and Diplomatic Post Office Mail

* * * * *

2.5 Parcel Airlift (PAL)

* * * * *

2.5.5 Additional Services

The following extra services may be combined with PAL if the applicable standards for the services are met and the additional service fees paid:

* * * * *

[Delete item ''e'' in its entirety.]

* * * * *

3.0 Department of State Mail

* * * * *

3.2 Conditions for Authorized Mail

* * * * *

3.2.6 Extra Services

* * * * *

[Delete item e and renumber item f as item e.]

* * * * *

9.0 Mixed Classes

* * * * *

9.13 Extra Services for Mixed Classes

[Delete 9.13.1 in its entirety and renumber items 9.13.2 and 9.13.3 as 9.13.1 and 9.13.2.]

* * * * *

705 Advanced Preparation and Special Postage Payment Systems

* * * * *

18.0 Priority Mail Express Open and Distribute and Priority Mail Open and Distribute

* * * * *

18.3 Additional Standards for Priority Mail Express Open and Distribute

* * * * *

18.3.2 Extra Services

No extra services may be added to the Priority Mail Express segment of a Priority Mail Express Open and Distribute shipment, and the enclosed mail may receive only the following extra services:

[Revise the text of items a and b to read as follows:]

a. First-Class Mail pieces may be sent with Certified Mail service or, for parcels only, USPS Tracking or Signature Confirmation service.

b. Priority Mail pieces may be sent with Certified Mail service, USPS Tracking, or Signature Confirmation service.

* * * * *

[Revise the text of item d to read as follows:]

d. Parcel Select, USPS Retail Ground and Package Services mail may be sent with, for parcels only, USPS Tracking or Signature Confirmation service.

18.4 Additional Standards for Priority Mail Open and Distribute

* * * * *

18.4.2 Extra Services

* * * The mail enclosed in the container may receive only the following services:

[Revise the text of item a to read as follows:]

a. First-Class Mail pieces may be sent with Certified Mail service or special handling or, for parcels only, USPS Tracking or Signature Confirmation service.

* * * * *

[Revise the text of item c to read as follows:]

c. Parcel Select and Package Services mail may be sent with, for parcels only, USPS Tracking or Signature Confirmation service.

* * * * *

Index

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E

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extra services, 503

[Revise the ''extra services'' entry by deleting the ''Special Handling—Fragile'' line item.]

* * * * *

S

* * * * *

[Delete the ''special Handling'' entry in its entirety.]

* * * * *

Joshua J. Hofer,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–11573 Filed 5–31–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 220523–0119]

RIN 0648–BL16

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna and North Atlantic Albacore Quotas

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: In this final rule, NMFS modifies the baseline annual U.S. quota and subquotas for Atlantic bluefin tuna and the baseline annual U.S. North Atlantic albacore tuna (northern albacore) quota. This action is necessary to implement binding recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT) adopted in 2021, as required by the Atlantic Tunas Convention Act (ATCA), and to achieve domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). NMFS also adjusts the 2022 bluefin tuna Reserve category quota and the 2022 baseline northern albacore quota to account for available underharvest from 2021, consistent with the Atlantic tunas quota regulations. NMFS further recalculates the bluefin tuna Purse Seine and Reserve category quotas that were announced earlier this year, to reflect the quotas in this final rule.

DATES: This final rule is effective on July 1, 2022.

ADDRESSES: Copies of this final rule and supporting documents are available from the Highly Migratory Species (HMS) Management Division website at *https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species* or by contacting Carrie Soltanoff at *carrie.soltanoff@noaa.gov* or 301–427–8503.

FOR FURTHER INFORMATION CONTACT: Carrie Soltanoff (*carrie.soltanoff@noaa.gov*), Larry Redd, Jr. (*larry.redd@noaa.gov*), or Steve Durkee (*steve.durkee@noaa.gov*) at 301–427–8503.

SUPPLEMENTARY INFORMATION: Atlantic tunas fisheries are managed under the authority of ATCA (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (2006 Consolidated HMS FMP) and its amendments are implemented by regulations at 50 CFR part 635. Section 635.27(a) divides the U.S. bluefin tuna quota recommended by ICCAT and as implemented by the United States among domestic fishing categories and provides the annual bluefin tuna quota adjustment process. Section 635.27(e) implements the ICCAT-recommended U.S. northern albacore quota and provides the annual northern albacore quota adjustment process.

Background information about the need to modify the baseline annual U.S. quota and subquotas for Atlantic bluefin tuna and the baseline annual U.S. northern albacore quota was provided in the preamble to the proposed rule (87 FR 12648, March 7, 2022) and most of that background information is not repeated here. The comment period for the proposed rule closed on April 6, 2022. NMFS received one written comment and did not receive any oral comments at a public webinar. The comment received, and the response to that comment, is summarized below in the Response to Comments section.

Consistent with the regulations regarding annual bluefin tuna and northern albacore quota adjustment, NMFS annually announces the addition of available underharvest, if any, to the bluefin tuna Reserve category and to the northern albacore quota in a **Federal Register** notice once catch (landings and dead discards) information is available. Preliminary data have become available to NMFS since publication of the proposed rule. These preliminary data do not necessarily represent the complete and quality-controlled catch data that will become available later in the year and that will be submitted to ICCAT for 2021. However, NMFS anticipates that any changes in the data as a result of this additional analysis would be minor and would not change the amount of allowable carryover into 2022 for either bluefin tuna or northern albacore. Notice of the quota adjustment for 2021 underharvest is included in this final rule to provide the regulated community with information about the adjusted quota balances.

NMFS has prepared an Environmental Assessment (EA), Regulatory Impact Review (RIR), and Final Regulatory Flexibility Analysis (FRFA), which analyze the anticipated environmental, social, and economic impacts of several alternatives for each of the major issues contained in this final rule. A summary of the analyses is provided below. The full list of alternatives and their analyses are provided in the final EA/RIR/FRFA and are not repeated here.

A copy of the final EA/RIR/FRFA prepared for this final rule is available from NMFS (see **ADDRESSES**).

Bluefin Tuna Annual Quota and Subquotas

Quotas and Domestic Allocations

Under ICCAT Recommendation 21–07, adopted at the November 2021 ICCAT meeting, the annual U.S. bluefin tuna quota is 1,316.14 mt, plus 25 mt to account for bycatch related to pelagic longline fisheries in the Northeast Distant gear restricted area (NED), resulting in a total of 1,341.14 mt. The 1,316.14-mt quota is an increase of 68.28 mt (5.5 percent) from the 1,247.86-mt level established in the 2018 quota rule (83 FR 51391, October 11, 2018). All total allowable catch (TAC), quota, and weight information provided in this action are whole weight (ww) amounts.

This action implements the ICCAT-recommended quota of 1,341.14 mt, which would remain in effect until changed (for instance as a result of a new ICCAT bluefin tuna TAC and U.S. quota recommendation). The ICCAT-recommended bluefin tuna quota is divided among the established regulatory domestic bluefin tuna subquota categories. To calculate the subquotas under the existing regulations, 68 mt first is subtracted from the baseline annual U.S. bluefin tuna quota and allocated to the Longline category quota. This amount was first provided through Amendment 7 to the 2006 Consolidated HMS FMP to facilitate the category's ability to account for both landings and dead discards within the quota, consistent with the historical separate dead discard allocation. Second, the remaining quota is divided among the categories according to the following percentages: General—47.1 percent; Angling—19.7 percent; Harpoon—3.9 percent; Purse Seine—18.6 percent; Longline—8.1 percent (plus the 68-mt initial allocation); Trap—0.1 percent; and Reserve—2.5 percent. The resulting subquotas will be codified at § 635.27(a) when this final rule becomes effective and will remain in effect until changed. Within the bluefin tuna quota implemented in this action and consistent with the ICCAT-recommended limit on the harvest of school bluefin tuna (measuring 27 to less than 47 inches curved fork length), the school bluefin tuna subquota is 134.1 mt. The 25-mt NED allocation is in addition to these subquotas.

The table below shows the quotas and subquotas that result from applying this process, using the current subquota formula and regulations. In May 2021, NMFS published a proposed rule for Draft Amendment 13 to the 2006 Consolidated HMS FMP (86 FR 27686, May 21, 2021) that proposed modifications to the category quotas. At the time of this rulemaking, NMFS has not yet issued a final rule for Amendment 13, and the quotas and subquotas in Table 1 are not affected by Amendment 13 at this time.

TABLE 1—ANNUAL ATLANTIC BLUEFIN TUNA QUOTAS

[In metric tons]

Category	Annual baseline quota	Subquotas		
General	587.9			
		January–March [1]	31.2	
		June–August	293.9	
		September	155.8	
		October–November	76.4	
		December	30.6	
Harpoon	48.7			
Longline	169.1			
Trap	1.2			
Purse Seine	232.2			
Angling	245.9			
		School	134.1	
		Reserve		24.8
		North of 39°18′ N lat		51.6
		South of 39°18′ N lat		57.7
		Large School/Small Medium	106.1	
		North of 39°18′ N lat		50.1
		South of 39°18′ N lat		56.0
		Trophy	5.7	
		North of 39°18′ N lat		1.9
		South of 39°18′ N lat		1.9
		Gulf of Mexico		1.9
Reserve	31.2			
U.S. Baseline Quota	[2] 1,316.14			
Total U.S. Quota, including 25 mt for NED (Longline).	[2] 1,341.14			

[1] January 1 through the effective date of a closure notice filed by NMFS announcing that the January subquota is reached or projected to be reached, or through March 31, whichever comes first.

[2] Totals subject to rounding error.

In addition to the final measures, in the EA for this action, NMFS analyzed a no action alternative that would maintain the current U.S. annual bluefin tuna quota of 1,247.86 mt and the current subquotas. The EA for this action describes the impacts of the no action alternative and the preferred alternative finalized here.

Recalculation of Quota Available to Atlantic Tunas Purse Seine Category and Reserve Category

Pursuant to § 635.27(a)(4), NMFS annually determines the amount of quota available to the Atlantic Tunas Purse Seine category participants, based on their bluefin tuna catch (landings and dead discards) in the prior year, and reallocates the remainder to the Reserve category. Because this action increases the U.S. baseline quota and subquotas, NMFS also recalculates the 2022 Purse Seine and Reserve category quotas in this final rule. NMFS previously announced that 55 mt were available to the Purse Seine category for 2022, and the amount of Purse Seine category quota to be reallocated to the Reserve category was 164.5 mt (219.5 mt less 55 mt available to the Purse Seine category) (87 FR 5737, February 2, 2022). To account for the ICCAT quota increase addressed in this rule, NMFS first adjusts the 2022 Purse Seine category quota to reflect the ICCAT quota increase. As a result, the baseline Purse Seine category quota initially increases by 12.7 mt to 232.2 mt. NMFS then recalculates the amounts of quota available to individual Purse Seine category participants for 2022 using the revised baseline Purse Seine category quota (232.2 mt). As a result of this recalculation, 58 mt are available overall for Purse Seine category participants in 2022, based on the cumulative amounts available to individual participants under the regulations at § 635.27(a)(4)(v). NMFS will notify Purse Seine category participants of the adjusted amount of quota available for their use in 2022 through the Individual Bluefin Quota (IBQ) electronic system and in writing.

The remaining 174.2 mt (232.2 mt less 58 mt available to the Purse Seine category) is added to the 2022 Reserve category quota. This final rule also increases the baseline annual Reserve category quota by 1.7 mt from 29.5 mt to 31.2 mt based on the ICCAT baseline quota increase and the existing Reserve category quota percentage. Thus, the recalculated 2022 Reserve category quota is: 29.5 mt (current baseline) + 1.7 mt (reflecting ICCAT baseline quota increase) + 174.2 mt (transfer to Reserve following Purse Seine adjustments reflecting ICCAT baseline quota increase), for a total of 205.4 mt. The 2022 Reserve category quota is further adjusted from this recalculated total as described below.

Adjustment of the 2022 Bluefin Tuna Reserve Category Quota for Underharvest

Consistent with the regulations regarding annual bluefin tuna quota adjustment at § 635.27(a), NMFS annually announces the addition of available underharvest, if any, to the bluefin tuna Reserve category, after catch information is available. Under ICCAT Recommendation 17–06, as implemented in the U.S. quota adjustment regulations at § 635.27(a)(10), the maximum underharvest that a Contracting Party may carry forward from one year to the next is 10 percent of its initial catch quota, which, for the United States, was 127.29 mt for 2021 (10 percent of 1,272.86 mt).

For 2022, NMFS is carrying forward the full, allowable 127.29 mt. In 2021, the adjusted bluefin tuna quota was 1,400.15 mt (baseline quota of 1,272.86 mt + 127.29 mt of 2020 underharvest carried over to 2021 (86 FR 54659, October 4, 2021)). The total 2021 bluefin tuna catch, including landings and dead discards, was 1,184.5 mt, which is an underharvest of 215.65 mt from the 2021 adjusted quota and which exceeds the allowable carryover of 127.29 mt. When carrying over underharvest from one year to the next, NMFS uses the underharvest to augment the bluefin tuna Reserve category quota. Thus, for 2022, NMFS augments the Reserve category quota with the allowable carryover of 127.29 mt.

Effective January 28, 2022, NMFS transferred 26 mt of Reserve category quota to the General category (87 FR 5737, February 2, 2022). Thus, the adjusted 2022 Reserve category quota as of the effective date of this action is: 29.5 mt (current baseline) + 1.7 mt (reflecting ICCAT baseline quota increase) + 174.2 mt (transfer to Reserve following Purse Seine adjustments reflecting ICCAT baseline quota increase) − 26 mt (January quota transfer) + 127.29 mt (underharvest carryover in this action), for a total of 306.69 mt.

Northern Albacore Annual Quota

Domestic Quota

Although an increase in the U.S. northern albacore quota to 711.5 mt was recommended for 2021 in ICCAT Recommendation 20–04, NMFS did not codify the quota increase at that time due to the low level of northern albacore landings compared to the baseline quota, as described in the rule to adjust the 2021 northern albacore, swordfish, and bluefin tuna Reserve category quotas (86 FR 54659, October 4, 2021).

At its 2021 annual meeting, under Recommendation 21–04, ICCAT adopted a management procedure for northern albacore and maintained the 711.5-mt U.S. northern albacore quota for 2022 and 2023. Accordingly, this action modifies the baseline annual U.S. northern albacore quota from 632.4 mt, as established in the 2018 quota rule, to 711.5 mt. The associated EA for this action also analyzes the effects of three-year annual quotas of up to 950 mt, where the quota is set through application of the harvest control rule within Recommendation 21–04's northern albacore management procedure. This level of 950 mt is derived from the maximum allowable catch limit recommended in the northern albacore management procedure. The maximum catch limit of 50,000 mt represents an increase of approximately 32 percent over the current TAC of 37,801 mt. Assuming the portion of the overall quota allocated to the United States remains the same in future years under the management procedure, such an increase would result in a maximum annual baseline U.S. quota of 950 mt. This analysis anticipates that NMFS would implement U.S. northern albacore quotas as recommended by ICCAT in accordance with the management procedure, up to the analyzed maximum baseline quota of 950 mt. The baseline quota would remain at 711.5 mt annually until changed by ICCAT. NMFS anticipates implementing any new baseline quotas through final rulemaking, assuming no new management measures are adopted or other relevant changes in circumstances occur. Additionally, consistent with current practice, NMFS annually would provide notice to the public in the **Federal Register** of the baseline northern albacore quota with any annual adjustments as allowable for over- and underharvest, as appropriate. NMFS would evaluate the need for any additional environmental analyses or for proposed and final rulemaking when a new quota is adopted by ICCAT and implemented by NMFS.

In addition to the final measures, in the EA for this action, NMFS analyzed a no action alternative that would maintain the current U.S. annual northern albacore quota of 632.4 mt, as well as an alternative that would implement the ICCAT-recommended 711.5-mt U.S. annual northern albacore quota without considering a maximum quota under the northern albacore management procedure. The EA for this action describes the impacts of these

two alternatives and the preferred alternative finalized here.

Adjustment of the 2022 Northern Albacore Quota

Consistent with regulations at § 635.27(e), NMFS adjusts the U.S. annual northern albacore quota for allowable underharvest, if any, in the previous year. NMFS makes such adjustments consistent with ICCAT carryover limits when catch information for the prior year is available. Under ICCAT Recommendation 21–04, the maximum underharvest that a Contracting Party may carry forward from one year to the next is 25 percent of its initial catch quota, which, relevant to 2022, would be 177.9 mt for the United States (25 percent of 711.5 mt under Recommendation 20–04).

In 2021, the adjusted northern albacore quota was 790.5 mt (baseline quota of 632.4 mt plus 158.1 mt of 2020 underharvest carried forward to 2021, based on 25 percent of the 632.4-mt quota in place for 2020) (86 FR 54659, October 4, 2021). The total 2021 northern albacore landings were 272 mt, which is an underharvest of 518.5 mt of the 2021 adjusted quota. Of this underharvest, 177.9 mt may be carried forward to the 2022 fishing year. Thus, the adjusted 2022 northern albacore quota is 711.5 mt plus 177.9 mt, for a total of 889.4 mt.

Response to Comments

Written comments can be found at *www.regulations.gov* by searching for NOAA–NMFS–2022–0024. Below, NMFS summarizes and responds to the comment made specifically on the proposed rule during the comment period.

Comment 1: A commenter suggested that, for conservation reasons, NMFS should reduce rather than increase the northern albacore and bluefin tuna overall quotas.

Response: The western Atlantic bluefin tuna TAC adopted by ICCAT is consistent with the advice of ICCAT's scientific body, the Standing Committee on Research and Statistics (SCRS). For management in 2022 under an interim conservation and management plan, ICCAT identified the selected TAC as precautionary, based on the results of the 2021 stock assessment, and as one that prevents overfishing with a high probability, prioritizes continued stock growth, including into the long-term, and ensures relative stability by avoiding a large fluctuation in catches. The northern albacore TAC resulted from the harvest control rule and management procedure adopted by ICCAT. The harvest control rule, management procedure, and resultant TAC support ICCAT's management objectives for the northern albacore stock, including to maintain the stock in the green quadrant of the Kobe plot (*i.e.,* not overfished and not undergoing overfishing), with at least a 60-percent probability, while maximizing long-term yield from the fishery. NMFS has determined that implementing the U.S. bluefin tuna and northern albacore baseline quotas is consistent with the ICCAT recommendations and NMFS' conservation and management obligations under the Magnuson-Stevens Act and ATCA to provide a reasonable opportunity to harvest the ICCAT-recommended quotas. Furthermore, ATCA prohibits NMFS from taking an action that ''may have the effect of increasing or decreasing any allocation or quota of fish or fishing mortality level'' set by ICCAT. 16 U.S.C. 971d(c)(3). NMFS is committed to the sustainable, science-based management of bluefin tuna and northern albacore, and is supportive of ICCAT's work toward adopting stock management recommendations using a management procedure for bluefin tuna, which ICCAT has recommended and has been adopted for northern albacore, to manage fisheries more effectively in the face of identified uncertainties. Reducing the quotas for either stock is not warranted from a conservation and management perspective.

Classification

NMFS is issuing this rule pursuant to section 305(d) of the Magnuson-Stevens Act. The NMFS Assistant Administrator has determined that the final rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the Magnuson-Stevens Act, ATCA, and other applicable law.

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

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

A Final Regulatory Flexibility Analysis (FRFA) was prepared for this rule. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, NMFS' responses to those comments, and a summary of the analyses completed to support the action. The full FRFA is available from NMFS (see **ADDRESSES**). A summary is provided below.

Section 604(a)(1) of the Regulatory Flexibility Act (RFA) requires Agencies to state the need for, and objective of, the final action. The purpose of this rulemaking is, consistent with the 2006 Consolidated HMS FMP objectives, the Magnuson-Stevens Act, ATCA, and other applicable laws, to analyze the impacts of the alternatives for implementing the ICCAT-recommended U.S. bluefin tuna and northern albacore quotas and allocating the bluefin tuna quota per the codified quota regulations. The objective of this rulemaking is to implement ICCAT recommendations consistent with ATCA and achieve domestic management objectives under the Magnuson-Stevens Act. See Section 1 of the EA for a full description of the need for and objectives of the final rule.

Section 604(a)(2) of the RFA requires a summary of significant issues raised by the public in response to the IRFA, a summary of the agency's assessment of such issues, and a statement of any changes made as a result of the comments. NMFS received one comment on the proposed rule during the comment period. A summary of that comment and the Agency's response are described above. That comment did not refer to the IRFA or the economic impacts of the rule.

Section 604(a)(3) of the RFA requires the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the SBA comments. NMFS did not receive comments from the Chief Counsel for Advocacy of the SBA in response to the proposed rule.

Section 604(a)(4) of the RFA requires Agencies to provide descriptions of, and where feasible, an estimate of the number of small entities to which the rule would apply. NMFS established a small business size standard of $11 million in annual gross receipts for all businesses in the commercial fishing industry (NAICS 11411) for RFA compliance purposes. The Small Business Administration (SBA) has established size standards for all other major industry sectors in the United States, including the scenic and sightseeing transportation (water) sector (NAICS code 487210), which includes for-hire (charter/party boat) fishing entities. The SBA has defined a small entity under the scenic and sightseeing transportation (water) sector as one with average annual receipts (revenue) of less than $8.0 million.

NMFS considers all HMS permit holders, both commercial and for-hire, to be small entities because they had average annual receipts of less than their respective sector's standard of $11

million and $8 million. Regarding those entities that would be directly affected by the preferred alternatives, the average annual revenue per active pelagic longline vessel is estimated to be $202,000, based on approximately 90 active vessels that in total produced an estimated $18.2 million in revenue in 2020, well below the NMFS small business size standard for commercial fishing businesses of $11 million. No single pelagic longline vessel has exceeded $11 million in revenue in recent years.

Other non-longline HMS commercial fishing vessels typically earn less revenue than pelagic longline vessels and, thus, would also be considered small entities. Based on 2021 permit information, NMFS predicts that the preferred alternatives would apply to the following numbers of non-pelagic longline permit holders that fish commercially or engage in commercial activities: 2,730 General category, 4,055 Charter/Headboat, 35 Harpoon category, and 34 seafood dealers that purchase bluefin tuna and northern albacore. There are no Purse Seine category permits issued currently; however there are five historical participants in the purse seine fishery that are allocated some portion of the category's available bluefin tuna quota under regulations adopted in 2015. These participants may lease that quota to other category participants or pelagic longline vessels through the Individual Bluefin Quota (IBQ) leasing program.

NMFS has determined that the preferred alternatives would not likely directly affect any small organizations or small government jurisdictions defined under RFA, nor would there be disproportionate economic impacts between large and small entities.

This action would apply to all participants in the Atlantic tuna fisheries, *i.e.,* to the over 7,000 permit holders that held an Atlantic HMS Charter/Headboat or an Atlantic Tunas permit as of October 2021. This final rule is expected to directly affect commercial and for-hire fishing vessels that possess an Atlantic Tunas permit or Atlantic HMS Charter/Headboat permit. It is unknown what portion of HMS Charter/Headboat permit holders actively participate in the bluefin tuna and northern albacore fisheries or provide fishing services for recreational anglers. As summarized in the 2021 SAFE Report for Atlantic HMS, there were 7,104 commercial Atlantic tunas or Atlantic HMS permits in 2021, categorized as follows: 2,730 in the Atlantic Tunas General category; 35 in the Atlantic Tunas Harpoon category; 284 in the Atlantic Tunas Longline category; 2 in the Atlantic Tunas Trap category; and 4,055 in the HMS Charter/Headboat category. The 90 active pelagic longline vessels described above are a subset of the 284 Atlantic Tunas Longline permits issued, 136 of which received IBQ shares. This constitutes the best available information regarding the universe of permits and permit holders recently analyzed. NMFS has determined that this action would not likely directly affect any small government jurisdictions defined under the RFA.

Section 604(a)(5) of the RFA requires agencies to describe any new reporting, record-keeping, and other compliance requirements. This action does not contain any new collection of information, reporting, or record-keeping requirements.

Section 604(a)(6) of the RFA requires Agencies to describe the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

This rulemaking implements the recently adopted ICCAT-recommended U.S. bluefin tuna and northern albacore quotas and, for bluefin tuna, applies the allocations for each quota category per the codified quota regulations. This action would be consistent with ATCA, under which the Secretary promulgates regulations as necessary to implement binding ICCAT recommendations.

As described below, NMFS analyzed several different alternatives in this rulemaking and provides rationales for identifying the preferred alternatives to achieve the desired objectives. The FRFA assumes that each permit holder will have similar catch and gross revenues to show the relative impact of the final action on permit holders.

For bluefin tuna, NMFS analyzed a no action alternative, Alternative A1, which would maintain the current U.S. annual bluefin tuna quota of 1,247.86 mt and the current subquotas. NMFS also analyzed Alternative A2, the preferred alternative, which would increase the U.S. annual bluefin tuna quota, as described below.

NMFS has estimated the average impact of establishing the increased annual U.S. baseline bluefin tuna quota for all domestic quota categories under the preferred alternative on individual categories and the permit holders within those categories. As mentioned above, the 2021 bluefin tuna ICCAT recommendation increased the annual U.S. baseline bluefin tuna quota for 1,316.14 mt and continues to provide 25 mt annually for incidental catch of bluefin tuna related to directed longline fisheries in the NED. The annual U.S. baseline bluefin tuna subquotas would be adjusted consistent with the process (*i.e.,* the formulas) established in Amendment 7 and as codified in the quota regulations (as shown in Table 1), and these amounts (in mt) would be codified. In May 2021, NMFS published a proposed rule for Draft Amendment 13 to the 2006 Consolidated HMS FMP (86 FR 27686, May 21, 2021) that proposed modifications to the category quotas. At the time of this rulemaking, NMFS has not yet issued a final rule for Amendment 13, and Amendment 13 does not affect the measures in this action.

To calculate the average ex-vessel bluefin tuna revenues under this action, NMFS first estimated potential category-wide revenues. The most recent ex-vessel average price per pound information for each commercial quota category is used to estimate potential ex-vessel gross revenues under the subquotas in this action (*i.e.,* 2021 prices for the General, Harpoon, Longline/Trap categories, and 2015 prices for the Purse Seine category). The baseline subquotas in this action could result in estimated gross revenues of $12.3 million annually, if fully utilized. Note that in recent years, the Purse Seine category has not landed any bluefin tuna and has therefore been distributed 25 percent of the Purse Seine category quota. The remaining 75 percent of the Purse Seine category quota has been transferred to the Reserve category, which typically is then transferred to the General category. (This is a simplification for the purposes of this analysis. Reserve category quota can be transferred to any other category after consideration of regulatory criteria). The Purse Seine category quota distributed to participants is available for leasing to Atlantic Tunas Longline permit holders under the IBQ Program. The following quota category amounts assume the 174.2 mt is transferred to the General category (75 percent of the purse seine quota) and 58.1 mt is leased to the pelagic longline fishery (25 percent of the purse seine quota). Potential revenues for each category are as follows: General category: $9.3 million (762.1 mt multiplied by $5.55/lb); Harpoon category: $660,289 (48.7 mt multiplied by $6.15/lb); Purse Seine category: $0 million (0 mt multiplied by

$3.21/lb); Longline category: $2.3 million (227.2 mt multiplied by $4.52/lb); and Trap category: $10,556 (1.2 mt multiplied by $3.99/lb).

Using the above methodology, the current baseline subquotas under Alternative A1 could result in estimated gross revenues of $11.6 million annually, if fully utilized. The following quota category amounts assume the 164.5 mt is transferred to the General category (75 percent of the purse seine quota) and 55 mt is leased to the pelagic longline fishery (25 percent of the purse seine quota). Potential revenues for each category are as follows: General category: $8.8 million (720.2 mt multiplied by $5.55/lb); Harpoon category: $623,690 (46 mt multiplied by $6.15/lb); Purse Seine category: $0 (0 mt multiplied by $3.21/lb); Longline category: $2.2 million (218.6 mt multiplied by $4.52/lb); and Trap category: $10,556 (1.2 mt multiplied by $3.99/lb). Note that these revenues are likely an underestimation for the General and Harpoon categories, which typically receive additional quota from the Reserve category (*i.e.,* from the baseline Reserve subquota, and from the up to 10 percent of the U.S. baseline quota that could be carried forward from the previous year's underharvest). These revenues are likely an overestimation for the Longline and Trap categories, which do not typically land their entire quotas allocated for incidental bluefin tuna catch. For comparison to these revenue estimations, in 2021, gross revenues were approximately $12.0 million, broken out by category as follows: $10.5 million for the General category, $755,924 for the Harpoon category, $0 for the Purse Seine category, $753,067 for the Longline category, and $0 for the Trap category.

No affected entities would be expected to experience negative economic impacts as a result of this action. On the contrary, each of the bluefin tuna quota categories would increase relative to the baseline quotas that applied in prior years, and thus economic impacts would be expected to be positive.

To estimate the potential average ex-vessel revenues for each permit holder that could result from this action for bluefin tuna, NMFS divided the potential annual gross revenues for the General, Harpoon, Purse Seine, and Trap categories by the number of permit holders. For the Longline category, NMFS divided the potential annual gross revenues by the number of permit holders that are IBQ share recipients. This is an appropriate approach for bluefin tuna fisheries, in particular, because available landings data (weight and ex-vessel value of the fish in price-per-pound) allow NMFS to calculate the gross revenue earned by a permit holder on a successful trip. The available data (particularly from non-Longline permit holders) do not, however, allow NMFS to calculate the effort and cost associated with each successful trip (*e.g.,* the cost of gas, bait, ice, etc.), so net revenue for each permit holder cannot be calculated. As a result, NMFS analyzes the average impact of the alternatives among all permit holders in each category using gross revenues. The potential annual gross revenues reflect the analysis above, in which the Purse Seine category quota was divided among the General and Longline categories.

Success rates for catching and landing bluefin tuna vary widely across permit holders in each category (due to extent of vessel effort and availability of commercial-sized bluefin tuna to permit holders where they fish), but for the sake of estimating potential revenues per permit holder, category-wide revenues can be divided by the number of permits in each category. For the Longline fishery, category-wide revenue is divided by the number of permits that received IBQ shares to determine potential revenue per the 136 permit holders that are IBQ share recipients, as indicated below, and actual revenues would depend, in part, on each permit holder's IBQ in 2022. It is unknown what portion of HMS Charter/Headboat permit holders actively participate in the bluefin tuna fishery. HMS Charter/Headboat vessels may fish commercially under the General category quota and retention limits. Therefore, NMFS is estimating potential General category ex-vessel revenue changes using the number of General category permit holders only.

Considering the number of permit holders and estimated gross revenues listed above, under the current subquotas, estimated potential 2022 bluefin tuna revenues on a per permit holder basis under Alternative A1, the no action alternative, could be $3,228 for the General category permit holders; $17,819 for the Harpoon category permit holders; $0 for the Purse Seine category (no active vessels); $16,010 for the Longline category (using 136 IBQ share recipients); and $5,279 for the Trap category permit holders. Considering the number of permit holders and estimated gross revenues listed above and the subquotas in this action, estimated potential 2022 bluefin tuna revenues on a per permit holder basis under the preferred alternative could be $3,407 for the General category permit holders; $18,865 for the Harpoon category permit holders; $0 for the Purse Seine category (no active vessels); $16,912 for the Longline category (using 136 IBQ share recipients); and $5,279 for the Trap category permit holders.

As noted above, there are no active purse seine vessels landing bluefin tuna, but Purse Seine category participants do lease bluefin tuna quota to Atlantic Tunas Longline permit holders through the IBQ Program system. As described in the FEIS for Amendment 13, the recent lease price for Purse Seine category quota is $1.08–$1.25/lb. Under Alternative A1, if the full 55 mt of Purse Seine quota were leased to the Longline category at $1.25/lb, revenue for Purse Seine category participants would be $151,568, or $30,314 per participant ($151,568 divided by 5 participants). Under Alternative A2, if the full 58.1 mt of Purse Seine quota were leased to the Longline category, revenue for Purse Seine category participants would be $160,111, or $32,022 per participant.

Because the directed commercial categories have underharvested their subquotas in recent years, the potential increases in ex-vessel revenues under both alternatives likely overestimate the probable economic impacts to permit holders in those categories relative to recent conditions. Additionally, there has been substantial interannual variability in ex-vessel revenues in each category in recent years, due to recent changes in bluefin tuna availability and other factors. Overall, because the U.S. quota has not been fully harvested in recent years and because the increase in quota under Alternative A2 is relatively minor, the expected economic impacts on individual permit holders as a result of this action is minor.

For northern albacore, NMFS analyzed three alternatives. Alternative B1, the no action alternative, would maintain the current U.S. baseline northern albacore quota of 632.4 mt. Alternative B2 would implement the 2021 northern albacore ICCAT recommendation that increased the annual U.S. baseline northern albacore quota to 711.5 mt. Alternative B3 would implement the 2021 ICCAT recommendation for northern albacore by establishing an annual baseline quota of 711.5 mt (the same level as in Alternative B2 for 2022) and would analyze and anticipate implementation of subsequent annual quotas set consistent with the management procedure's harvest control rule, with a maximum of 950 mt, consistent with the process set out in Recommendation 21–04. This quota would be adjusted annually for overharvest and underharvest consistent with existing

regulations and ICCAT recommendations.

NMFS does not subdivide the U.S. northern albacore quota into category subquotas. The most recent ex-vessel average price per pound information is used to estimate potential ex-vessel gross revenues. Potential annual gross revenues are divided by the total number of Atlantic tunas or Atlantic HMS permit holders that are authorized to retain and sell northern albacore, however, note that not all permit holders will sell northern albacore each year. As described for bluefin tuna, this analysis excludes HMS Charter/Headboat permit holders and includes the 136 Atlantic Tunas Longline permit holders that received IBQ shares. In addition, Trap category permit holders cannot retain northern albacore. The total number of permit holders that would potentially land northern albacore is 2,901 (2,730 in the Atlantic Tunas General category; 35 in the Atlantic Tunas Harpoon category; 136 in the Atlantic Tunas Longline category (IBQ share recipients)). If the entire quota is harvested under Alternative B1, the no action alternative, estimated annual gross revenues would be $1.75 million (632.4 mt ww/1.25 multiplied by $1.57/lb dressed weight (dw)) and average annual revenue across all permit holders would be $604 ($1.75 million divided by 2,901 permit holders). If the entire quota is harvested under Alternative B2, estimated annual gross revenues would be $1.97 million (711.5 mt ww/1.25 multiplied by $1.57/lb dw) and average annual revenue across all permit holders would be $679 ($1.97 million divided by 2,901 permit holders). If the entire maximum quota is harvested under Alternative B3, the preferred alternative, estimated annual gross revenues would be $2.63 million (950 mt ww/1.25 multiplied by $1.57/lb dw) and average annual revenue across all permit holders would be $907 ($2.63 million divided by 2,901 permit holders). In the short-term, Alternative B3 would set the same quota and produce the same estimated revenue as Alternative B2.

Because the directed commercial fishery has underharvested the quota in recent years, the potential increases in ex-vessel revenues under the three analyzed alternatives likely overestimate the probable economic impacts relative to recent conditions. Additionally, there has been substantial interannual variability in ex-vessel revenues in recent years, due to recent changes in northern albacore availability and other factors. Overall, because the U.S. quota has not been fully harvested in recent years and because the increase in quota under Alternative B3 is relatively minor, the expected economic impacts on individual permit holders as a result of this action is minor.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a web page that also serves as small entity compliance guide (the guide) was prepared. This final rule and the guide are available on the HMS Management Division website at *https://www.fisheries.noaa.gov/action/changes-atlantic-bluefin-tuna-and-north-atlantic-albacore-quotas-proposed* or by contacting Carrie Soltanoff at *carrie.soltanoff@noaa.gov* or 301–427–8503.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: May 25, 2022.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.;* 16 U.S.C. 1801 *et seq.*

■ 2. In § 635.27, revise paragraphs (a) introductory text, (a)(1)(i), (a)(2) and (3), (a)(4)(i), (a)(5), (a)(7)(i) and (ii), and (e)(1) to read as follows:

§ 635.27 Quotas.

(a) *Bluefin tuna.* Consistent with ICCAT recommendations, and with paragraph (a)(10)(iv) of this section, NMFS may subtract the most recent, complete, and available estimate of dead discards from the annual U.S. bluefin tuna quota, and make the remainder available to be retained, possessed, or landed by persons and vessels subject to U.S. jurisdiction. The remaining baseline annual U.S. bluefin tuna quota will be allocated among the General, Angling, Harpoon, Purse Seine, Longline, Trap, and Reserve categories, as described in this section. Bluefin tuna quotas are specified in whole weight. The baseline annual U.S. bluefin tuna quota is 1,316.14 mt, not including an additional annual 25-mt allocation provided in paragraph (a)(3) of this section. The bluefin quota for the quota categories is calculated through the following process. First, 68 mt is subtracted from the baseline annual U.S. bluefin tuna quota and allocated to the Longline category quota. Second, the remaining quota is divided among the categories according to the following percentages: General—47.1 percent (587.9 mt); Angling—19.7 percent (245.9 mt), which includes the school bluefin tuna held in reserve as described under paragraph (a)(7)(ii) of this section; Harpoon—3.9 percent (48.7 mt); Purse Seine—18.6 percent (232.2 mt); Longline—8.1 percent (101.1) plus the 68-mt allocation (*i.e.,* 169.1 mt total not including the 25-mt allocation from paragraph (a)(3)); Trap—0.1 percent (1.2 mt); and Reserve—2.5 percent (31.2 mt). NMFS may make inseason and annual adjustments to quotas as specified in paragraphs (a)(9) and (10) of this section, including quota adjustments as a result of the annual reallocation of Purse Seine quota described under paragraph (a)(4)(v) of this section.

(1) * * *

(i) Catches from vessels for which General category Atlantic Tunas permits have been issued and certain catches from vessels for which an HMS Charter/Headboat permit has been issued are counted against the General category quota in accordance with § 635.23(c)(3). Pursuant to paragraph (a) of this section, the amount of large medium and giant bluefin tuna that may be caught, retained, possessed, landed, or sold under the General category quota is 587.9 mt, and is apportioned as follows, unless modified as described under paragraph (a)(1)(ii) of this section:

(A) January 1 through the effective date of a closure notice filed by NMFS announcing that the January subquota is reached, or projected to be reached under § 635.28(a)(1), or through March 31, whichever comes first—5.3 percent (31.2 mt);

(B) June 1 through August 31—50 percent (293.9 mt);

(C) September 1 through September 30—26.5 percent (155.8 mt);

(D) October 1 through November 30—13 percent (76.4 mt); and

(E) December 1 through December 31—5.2 percent (30.6 mt).

* * * * *

(2) *Angling category quota.* In accordance with the framework procedures of the Consolidated HMS FMP, prior to each fishing year, or as early as feasible, NMFS will establish the Angling category daily retention limits. In accordance with paragraph (a) of this section, the total amount of bluefin tuna that may be caught, retained, possessed, and landed by anglers aboard vessels for which an HMS Angling permit or an HMS Charter/Headboat permit has been issued is 245.9 mt. No more than 2.3 percent (5.7 mt) of the annual Angling category quota may be large medium or giant bluefin tuna. In addition, no more than 10 percent of the annual U.S. bluefin tuna quota, inclusive of the allocation specified in paragraph (a)(3) of this section, may be school bluefin tuna (*i.e.,* 134.1 mt). The Angling category quota includes the amount of school bluefin tuna held in reserve under paragraph (a)(7)(ii) of this section. The size class subquotas for bluefin tuna are further subdivided as follows:

(i) After adjustment for the school bluefin tuna quota held in reserve (under paragraph (a)(7)(ii) of this section), 52.8 percent (57.7 mt) of the school bluefin tuna Angling category quota may be caught, retained, possessed, or landed south of 39°18′ N lat. The remaining school bluefin tuna Angling category quota (51.6 mt) may be caught, retained, possessed or landed north of 39°18′ N lat.

(ii) An amount equal to 52.8 percent (56 mt) of the large school/small medium bluefin tuna Angling category quota may be caught, retained, possessed, or landed south of 39°18′ N lat. The remaining large school/small medium bluefin tuna Angling category quota (50.1 mt) may be caught, retained, possessed or landed north of 39°18′ N lat.

(iii) One third (1.9 mt) of the large medium and giant bluefin tuna Angling category quota may be caught retained, possessed, or landed, in each of the three following geographic areas: North of 39°18′ N lat.; south of 39°18′ N lat., and outside of the Gulf of Mexico; and in the Gulf of Mexico. For the purposes of this section, the Gulf of Mexico region includes all waters of the U.S. EEZ west and north of the boundary stipulated at 50 CFR 600.105(c).

(3) *Longline category quota.* Pursuant to paragraph (a) of this section, the total amount of large medium and giant bluefin tuna that may be caught, discarded dead, or retained, possessed, or landed by vessels that possess Atlantic Tunas Longline category permits is 169.1 mt. In addition, 25 mt shall be allocated for incidental catch by pelagic longline vessels fishing in the Northeast Distant gear restricted area, and subject to the restrictions under § 635.15(b)(8).

(4) * * *

(i) *Baseline Purse Seine quota.* Pursuant to this paragraph (a), the baseline amount of large medium and giant bluefin tuna that may be caught, retained, possessed, or landed by vessels that possess Atlantic Tunas Purse Seine category permits is 232.2 mt, unless adjusted as a result of inseason and/or annual adjustments to quotas as specified in paragraphs (a)(9) and (10) of this section; or adjusted (prior to allocation to individual participants) based on the previous year's catch as described under paragraph (a)(4)(v) of this section. Annually, NMFS will make a determination when the Purse Seine fishery will start, based on variations in seasonal distribution, abundance or migration patterns of bluefin tuna, cumulative and projected landings in other commercial fishing categories, the potential for gear conflicts on the fishing grounds, or market impacts due to oversupply. NMFS will start the bluefin tuna purse seine season between June 1 and August 15, by filing an action with the Office of the Federal Register, and notifying the public. The Purse Seine category fishery closes on December 31 of each year.

* * * * *

(5) *Harpoon category quota.* The total amount of large medium and giant bluefin tuna that may be caught, retained, possessed, landed, or sold by vessels that possess Harpoon category Atlantic Tunas permits is 48.7 mt. The Harpoon category fishery commences on June 1 of each year, and closes on November 15 of each year.

* * * * *

(7) * * *

(i) The total amount of bluefin tuna that is held in reserve for inseason or annual adjustments and research using quota or subquotas is 31.2 mt, which may be augmented by allowable underharvest from the previous year, or annual reallocation of Purse Seine category quota as described under paragraph (a)(4)(v) of this section. Consistent with paragraphs (a)(8) through (10) of this section, NMFS may allocate any portion of the Reserve category quota for inseason or annual adjustments to any fishing category quota.

(ii) The total amount of school bluefin tuna that is held in reserve for inseason or annual adjustments and fishery-independent research is 18.5 percent (24.8 mt) of the total school bluefin tuna Angling category quota as described under paragraph (a)(2) of this section. This amount is in addition to the amounts specified in this paragraph (a)(7)(i). Consistent with paragraph (a)(8) of this section, NMFS may allocate any portion of the school bluefin tuna Angling category quota held in reserve for inseason or annual adjustments to the Angling category.

* * * * *

(e) * * *

(1) *Annual quota.* Consistent with ICCAT recommendations, the ICCAT northern albacore management procedure, and domestic management objectives, the baseline annual quota, before any adjustments, is 711.5 mt. The total quota, after any adjustments made per paragraph (e)(2) of this section, is the fishing year's total amount of northern albacore tuna that may be landed by persons and vessels subject to U.S. jurisdiction.

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[FR Doc. 2022–11722 Filed 5–31–22; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 220524–0121]

RIN 0648–BK99

Atlantic Highly Migratory Species (HMS); Atlantic Tunas General Category Restricted-Fishing Days (RFDs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This final rule sets Atlantic bluefin tuna (BFT) General category restricted-fishing days (RFDs) for all Tuesdays, Fridays, and Saturdays during the months of July through November 2022. On an RFD, Atlantic Tunas General category permitted vessels may not fish for (including catch-and-release or tag-and-release fishing), possess, retain, land, or sell bluefin tuna (BFT). On an RFD, HMS Charter/Headboat permitted vessels with a commercial sale endorsement also are subject to these restrictions to preclude fishing commercially for BFT under the General category restrictions and retention limits, but such vessels may still fish for, possess, retain, or land BFT when fishing recreationally under

applicable HMS Angling category rules. RFDs are designed, in part, to slow the rate of landings and extend fishing opportunities for General category permit holders through a greater portion of the subquota periods. NMFS may waive previously scheduled RFDs under certain circumstances, but will not modify the previously scheduled RFDs during the fishing year in other ways (such as changing an RFD from one date to another, or adding RFDs).

DATES: This final rule is effective on July 1, 2022, through November 30, 2022.

ADDRESSES: Copies of this final rule and supporting documents are available from the HMS Management Division website at *https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species* or by contacting Larry Redd at *larry.redd@noaa.gov* or 301–427–8503.

FOR FURTHER INFORMATION CONTACT: Larry Redd, Jr., *larry.redd@noaa.gov* or Carrie Soltanoff, *carrie.soltanoff@noaa.gov,* at 301–427–8503.

SUPPLEMENTARY INFORMATION: Atlantic HMS fisheries, including BFT fisheries, are managed under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (2006 Consolidated HMS FMP) and its amendments are implemented by regulations at 50 CFR part 635. Section 635.27 divides the U.S. BFT quota, recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States, among the various domestic fishing categories per the allocations established in the 2006 Consolidated HMS FMP and its amendments. Section 635.23 specifies the retention limit provisions for Atlantic Tunas General category permitted vessels and HMS Charter/Headboat permitted vessels, including regarding RFDs.

Specific information regarding RFDs, request for comments, and the current U.S. quota and General category subquotas, was provided in the preamble to the proposed rule (87 FR 12643, March 7, 2022) and is not repeated here.

As described in the proposed rule, NMFS is undertaking this rulemaking to address and avoid repetition of certain issues that affected the General category BFT fishery in 2020 and earlier and could recur without additional action. Those issues include the shortened time to fish under the General category subquotas that occurs when the quota is filled quickly, increasing numbers of BFT that are landed but not sold to dealers because of market gluts, and the resulting decreased price of BFT. Because the use of RFDs in 2021 succeeded in extending fishing opportunities through a greater portion of the relevant subquota periods and the fishing season overall, consistent with management objectives for the fishery, NMFS proposed an RFD schedule for the 2022 fishing year.

The comment period for the proposed rule closed on April 6, 2022. NMFS received 19 written comments, including comments from commercial and recreational fishermen, Atlantic tuna dealers, and the general public, as well as oral comments at a public hearing held by webinar. The comments received, and responses to those comments, are summarized below in the Response to Comments section.

After considering public comments on the proposed rule in light of the management goals of this action, NMFS is finalizing the 2022 RFD schedule as proposed. As described below, no changes are made from the proposed rule. Implementing this RFD schedule, with the ability to waive scheduled RFDs, should slow the rate of landings and provide available quota throughout a longer duration of the General category subquota periods while providing reasonable fishing opportunities, including some fishing tournament opportunities, for all General category participants.

Specifically, NMFS sets RFDs for the 2022 fishing year on the following days: All Tuesdays, Fridays, and Saturdays from July 1 through November 30, 2022. On an RFD, vessels permitted in the Atlantic Tunas General category are prohibited from fishing for (including catch-and-release and tag-and-release fishing), possessing, retaining, landing, or selling BFT (§ 635.23(a)(2)). RFDs also apply to HMS Charter/Headboat permitted vessels to preclude fishing commercially under General category restrictions and retention limits on those days, but do not preclude such vessels from recreational fishing activity under applicable Angling category regulations and size classes, and they may participate in including catch-and-release and tag-and-release fishing (§ 635.23(c)(3)).

NMFS may waive previously scheduled RFDs under certain circumstances. Consistent with § 635.23(a)(4), NMFS may waive an RFD by adjusting the daily BFT retention limit from zero up to five on specified RFDs, after considering the inseason adjustment determination criteria at § 635.27(a)(8). Considerations include, among other things, review of dealer reports, daily landing trends, and the availability of BFT on fishing grounds. NMFS will announce any such waiver by filing a retention limit adjustment with the Office of the Federal Register for publication. Such adjustments will be effective no less than 3 calendar days after the date of filing for public inspection with the Office of the Federal Register. NMFS also may waive previously designated RFDs effective upon closure of the General category fishery so that persons aboard vessels permitted in the General category may conduct only catch-and-release or tag-and-release fishing for BFT under § 635.26(a). NMFS will not modify the previously scheduled RFDs during the fishing year in other ways (such as changing an RFD from one date to another, or adding RFDs) other than waiving designated RFDs based on the circumstances described above.

Response to Comments

All written comments can be found at *www.regulations.gov* by searching for NOAA–NMFS–2022–0025. NMFS received approximately 19 comments orally at public hearings and in writing from General category fishermen, charter/headboat fishermen, tournament operators, and others from the public. Commenters both supported and opposed General category RFDs for the 2022 fishing year. Below, NMFS summarizes and responds to all comments made specifically on the proposed rule during the comment period.

Comment 1: Most commenters supporting RFDs noted that RFDs should lengthen the General category season within the subquota periods and the season overall.

Response: NMFS agrees that RFDs should lengthen the General category season within the subquota periods and the season overall. The primary objective of this action is to slow the harvest rate of BFT in order to extend the period of time that the fishery remains open, allowing fishing opportunities later in the season.

Comment 2: Some commenters supporting RFDs noted that there may be more reliance on domestic markets this year given that global markets and economies are still stabilizing, as well as due to the anticipated increase in shipping costs due to fuel prices. Other commenters expressed that RFDs were unnecessary given the impacts of COVID–19 on the recovery of domestic and international markets.

Response: NMFS considered economic factors and past and present

market conditions and economies in the proposed rule. NMFS acknowledges the unique global impacts of COVID–19 and the challenges that could be experienced as domestic and international markets recover and given higher fuel prices; however, NMFS observed the issues that contributed to the need for this action for several years, and those issues were exacerbated in both 2019 and 2020. Specifically, over the past several years, landings have been highest from mid-August through November, contributing to derby-like conditions and market gluts, shortening the time it takes to fill relevant subquotas, and resulting in inseason closures earlier than desired. In 2021, NMFS established a schedule of RFDs from September through November. Because the use of RFDs in 2021 succeeded in extending fishing opportunities through a greater portion of the relevant subquota periods and the fishing season overall, consistent with management objectives for the fishery, NMFS proposed an RFD schedule for the 2022 fishing year.

Comment 3: Some commenters expressed concern that the proposed rule seemed to be economic in nature and would negatively impact General category participants.

Response: As discussed in response to Comment 2, above, NMFS considered economic factors in developing the proposed rule for this action, but the primary purpose of the action is not solely economic in nature. Rather, the rule is designed to lengthen the General category season within the subquota periods and the season overall. Considering all relevant information, NMFS concluded that RFDs should help prevent large numbers of BFT from entering the market at the same time, which could potentially alleviate some negative economic impacts experienced by General category and Charter/Headboat permitted fishermen who could not find buyers for their BFT (as did the 2021 RFD rule).

NMFS acknowledges the unique global impacts of COVID–19 and the challenges that could be experienced due to rising fuel prices and recovering domestic and international markets. The issues that contributed to the need for this action were occurring for several years, however, not only as a result of COVID–19 market effects, although those issues were exacerbated in both 2019 and 2020. Specifically, over the past several years, landings have been highest from mid-August through November, contributing to derby-like conditions and market gluts, shortening the time it takes to fill relevant subquotas, and resulting in inseason closures earlier than desired. In 2021, NMFS established a schedule of RFDs from September through November. Because the use of RFDs in 2021 succeeded in extending fishing opportunities through a greater portion of the relevant subquota periods and the fishing season overall, consistent with management objectives for the fishery, NMFS proposed an RFD schedule for the 2022 fishing year.

Comment 4: Some commenters opposing RFDs expressed concerns that RFDs could result in safety-at-sea concerns and could have negative impacts given fuel prices.

Response: Overall, NMFS believes that by spreading out fishing effort over a longer period of time, safety-at-sea issues should decrease, as the conditions that encourage derby-like behavior would be diminished. NMFS recognizes that the weather is unpredictable, particularly in the second half of October and early November, and that poor weather may limit participation without the need for additional RFDs during this part of the season. Should BFT landings and catch rates merit waiving RFDs, NMFS could adjust the daily retention limit on waived days with a minimum 3-day notification to fishermen, by filing such an adjustment in the **Federal Register**, under § 635.23(a)(4).

Comment 5: NMFS received comments both supporting the proposed Tuesday, Friday, and Saturday schedule of RFDs, and opposing the proposed schedule. Some commenters suggested modifications to the proposed schedule, including implementing RFDs starting June 1, 2022, and/or avoiding weekends. One commenter objected to the proposed RFD schedule while also suggesting a weekly RFD schedule of Tuesday, Friday, and Sunday. Some commenters supported the proposed schedule of RFDs starting on July 1, 2022.

Response: NMFS' proposed schedule of RFDs was based on a review of average daily catch rate data for recent years, a review of past years' RFD schedules (including the 2021 RFD schedule) and how they worked to extend the use of the General category quota, and input from General category participants, Atlantic tuna dealers, and members of the HMS Advisory Panel. The Tuesday, Friday, and Saturday RFD schedule allows for two-consecutive-day periods twice each week (Sunday-Monday; Wednesday-Thursday) for General category and Charter/Headboat permitted vessels with a commercial sale endorsement to fish for and sell BFT. NMFS believes that two-consecutive-day periods twice each week would allow BFT products to move through the market while also allowing some commercial fishing activity to occur each weekend (*i.e.,* Sundays). NMFS acknowledges that Sunday (similar to Friday and Saturday) is a high catch and landing day. However, NMFS believes that setting Sunday as an RFD instead of Saturday would not meet the objective of this rulemaking as it would not allow adequate time for fish products to move through the market and would continue the increasing trend of BFT landed by General category participants that could not be sold, as occurred from 2018 through 2020.

NMFS disagrees that RFDs should start on June 1, 2022, as catch and landings rates are generally slow at the beginning of the June. NMFS is setting RFDs starting on July 1, 2022, as proposed, when catch and landing rates begin to substantially increase, resulting in General category subquotas being met and closures of applicable General category subquota periods. NMFS believes that this schedule of RFDs should increase the likelihood of pacing General category landings to extend fishing opportunities through a greater portion of the subquota periods (similar to the 2021 RFD schedule).

Comment 6: NMFS received comments, from both those in support of and opposed to RFDs, regarding the potential negative impacts of RFDs on BFT fishing tournaments. These commenters noted the economic importance of fishing tournaments on local economies. One commenter noted the negative impact that RFDs would have on fishing tournaments but suggested that NMFS maintain the proposed RFD schedule, *i.e.,* Tuesday, Friday, and Saturday RFDs beginning July 1, 2022, noting that many fishing tournaments have established their dates based around the proposed schedule. One commenter noted that RFDs did not negatively impact their fishing tournament in 2021.

Response: NMFS acknowledges that RFDs that occur on a tournament date may affect BFT fishing at those tournaments, since some tournament participants are General category permit holders and are prohibited from fishing for BFT on RFDs. However, on an RFD, General category permit holders may still participate in non-BFT fishing during the tournament, and may land sharks, swordfish, billfish, and/or bigeye, albacore, yellowfin, and skipjack tunas recreationally as otherwise allowed. Additionally, on an RFD, Charter/Headboat-permitted vessels may participate recreationally in HMS fishing tournaments, including for BFT,

under the applicable Angling category restrictions and size class limits. Under the current regulations, tournament operators are required to register their tournament with NMFS at least four weeks prior to the start of the tournament. Given past scheduled tournaments from July through November and the tournaments that have registered already for this year, NMFS anticipates or has been notified of several fishing tournaments that will likely include BFT. Should a tournament change its dates of operation, NMFS encourages tournament operators to contact NMFS to update the dates for which their tournament is registered. NMFS does not plan to waive RFDs specifically and solely to accommodate tournaments as doing so could eliminate the benefits of RFDs by allowing General category and Charter/Headboat permitted vessels with a commercial sale endorsement the opportunity to land and sell commercial size BFT on those scheduled RFD dates. NMFS will closely monitor BFT landings and catch rates and, based on that information, NMFS will consider waiving RFDs if BFT landings and catches indicate that such action is warranted, after taking into consideration the inseason adjustment determination criteria at § 635.27(a)(8). This would include, among other things, review of dealer reports, daily landing trends, and the availability of BFT on fishing grounds. NMFS could waive an RFD by adjusting the daily retention limits with a minimum 3-day notification to fishermen, by filing such an adjustment in the **Federal Register**, under § 635.23(a)(4).

Comment 7: NMFS received comments expressing concern that increasing the General category retention limit from the default of one fish to three fish to begin the June through August subquota period is counterproductive to the goal of setting RFDs. Some commenters requested the use of mechanisms other than RFDs to extend the fishery, such as maintaining the default retention limit throughout the season. One commenter suggested NMFS modify existing subquota allocations.

Response: This action focuses on implementing RFDs, as currently authorized in the regulations, to slow the rate of General category landings, prevent early closures, and extend fishing opportunities through a greater portion of the General category time-period subquotas for the 2022 fishing year. NMFS will continue to use retention limits, RFDs, and other available management tools to manage the BFT fisheries, within the available BFT quota and established subquotas. In recent years, because the rate of landings and overall fishing effort in the General category is typically slow in early June, NMFS has regularly set the daily retention limit for the beginning of the June through August period at three fish, following consideration of the relevant criteria provided under § 635.27(a)(8), including supporting scientific data collection. NMFS monitors the landings closely, and, as appropriate, NMFS then typically reduces the limit to the one-fish default level to ensure fishing opportunities in all respective time-period subquotas and to ensure that the available quota is not exceeded. Any change in the retention limit considers the relevant criteria and includes consideration of the catch rates associated with the various authorized gear types (*e.g.,* harpoon, rod and reel).

As with other mechanisms mentioned above, RFDs are an available effort control mechanism that can be used to extend time-period subquotas and provide additional inseason management flexibility regarding quota use and distribution and season length. Unlike other mechanisms, in the current regulations, RFDs may only be used to assist with the management of the BFT General category fishery (*i.e.,* permit categories that fish against the General category quota). Throughout the season, NMFS monitors landings and catch rates and will close the fishery or modify retention limits as appropriate to ensure the quotas are not exceeded. NMFS will continue to monitor and evaluate the effectiveness of all these management measures in the context of current conditions to determine whether other actions are necessary.

NMFS is not considering modifications of the General category subquotas in this action. The proposed rule for Amendment 13 to the 2006 Consolidated HMS FMP (86 FR 27686, May 21, 2021) proposed modifications to the BFT category quotas which were further detailed in the Amendment 13 Final Environmental Impact Statement published on May 13, 2022 (87 FR 29310). The final rule for Amendment 13 has not been completed, and the BFT quotas and subquotas therefore are not affected by Amendment 13 at this time. NMFS also recently published a final rule which would increase the U.S. baseline BFT quota to reflect a binding 2021 ICCAT binding and to adjust the subquotas accordingly.

Comment 8: NMFS received comments noting issues with dealer practices and requesting NMFS not to use RFDs. Several individuals noted that dealers could limit their own purchases in order to control supply and demand related to domestic and international markets.

Response: NMFS requires that dealers obtain a Federal dealer permit to purchase, trade, or barter any HMS and abide by the regulations under both § 635.4 and § 635.5. As described in the proposed rule, NMFS received communications from dealers and fishermen regarding the self-imposed no-purchase (or limited-purchase) days in 2019 and 2020. While these actions by dealers may have prevented an oversupply of BFT on the market and may have lengthened the duration of some subquota periods, these actions were not pre-scheduled or consistently implemented across the fishery. Some General category and Charter/Headboat permitted fishermen may have experienced negative impacts in this context, and opportunities may not have been equitably distributed among all permitted vessels. Thus, NMFS is finalizing a schedule of RFDs for 2022.

Comment 9: NMFS received some comments noting that the BFT stock has rebounded and is healthy, and that, therefore, this action is not necessary. Additionally, one commenter noted that NMFS is overly restrictive to BFT fishermen in New England.

Response: NMFS disagrees that this action is ''unwarranted.'' The purpose of this action, consistent with the objectives of the 2006 Consolidated HMS FMP and its amendments and other applicable laws, is to set a schedule of RFDs for the 2022 fishing year as an effort control for the General category quota, and to extend General category fishing opportunities through a greater portion of the General category time-period subquotas than have been available in recent years, as intended when the time-period subquotas were adopted. NMFS does not manage the General category fishery by region. Instead, these regulations are applicable to all General category permit holders and Charter/Headboat permitted vessels that fish commercially for BFT.

Regarding the status of BFT, the western Atlantic BFT stock is assessed by ICCAT, and the most recent assessment was conducted in 2021. Domestically, following the 2017 stock assessment, NMFS determined that the overfished status for BFT is unknown and that the stock is not subject to overfishing, and this status remains in effect. NMFS recently published a final rule that increased the baseline U.S. BFT quota to 1,316.14 mt (not including the 25 mt ICCAT allocated to the United States to account for bycatch of BFT in pelagic longline fisheries in the Northeast Distant Gear Restricted Area), as codified at § 635.27(a), consistent with Recommendation 21–07 adopted by ICCAT at the November 2021 annual meeting. Further information on the BFT stock assessment and stock status can be found in that final rule and associated Environmental Assessment. This action helps manage the BFT fisheries within that available U.S. quota and the category subquotas as established in existing regulations.

Comment 10: NMFS received comments supporting the future use of RFDs for the January through March subquota period noting that RFDs would likely result in better management of the annual quota and avoid quota exceedance during this period. One commenter expressed concerns for setting RFDs during the January through March subquota period noting unpredictable weather and the potential undesirable impacts of extending the length of time to reach the subquota if the fishery starts in mid-February. Additionally, NMFS received comments opposing the setting of three consecutive days of RFDs or setting RFDs for the December subquota period.

Response: Although NMFS requested comment on the potential setting of RFDs for the January through March subquota period, NMFS is not setting RFDs for the January through March 2023 subquota period through this action because BFT landings and catch rates do not indicate RFDs are warranted at this time. NMFS will continue to monitor landings during this subquota period and consider the input received during the public comment period for this action to determine whether RFDs are necessary for the January through March subquota period. If NMFS believes RFDs are necessary for the January through March subquota period, NMFS will publish a proposed schedule of RFDs in a future rulemaking.

Comment 11: One commenter requested that NMFS establish RFDs for fishermen fishing in the Gulf of Mexico noting that the Gulf of Mexico is a spawning area for BFT.

Response: NMFS disagrees that RFDs should be established specifically for the Gulf of Mexico. Under the current regulations, commercial fishermen, including all General category permit holders and Charter/Headboat permitted vessels that fish commercially for BFT, may not target BFT at any time in the Gulf of Mexico, a rule that was established recognizing that the Gulf of Mexico is recognized as the primary spawning grounds for bluefin tuna. HMS Charter/Headboat permit holders fishing recreationally may retain one ''trophy'' BFT (>73″) per vessel per year from the Gulf of Mexico, if it is caught incidentally while fishing for other species, provided the limited ''trophy'' category subquota in the Gulf of Mexico is available at the time of harvest and the season has not closed. RFDs do not apply to recreational catch because RFDs only apply to General category permit holders and Charter/Headboat permitted vessels that fish commercially for BFT.

Comment 9: NMFS received a comment expressing concern that RFDs would not reduce the amount of fishing gear in the ocean.

Response: Addressing discarded gear is outside of the scope of this action.

Classification

NMFS is issuing this rule pursuant to 305(d) of the Magnuson-Stevens Act. The NMFS Assistant Administrator has determined that this final rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the Magnuson-Stevens Act, ATCA, and other applicable law.

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

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

A Final Regulatory Flexibility Analysis (FRFA) was prepared for this rule. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, our responses to those comments and a summary of the analyses completed to support the action. The FRFA is provided below.

Section 604(a)(1) of the Regulatory Flexibility Act (RFA) requires agencies to state the need for and objective of the final action. The objective of this final rulemaking is to set a schedule of RFDs for the 2022 fishing year that should slow the rate of General category landings to extend fishing opportunities through a greater portion of the subquota periods (similar to the 2021 RFD schedule).

Section 604(a)(2) of the RFA requires a summary of significant issues raised by the public in response to the IRFA, a summary of the agency's assessment of such issues, and a statement of any changes made as a result of the comments. As described above, during the public comment period, NMFS received comments both in support of and opposed to establishing RFDs for 2022. No comments specifically referenced the IRFA, although some comments raised a variety of economic concerns including whether RFDs would affect the market (see comments 2, 3, 5, and 8), whether RFDs would affect some parts of the fishery more than others (see comment 9), and whether RFDs would negatively affect tournaments (see comment 6). NMFS' responses to those comments are summarized above. After careful consideration of all the comments received, no changes were made to the proposed rule.

Section 604(a)(3) of the RFA requires the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the SBA comments. NMFS did not receive any comments from the Chief Counsel for Advocacy of the SBA on the proposed rule.

Section 604(a)(4) of the RFA requires agencies to provide descriptions of, and where feasible, an estimate of the number of small entities to which the rule would apply. NMFS established a small business size standard of $11 million in annual gross receipts for all businesses in the commercial fishing industry (NAICS 11411) for RFA compliance purposes. NMFS established a small business size standard of $11 million in annual gross receipts for all businesses in the commercial fishing industry (NAICS 11411) for RFA compliance purposes. The Small Business Administration (SBA) has established size standards for all other major industry sectors in the United States, including the scenic and sightseeing transportation (water) sector (NAICS code 487210), which includes for-hire (charter/party boat) fishing entities. The SBA has defined a small entity under the scenic and sightseeing transportation (water) sector as one with average annual receipts (revenue) of less than $8.0 million. NMFS considers all HMS permit holders, both commercial and for-hire, to be small entities because

they had average annual receipts of less than their respective sector's standard of $11 million and $8 million. The 2020 total ex-vessel annual revenue for the BFT fishery was $8.4 million. Since a small business is defined as having annual receipts not in excess of $11.0 million, each individual BFT permit holder would fall within the small entity definition. The numbers of relevant annual Atlantic Tunas or Atlantic HMS permits as of October 2021 are as follows: 2,730 General category permit holders and 4,055 HMS Charter/Headboat permit holders, of which 1,793 hold HMS Charter/Headboat permits with a commercial sale endorsement.

Section 604(a)(5) of the RFA requires agencies to describe any new reporting, record-keeping, and other compliance requirements. This final rule does not contain any new collection of information, reporting, or record-keeping requirements. This final rule would set a schedule of RFDs for 2022 as an effort control for the General category.

Section 604(a)(6) of the RFA, requires agencies to describe the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

This final rule does not change the U.S. Atlantic BFT quotas or implement any new management measures not previously considered under the 2006 Consolidated HMS FMP and its amendments. This final rule will instead set a schedule of RFDs for the General category in 2022. Under the regulations, when a General category subquota period is reached or projected to be reached, NMFS closes the General category fishery. Retaining, possessing, or landing BFT under that quota category is prohibited on and after the effective date and time of a closure notice for that category, for the remainder of the fishing year, until the opening of the subsequent quota period or until such date as specified. In recent years, these closures, if needed, have generally occurred toward the end of a subquota period. According to communications with dealers and fishermen, several of the high-volume Atlantic tunas dealers in 2019 and 2020 were limiting their purchases of BFT and buying no or very few BFT (such as harpooned fish only) on certain days during the beginning portion of the June through August subquota period in order to extend the available quota until later in the subquota period given market considerations. However, while these actions may have prevented large numbers of BFT from entering the market at the same time and may have lengthened the time before any particular subquota period was closed, because these actions were not pre-scheduled or consistently implemented across the fishery, there were negative impacts experienced by some General category and Charter/Headboat permitted fishermen, who could not find buyers for their BFT. As a result, a number of BFT that normally would have been sold were not, and opportunities may not have been equitably distributed among all permitted vessels. In 2021, NMFS set pre-scheduled RFDs for the General category fishery on certain days (Tuesdays, Fridays, and Saturdays) from September through November to increase the likelihood of pacing General category landings to extend fishing opportunities through a greater portion of the subquota periods. Table 1 shows the number and total metric tons (mt) of BFT that were landed but not sold by fishermen fishing under the General category quota from 2017 through 2021. The number and weight of unsold BFT increased from 2018 through 2020, with a peak of unsold BFT in 2020 (161 BFT and 28.8 mt) which NMFS presumes is in part due to the pandemic, and substantially decreased in 2021 (from 161 to 14 BFT and 28.8 mt to 2.5 mt). NMFS believes this substantial decrease is in part due to the use of RFDs in 2021.

TABLE 1—NUMBER (COUNT) AND WEIGHT (MT) OF BFT LANDED BUT UNSOLD BY GENERAL CATEGORY PARTICIPANTS BY YEAR

[2017–2021]

Year	Count	Weight (mt)
2017	0	0
2018	8	1.4
2019	11	2.2
2020	161	28.8
2021	14	2.5
Total	194	34.9

Table 2 shows the average ex-vessel price per pound of BFT during each General category subquota time period from 2017 through 2021. Ex-vessel price per pound was lower for the June through August period, with an average (2017 through 2021) of $6.29, and increased into fall period, with an average of $6.98 for the October through November period). In 2021, the average price per pound was higher for all time periods compared to the average price per pound during the time periods in 2020. In most time periods, the 2021 average price per pound was also higher than the 2019 average price per pound. NMFS believes that this increase in average price was in part due to the use of RFDs in 2021.

TABLE 2—AVERAGE EX-VESSEL PRICE PER POUND ($) OF BFT BY GENERAL CATEGORY SUBQUOTA TIME PERIOD
[2017–2021]

Year	Subquota time period				
	January through March	June through August	September	October through November	December
2017	$7.30	$6.73	$7.08	$7.58	$9.83
2018	7.49	6.92	6.56	7.58	9.56
2019	6.07	5.61	6.36	5.53	12.25
2020	6.14	4.92	5.22	5.63	5.76
2021	6.26	6.96	6.17	7.40	8.55
2017–2021 average	6.52	6.29	6.26	6.98	8.80

Table 3 shows the number of open days during each General category subquota time period from 2017 through 2021. On an annual basis, the average number of General category open days tends to be higher earlier in the fishing year (*i.e.,* 64 days for the January through March period and 79 days for the June through August period) and decreases as the season progresses into the late fall and winter seasons (*i.e.,* 21 days for September period, 21 days for October through November period, and 20 days for the December period). In 2021, the total number of open days was higher compared to the total number of days in 2019. NMFS set RFDs for the September and October through November subquota periods in 2021. Although the number of open days for the September 2021 subquota period was the lowest except for 2019, the October through November 2021 subquota period remained open for more days compared to the previous four years. NMFS believes that the increase in fishing days was in part due to RFDs.

TABLE 3—GENERAL CATEGORY NUMBER OF OPEN DAYS BY SUBQUOTA TIME PERIOD
[2017–2021]

Year	Subquota time period					
	January through March	June through August	September	October through November	December	Total
2017	88	77	17	5	6	193
2018	61	92	23	15	31	222
2019	59	69	13	13	31	185
2020	55	91	27	11	14	200
2021	58	65	14	34	18	189
2017–2021 average	64	79	19	16	20	198

NMFS is setting a schedule of RFDs for the 2022 fishing year that would specify days on which General category quota fishing and sales will not occur. Specifically, the schedule allows for two-consecutive-day periods twice each week for BFT product to move through the market while also allowing some commercial fishing activity to occur each weekend (*i.e.,* Sundays). Because this schedule of RFDs would apply to all participants equally, NMFS anticipates that this schedule would extend fishing opportunities through a greater proportion of the subquota periods in which they apply by spreading fishing effort out over time, similar to the 2021 fishing season. Further, to the extent that the ex-vessel revenue of a BFT sold by a General or HMS Charter/Headboat permitted vessel (with a commercial endorsement) may be higher when a lower volume of domestically-caught BFT is on the market at one time, the use of RFDs may result in some increase in BFT price, and the value of the General category subquotas could increase, similar to that of 2021. Thus, although NMFS anticipates that the same overall amount of the General category quota would be landed as well as the same amount of BFT landed per vessel, there may be positive impacts to the General category and Charter/Headboat (commercial) BFT fishery because using RFDs may more equitably distribute opportunities across all permitted vessels for longer durations within the subquota periods.

If NMFS does not implement a schedule of RFDs, as in this final rule, without any other changes, it is possible that the trends of increasing numbers of unsold BFT (Table 1) and decreasing ex-vessel prices (Table 2) from 2017 through 2020 could continue. Additionally, without RFDs in 2022, the General category could have fewer open days later in the fishing season when ex-vessel prices tend to be higher (Table 3) as observed from 2017 through 2020. If those trends were to continue, most active General category permit holders could experience negative economic impacts similar to those in 2019 and 2020 when dealers were limiting their purchases of BFT and buying no or very few BFT on certain days in order to extend the available quota.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rule. As part of this rulemaking process, NMFS has prepared a booklet summarizing fishery

information and regulations for Atlantic BFT General category RFDs for the 2022 fishing year. That booklet notice serves as the small entity compliance guide.

Copies of the compliance guide are available from NMFS (see **ADDRESSES**).

Dated: May 24, 2022.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2022–11730 Filed 5–31–22; 8:45 am]

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Proposed Rules

Federal Register
Vol. 87, No. 105
Wednesday, June 1, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Doc No. AMS–SC–21–0039, SC–21–327]

Revising U.S. Grade Standards for Pecans in the Shell and Shelled Pecans

AGENCY: Agricultural Marketing Service, Department of Agriculture (USDA).

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) proposes to revise the U.S. Standards for Grades of Pecans in the Shell and the U.S. Standards for Grades of Shelled Pecans by replacing the current grades with U.S. Extra Fancy, U.S. Fancy, U.S. Choice, and U.S. Standard grades. In addition, AMS proposes to update terminology, definitions, and defect scoring guides.

DATES: Comments must be submitted on or before August 1, 2022.

ADDRESSES: Interested persons are invited to submit written comments to the USDA, Specialty Crops Inspection Division, 100 Riverside Parkway, Suite 101, Fredericksburg, VA 22406; via fax to (540) 361–1199; or, at *https://www.regulations.gov.* Comments should reference the date and page number of this issue of the **Federal Register**. Comments will be posted without change, including any personal information provided. All comments received within the comment period will become part of the public record maintained by the Agency and will be made available to the public via *https://www.regulations.gov.* Comments will be made available for public inspection at the above address during regular business hours or can be viewed at: *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Olivia Banks at the address above, or by phone (540) 361–1120; fax (540) 361–1199; or email *Olivia.Banks@usda.gov.* Copies of the proposed U.S. Standards for Grades for Pecans in the Shell and U.S. Standards for Grades of Shelled Pecans are available at *https://www.regulations.gov.* Copies of the current Standards are available at *https://www.ams.usda.gov/nuts.*

SUPPLEMENTARY INFORMATION: This proposed action, pursuant to 5 U.S.C. 553, would amend regulations at 7 CFR part 51 issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), as amended. These revisions do not affect the Federal marketing order, 7 CFR part 986 (referred to as Marketing Order 986), issued under the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601–674) or applicable imports.

Executive Orders 12866 and 13563

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 12866 and 13563. 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). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This proposed action falls within a category of regulatory actions that the Office of Management and Budget (OMB) has exempted from review under Executive Order 12866.

Executive Order 13175

This proposed rule has been reviewed under E.O. 13175—Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have tribal implications.

AMS has determined that this proposed rule is unlikely to have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed action is not intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Background

AMS continuously reviews fruit and vegetable grade standards to ensure their effectiveness in the industry and to modernize language.

On June 12, 2020, the American Pecan Council (APC) petitioned AMS to revise the U.S. Standards for Grades of Pecans in the Shell and the U.S. Standards for Grades of Shelled Pecans (Standards or Grade Standards). The APC was established by, and is regulated under, the Federal marketing order for the pecan industry, Marketing Order 986, and represents all 15 major U.S. pecan-growing states.

The APC noted that the pecan Standards have not been substantially updated since 1969, the year they were issued, and the terminology of the Standards no longer reflect current industry descriptions and practices. The National Pecan Shellers Association directed the initiative to update the Standards for the APC. The APC voted unanimously to submit their proposed revisions to the USDA. AMS and the APC have since collaborated to refine the proposed revisions.

The proposed changes to the Standards would replace current grades with new ones, revise scoring guides for defects, create new sizes, and revise definitions. AMS proposes to revise the U.S. Standards for Grades of Pecans in the Shell and the U.S. Standards for Grades of Shelled Pecans by replacing the current grades with U.S. Extra Fancy, U.S. Fancy, U.S. Choice, and U.S. Standard grades. The two current grades for pecans in the shell are U.S. No. 1 and U.S. No. 2. The six current grades for shelled pecans are U.S. No. 1 Halves, U.S. No. 1 Halves and Pieces, U.S. No. 1 Pieces, U.S. Commercial Halves, U.S. Commercial Halves and Pieces, and U.S. Commercial Pieces. These proposed changes represent current industry descriptions and practices.

The proposed revisions do not affect Marketing Order 986 or applicable imports since there are no grade, size, or quality standards currently applied under the marketing order.

A 60-day comment period is provided for interested persons to submit comments on the proposed revised

Grade Standards. Copies of the proposed revised standards are at *https://www.regulations.gov.* After the 60-day comment period, AMS will move forward in accordance with 7 CFR 36.3(a)(1) through (3).

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this proposed rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be unduly or disproportionately burdened.

Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of no more than $1,000,000 (13 CFR 121.201). Small agricultural service firms (handlers) are defined as those with annual receipts of no more than $30,000,000 (13 CFR 121.201).

USDA used the following data and computations to estimate whether a majority of U.S. pecan growers and handlers qualify as small or large businesses, and the potential economic impact of this proposed rule on them. There are two distinct steps in this computation. The first step is to use 2017 Agricultural Census date to estimate the number of commercial pecan growers, using Marketing Order 986's definition of a grower. The second step is to take that estimated number of commercial pecan growers and compute the proportion of those growers that are small or large businesses using the SBA size threshold of $1,000,000 in annual sales.

Almost all U.S. pecans are grown in a 15-state production area that consists of Alabama, Arkansas, Arizona, California, Florida, Georgia, Kansas, Louisiana, Missouri, Mississippi, North Carolina, New Mexico, Oklahoma, South Carolina, and Texas (7 CFR 986.31). Under Marketing Order 986, the term ''grower'' includes those who produce a minimum of 50,000 pounds of inshell pecans during a representative period or who own a minimum of 30 pecan acres (7 CFR 986.17(b)). Growers with an orchard that is fewer than 30 pecan acres are not regulated by Marketing Order 986 and do not pay an assessment.

In the 2017 Census of Agriculture, the most recent edition to date, 25 acres is the lower bound of the range that includes 30 acres (25 to 49.9 acres). In the 12 states for which the Census has data on the number of pecan farms, the Census identified 17,144 total pecan farms. Of those, 3,221 were farms with 25 pecan acres or more (with bearing and non-bearing acres). Since Marketing Order 986 defines the threshold for a commercially viable farm as 30 acres, the estimate of 3,221 commercial pecan farms may be moderately overstated but is the best available estimate of farms selling into the commercial market and therefore most affected by grade standards applied to the sale of pecans to handlers.

The second step in the computation is to estimate the number of commercial pecan growers that are small and large businesses.

The Census identified 440 farms with sales of more than $1,000,000, which qualify as a large business under the SBA standard, which represents 14 percent of the 3,221 farms with 25 or more acres and 3 percent of total pecan farms. Therefore, 86 percent of commercially viable pecan farms are small businesses under the SBA standard.

The remaining pecan farms do not sell directly into regular commercial channels but rather sell small quantities to larger farm operations or other businesses.

The APC estimates there are 105 handlers subject to regulation under Marketing Order 986. National Agricultural Statistics Service (NASS) data for the years 2018 through 2020, show that the national average quantity of pecans produced was 267.3 million pounds, with a crop value of $442.6 million. Dividing crop value by quantity yields a 3-year average grower price of $1.66 per inshell pound. The average handler margin is approximately $0.60 per inshell pound according to evidence presented in 2015 during formal rulemaking for Marketing Order 986. Adding the average handler margin to the 3-year average grower price of $1.66 per pound results in an estimated handler price of $2.26 per inshell pound. Multiplying the estimated handler price per pound by the 3-year average production of 267.3 million pounds yields a total value of production at the handler level of approximately $604 million. Dividing this handler-level value of pecan production by the number of handlers (105) results in an average return per handler of $5.75 million, well below the SBA small business threshold of $30,000,000 in annual receipts. Building in a $0.10 higher or lower cost to account for changes since the 2015 data, the range of average returns per handlers could be from $5.5 to $6.0 million, still well below $30,000,000. Using these estimated prices, utilization volume, and number of handlers, and assuming a normal bell-curve distribution of receipts among handlers, the majority of handlers qualify as small businesses.

Food grading standards provide important quality information to buyers and sellers that contribute to the efficient marketing of agricultural commodities. Because the proposed revisions of the Grade Standards represent current industry grading practices, these changes will not require any significant changes in grower or handler business operations nor any significant industry educational effort. As the Standards are voluntary, handlers are not required to use the new terms or make any changes. Neither large nor small handlers will incur additional costs. No small businesses will be unduly or disproportionately burdened.

USDA has determined that this rule is consistent with and would effectuate the purpose of the Agricultural Marketing Act of 1946. Therefore, this rule proposes to revise the voluntary U.S. Standards for Grades of Pecans in the Shell and the U.S. Standards for Shelled Pecans issued under the Agricultural Marketing Act of 1946.

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Vegetables.

For reasons set forth in the preamble, the Agricultural Marketing Service proposes to amend 7 CFR part 51 as follows:

PART 51—FRESH FRUITS, VEGETABLES, AND OTHER PRODUCTS (INSPECTION, CERTIFICATION, AND STANDARDS)

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

■ 2. Revise § 51.1400 to read as follows:

§ 51.1400 U.S. Extra Fancy.

U.S. Extra Fancy consists of pecans in the shell which meet the following requirements:

(a) Free from loose, extraneous, or foreign material.

(b) Well cured.

(c) Shells are:

(1) Uniform in color; and

(2) Free from damage by any cause.

(d) Kernels are:

(1) Well developed;

(2) Uniform in color and not darker than ''light;'' and

(3) Free from damage by any cause.
(e) For tolerances see § 51.1406.

■ 3. Revise § 51.1401 to read as follows:

§ 51.1401 U.S. Fancy.

U.S. Fancy consists of pecans in the shell which meet the following requirements:
(a) Free from loose, extraneous, or foreign material.
(b) Well cured.
(c) Shells are:
(1) Uniform in color; and
(2) Free from damage by any cause.
(d) Kernels are:
(1) Fairly well developed;
(2) Uniform in color;
(3) Not darker than ''light amber,'' unless specified to a lighter color classification; and
(4) Free from damage by any cause.
(e) For tolerances see § 51.1406.

■ 4. Remove the undesignated center heading preceding § 51.1402.

■ 5. Revise § 51.1402 to read as follows:

§ 51.1402 U.S. Choice.

U.S. Choice consists of pecans in the shell which meet the following requirements:
(a) Free from loose, extraneous, or foreign material.
(b) Well cured.
(c) Shells are:
(1) Fairly uniform in color; and
(2) Free from serious damage by any cause.
(d) Kernels are:
(1) Not poorly developed;
(2) Fairly uniform in color;
(3) Not darker than ''amber,'' unless specified to a lighter color classification; and
(4) Free from serious damage by any cause.
(e) For tolerances see § 51.1406.

■ 6. Remove the undesignated center heading preceding § 51.1403.

■ 7. Revise § 51.1403 to read as follows:

§ 51.1403 U.S. Standard.

U.S. Standard consists of pecans in the shell which meet the following requirements:
(a) Free from loose, extraneous, or foreign material;
(b) Well cured;
(c) No requirement for fullness of kernel;
(d) No requirement for uniformity of color of shells or kernels;
(e) May contain kernels that are ''dark amber'' or darker, unless specified to a lighter color classification; and
(f) Increased tolerances for defects see § 51.1406.

■ 8. Revise the undesignated center heading preceding § 51.1404 to read as follows:

Size Classification

■ 9. Revise § 51.1404 to read as follows:

§ 51.1404 Size classification.

Size of pecans may be specified in connection with the grade in accordance with one of the following classifications. To meet the requirements for any one of the classifications in Table 1 to this section, the lot must conform to both the specified number of nuts per pound and the weight of the 10 smallest nuts per 100-nut sample.

TABLE 1 TO § 51.1404

Size classification	Number of nuts per pound	Minimum weight of the 10 smallest nuts per 100-nut sample
Jumbo	55 or less	In each classification, the 10 smallest nuts per 100 must weigh at least 7% of the total weight of the 100 nut-sample.
Extra Large	56 to 63	
Large	64 to 77	
Medium	78 to 100	
Small	101 more	

■ 10. Revise the undesignated center heading preceding § 51.1405 to read as follows:

Kernel Color Classification

■ 11. Revise § 51.1405 to read as follows:

§ 51.1405 Kernel color classification.

(a) The skin color of the pecan kernels may be described in terms of the color classifications provided in this section. When the color of kernels in a lot generally conforms to the ''light'' or ''light amber'' classification, the color classification may be used to describe the lot in connection with the grade.

(1) *Light* means that the kernel is mostly golden color or lighter, with not more than 25 percent of the surface darker than golden, and none of the surface darker than light brown.

(2) *Light amber* means that more than 25 percent of the kernel is light brown, with not more than 25 percent of the surface darker than light brown, none of which is darker than medium brown.

(3) *Amber* means that more than 25 percent of the kernel is medium brown, with not more than 25 percent of the surface darker than medium brown, none of which is darker than dark brown (very dark brown or blackish-brown discoloration).

(4) *Dark amber* means that more than 25 percent of the kernel is dark brown, with not more than 25 percent of the surface darker than dark brown (very dark brown or blackish-brown discoloration).

(b) U.S. Department of Agriculture kernel color standards, PEC–MC–1, illustrate the color intensities implied by the terms ''golden,'' ''light brown,'' ''medium brown,'' and ''dark brown'' referred to in paragraph (a) of this section. The color standards are available at *https://www.ams.usda.gov/grades-standards.*

■ 12. Revise the undesignated center heading preceding § 51.1406 to read as follows:

Tolerances

■ 13. Revise § 51.1406 to read as follows:

§ 51.1406 Tolerances.

In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances are provided as specified:

(a) *U.S. Extra Fancy, U.S. Fancy, and U.S. Choice grades*—(1) *For shell defects, by count.* 5 percent for pecans with damaged shells, including therein not more than 2 percent for shells which are seriously damaged.

(2) *For kernel defects, by count.* 12 percent for pecans with kernels which fail to meet the requirements for the grade or any specified color classification, including therein not more than 7 percent for kernels which are seriously damaged: *Provided,* That not more than 6 percent shall be allowed for kernels which are rancid, moldy, decayed, or injured by insects: *Provided further,* That included in this

6 percent tolerance not more than 0.5 percent (one-half of 1 percent) shall be allowed for pecans with live insects inside the shell.

(3) *For loose, extraneous, or foreign material, by weight.* 0.5 percent (one-half of 1 percent).

(b) *U.S. Standard grade*—(1) *For shell defects, by count.* 10 percent for pecans with damaged shells, including therein not more than 3 percent for shells which are seriously damaged.

(2) *For kernel defects, by count.* 30 percent for pecans with kernels which fail to meet the requirements for the U.S. Extra Fancy, U.S. Fancy, or U.S. Choice grades, including therein not more than 10 percent for kernels which are seriously damaged: *Provided,* That not more than 7 percent shall be allowed for kernels which are rancid, moldy, decayed, or injured by insects: *Provided further,* That included in this 7 percent tolerance not more than 0.5 percent (one-half of 1 percent) shall be allowed for pecans with live insects inside the shell.

(3) *For loose, extraneous, or foreign material, by weight.* 0.5 percent (one-half of 1 percent).

■ 14. Revise the undesignated center heading preceding § 51.1407 to read as follows:

Application of Tolerances

■ 15. Revise § 51.1407 to read as follows:

§ 51.1407 Application of tolerances.

Individual 100-count samples shall have mot more than one and one-half times a specified tolerance of 5 percent or more and not more than double a tolerance of less than 5 percent, except that at least one pecan which is seriously damaged by live insects inside the shell is permitted: *Provided,* That the averages for the entire lot are within the tolerances specified for the grade.

■ 16. Add an undesignated center heading preceding § 51.1408 to read as follows:

Sample for Grade or Size Determination

■ 17. Revise § 51.1408 to read as follows:

§ 51.1408 Sample for grade or size determination.

Each sample shall consist of 100 pecans. The individual sample shall be drawn at random from a sufficient number of packages to form a 100-count composite sample. The number of such individual 100-count samples drawn for grade or size determination will vary with the size of the lot. When practicable, at point of packaging the sample may be obtained from the grading belt after sorting has been completed.

■ 18. Add an undesignated center heading preceding § 51.1409 to read as follows:

Definitions

■ 19. Revise § 51.1409 to read as follows:

§ 51.1409 Loose extraneous or foreign material.

Loose extraneous or foreign material means loose hulls, empty broken shells, rocks, wood, glass, plastic, or any substance other than pecans in the shell or pecan kernels.

■ 20. Revise § 51.1410 to read as follows:

§ 51.1410 Well cured.

Well cured means the kernel separates freely from the shell, breaks cleanly when bent without splintering, shattering, or loosening the skin; and the kernel appears to be in good shipping or storage condition as to moisture content.

■ 21. Revise § 51.1411 to read as follows:

§ 51.1411 Well developed.

Well developed means that the kernel is full-meated throughout its width and length.

■ 22. Revise § 51.1412 to read as follows:

§ 51.1412 Fairly well developed.

Fairly well developed means that the kernel is full-meated in over 50 percent of its width and length.

■ 23. Revise § 51.1413 to read as follows:

§ 51.1413 Poorly developed.

Poorly developed means that the kernel is full-meated in less than 25 percent of its width and length.

■ 24. Revise § 51.1414 to read as follows:

§ 51.1414 Uniform in color.

Uniform in color means that the shells do not show sufficient variation in color to detract from the general appearance of the lot and that 95 percent or more of the kernels in the lot have skin color within the range of one or two color classifications.

■ 25. Revise § 51.1415 to read as follows:

§ 51.1415 Fairly uniform in color.

Fairly uniform in color means that the shells do not show sufficient variation in color to materially detract from the general appearance of the lot and that 85 percent or more of the kernels in the lot have skin color within the range of one or two color classifications.

■ 26. Remove the undesignated center heading preceding § 51.1416.

■ 27. Revise § 51.1416 to read as follows:

§ 51.1416 Damage.

Damage means any specific defect described in this section; or an equally objectionable variation of any one of these defects, or any other defect, or any combination of defects, which materially detracts from the appearance or the edible or marketing quality of the individual pecan or the general appearance of the pecans in the lot. The following defects shall be considered as damage:

(a) Adhering hull material or dark stains affecting an aggregate of more than 5 percent of the surface of the individual shell;

(b) Adhering material from inside the shell when firmly attached to more than one-third of the outer surface of the kernel and contrasting in color with the skin of the kernel;

(c) Broken shells when any portion of the shell is missing;

(d) Internal flesh discoloration of a medium shade of gray or brown extending more than one-fourth inch (6 mm) lengthwise beneath the center ridge, or any equally objectionable amount in other portions of the kernel; or lesser areas of dark discoloration affecting the appearance to an equal or greater extent;

(e) Kernels which are dark amber in color;

(f) Kernels which are not well cured;

(g) Kernel spots when more than one dark spot is present on either half of the kernel, or when any such spot is more than one-eighth inch (3 mm) in greatest dimension;

(h) Poorly developed kernels;

(i) Shriveling when the surface of the kernel is very conspicuously wrinkled; and

(j) Split or cracked shells when the shell is spread apart or will spread upon application of slight pressure.

■ 28. Add § 51.1417 to read as follows:

§ 51.1417 Serious damage.

Serious damage means any specific defect described in this section; or an equally objectionable variation of any one of these defects, or any other defect, or any combination of defects, which seriously detracts from the appearance or the edible or marketing quality of the individual pecan. The following defects shall be considered as serious damage:

(a) Adhering hull material or dark stains affecting an aggregate of more than 20 percent of the individual shell;

(b) Broken shells when the missing portion of shell is greater in area than

a circle one-fourth inch (6 mm) in diameter;

(c) Dark discoloration of the skin which is darker than dark amber over more than 25 percent of the surface of the kernel;

(d) Decay affecting any portion of the kernel;

(e) Insects, web, frass, or the kernel shows distinct evidence of insect feeding on the kernel;

(f) Internal flesh discoloration of a dark shade extending more than one-third the length of the kernel beneath the ridge, or an equally objectionable amount of dark discoloration in other portions of the kernel;

(g) Kernel spots when more than three dark spots on either half of the kernel, or when any spot or the aggregate of two or more spots on one of the halves of the kernel affects more than 10 percent of the surface;

(h) Mold, on the surface or inside the kernel, which is plainly visible without magnification;

(i) Rancidity when the kernel is distinctly rancid to the taste. Staleness of flavor shall not be classed as rancidity;

(j) Undeveloped kernels having practically no food value, or which are blank (complete shell containing no kernel); and

(k) Worm holes when penetrating the shell.

■ 29. Add § 51.1418 to read as follows:

§ 51.1418 Inedible kernels.

Inedible kernels means that the kernel or pieces of kernels are rancid, moldy, decayed, injured by insects or otherwise unsuitable for human consumption.

■ 30. Add § 51.1419 to read as follows:

§ 51.1419 Rancidity.

Rancidity refers to the tendency of the oil in a pecan kernel to become tainted as a result of oxidation or hydrolysis. While there is no definitive measure to determine rancidity, the tendency of the kernel to become rancid can be evaluated by testing the kernel's peroxide and free fatty acid values. Peroxide values should be less than 5 mEq/kg and free fatty acid should be less than 1%.

■ 31. Add § 51.1420 to read as follows:

§ 51.1420 Kernel moisture content.

Moisture content shall be no more than 6%, unless otherwise specified.

■ 32. Revise § 51.1430 to read as follows:

§ 51.1430 U.S. Extra Fancy.

U.S. Extra Fancy consists of pecan half-kernels which meet the following requirements:

(a) *For quality.* (1) Well dried;

(2) Well developed;

(3) Uniform in color;

(4) Not darker than ''light;''

(5) Free from damage by any cause; and

(6) Comply with tolerances for defects (see § 51.1437).

(b) *For size.* (1) Uniform in size; and

(2) Conform to size classification or count specified.

■ 33. Revise § 51.1431 to read as follows:

§ 51.1431 U.S. Fancy.

U.S. Fancy consists of pecan half-kernels which meet the following requirements:

(a) *For quality.* (1) Well dried;

(2) Fairly well developed;

(3) Uniform in color;

(4) Not darker than ''light amber,'' unless specified to a lighter color classification;

(5) Free from damage by any cause; and

(6) Comply with tolerances for defects (see § 51.1437).

(b) *For size.* (1) Uniform in size; and

(2) Conform to size classification or count specified.

■ 34. Revise § 51.1432 to read as follows:

§ 51.1432. U.S. Choice.

U.S. Choice consists of pecan half-kernels which meet the following requirements:

(a) *For quality.* (1) Well dried;

(2) Not poorly developed;

(3) Fairly uniform in color;

(4) Not darker than ''amber,'' unless specified to a lighter color classification;

(5) Free from serious damage by any cause; and

(6) Comply with tolerances for defects (see § 51.1437).

(b) *For size.* (1) Fairly uniform in size; and

(2) Conform to size classification or count specified.

■ 35. Revise § 51.1433 to read as follows:

§ 51.1433 U.S. Standard.

U.S. Standard consists of pecan half-kernels which meet the following requirements:

(a) *For quality.* (1) Well dried;

(2) No requirement for fullness of kernel;

(3) No requirement for uniformity of kernel;

(4) May contain kernels ''dark amber'' or darker, unless specified to a lighter color classification; and

(5) Increased tolerances for defects (see § 51.1437).

(b) *For size.* (1) No uniformity in size; and

(2) Conform to size classification or count specified.

■ 36. Add an undesignated center heading preceding § 51.1434 to read as follows:

Color Classifications

■ 37. Revise § 51.1434 to read as follows:

§ 51.1434 Color classification.

(a) The skin color of pecan kernels may be described in terms of the color classifications provided in this section. When the color of kernels in a lot generally conforms to ''light'' or ''light amber'' classification, that color classification may be used to describe the lot in connection with the grade.

(1) *Light* means that the kernel is mostly golden color or lighter, with not more than 25 percent of the surface darker than golden, and none of the surface darker than light brown.

(2) *Light amber* means that the kernel has more than 25 percent of the surface light brown, but not more than 25 percent of surface darker than light brown, and none of the surface darker than medium brown.

(3) *Amber* means that the kernel has more than 25 percent of the surface medium brown, but not more than 25 percent of surface darker than medium brown, and none of the surface darker than dark brown (very dark brown or blackish-brown discoloration).

(4) *Dark amber* means that the kernel has more than 25 percent of the surface dark brown, but not more than 25 percent of surface darker than dark brown (very dark brown or blackish-brown discoloration).

(b) U.S. Department of Agriculture kernel color standards, PEC–MC–1, illustrate the color intensities implied by the terms ''golden,'' ''light brown,'' ''medium brown,'' and ''dark brown'' referred to in paragraph (a) of this section. The color standards are available at *https://www.ams.usda.gov/grades-standards.*

■ 38. Add an undesignated center heading preceding § 51.1435 to read as follows:

Size Classifications

■ 39. Revise § 51.1435 to read as follows:

§ 51.1435 Size classification for halves.

The size of pecan halves in a lot may be specified in accordance with one of the size classifications shown in Table 1 to this section.

(a) *Basis of weight.* The number of halves per pound shall be based upon the weight of half-kernels after all pieces, meal and flour, shell, center

wall, and foreign material have been removed.

(b) *Size specifications.* In lieu of the size classifications in Table 1 to this section, the size of pecan halves in a lot may be specified in terms of the number of halves or a range of number of halves per pound. For example, ''400'' or ''600–700.''

(c) *Tolerance for count per pound.* In order to allow for variations incident to proper sizing, a tolerance shall be permitted as follows:

(1) When an exact number of halves per pound is specified, the actual count per pound may vary not more than 5 percent from the specified number; and

(2) When any size classification shown in Table 1 to this section or a range in count per pound is specified, no tolerance shall be allowed for counts outside of the specified range.

(d) *Tolerances for pieces, meal, and flour*—(1) *For U.S. Extra Fancy halves.* In order to allow for variations incident to proper sizing and handling, not more than 5 percent, by weight, of any lot may consist of pieces, meal, and flour: *Provided,* That included in this amount, not more than 3 percent, shall be allowed for portions less than one-half of a complete half-kernel, including not more than 1 percent for meal and flour.

(2) *For U.S. Fancy halves.* In order to allow for variations incident to proper sizing and handling, not more than 15 percent, by weight, of any lot may consist of pieces, meal, and flour: *Provided,* That not more than one-third of this amount, or 5 percent, shall be allowed for portions less than one-half of a complete half-kernel, including not more than 1 percent for meal and flour.

(3) *For all other halves.* In order to allow for variations incident to proper sizing and handling, not more than 20 percent, by weight, of any lot may consist of pieces, meal, and flour: *Provided,* That not more than one-quarter of this amount, or 5 percent, shall be allowed for portions less than one-half of a complete half-kernel, including not more than 1 percent for meal and flour.

TABLE 1 TO § 51.1435

Size classification for halves	Number of halves per pound
Mammoth	250 or less.
Junior Mammoth	251 to 350.
Jumbo	351 to 450.
Large	451 to 550.
Medium	551 to 650.
Topper	651 to 750.
King Topper	751 more.

■ 40. Remove the undesignated center heading preceding § 51.1436.

■ 41. Revise § 51.1436 to read as follows:

§ 51.1436 Size classification for pieces.

The size of pecan pieces in a lot may be specified in accordance with one of the size classifications shown in Table 1 to this section. Sizes are measured using a round-hole screen.

(a) *Size specifications.* In lieu of the size classifications in Table 1 to this section, the size of pieces in a lot may be specified in terms of minimum diameter, or as a range described in terms of minimum and maximum diameters expressed in sixteenths or sixty-fourths of an inch.

(b) *Tolerances for size of pieces.* In order to allow for variations incident to proper sizing, tolerances are provided for pieces in a lot which fail to meet the requirements of any size specified. The tolerances, by weight, are as follows:

(1) *For U.S. Extra Fancy and Fancy pieces.* Not more than 15 percent of the lot may fall outside of the size range in Table 1 to this section. Further, not more than 1 percent of the pieces may pass through an eight sixty-fourths of an inch round hole screen.

(2) *For U.S. Choice pieces.* Not more than 20 percent of the lot may fall outside of the size range in Table 1 to this section. Further, not more than 2 percent of the pieces may pass through an eight sixty-fourths of an inch round hole screen.

(3) *For U.S. Standard pieces.* Not more than 25 percent of the lot may fall outside of the size range in Table 1 to this section. Further, not more than 2 percent of the pieces may pass through an eight sixty-fourths of an inch round hole screen.

TABLE 1 TO § 51.1436

Size classification	Maximum diameter (will pass through round opening of the following diameter)	Minimum diameter (will not pass through round opening of the following diameter)
Extra-Large Pieces	No limitation	32/64 inch.
Large Pieces	32/64 inch	24/64 inch.
Halves and Pieces	No limitation	20/64 inch.
Medium Pieces	24/64 inch	16/64 inch.
Small Pieces	16/64 inch	12/64 inch.
Topping Pieces	12/64 inch	8/64 inch.
Granules	8/64 inch	4/64 inch.

■ 42. Revise the undesignated center heading preceding § 51.1437 to read as follows:

Tolerances for Defects

■ 43. Revise § 51.1437 to read as follows:

§ 51.1437 Tolerances for defects.

In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances, by weight, are provided as specified:

(a) U.S. Extra Fancy grade. (1) No foreign material;

(2) 0.01 percent for shell, and center wall;

(3) Zero tolerance is provided for pecan weevil;

(4) 3 percent for portions of kernels which are ''dark amber'' or darker color; and

(5) 3 percent for portions of kernels which fail to meet the remaining requirements of the grade, including therein not more than 0.50 percent for defects causing serious damage: *Provided,* That any unused portion of this tolerance may be applied to increase the tolerance for kernels which are ''dark amber'' or darker color, or darker than any specified lighter color classification.

(b) U.S. Fancy grade. (1) No foreign material;

(2) 0.01 percent for shell and center wall;

(3) No more than 2 pecan weevil larvae per 30-pounds of product;

(4) 5 percent for portions of kernels which are ''dark amber'' or darker color, or darker than any specified lighter color classification, but which are not otherwise defective; and

(5) 5 percent for portions of kernels which fail to meet the remaining requirements of the grade, including

therein not more than 0.50 percent for defects causing serious damage: *Provided,* That any unused portion of this tolerance may be applied to increase the tolerance for kernels which are ''dark amber'' or darker color, or darker than any specified lighter color classification.

(c) U.S. Choice grade. (1) No foreign material;

(2) 0.01 percent for shell and center wall;

(3) No more than 5 pecan weevil larvae per 30-pounds of product;

(4) 15 percent for portions of kernels which are ''dark amber'' or darker color, or darker than any specified lighter color classification, but which are not otherwise defective; and

(5) 8 percent for portions of kernels which fail to meet the remaining requirements of the grade, including therein not more than 1 percent for defects causing serious damage.

(d) U.S. Standard grade. (1) No foreign material;

(2) 0.01 percent for shell and center wall;

(3) No limit on the number of pecan weevil larvae per 30 pounds of product;

(4) 25 percent for portions of kernels which are ''dark amber'' or darker color, or darker than any specified lighter color classification, but which are not otherwise defective; and

(5) 15 percent for portions of kernels which fail to meet the remaining requirements of the grade, including therein not more than 1 percent for defects causing serious damage.

■ 44. Add an undesignated center heading preceding § 51.1438 to read as follows:

Application of Standards

■ 45. Revise § 51.1438 to read as follows:

§ 51.1438 Application of standards.

The grade of a lot of shelled pecans shall be determined on the basis of a composite sample drawn at random from containers in various locations in the lot. However, any identifiable container or number of containers in which the pecans are obviously of a quality or size materially different from that in the majority of containers, shall be considered as a separate lot, and shall be sampled and graded separately.

■ 46. Revise the undesignated center heading preceding § 51.1439 to read as follows:

Definitions

■ 47. Revise § 51.1439 to read as follows:

§ 51.1439 Half-kernel.

(a) For Extra Fancy halves, a *half-kernel* means one of the separated halves of an entire pecan kernel with not more than one-eighth of its original volume missing, exclusive of the portion which formerly connected the two halves of the kernel.

(b) For all other halves, a *half-kernel* means one of the separated halves of an entire pecan kernel with not more than one-quarter of its original volume missing, exclusive of the portion which formerly connected the two halves of the kernel.

■ 48. Remove the undesignated center heading preceding § 51.1440.

■ 49. Revise § 51.1440 to read as follows:

§ 51.1440 Piece.

Piece means a portion of a kernel which is less than seven-eighths of a half-kernel, but which will not pass through a round opening four sixty-fourths of an inch in diameter.

■ 50. Remove the undesignated center heading preceding § 51.1441.

■ 51. Revise § 51.1441 to read as follows:

§ 51.1441 Meal and flour.

Meal and flour means fragments of kernels which will pass through a round opening four sixty-fourths of an inch in diameter.

■ 52. Revise § 51.1442 to read as follows:

§ 51.1442 Well dried.

Well dried means that the portion of kernel is firm and crisp, not pliable, or leathery. Moisture should be no more than 4.5%, unless otherwise specified.

■ 53. Revise § 51.1443 to read as follows:

§ 51.1443 Well developed.

Well developed means that the kernel is full-meated through its width and length.

■ 54. Revise § 51.1444 to read as follows:

§ 51.1444 Fairly well developed.

Fairly well developed means that the kernel is full-meated in over 50 percent of its width and length.

■ 55. Revise § 51.1445 to read as follows:

§ 51.1445 Poorly developed.

Poorly developed means that the kernel is full-meated in less than 25 percent of its width and length.

■ 56. Revise § 51.1446 to read as follows:

§ 51.1446 Uniform in color.

Uniform in color means that 95 percent or more of the kernels in the lot have skin color within the range of one or two color classifications.

■ 57. Revise § 51.1447 to read as follows:

§ 51.1447 Fairly uniform in color.

Fairly uniform in color means that 85 percent or more of the kernels in the lot have skin color within the range of one or two color classifications.

■ 58. Revise § 51.1448 to read as follows:

§ 51.1448 Uniform in size.

Uniform in size means that, in a representative sample of 100 halves, the 10 smallest halves weigh not less than 25 percent as much as the 10 largest halves.

■ 59. Revise § 51.1449 to read as follows:

§ 51.1449 Fairly uniform in size.

Fairly uniform in size means that, in a representative sample of 100 halves, the 10 smallest halves weigh not less than one-half as much as the 10 largest halves.

■ 60. Revise § 51.1450 to read as follows:

§ 51.1450 Foreign material.

Foreign material includes rocks, wood, glass, plastic, insects, or any similar material. It does not include hard shell, center wall, or pecan weevil larvae.

■ 61. Remove the undesignated center heading preceding § 51.1451.

■ 62. Revise § 51.1451 to read as follows:

§ 51.1451 Damage.

Damage means any specific defect described in this section; or an equally objectionable variation of any one of these defects, or any other defect, or any combination of defects, which materially detracts from the appearance or the edible or marketing quality of the individual portion of the kernel or of the lot as a whole. The following defects shall be considered as damage:

(a) Adhering material from inside the shell when attached to more than one-fourth of the surface on one side of the half-kernel or piece;

(b) Dust or dirt adhering to the kernel when conspicuous;

(c) Internal flesh discoloration of a medium shade of gray or brown extending more than one-fourth the length of the half-kernel or piece, or lesser areas of dark discoloration affecting the appearance to an equal or greater extent;

(d) Kernel which is not well dried;

(e) Kernel which is ''dark amber'' or darker color;

(f) Kernel having more than one dark kernel spot, or one dark kernel spot

more than one-eighth inch in greatest dimension;

(g) Poorly developed kernel; and

(h) Shriveling when the surface of the kernel is very conspicuously wrinkled.

■ 63. Add § 51.1452 to read as follows:

§ 51.1452 Serious damage.

Serious damage means any specific defect described in this section; or an equally objectionable variation of any one of these defects, or any other defect, or any combination of defects, which seriously detracts from the appearance or the edible or marketing quality of the individual portion of kernel or of the lot as a whole. The following defects shall be considered as serious damage:

(a) Adhering material from inside the shell when attached to more than one-half of the surface on one side of the half-kernel or piece;

(b) Any plainly visible mold;

(c) Dark kernel spots when more than three are on the kernel, or when any dark kernel spot or the aggregate of two or more spots affect an area of more than 10 percent of the surface of the half-kernel or piece;

(d) Dark skin discoloration, darker than ''dark brown,'' when covering more than one-fourth of the surface of the half-kernel or piece;

(e) Decay affecting any portion of the kernel;

(f) Insects, web, or frass or any distinct evidence of insect feeding on the kernel;

(g) Internal discoloration, which is dark gray, dark brown, or black and extends more than one-third the length of the half-kernel or piece;

(h) Rancidity when the kernel is distinctly rancid to the taste. Staleness of flavor shall not be classed as rancidity; and

(i) Undeveloped kernel.

■ 64. Add § 51.1453 to read as follows:

§ 51.1453 Rancidity.

Rancidity refers to the tendency of the oil in a pecan kernel to become tainted as a result of oxidation or hydrolysis. While there is no definitive measure to determine rancidity, the tendency of the kernel to become rancid can be evaluated by testing the kernel's peroxide and free-fatty acid values. Peroxide values should be less than 5 mEq/kg and free fatty acid should be less than 1%.

■ 65. Add an undesignated center heading and § 51.1454 to read as follows:

Metric Conversion Table

§ 51.1454 Metric conversion table.

TABLE 1 TO § 51.1454

Inches	Millimeters (mm)
32/64	12.7
28/64	11.1
24/64	9.5
20/64	7.9
16/64	6.4
12/64	4.8
8/64	3.2
6/64	2.4
5/64	2.0
4/64	1.6

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2022–10856 Filed 5–31–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0467; Project Identifier AD–2022–00174–E]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain General Electric Company (GE) GEnx–1B and GEnx–2B model turbofan engines. This proposed AD was prompted by the detection of melt-related freckles in the forgings and billets, which may reduce the life of certain compressor discharge pressure (CDP) seals, interstage seals, high-pressure turbine (HPT) rotor stage 2 disks, and stages 6–10 compressor rotor spools. This proposed AD would require revising the airworthiness limitations section (ALS) of the applicable GEnx–1B and GEnx–2B Engine Manual (EM) and the operator's existing approved maintenance program or inspection program, as applicable, to incorporate reduced life limits for these parts. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by July 18, 2022.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact General Electric Company, 1 Neumann Way, Cincinnati, OH 45215; phone: (513) 552–3272; email: *aviation.fleetsupport@ae.ge.com*; website: *https://www.ge.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0467; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Alexei Marqueen, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7178; email: *Alexei.T.Marqueen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–0467; Project Identifier AD–2022–00174–E'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR

11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Alexei Marqueen, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA was notified by the engine manufacturer of the detection of melt-related freckles in the forgings and billets, which may reduce the life of certain CDP seals, interstage seals, HPT rotor stage 2 disks, and stages 6–10 compressor rotor spools (life-limited parts (LLPs)) on GEnx–1B54/P2, GEnx–1B58/P2, GEnx–1B64/P2, GEnx–1B67/P2, GEnx–1B70/P2, GEnx–1B70C/P2, GEnx–1B70/72/P2, GEnx–1B70/75/P2, GEnx–1B74/75/P2, GEnx–1B75/P2, GEnx–1B76/P2, GEnx–1B76A/P2, and GEnx–1B78/P2 (GEnx–1B) and GEnx–2B67, GEnx–2B67B, and GEnx–2B67/P (GEnx–2B) model turbofan engines. The manufacturer's investigation determined that, as a result of such freckles forming in the forgings and billets, certain LLPs may have undetected subsurface anomalies that developed during the manufacturing process, resulting in reduced material properties and a lower fatigue life capability. Reduced material properties may cause premature LLP fracture, which could result in uncontained debris release. As a result of its investigation, the manufacturer determined the need to reduce the life limits of certain LLPs. To reflect these reduced life limits, the manufacturer revised the ALS of the affected GEnx–1B and GEnx–2B EMs. The FAA is proposing to require operators to update the ALS of the applicable GEnx–1B and GEnx–2B EM with the reduced life limits for certain LLPs. This condition, if not addressed, could result in uncontained debris release, damage to the engine, and damage to the airplane.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Related Service Information

The FAA reviewed GE GEnx–1B Service Bulletin (SB) 72–0484 R00, dated August 11, 2021, and GE GEnx–2B SB 72–0423 R00, dated August 11, 2021. These SBs, differentiated by engine model, provide the reduced life limits for certain LLPs.

Proposed AD Requirements in This NPRM

This proposed AD would require revising the ALS of the applicable GEnx–1B and GEnx–2B EM and the operator's existing approved maintenance program or inspection program, as applicable, to incorporate reduced life limits for certain LLPs.

Differences Between This Proposed AD and the Service Information

GE GEnx–2B Service Bulletin (SB) 72–0423 R00, dated August 11, 2021, uses the term ''HPT stage 2 disk'' to describe HPT stage 2 disk P/N 2383M86P02, while this proposed AD uses the term ''HPT rotor stage 2 disk.''

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 390 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Revise ALS of EM and the operator's existing approved maintenance or inspection program.	1 work-hour × $85 per hour = $85	$0	$85	$33,150

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

General Electric Company: Docket No. FAA–2022–0467; Project Identifier AD–2022–00174–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by July 18, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to General Electric Company (GE) GEnx–1B54/P2, GEnx–1B58/P2, GEnx–1B64/P2, GEnx–1B67/P2, GEnx–1B70/P2, GEnx–1B70C/P2, GEnx–1B70/72/P2, GEnx–1B70/75/P2, GEnx–1B74/75/P2, GEnx–1B75/P2, GEnx–1B76/P2, GEnx–1B76A/P2, GEnx–1B78/P2, GEnx–2B67, GEnx–2B67B, and GEnx–2B67/P model turbofan engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7230, Turbine Engine Compressor Section, and JASC Code 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by the detection of melt-related freckles in the forgings and billets, which may reduce the life of certain compressor discharge pressure (CDP) seals, interstage seals, high-pressure turbine (HPT) rotor stage 2 disks, and stages 6–10 compressor rotor spools. The FAA is issuing this AD to prevent failure of the CDP seal, interstage seal, HPT rotor stage 2 disk, and stages 6–10 compressor rotor spool. The unsafe condition, if not addressed, could result in uncontained debris release, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

(1) For all affected GEnx–1B model turbofan engines, within 90 days after the effective date of this AD, revise the airworthiness limitations section (ALS) of the existing GEnx–1B Engine Manual (EM) and the operator's existing approved maintenance program or inspection program, as applicable, by inserting the following information into the applicable table for their respective part numbers:

(i) For stages 6–10 compressor rotor spool part number (P/N) 2628M56G01, insert the information in Table 1 to paragraph (g)(1)(i) of this AD.

TABLE 1 TO PARAGRAPH (g)(1)(i)—STAGES 6–10 COMPRESSOR ROTOR SPOOL P/N 2628M56G01

Part name	Part No.	Life cycles –1B54/P2	Life cycles –1B58/P2 –1B64/P2 –1B67/P2 –1B70/P2	Life cycles –1B70C/P2	Life cycles –1B70/72/P2 –1B70/75/P2 –1B74/75/P2 –1B75/P2	Life cycles –1B76/P2	Life cycles –1B76A/P2	Life cycles –1B78/P2
Spool, Stage 6–10	2628M56G01 For part serial numbers NOT listed in GEnx–1B SB 72–0484, latest revision.	17,000	17,000	15,000	15,000	14,600	12,200	14,600
Spool, Stage 6–10	2628M56G01 For part serial numbers listed in Table 1 of GEnx–1B SB 72–0484, latest revision.	10,300	10,300	10,300	10,300	8,500	8,500	8,500
Spool, Stage 6–10	2628M56G01 For part serial numbers listed in Table 2 of GEnx–1B SB 72–0484, latest revision.	5,700	5,700	5,700	5,700	4,800	4,800	4,800

(ii) For CDP seal P/N 2383M82P03, insert the information in Table 2 to paragraph (g)(1)(ii) of this AD.

TABLE 2 TO PARAGRAPH (g)(1)(ii)—CDP SEAL P/N 2383M82P03

Part name	Part No.	Life cycles –1B54/P2	Life cycles –1B58/P2 –1B64/P2 –1B67/P2 –1B70/P2	Life cycles –1B70C/P2	Life cycles –1B70/72/P2 –1B70/75/P2 –1B74/75/P2 –1B75/P2	Life cycles –1B76/P2	Life cycles –1B76A/P2	Life cycles –1B78/P2
Seal, CDP	2383M82P03 For part serial numbers NOT listed in GEnx–1B SB 72–0484, latest revision.	20,000	20,000	15,000	15,000	15,000	15,000	15,000
Seal, CDP	2383M82P03 For part serial numbers listed in Table 3 of GEnx–1B SB 72–0484, latest revision.	6,100	6,100	6,100	6,100	5,300	5,300	5,300
Seal, CDP	2383M82P03 For part serial numbers listed in Table 4 of GEnx–1B SB 72–0484, latest revision.	13,400	13,400	13,400	13,400	9,300	9,300	9,300
Seal, CDP	2383M82P03 For part serial numbers listed in Table 5 of GEnx–1B SB 72–0484, latest revision.	3,600	3,600	3,600	3,600	2,900	2,900	2,900

(iii) For interstage seal P/N 2383M85P04, insert the information in Table 3 to paragraph (g)(1)(iii) of this AD.

TABLE 3 TO PARAGRAPH (g)(1)(iii)—INTERSTAGE SEAL P/N 2383M85P04

Part name	Part No.	Life cycles –1B54/P2	Life cycles –1B58/P2 –1B64/P2 –1B67/P2 –1B70/P2	Life cycles –1B70C/P2	Life cycles –1B70/72/P2 –1B70/75/P2 –1B74/75/P2 –1B75/P2	Life cycles –1B76/P2	Life cycles –1B76A/P2	Life cycles –1B78/P2
Seal, Interstage	2383M85P04 For part serial numbers NOT listed in GEnx–1B SB 72–0484, latest revision.	17,000	15,000	15,000	15,000	14,200	14,800	14,200
Seal, Interstage	2383M85P04 For part serial numbers listed in Table 6 of GEnx–1B SB 72–0484, latest revision.	10,500	10,500	10,500	10,500	6,400	6,400	6,400
Seal, Interstage	2383M85P04 For part serial numbers listed in Table 7 of GEnx–1B SB 72–0484, latest revision.	15,000	15,000	15,000	15,000	10,500	10,500	10,500
Seal, Interstage	2383M85P04 For part serial numbers listed in Table 8 of GEnx–1B SB 72–0484, latest revision.	5,500	5,500	5,500	5,500	2,800	2,800	2,800

(iv) For HPT rotor stage 2 disk P/N 2383M86P02, insert the information in Table 4 to paragraph (g)(1)(iv) of this AD.

TABLE 4 TO PARAGRAPH (g)(1)(iv)—HPT ROTOR STAGE 2 DISK P/N 2383M86P02

Part name	Part No.	Life cycles –1B54/P2	Life cycles –1B58/P2 –1B64/P2 –1B67/P2 –1B70/P2	Life cycles –1B70C/P2	Life cycles –1B70/72/P2 –1B70/75/P2 –1B74/75/P2 –1B75/P2	Life cycles –1B76/P2	Life cycles –1B76A/P2	Life cycles –1B78/P2
Disk, Stage 2	2383M86P02 For part serial numbers NOT listed in GEnx–1B SB 72–0484, latest revision.	12,100	12,100	10,400	10,400	9,500	6,800	9,500
Disk, Stage 2	2383M86P02 For part serial numbers listed in Table 9 of GEnx–1B SB 72–0484, latest revision.	6,900	6,900	6,900	6,900	5,100	5,100	5,100
Disk, Stage 2	2383M86P02 For part serial numbers listed in Table 10 of GEnx–1B SB 72–0484, latest revision.	10,400	10,400	10,400	10,400	7,500	6,800	7,500
Disk, Stage 2	2383M86P02 For part serial numbers listed in Table 11 of GEnx–1B SB 72–0484, latest revision.	3,800	3,800	3,800	3,800	3,000	3,000	3,000

(2) For all affected GEnx–2B model turbofan engines, within 90 days after the effective date of this AD, revise the ALS of the existing GEnx–2B EM and the operator's existing approved maintenance program or inspection program, as applicable, by inserting the following information into the applicable table for their respective part numbers:

(i) For stages 6–10 compressor rotor spool P/N 2628M56G01, insert the information in Table 5 to paragraph (g)(2)(i) of this AD.

TABLE 5 TO PARAGRAPH (g)(2)(i)—STAGES 6–10 COMPRESSOR ROTOR SPOOL P/N 2628M56G01

Part name	Part No.	Life cycles –2B67	Life cycles –2B67B	Life cycles –2B67/P
Spool, Stage 6–10	2628M56G01 For part serial numbers NOT listed in GEnx–2B SB 72–0423, latest revision.	.....	.....	11,100
Spool, Stage 6–10	2628M56G01 For part serial numbers listed in Table 1 of GEnx–2B SB 72–0423, latest revision.	.....	.....	10,300
Spool, Stage 6–10	2628M56G01 For part serial numbers listed in Table 2 of GEnx–2B SB 72–0423, latest revision.	.....	.....	5,700

(ii) For CDP seal P/N 2383M82P03, insert the information in Table 6 to paragraph (g)(2)(ii) of this AD.

TABLE 6 TO PARAGRAPH (g)(2)(ii)—CDP SEAL P/N 2383M82P03

Part name	Part No.	Life cycles –2B67	Life cycles –2B67B	Life cycles –2B67/P
Seal, CDP	2383M82P03 For part serial numbers NOT listed in GEnx–2B SB 72–0423, latest revision.	.....	.....	15,000

TABLE 6 TO PARAGRAPH (g)(2)(ii)—CDP SEAL P/N 2383M82P03—Continued

Part name	Part No.	Life cycles –2B67	Life cycles –2B67B	Life cycles –2B67/P
Seal, CDP	2383M82P03 For part serial numbers listed in Table 3 of GEnx–2B SB 72–0423, latest revision.			6,100
Seal, CDP	2383M82P03 For part serial numbers listed in Table 4 of GEnx–2B SB 72–0423, latest revision.			13,400
Seal, CDP	2383M82P03 For part serial numbers listed in Table 5 of GEnx–2B SB 72–0423, latest revision.			3,600

(iii) For interstage seal P/N 2383M85P04, insert the information in Table 7 to paragraph (g)(2)(iii) of this AD.

TABLE 7 TO PARAGRAPH (g)(2)(iii)—INTERSTAGE SEAL P/N 2383M85P04

Part name	Part No.	Life cycles –2B67	Life cycles –2B67B	Life cycles –2B67/P
Seal, Interstage	2383M85P04 For part serial numbers NOT listed in GEnx–2B SB 72–0423, latest revision.			15,000
Seal, Interstage	2383M85P04 For part serial numbers listed in Table 6 of GEnx–2B SB 72–0423, latest revision.			10,500
Seal, Interstage	2383M85P04 For part serial numbers listed in Table 7 of GEnx–2B SB 72–0423, latest revision.			15,000
Seal, Interstage	2383M85P04 For part serial numbers listed in Table 8 of GEnx–2B SB 72–0423, latest revision.			5,500

(iv) For HPT rotor stage 2 disk P/N 2383M86P02, insert the information in Table 8 to paragraph (g)(2)(iv) of this AD.

TABLE 8 TO PARAGRAPH (g)(2)(iv)—HPT ROTOR STAGE 2 DISK P/N 2383M86P02

Part name	Part No.	Life cycles –2B67	Life cycles –2B67B	Life cycles –2B67/P
Disk, Stage 2	2383M86P02 For part serial numbers NOT listed in GEnx–2B SB 72–0423, latest revision.			13,300
Disk, Stage 2	2383M86P02 For part serial numbers listed in Table 9 of GEnx–2B SB 72–0423, latest revision.			6,900
Disk, Stage 2	2383M86P02 For part serial numbers listed in Table 10 of GEnx–2B SB 72–0423, latest revision.			10,400
Disk, Stage 2	2383M86P02 For part serial numbers listed in Table 11 of GEnx–2B SB 72–0423, latest revision.			3,800

(3) After performing the actions required by paragraphs (g)(1) and (2) of this AD, except as provided in paragraph (h) of this AD, no alternative life limits may be approved for the affected parts.

(h) Alternative Methods of Compliance (AMOCs)

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

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

(i) Related Information

(1) For more information about this AD, contact Alexei Marqueen, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7178; email: *Alexei.T.Marqueen@faa.gov*.

(2) For service information identified in this AD, contact General Electric Company, 1 Neumann Way, Cincinnati, OH 45215; phone: (513) 552–3272; email: *aviation.fleetsupport@ae.ge.com*; website: *https://www.ge.com*. You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

Issued on May 12, 2022.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–11354 Filed 5–31–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0833; Project Identifier MCAI–2021–00245–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM); reopening of comment period.

SUMMARY: The FAA is revising an earlier proposal to supersede Airworthiness Directive (AD) 2020–18–04, which applies to all Airbus SAS Model A350–941 and –1041 airplanes. This action revises the notice of proposed rulemaking (NPRM) by requiring a modification (replacement of each affected slat power control unit (PCU) with a slat PCU having a different part number), requiring an inspection report, and revising the limitations on the installation of affected parts, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference. The FAA is proposing this AD to address the unsafe condition on these products. Since these actions would impose an additional burden over those in the NPRM, the FAA is reopening the comment period to allow the public the chance to comment on these changes.

DATES: The FAA must receive comments on this SNPRM by July 18, 2022.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For EASA material that will be incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0833.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0833; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this SNPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225; email *dan.rodina@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–0833; Project Identifier MCAI–2021–00245–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225; email *dan.rodina@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2020–18–04, Amendment 39–21225 (85 FR 54896, September 3, 2020) (AD 2020–18–04), which applies to all Airbus SAS Model A350–941 and –1041 airplanes. AD 2020–18–04 requires a one-time health check of the slat PCU torque sensing unit (TSU) for discrepancies, and corrective actions if necessary; a detailed inspection of the left-hand (LH) and right-hand (RH) slat transmission systems for discrepancies, and corrective actions if necessary; and LH and RH track 12 slat gear rotary actuator (SGRA) water drainage and vent plug cleaning (which includes an inspection for moisture).

The FAA issued an NPRM to amend 14 CFR part 39 by adding an AD to supersede AD 2020–18–04 that would apply to all Airbus SAS Model A350–941 and –1041 airplanes. The NPRM published in the **Federal Register** on September 30, 2021 (86 FR 54136) (the NPRM). The NPRM was prompted by a determination that the one-time health check must be repetitive instead to monitor the TSU wear, and that the water drainage and vent plug cleaning is no longer required. The NPRM proposed to require repetitive health checks of the slat PCU TSU, a detailed visual inspection of the slat transmission systems, and corrective actions if necessary.

Actions Since the NPRM Was Issued

Since the FAA issued the NPRM, EASA determined that requiring modification of the PCU by replacing

each affected slat PCU with a serviceable PCU (one having a different part number) is necessary. EASA issued a new AD to require this modification. In addition, in its new AD, EASA clarified the limitations related to when an affected slat PCU may be installed on an airplane.

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0275, dated December 10, 2021 (EASA AD 2021–0275) (also referred to after this as the MCAI), to correct an unsafe condition for all Airbus SAS Model A350–941 and –1041 airplanes. You may examine the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0833.

This proposed AD was prompted by a report of a slat system jam during landing, the determination that health checks must be repetitive to monitor TSU wear, and the development of a modification that terminates the repetitive health checks. The FAA is proposing this AD to address a slat system jam during landing, which could lead to a double shaft disconnection/rupture, potentially causing one or more slat surfaces to be no longer connected to either the slat wing tip brake or the slat PCU, possibly resulting in reduced control of the airplane. See the MCAI for additional background information.

Explanation of Retained Requirements

Although this proposed AD does not explicitly restate the requirements of AD 2020–18–04, this proposed AD would retain certain requirements of AD 2020–18–04. Those requirements are referenced in EASA AD 2021–0275, which, in turn, is referenced in paragraph (g) of this proposed AD.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0275 specifies procedures for repetitive health checks of the slat PCU TSU for discrepancies, and corrective actions (replacement) if necessary; a detailed visual inspection of the LH and RH slat transmission systems for discrepancies, inspection report, and corrective actions (repair) if necessary; and a modification of the PCU (replacement of each slat PCU having part number (P/N) 4785A0000–04 or 4785A0000–05 with a slat PCU having P/N 4785A0000–06), which terminates the repetitive health checks. EASA AD 2021–0275 also specifies limitations for installing affected slat PCUs. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Comments

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

The FAA received additional comments from a commenter, Delta Air Lines (Delta). The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Refer to Most Recent MCAI

Delta requested that the FAA wait to publish the final rule until EASA releases an updated AD, and then revise paragraph (g) of the proposed AD to reference the new EASA AD instead. Delta noted that EASA planned AD (PAD) 21–157 proposed to supersede EASA AD 2021–0053R1, dated April 19, 2021 (EASA AD 2021–0053R1), which was specified in the NPRM. Delta reasoned that issuing two FAA ADs within a short period of time would create unnecessary paperwork and processing time.

The FAA agrees to reference the new MCAI. As discussed in the Actions Since the NPRM was Issued portion of this SNPRM, EASA has issued EASA AD 2021–0275 to add a modification action, and the FAA has determined that it is necessary to include the new action in the proposed requirements. The FAA has revised this SNPRM to reference EASA AD 2021–0275.

Request To Correct Reference to an Appendix

Delta requested that an exception to paragraph (h) of the proposed AD be provided to correct a reference in paragraph (4) of EASA AD 2021–0053R1. Delta requested that the exception remove reference to ''Appendix 5 of the AOT,'' which does not exist in Airbus Alert Operators Transmission A27P016–20, Revision 02, dated July 19, 2021, and instead, reference the title of the appendix.

The FAA agrees to revise paragraph (h) of this proposed AD. Paragraph (4) of EASA AD 2021–0275 also references an appendix number instead of the appendix title. The FAA has added paragraph (h)(3) to this proposed AD.

Request To Detail Corrective Actions

Delta requested that the FAA coordinate with Airbus to provide instructions for the complete slat transmission system inspection and corrective action. Delta stated that information should be added to the airplane maintenance manual (AMM) or provided in a technical information letter, and then addressed in the proposed AD with a new exception paragraph. Delta stated that Airbus Alert Operators Transmission A27P016–20, Revision 02, dated July 19, 2021, specifies that if there are any findings, the complete slat transmission system would have to be inspected and any damaged parts replaced. Delta reasoned that since EASA AD 2021–0053R1 states to contact Airbus for corrective action, Airbus might have instructions for the complete slat transmission. Delta noted that providing those instructions in advance would be beneficial to operators because of reduced delays in waiting for instructions.

The FAA disagrees with the request. The FAA notes that Airbus Alert Operators Transmission A27P016–20, Revision 02, dated July 19, 2021, specifies that ''it is expected that'' the complete slat transmission system would have to be inspected and any damaged parts replaced, not that these actions will be required. The corrective action instructions that would be provided are dependent on the inspection findings and would not be transferrable to other airplanes without further review. The FAA has not changed this proposed AD in this regard.

Request To Revise Paragraph (g) of Proposed AD

Delta requested that paragraph (g) of the proposed AD be revised to include reference to paragraph (i) of the proposed AD in regards to exceptions. Delta stated that if paragraph (g) of the proposed AD does not identify both paragraphs (h) and (i) of the proposed AD as exceptions, there could be confusion if only one exclusionary paragraph is identified in paragraph (g).

The FAA agrees. The FAA has revised paragraph (g) of the proposed AD to add reference to paragraph (i) of the proposed AD.

Request To Remove Calendar Time From Compliance Times

Delta requested the FAA revise the proposed AD to add a new exception removing a calendar-based compliance time to paragraph (h) of the proposed AD. Delta specified a request for removal of the 6-month compliance time specified in table 1 of EASA AD 2021–0053R1. Delta reasoned that the 6-month compliance time is irrelevant to the airworthiness of the airplane and an unnecessary burden to operators because slat PCU failure is associated with operation cycles and the wear-out mode for the TSU is flight cycles.

The FAA disagrees with the request. The operator did not provide data to

substantiate its request. EASA, as the State of Design Authority for these airplanes, based on a risk assessment, determined the compliance time provides an acceptable level of safety. In addition, the FAA considered not only the urgency associated with the subject unsafe condition, but also the manufacturer's and EASA's recommendations. After considering all the available information, the FAA determined that the compliance time, as proposed, represents an appropriate interval of time in which the required actions can be performed in a timely manner within the affected fleet, while still maintaining an adequate level of safety. However, under the provisions of paragraph (i) of this proposed AD, the FAA may consider requests for an alternative method of compliance (AMOC) after the publication of the final rule. The FAA has not revised this proposed AD in this regard.

Request To Clarify MCAI Wording in Note 2 of MCAI

Delta requested adding an exception to paragraph (h) of the proposed AD to revise wording in note 2 of EASA AD 2021–0053R1. Delta suggested revising the phrase ''certificate of release accompanying the replacement part will clarify'' to ''. . . may be used to clarify.'' Delta stated that it interprets the intention of note 2 of EASA AD 2021–0053R1 is to provide an additional means of calculating the compliance time of the next TSU health check. Delta added that leaving the wording as-is could lead to interpreting note 2 as an AD requirement and mandate that the operator ensure all future certificates of release include this clarifying information.

The FAA agrees with the commenter's request and notes that the same wording exists in EASA AD 2021–0275. The FAA has added paragraph (h)(4) to this proposed AD to provide the requested clarification.

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI and service information referenced above. The FAA is proposing this AD because the FAA evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Certain changes described above expand the scope of the NPRM. As a result, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this SNPRM.

Proposed AD Requirements of This SNPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2021–0275 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD. This proposed AD would also limit the installation of affected parts under certain conditions. Finally, this proposed AD would require reporting all inspection results to Airbus.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2021–0275 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2021–0275 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2021–0275 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2021–0275. Service information required by EASA AD 2021–0275 for compliance will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0833 after the FAA final rule is published.

Interim Action

The preamble to the AD 2020–18–04 explains that the FAA considers those requirements ''interim action'' and that the manufacturer is developing a final action to address the unsafe condition. That AD explains that the FAA might consider further rulemaking if a final action is identified. The same explanation was in the preamble of the NPRM. Since the FAA issued AD 2020–18–04 and the NPRM, the manufacturer has developed a modification to the PCU, and the FAA has determined that further rulemaking is indeed necessary; this proposed AD follows from that determination.

Costs of Compliance

The FAA estimates that this proposed AD affects 15 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS *

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 40 work-hours × $85 per hour = $3,400	$275,300	Up to $278,700	Up to $4,180,500.

* Table does not include estimated costs for reporting.

The FAA estimates that it would take about 1 work-hour per product to comply with the proposed reporting requirement in this proposed AD. The average labor rate is $85 per hour. Based on these figures, the FAA estimates the cost of reporting the inspection results on U.S. operators to be up to $1,275, or $85 per product.

The FAA has received no definitive data on which to base the cost estimates for the on-condition repairs specified in this proposed AD.

According to the manufacturer, some or all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. The FAA does not control warranty coverage for affected individuals. As a result, the FAA has included all known costs in the cost estimate.

Paperwork Reduction Act

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2020–18–04, Amendment 39–21225 (85 FR 54896, September 3, 2020); and

■ b. Adding the following new AD:

Airbus SAS: Docket No. FAA–2021–0833; Project Identifier MCAI–2021–00245–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by July 18, 2022.

(b) Affected ADs

This AD replaces AD 2020–18–04, Amendment 39–21225 (85 FR 54896, September 3, 2020) (AD 2020–18–04).

(c) Applicability

This AD applies to all Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight Controls.

(e) Reason

This AD was prompted by a report of a slat system jam during landing, the determination that health checks must be repetitive to monitor torque sensor unit (TSU) wear, and the development of a modification that terminates the repetitive health checks. The FAA is issuing this AD to address a slat system jam during landing, which could lead to a double shaft disconnection/rupture, potentially causing one or more slat surfaces to be no longer connected to either the slat wing tip brake or the slat power control unit (PCU), possibly resulting in reduced control of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0275, dated December 10, 2021 (EASA AD 2021–0275).

(h) Exceptions to EASA AD 2021–0275

(1) Where EASA AD 2021–0275 refers to March 11, 2021 (the effective date of EASA AD 2021–0053, dated February 25, 2021), this AD requires using the effective date of this AD.

(2) Where paragraph (2) of EASA AD 2021–0275 specifies compliance times for accomplishment of certain actions, replace the text ''but not exceeding the compliance time for the repeat health check as determined in accordance with the instructions of AOT [Alert Operators Transmission] A27P015–20, or AOT A27P016–20,'' with ''but within the applicable compliance time specified in paragraph 4.2.3.1 of AOT A27P015–20; or 4.2.2.2.2 or 4.2.2.3.2 of AOT A27P016–20; as applicable.''

(3) Where paragraph (4) of EASA AD 2021–0275 specifies ''Appendix 5 of the AOT,'' use ''the Appendix labeled TSU Condition Check Flowchart of the AOT.''

(4) Where note 2 of EASA AD 2021–0275 states that the certificate of release accompanying a replacement part ''will clarify,'' use ''may be used to clarify.''

(5) The ''Remarks'' section of EASA AD 2021–0275 does not apply to this AD.

(6) Where EASA AD 2021–0275 refers to its effective date, this AD requires using the effective date of this AD.

(7) Where any service information referenced in EASA AD 2021–0275 specifies reporting, this AD requires only reporting of damage findings at the applicable time specified in paragraph (h)(7)(i) or (ii) of this AD. If operators have reported findings as part of obtaining any corrective actions approved by Airbus SAS's EASA Design Organization Approval (DOA), operators are not required to report those findings as specified in this paragraph.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(i) Additional FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending

information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (j)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraph (i)(2) of this AD, if any service information referenced in EASA AD 2021–0275 contains paragraphs that are labeled as RC, the instructions in RC paragraphs, including subparagraphs under an RC paragraph, must be done to comply with this AD; any paragraphs, including subparagraphs under those paragraphs, that are not identified as RC are recommended. The instructions in paragraphs, including subparagraphs under those paragraphs, not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the instructions identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to instructions identified as RC require approval of an AMOC.

(j) Related Information

(1) For EASA AD 2021–0275, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu*. You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu*. You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0833.

(2) For more information about this AD, contact Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225; email *dan.rodina@faa.gov*.

Issued on May 24, 2022.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–11550 Filed 5–31–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0693; Airspace Docket No. 22–ASW–12]

RIN 2120–AA66

Proposed Amendment of the Class D and Class E Airspace; Victoria, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class D and Class E airspace at Victoria, TX. The FAA is proposing this action due to a biennial airspace review. The geographic coordinates of the airport would also be updated to coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before July 18, 2022.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2022–0693/Airspace Docket No. 22–ASW–12, at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2022–0693/Airspace Docket No. 22–ASW–12.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by:

Amending the Class D airspace to within a 4.6-mile (decreased from a 4.7-mile) radius of Victoria Regional Airport, Victoria, TX; updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database; and replacing the outdated terms of ''Notice to Airmen'' with ''Notice to Air Missions'' and ''Airport/Facility Directory'' with ''Chart Supplement'';

Amending the Class E surface area with within a 4.6-mile radius (decreased from a 4.7-mile) radius of Victoria Regional Airport; adding missing part-time language to the airspace legal description; and updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database;

And amending the Class E airspace extending upward from 700 feet above the surface at Victoria Regional Airport by amending the northwest extension to 2.4 (increased from 1.9) miles each side of the 307° (previously 312°) bearing from the Victoria VOR/DME (previously the airport) extending from the 7.1-mile radius to 11.3 (decreased from 12.8) miles northwest of the airport; and updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database.

This action is the result of an airspace review conducted as part a biennial airspace review.

Class D and E airspace designations are published in paragraphs 5000, 6002, and 6005, respectively, of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASW TX D Victoria, TX [Amended]

Victoria Regional Airport, TX
(Lat. 28°51′15″ N, long. 96°55′07″ W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.6-mile radius of Victoria Regional Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective dates and times will thereafter be continuously published in the Chart Supplement.

Paragraph 6002 Class E Airspace Areas Designated as Surface Areas.

* * * * *

ASW TX E2 Victoria, TX [Amended]

Victoria Regional Airport, TX
(Lat. 28°51′15″ N, long. 96°55′07″ W)

Within a 4.6-mile radius of Victoria Regional Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective dates and times will thereafter be continuously published in the Chart Supplement.

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASW TX E5 Victoria, TX [Amended]

Victoria Regional Airport, TX
(Lat. 28°51′15″ N, long. 96°55′07″ W)
Victoria VOR/DME
(Lat. 28°54′01″ N, long. 96°58′44″ W)

That airspace extending upward from 700 feet above the surface within a 7.1-mile radius of Victoria Regional Airport; and within 2.4 each side of the 307° bearing from the Victoria VOR/DME extending from the 7.1-mile radius to 11.3-miles northwest of the airport.

Issued in Fort Worth, Texas, on May 25, 2022.

Martin A. Skinner,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2022–11561 Filed 5–31–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0668; Airspace Docket No. 22–ASO–13]

RIN 2022–AA66

Proposed Amendment of Class D Airspace, and Revocation of Class E Airspace; Fort Pierce, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class D airspace and remove Class E airspace area designated as an extension to Class D airspace in Fort Pierce, FL, as the Fort Pierce non-directional beacon (NDB) has been decommissioned and associated approaches into Treasure Coast International Airport cancelled. This action would also update the airport's name and geographic coordinates. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

DATES: Comments must be received on or before July 18, 2022.

ADDRESSES: Send comments on this proposal to: The U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; Telephone: (800) 647–5527, or (202) 366–9826. You must identify Docket No. FAA–2022–0668; Airspace Docket No. 22–ASO–13 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on-line at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; Telephone: (202) 267–8783.

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it would amend airspace in Fort Pierce, FL, to support IFR operations in the area.

Comments Invited

Interested persons are invited to comment on this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (Docket No. FAA–2022–0668 and Airspace Docket No. 22–ASO–13) and be submitted in triplicate to DOT Docket Operations (see **ADDRESSES** section for the address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2022–0668; Airspace Docket No. 22–ASO–13.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this document may be changed in light of the comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays, at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, GA 30337.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA proposes an amendment to Title 14 CFR part 71 to amend Class D airspace and remove Class E airspace designated as an extension to a Class D surface area for Treasure Coast International Airport (formerly St. Lucie County International Airport), Fort Pierce, FL, due to the decommissioning of the Fort Pierce NDB. The Class D airspace would be increased to a 4.6-mile radius (formerly 4.2 miles) and the surface extensions eliminated, as the NDB approaches have been cancelled. Additionally, this action would update the airport's name, and the airport's geographic coordinates to coincide with the FAA's database, as well as remove the city from the airport descriptor. Also, this action would replace the term Airport/Facility Directory with the term Chart Supplement in the Class D description.

Class D and Class E airspace designations are published in Paragraphs 5000, and 6004, respectively, of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace

designations listed in this document will be published subsequently in FAA Order JO 7400.11F.

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' prior to any FAA final regulatory action.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO FL D Fort Pierce, FL [Amended]

Treasure Coast International Airport, FL
(Lat. 27°29′51″ N, long. 80°22′22″ W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.6-mile radius of Treasure Coast International Airport. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Air Missions. The effective days and times will thereafter be continuously published in the Chart Supplement.

Paragraph 6004 Class E Airspace Designated as an Extension to Class D Surface Area.

* * * * *

ASO FL E4 Fort Pierce, FL [Removed]

Issued in College Park, Georgia, on May 25, 2022.

Andreese C. Davis,

Manager, Airspace & Procedures Team South, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2022–11585 Filed 5–31–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0568; Airspace Docket No. 22–ASO–12]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Alma, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E surface airspace and Class E airspace extending upward from 700 feet above the surface at Bacon County Airport, Alma, GA, due to the decommissioning of the Alma Very High Frequency Omnidirectional Range Tactical Air Navigation (VORTAC) and cancellation of associated approaches, as well as updating the airport's geographic coordinates. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

DATES: Comments must be received on or before July 18, 2022.

ADDRESSES: Send comments on this proposal to: The U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; Telephone: (800) 647–5527, or (202) 366–9826. You must identify the Docket No. FAA–2022–0568; Airspace Docket No. 22–ASO–12 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; Telephone: (202) 267–8783.

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested persons are invited to comment on this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (Docket No. FAA–2021–0568 and Airspace Docket No. 22–ASO–12) and be submitted in triplicate to DOT Docket Operations (see **ADDRESSES** section for the address and phone number). You may also submit

comments through the internet at *https://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2021–0568; Airspace Docket No. 22–ASO–12.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this document may be changed in light of the comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays, at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, GA 30337.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA proposes an amendment to 14 CFR part 71 to amend Class E surface airspace and Class E airspace extending upward from 700 feet above the surface at Bacon County Airport, Alma, GA, due to the decommissioning of the Alma VORTAC and cancellation of associated extensions. This action would also update the airport's geographic coordinates to coincide with the FAA's database, and remove the city name from airspace header per order FAA 7400.2. In addition, this action would replace the outdated term Airport/Facility Directory with the term Chart Supplement in the airspace description.

Class E airspace designations are published in Paragraphs 6002 and 6005, respectively, of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'', prior to any FAA final regulatory action.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 6002 Class E Surface Airspace.

* * * * *

ASO GA E2 Alma, GA [Amended]

Bacon County Airport, GA
(Lat. 31°32′10″ N, long. 82°30′24″ W)

That airspace extending upward from the surface within a 4-mile radius of Bacon County Airport. This Class E airspace area is effective during the specific days and times established in advance by a Notice to Air Missions. The effective days and times will thereafter be continuously published in the Chart Supplement.

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO GA E5 Alma, GA [Amended]

Bacon County Airport, GA
(Lat. 31°32′10″ N, long. 82°30′24″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Bacon County Airport.

Issued in College Park, Georgia, on May 25, 2022.

Andreese C. Davis,

Manager, Airspace & Procedures Team South, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2022–11703 Filed 5–31–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0625; Airspace Docket No. 21–AEA–11]

RIN 2120–AA66

Proposed Establishment and Amendment of Area Navigation Routes; Northeastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish 9 new High Altitude Area Navigation (RNAV) routes (Q-routes), and modify 12 existing Q-routes, in support of the Northeast Corridor Atlantic Coast Route (NEC ACR) Project. This proposal would improve the efficiency of the National Airspace System (NAS) by expanding the availability of RNAV routing and reducing the dependency on ground-based navigational systems.

DATES: Comments must be received on or before July 18, 2022.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: (800) 647–5527 or (202) 366–9826. You must identify FAA Docket No. FAA–2022–0625; Airspace Docket No. 21–AEA–11 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *httsp://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would expand the availability of RNAV routes in the NAS, increase airspace capacity, and reduce complexity in high air traffic volume areas.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2022–0625; Airspace Docket No. 21–AEA–11) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2022–0625; Airspace Docket No. 21–AEA–11.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Ave., College Park, GA 30337.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this proposed rule. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Background

The Northeast Corridor Atlantic Coast Route (NEC ACR) project developed Performance Based Navigation (PBN) routes involving the Washington, Boston, New York, and Jacksonville Air Route Traffic Control Centers (ARTCC). The proposed routes would enable aircraft to travel from most locations along the east coast of the United States mainland between Maine and Charleston, SC. The proposed NEC ACR routes would also tie-in to the existing high altitude RNAV route structure enabling more efficient direct routings between the U.S. east coast and Caribbean area locations.

Additionally, the proposed Q-routes would support the strategy to transition the NAS from a ground-based navigation aid, and radar-based system, to a satellite-based PBN system.

The Proposal

The FAA is proposing an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to establish 9 new Q-routes, and amend 12 existing Q-routes, in the northeastern United States to support the Northeast Corridor Atlantic Coast Route project. The proposed new routes would be designated: Q–101, Q–107, Q–111, Q–117, Q–131, Q–133, Q–167, Q–445, and Q–481. In addition,

amendments are proposed to the descriptions of the following existing routes: Q–22, Q–34, Q–60, Q–85, Q–87, Q–97, Q–99, Q–109, Q–113, Q–135, Q–409, and Q–419.

Note: The route descriptions of Q–97, Q–109, Q–167, and Q–445 include waypoints located over international waters. In those route descriptions, in place of a two-letter state abbreviation, either ''OA,'' meaning ''Offshore Atlantic,'' or ''OG,'' meaning ''Offshore Gulf of Mexico,'' is used.

The proposed new Q-routes are as follows:

Q–101: Q–101 would extend between the SKARP, NC, waypoint (WP), and the TUGGR, VA, WP.

Q–107: Q–107 would extend between the GARIC, NC, WP, and the HURTS, VA, WP.

Q–111: Q–111 would extend between the ZORDO, NC, WP, and the ALXEA, VA, WP.

Q–117: Q–117 would extend between the YLEEE, NC, WP, and the SAWED, VA, FIX.

Q–131: Q–131 would extend between the ZILLS, NC, WP, and the ZJAAY, MD, WP.

Q–133: Q–133 would extend between the CHIEZ, NC, WP, and the PONCT, NY, WP.

Q–167: Q167 would extend between the ZJAAY, MD, WP, and the SSOXS, MA, FIX.

Q–445: Q–445 would extend between the PAACK, NC, WP, and the KYSKY, NY, FIX.

Q–481: Q–481 would extend between the CONFR, MD, WP, and the Deer Park, NY (DPK), VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME).

The above proposed new Q-routes would provide high altitude RNAV routing options in the general area between North Carolina and New England.

The proposed Q-route amendments are as follows:

Q–22: Q–22 extends between the GUSTI, LA, FIX, and the FOXWOOD, CT, WP. This action would replace the Spartanburg, SC, (SPA) VHF Omnidirectional Range and Tactical Air Navigational System (VORTAC) with the BURGG, SC, WP. The following points would be removed from the route description because they do not denote a turn point or are not required to determine route alignment: NYBLK, NC, WP; MASHI, NC, WP; KIDDO, NC, WP; OMENS, VA, WP; UMBRE, VA, WP; SYFER, MD, WP; PYTHN, DE, WP; and LAURN, NY, FIX. The JOEPO, NJ, WP would be moved 0.64 nautical miles (NM) southeast of its current position as requested by air traffic control to improve traffic efficiency.

Q–34: Q–34 extends from the Texarkana, AR, (TXK) VORTAC to the Robbinsville, NJ, (RBV) VORTAC. This proposal would remove the following points from the route description: KONGO, KY, FIX; LOOSE, AR, WP; MATIE, AR, FIX; MEMFS, TN, WP; SWAPP, TN, FIX; GHATS, KY, FIX; FOUNT, KY, FIX; TONIO, KY, FIX; NEALS, WV, FIX; ASBUR, WV, FIX; DUALY, MD, WP; and BIGRD, MD, WP. These points are not required in the route legal description because they do not affect the alignment of the route. The HITMN, TN, WP would be inserted after the Texarkana, AR, (TXK) VORTAC. The HULKK, NJ, WP would be moved 2.36 NM southeast of its current position as requested by air traffic control to improve air traffic efficiency.

Q–60: Q–60 extends between the Spartanburg, SC, (SPA) VORTAC, and the JAXSN, VA, FIX. This proposal would extend Q–60 northeast from the JAXSN, VA, FIX, to the HURTS, VA, WP. The Spartanburg VORTAC would be replaced by the BURGG, SC, WP. The BYJAC, NC, FIX, and the LOOEY, VA, WP, would be removed from the route because they do not denote a turn point.

Q–85: Q–85 extends between the LPERD, FL, WP, and the SMPRR, NC, WP. This proposal would further extend Q–85 from the SMPRR, NC, WP, northeast to the CRPLR, VA WP by adding the PBCUP, NC, WP, the MOXXY, NC, WP, and the CRPLR, VA, WP, after the SMPRR, NC, WP. As amended, Q–85 would extend between the LPERD, FL, WP, and the CRPLR, VA, WP.

Q–87: Q–87 extends between the PEAKY, FL, WP, and the LCAPE, SC, WP. This action route would extend Q–87 from the LCAPE, SC, WP, northeastward to the HURTS, VA, WP. The following points would be inserted after the LCAPE, SC, WP: ALWZZ, NC, WP; ASHEL, NC, WP; DADDS, NC, WP; NOWAE, NC, WP; RIDDN, VA, WP; GEARS, VA, WP; and HURTS, VA, WP. The amended route would extend between PEAKY, FL, and HURTS, VA.

Q–97: Q–97 extends between TOVAR, FL, WP, and the ELLDE, NC, WP. The route would be extended northeast of the ELLDE, NC, WP to the Presque Isle, ME, (PQI) VOR/DME. The following points would be inserted after the ELLDE, NC, WP: YEASO, NC, WP; PAACK, NC, WP; KOHLS, NC, WP; SAWED, VA, FIX; KALDA, VA, FIX; ZJAAY, MD, WP; DLAAY, MD, WP; BRIGS, NJ, FIX; HEADI, NJ, WP; SAILN, OA, WP; Calverton, NY, (CCC) VOR/DME; NTMEG, CT, WP; VENTE, MA, WP; BLENO, NH, WP; BEEKN, ME, WP; FRIAR, ME, FIX, and the Presque Isle, ME, (PQI) VOR/DME. This change would provide RNAV routing from southern North Carolina to Maine.

Q–99: Q–99 extends between the KPASA, FL, WP, and the POLYY, NC, WP. Q–99 would be amended by extending the route northeastward from the POLYY, NC, WP to the HURLE, VA, WP. The following points would be inserted after the POLYY, NC, WP: RAANE, NC, WP; OGRAE, NC, WP; PEETT, NC, WP; SHIRY, VA, WP; UMBRE, VA, WP; QUART, VA, WP; and HURLE, VA, WP. As amended, Q–99 would extend between the KPASA, FL WP, and the HURLE, VA, WP.

Q–109: Q–109 extends between the KNOST, OG, WP, and the LAANA, NC, WP. This action would extend Q–109 northeastward from the LAANA, NC, WP, to the DFENC, NC, WP. The TINKK, NC, WP would be added between LAANA and DFENC. As amended, Q–109 would extend between the KNOST, OG, WP, and the DFENC, NC, WP.

Q–113: Q–113 extends between the RAYVO, SC, WP, and the SARKY, SC, WP. The route would be extended from the SARKY, SC, WP northeastward by adding the following WPs: MARCL, NC; AARNN, NC; and RIDDN, VA. As amended, Q–113 would extend between RAYVO, SC, and RIDDN, VA.

Q–135: Q–135 extends between the JROSS, SC, WP, and the RAPZZ, NC, WP. The route would be extended to the northeast of the RAPZZ, NC, WP by adding the ZORDO, NC, and the CUDLE, NC, WPs to the route. As amended, Q–135 would extend between the JROSS, SC, WP, and the CUDLE, NC, WP.

Q–409: Q–409 extends between the ENEME, GA, WP, and the MRPIT, NC, WP. Q–409 would remain as currently charted between the ENEME, GA, WP, and the MRPIT, NC, WP. The route would be extended to the northeast of the MRPIT WP by adding the following points: DEEEZ, NC, WP; GUILD, NC, WP; CRPLR, VA, WP; TRPOD, MD, WP; GNARO, DE, WP; VILLS, NJ, FIX; Coyle, NJ, (CYN) VORTAC; to the WHITE, NJ, FIX. As amended, Q–409 would extend between the ENEME, GA, WP, and the WHITE, NJ, WP. This would extend RNAV routing from southern North Carolina to New Jersey.

Q–419: Q–419 extends between the BROSS, MD, FIX and the Deer Park, NY, VOR/DME. This proposal would remove the MYFOO, DE, WP, and the NACYN, NJ, WP from the route description because they do not mark a turn point on the route. In addition, the HULKK, NJ, WP, would be moved 2.36 NM southeast of its current position as

requested by air traffic control to improve air traffic efficiency.

Full route descriptions of the proposed new and amended routes are listed in ''The Proposed Amendment'' section of this notice.

The proposed route changes in this notice would expand the availability of high altitude RNAV routing along the eastern seaboard of the U.S. The project is designed to increase airspace capacity and reduce complexity in high volume areas through the use of optimized routes through congested airspace.

RNAV routes are published in paragraph 2006 of FAA Order JO 7400.11F dated August 10, 2021 and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The RNAV routes listed in this document would be subsequently published in FAA Order JO 7400.11.

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021 is amended as follows:

Paragraph 2006 United States Area Navigation Routes

* * * * *

Q–22 GUSTI, LA to FOXWD, CT [Amended]

GUSTI, LA	FIX	(Lat. 29°58′15.34″ N, long. 092°54′35.29″ W)
OYSTY, LA	FIX	(Lat. 30°28′15.21″ N, long. 090°11′49.14″ W)
ACMES, AL	WP	(Lat. 30°55′27.13″ N, long. 088°22′10.82″ W)
CATLN, AL	FIX	(Lat. 31°18′26.03″ N, long. 087°34′47.75″ W)
TWOUP, GA	WP	(Lat. 33°53′45.39″ N, long. 083°49′08.39″ W)
BURGG, SC	WP	(Lat. 35°02′00.55″ N, long. 081°55′36.86″ W)
BEARI, VA	WP	(Lat. 37°12′01.97″ N, long. 078°15′23.85″ W)
BBOBO, VA	WP	(Lat. 37°41′33.79″ N, long. 077°07′57.59″ W)
SHTGN, MD	WP	(Lat. 38°14′45.29″ N, long. 076°44′52.23″ W)
DANGR, MD	WP	(Lat. 38°57′36.25″ N, long. 075°58′30.85″ W)
BESSI, NJ	FIX	(Lat. 39°40′34.84″ N, long. 075°06′44.53″ W)
JOEPO, NJ	WP	(Lat. 39°53′57.33″ N, long. 074°51′39.48″ W)
BRAND, NJ	FIX	(Lat. 40°02′06.28″ N, long. 074°44′09.50″ W)
Robbinsville, NJ (RBV)	VORTAC	(Lat. 40°12′08.65″ N, long. 074°29′42.09″ W)
LLUND, NY	FIX	(Lat. 40°51′45.04″ N, long. 073°46′57.30″ W)
BAYYS, CT	FIX	(Lat. 41°17′21.27″ N, long. 072°58′16.73″ W)
FOXWD, CT	WP	(Lat. 41°48′21.66″ N, long. 071°48′07.03″ W)

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Q–34 Texarkana, AR (TXK) to Robbinsville, NJ (RBV) [Amended]

Texarkana, AR (TXK)	VORTAC	(Lat. 33°30′49.97″ N, long. 094°04′23.67″ W)
HITMN, TN	WP	(Lat. 36°08′12.47″ N, long. 086°41′05.25″ W)
SITTR, WV	WP	(Lat. 37°46′49.13″ N, long. 081°07′23.70″ W)
DENNY, VA	FIX	(Lat. 37°52′00.15″ N, long. 079°44′13.75″ W)
MAULS, VA	WP	(Lat. 37°52′49.36″ N, long. 079°19′49.19″ W)
Gordonsville, VA (GVE)	VORTAC	(Lat. 38°00′48.96″ N, long. 078°09′10.90″ W)
BOOYA, VA	WP	(Lat. 38°24′20.50″ N, long. 077°21′46.36″ W)
PNGWN, NJ	WP	(Lat. 39°39′27.07″ N, long. 075°30′41.79″ W)
HULKK, NJ	WP	(Lat. 39°58′08.70″ N, long. 074°57′15.95″ W)
Robbinsville, NJ (RBV)	VORTAC	(Lat. 40°12′08.65″ N, long. 074°29′42.09″ W)

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Q–60 BURGG, SC to HURTS, VA [Amended]

BURGG, SC	WP	(Lat. 35°02′00.55″ N, long. 081°55′36.86″ W)
EVING, NC	WP	(Lat. 36°05′21.65″ N, long. 079°53′56.38″ W)
JAXSN, VA	FIX	(Lat. 36°42′38.22″ N, long. 078°47′23.31″ W)
HURTS, VA	WP	(Lat. 37°27′41.87″ N, long. 076°57′17.75″ W)

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Q–85 LPERD, FL to CRPLR, VA [Amended]

LPERD, FL	WP	(Lat. 30°36′09.18″ N, long. 081°16′52.16″ W)
BEEGE, GA	WP	(Lat. 31°10′59.98″ N, long. 081°16′57.50″ W)
GIPPL, GA	WP	(Lat. 31°22′53.96″ N, long. 081°09′53.70″ W)

ROYCO, GA	WP	(Lat. 31°35′10.38″ N, long. 081°02′22.45″ W)
IGARY, SC	WP	(Lat. 32°34′41.37″ N, long. 080°22′36.01″ W)
PELIE, SC	WP	(Lat. 33°21′23.88″ N, long. 079°44′43.43″ W)
BUMMA, SC	WP	(Lat. 34°01′58.09″ N, long. 079°11′07.50″ W)
KAATT, NC	WP	(Lat. 34°15′35.43″ N, long. 078°59′42.38″ W)
SMPRR, NC	WP	(Lat. 34°26′28.32″ N, long. 078°50′31.80″ W)
PBCUP, NC	WP	(Lat. 34°59′29.65″ N, long. 078°19′51.07″ W)
MOXXY, NC	WP	(Lat. 36°02′46.63″ N, long. 077°19′31.71″ W)
CRPLR, VA	WP	(Lat. 37°36′24.01″ N, long. 076°09′57.67″ W)

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Q–87 PEAKY, FL to HURTS, VA [Amended]

PEAKY, FL	WP	(Lat. 24°35′23.72″ N, long. 081°08′53.91″ W)
GOPEY, FL	WP	(Lat. 25°09′32.92″ N, long. 081°05′17.11″ W)
GRIDS, FL	WP	(Lat. 26°24′54.27″ N, long. 080°57′11.40″ W)
TIRCO, FL	WP	(Lat. 27°19′05.75″ N, long. 080°51′16.67″ W)
MATLK, FL	WP	(Lat. 27°49′36.54″ N, long. 080°57′04.27″ W)
ONEWY, FL	WP	(Lat. 28°21′53.66″ N, long. 081°03′21.04″ W)
ZERBO, FL	WP	(Lat. 28°54′56.68″ N, long. 081°17′40.13″ W)
DUCEN, FL	WP	(Lat. 29°16′33.83″ N, long. 081°19′23.24″ W)
OVENP, FL	WP	(Lat. 30°08′04.41″ N, long. 081°22′26.25″ W)
FEMON, FL	WP	(Lat. 30°27′31.57″ N, long. 081°23′36.20″ W)
VIYAP, GA	FIX	(Lat. 31°15′08.15″ N, long. 081°26′08.18″ W)
SUSYQ, GA	WP	(Lat. 31°40′54.28″ N, long. 081°12′07.99″ W)
TAALN, GA	WP	(Lat. 31°59′56.18″ N, long. 081°01′41.91″ W)
JROSS, SC	WP	(Lat. 32°42′40.00″ N, long. 080°37′38.00″ W)
RAYVO, SC	WP	(Lat. 33°38′44.12″ N, long. 080°04′00.84″ W)
HINTZ, SC	WP	(Lat. 34°10′11.02″ N, long. 079°44′48.12″ W)
REDFH, SC	WP	(Lat. 34°22′36.35″ N, long. 079°37′08.34″ W)
LCAPE, SC	WP	(Lat. 34°33′03.47″ N, long. 079°30′39.47″ W)
ALWZZ, NC	WP	(Lat. 34°42′02.90″ N, long. 079°24′36.57″ W)
ASHEL, NC	WP	(Lat. 35°25′43.32″ N, long. 078°54′48.07″ W)
DADDS, NC	WP	(Lat. 35°36′30.35″ N, long. 078°47′20.70″ W)
NOWAE, NC	WP	(Lat. 36°22′39.49″ N, long. 078°14′59.21″ W)
RIDDN, VA	WP	(Lat. 36°47′21.19″ N, long. 077°45′50.29″ W)
GEARS, VA	WP	(Lat. 37°06′07.23″ N, long. 077°23′24.43″ W)
HURTS, VA	WP	(Lat. 37°27′41.87″ N, long. 076°57′17.75″ W)

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Q–97 TOVAR, FL to Presque Isle, ME (PQI) [Amended]

TOVAR, FL	WP	(Lat. 26°33′05.09″ N, long. 080°02′19.75″ W)
EBAYY, FL	WP	(Lat. 27°43′40.20″ N, long. 080°30′03.59″ W)
MALET, FL	FIX	(Lat. 28°41′29.90″ N, long. 080°52′04.30″ W)
DEBRL, FL	WP	(Lat. 29°17′48.73″ N, long. 081°08′02.88″ W)
KENLL, FL	WP	(Lat. 29°34′28.35″ N, long. 081°07′25.26″ W)
PRMUS, FL	WP	(Lat. 29°49′05.67″ N, long. 081°07′20.74″ W)
WOPNR, OA	WP	(Lat. 30°37′36.03″ N, long. 081°04′26.44″ W)
JEVED, GA	WP	(Lat. 31°15′02.60″ N, long. 081°03′40.14″ W)
CAKET, SC	WP	(Lat. 32°31′08.63″ N, long. 080°16′09.21″ W)
ELMSZ, SC	WP	(Lat. 33°40′36.61″ N, long. 079°17′59.56″ W)
YURCK, NC	WP	(Lat. 34°11′14.80″ N, long. 078°52′40.62″ W)
ELLDE, NC	WP	(Lat. 34°24′14.57″ N, long. 078°41′50.60″ W)
YEASO, NC	WP	(Lat. 35°33′12.41″ N, long. 077°37′07.28″ W)
PAACK, NC	WP	(Lat. 35°55′40.26″ N, long. 077°15′30.99″ W)
KOHLS, NC	WP	(Lat. 36°22′17.76″ N, long. 076°52′21.48″ W)
SAWED, VA	FIX	(Lat. 37°32′00.73″ N, long. 075°51′29.10″ W)
KALDA, VA	FIX	(Lat. 37°50′31.05″ N, long. 075°37′35.34″ W)
ZJAAY, MD	WP	(Lat. 38°03′09.95″ N, long. 075°26′34.27″ W)
DLAAY, MD	WP	(Lat. 38°24′42.80″ N, long. 075°08′56.85″ W)
BRIGS, NJ	FIX	(Lat. 39°31′24.72″ N, long. 074°08′19.67″ W)
HEADI, NJ	WP	(Lat. 39°57′49.56″ N, long. 073°43′28.85″ W)
SAILN, OA	WP	(Lat. 40°15′15.92″ N, long. 073°27′01.93″ W)
Calverton, NY (CCC)	VOR/DME	(Lat. 40°55′46.63″ N, long. 072°47′55.89″ W)
NTMEG, CT	WP	(Lat. 41°16′30.75″ N, long. 072°28′52.08″ W)
VENTE, MA	WP	(Lat. 42°08′24.33″ N, long. 071°53′38.08″ W)
BLENO, NH	WP	(Lat. 42°54′55.00″ N, long. 071°04′43.37″ W)
BEEKN, ME	WP	(Lat. 43°20′51.95″ N, long. 070°44′50.28″ W)
FRIAR, ME	FIX	(Lat. 44°26′28.93″ N, long. 069°53′04.38″ W)
Presque Isle, ME (PQI)	VOR/DME	(Lat. 46°46′27,07″ N, long. 068°05′40.37″ W)

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Q–99 KPASA, FL to HURLE, VA [Amended]

KPASA, FL	WP	(Lat. 28°10′34.00″ N, long. 081°54′27.00″ W)
DOFFY, FL	WP	(Lat. 29°15′22.73″ N, long. 082°31′38.10″ W)
CAMJO, FL	WP	(Lat. 30°30′32.00″ N, long. 082°41′11.00″ W)
HEPAR, GA	WP	(Lat. 31°05′13.00″ N, long. 082°33′46.00″ W)
TEEEM, GA	WP	(Lat. 32°08′41.20″ N, long. 081°54′50.57″ W)
BLAAN, SC	WP	(Lat. 33°51′09.38″ N, long. 080°53′32.78″ W)
BWAGS, SC	WP	(Lat. 34°00′03.77″ N, long. 080°45′12.26″ W)
EFFAY, SC	WP	(Lat. 34°15′30.67″ N, long. 080°30′37.94″ W)
WNGUD, SC	WP	(Lat. 34°41′53.16″ N, long. 080°06′12.12″ W)
POLYY, NC	WP	(Lat. 34°48′37.54″ N, long. 079°59′55.81″ W)
RAANE, NC	WP	(Lat. 35°09′21.97″ N, long. 079°41′33.90″ W)
OGRAE, NC	WP	(Lat. 35°44′44.41″ N, long. 079°11′07.71″ W)
PEETT, NC	WP	(Lat. 36°26′44.93″ N, long. 078°34′16.17″ W)

SHIRY, VA	WP	(Lat. 36°58′33.28″ N, long. 078°09′13.11″ W)
UMBRE, VA	WP	(Lat. 37°23′38.72″ N, long. 077°49′09.50″ W)
QUART, VA	WP	(Lat. 37°31′25.15″ N, long. 077°42′53.29″ W)
HURLE, VA	WP	(Lat. 37°44′01.09″ N, long. 077°32′42.16″ W)

Q–101 SKARP, NC to TUGGR, VA [New]

SKARP, NC	WP	(Lat. 34°29′10.30″ N, long. 077°24′37.54″ W)
PRANK, NC	WP	(Lat. 35°14′27.41″ N, long. 076°56′28.54″ W)
BGBRD, NC	WP	(Lat. 35°53′45.11″ N, long. 076°32′23.15″ W)
HYPAL, VA	WP	(Lat. 37°03′27.23″ N, long. 075°44′43.09″ W)
TUGGR, VA	WP	(Lat. 37°41′08.72″ N, long. 075°36′36.92″ W)

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Q–107 GARIC, NC to HURTS, VA [New]

GARIC, NC	WP	(Lat. 33°52′34.84″ N, long. 077°58′53.66″ W)
ZORDO, NC	WP	(Lat. 34°52′01.73″ N, long. 077°49′30.60″ W)
JAAMS, NC	WP	(Lat. 35°44′18.05″ N, long. 077°31′41.60″ W)
ALINN, NC	WP	(Lat. 36°28′15.05″ N, long. 077°17′15.81″ W)
HURTS, VA	WP	(Lat. 37°27′41.87″ N, long. 076°57′17.75″ W)

Q–109 KNOST, OG to DFENC, NC [Amended]

KNOST, OG	WP	(Lat. 28°00′02.55″ N, long. 083°25′23.99″ W)
DEANR, FL	WP	(Lat. 29°15′30.40″ N, long. 083°03′30.24″ W)
BRUTS, FL	WP	(Lat. 29°30′58.00″ N, long. 082°58′57.00″ W)
EVANZ, FL	WP	(Lat. 29°54′12.11″ N, long. 082°52′03.81″ W)
CAMJO, FL	WP	(Lat. 30°30′32.00″ N, long. 082°41′11.00″ W)
HEPAR, GA	WP	(Lat. 31°05′13.00″ N, long. 082°33′46.00″ W)
TEEEM, GA	WP	(Lat. 32°08′41.20″ N, long. 081°54′50.57″ W)
RIELE, SC	WP	(Lat. 32°37′27.14″ N, long. 081°23′34.97″ W)
PANDY, SC	WP	(Lat. 33°28′29.39″ N, long. 080°26′55.21″ W)
RAYVO, SC	WP	(Lat. 33°38′44.12″ N, long. 080°04′00.84″ W)
SESUE, SC	WP	(Lat. 33°52′02.58″ N, long. 079°33′51.88″ W)
BUMMA, SC	WP	(Lat. 34°01′58.09″ N, long. 079°11′07.50″ W)
YURCK, NC	WP	(Lat. 34°11′14.80″ N, long. 078°52′40.62″ W)
LAANA, NC	WP	(Lat. 34°19′41.35″ N, long. 078°35′37.16″ W)
TINKK, NC	WP	(Lat. 34°51′03.78″ N, long. 078°05′48.08″ W)
DFENC, NC	WP	(Lat. 35°55′11.09″ N, long. 077°03′37.54″ W)

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Q–111 ZORDO, NC to ALXEA, VA [New]

ZORDO, NC	WP	(Lat. 34°52′01.73″ N, long. 077°49′30.60″ W)
LARKE, NC	WP	(Lat. 35°36′16.63″ N, long. 077°39′33.59″ W)
RUKRR, VA	WP	(Lat. 36°33′00.47″ N, long. 077°29′22.43″ W)
GEARS, VA	WP	(Lat. 37°06′07.23″ N, long. 077°23′24.43″ W)
BUDWY, VA	WP	(Lat. 37°36′38.12″ N, long. 077°19′22.71″ W)
ALXEA, VA	WP	(Lat. 37°47′04.46″ N, long. 077°17′09.73″ W)

Q–113 RAYVO, SC to RIDDN, VA [Amended]

RAYVO, SC	WP	(Lat. 33°38′44.12″ N, long. 080°04′00.84″ W)
CEELY, SC	WP	(Lat. 34°12′54.72″ N, long. 079°27′57.01″ W)
SARKY, SC	WP	(Lat. 34°25′41.43″ N, long. 079°14′17.50″ W)
MARCL, NC	WP	(Lat. 35°43′54.41″ N, long. 078°25′46.57″ W)
AARNN, NC	WP	(Lat. 36°22′43.59″ N, long. 078°01′04.05″ W)
RIDDN, VA	WP	(Lat. 36°47′21.19″ N, long. 077°45′50.29″ W)

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Q–117 YLEEE, NC to SAWED, VA [New]

YLEEE, NC	WP	(Lat. 34°33′40.63″ N, long. 077°40′27.89″ W)
CUDLE, NC	WP	(Lat. 35°08′19.48″ N, long. 077°32′36.22″ W)
SUSSA, NC	WP	(Lat. 35°40′37.55″ N, long. 077°08′20.62″ W)
KTEEE, NC	WP	(Lat. 35°54′55.66″ N, long. 076°57′30.45″ W)
SAWED, VA	FIX	(Lat. 37°32′00.73″ N, long. 075°51′29.10″ W)

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Q–131 ZILLS, NC to ZJAAY, MD [New]

ZILLS, NC	WP	(Lat. 33°47′32.68″ N, long. 077°52′08.59″ W)
YLEEE, NC	WP	(Lat. 34°33′40.63″ N, long. 077°40′27.89″ W)
EARZZ, NC	WP	(Lat. 35°54′39.84″ N, long. 076°51′21.64″ W)
ODAWG, VA	WP	(Lat. 37°07′11.61″ N, long. 076°02′03.17″ W)
KALDA, VA	FIX	(Lat. 37°50′31.05″ N, long. 075°37′35.34″ W)
ZJAAY, MD	WP	(Lat. 38°03′09.95″ N, long. 075°26′34.27″ W)

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Q–133 CHIEZ, NC to PONCT, NY [New]

CHIEZ, NC	WP	(Lat. 34°31′05.93″ N, long. 077°32′25.74″ W)
BENCH, NC	WP	(Lat. 35°34′48.52″ N, long. 076°53′51.13″ W)
KOOKI, NC	WP	(Lat. 35°54′21.71″ N, long. 076°41′56.22″ W)
PYSTN, VA	WP	(Lat. 37°05′19.78″ N, long. 075°53′22.19″ W)
KALDA, VA	FIX	(Lat. 37°50′31.05″ N, long. 075°37′35.34″ W)
CONFR, MD	WP	(Lat. 38°16′10.90″ N, long. 075°24′32.98″ W)
MGERK, DE	WP	(Lat. 38°46′16.00″ N, long. 075°18′09.00″ W)
LEEAH, NJ	FIX	(Lat. 39°15′39.27″ N, long. 074°57′11.01″ W)
MYRCA, NJ	WP	(Lat. 40°20′42.97″ N, long. 073°56′58.07″ W)
Kennedy, NY (JFK)	VOR/DME	(Lat. 40°37′58.40″ N, long. 073°46′17.00″ W)
LLUND, NY	FIX	(Lat. 40°51′45.04″ N, long. 073°46′57.30″ W)

FARLE, NY	FIX	(Lat. 41°09′09.46″ N, long. 073°47′48.52″ W)
GANDE, NY	FIX	(Lat. 41°30′36.66″ N, long. 073°48′52.03″ W)
PONCT, NY	WP	(Lat. 42°44′48.83″ N, long. 073°48′48.07″ W)

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Q–135 JROSS, SC to CUDLE, NC [Amended]

JROSS, SC	WP	(Lat. 32°42′40.00″ N, long. 080°37′38.00″ W)
PELIE, SC	WP	(Lat. 33°21′23.88″ N, long. 079°44′43.43″ W)
ELMSZ, SC	WP	(Lat. 33°40′36.61″ N, long. 079°17′59.56″ W)
RAPZZ, NC	WP	(Lat. 34°15′03.34″ N, long. 078°29′17.58″ W)
ZORDO, NC	WP	(Lat. 34°52′01.73″ N, long. 077°49′30.60″ W)
CUDLE, NC	WP	(Lat. 35°08′19.48″ N, long. 077°32′36.22″ W)

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Q–167 ZJAAY, MD to SSOXS, MA [New]

ZJAAY, MD	WP	(Lat. 38°03′09.95″ N, long. 075°26′34.27″ W)
PAJET, MD	WP	(Lat. 38°28′04.13″ N, long. 075°03′00.55″ W)
CAANO, MD	WP	(Lat. 38°31′46.37″ N, long. 074°58′52.32″ W)
TBONN, OA	WP	(Lat. 38°45′02.83″ N, long. 074°45′03.77″ W)
ZIZZI, NJ	FIX	(Lat. 38°56′26.46″ N, long. 074°31′44.27″ W)
YAZUU, NJ	FIX	(Lat. 39°24′44.82″ N, long. 074°01′01.55″ W)
TOPRR, OA	WP	(Lat. 39°50′49.13″ N, long. 073°32′12.02″ W)
EMJAY, NJ	FIX	(Lat. 40°05′34.89″ N, long. 073°15′42.31″ W)
SPDEY, OA	WP	(Lat. 40°14′56.38″ N, long. 073°05′08.69″ W)
RIFLE, NY	FIX	(Lat. 40°41′24.18″ N, long. 072°34′54.89″ W)
HOFFI, NY	FIX	(Lat. 40°48′03.46″ N, long. 072°27′41.97″ W)
ORCHA, NY	WP	(Lat. 40°54′55.46″ N, long. 072°18′43.64″ W)
ALBOW, NY	WP	(Lat. 41°02′04.04″ N, long. 071°58′30.69″ W)
GRONC, NY	WP	(Lat. 41°08′42.80″ N, long. 071°45′27.74″ W)
NESTT, RI	WP	(Lat. 41°21′35.84″ N, long. 071°20′05.38″ W)
BUZRD, MA	WP	(Lat. 41°32′45.88″ N, long. 070°57′50.69″ W)
SSOXS, MA	FIX	(Lat. 41°50′12.62″ N, long. 070°44′46.26″ W)

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Q–409 ENEME, GA to WHITE, NJ [Amended]

ENEME, GA	WP	(Lat. 30°42′12.09″ N, long. 082°26′09.31″ W)
PUPYY, GA	WP	(Lat. 31°24′35.58″ N, long. 081°49′06.19″ W)
ISUZO, GA	WP	(Lat. 31°57′47.85″ N, long. 081°14′14.79″ W)
KONEY, SC	WP	(Lat. 32°17′01.62″ N, long. 081°01′23.79″ W)
JROSS, SC	WP	(Lat. 32°42′40.00″ N, long. 080°37′38.00″ W)
SESUE, SC	WP	(Lat. 33°52′02.58″ N, long. 079°33′51.88″ W)
OKNEE, SC	WP	(Lat. 34°15′39.92″ N, long. 079°10′40.68″ W)
MRPIT, NC	WP	(Lat. 34°26′05.09″ N, long. 079°01′45.10″ W)
DEEEZ, NC	WP	(Lat. 35°16′55.92″ N, long. 078°14′24.28″ W)
GUILD, NC	WP	(Lat. 36°18′49.56″ N, long. 077°14′59.96″ W)
CRPLR, VA	WP	(Lat. 37°36′24.01″ N, long. 076°09′57.67″ W)
TRPOD, MD	WP	(Lat. 38°20′17.30″ N, long. 075°30′28.27″ W)
GNARO, DE	WP	(Lat. 39°05′20.33″ N, long. 075°22′14.81″ W)
VILLS, NJ	FIX	(Lat. 39°18′03.87″ N, long. 075°06′37.89″ W)
Coyle, NJ (CYN)	VORTAC	(Lat. 39°49′02.42″ N, long. 074°25′53.85″ W)
WHITE, NJ	FIX	(Lat. 40°00′24.32″ N, long. 074°15′04.61″ W)

Q–419 BROSS, MD to Deer Park, NY (DPK) [Amended]

BROSS, MD	FIX	(Lat. 39°11′28.40″ N, long. 075°52′49.88″ W)
BSERK, NJ	WP	(Lat. 39°47′27.01″ N, long. 075°13′10.29″ W)
HULKK, NJ	WP	(Lat. 39°58′08.70″ N, long. 074°57′15.95″ W)
Robbinsville, NJ (RBV)	VORTAC	(Lat. 40°12′08.65″ N, long. 074°29′42.09″ W)
LAURN, NY	FIX	(Lat. 40°33′05.80″ N, long. 074°07′13.67″ W)
Kennedy, NY (JFK)	VOR/DME	(Lat. 40°37′58.40″ N, long. 073°46′17.00″ W)
Deer Park, NY (DPK)	VOR/DME	(Lat. 40°47′30.30″ N, long. 073°18′13.17″ W)

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Q–445 PAACK, NC to KYSKY, NY [New]

PAACK, NC	WP	(Lat. 35°55′40.26″ N, long. 077°15′30.99″ W)
JAMIE, VA	FIX	(Lat. 37°36′20.58″ N, long. 075°57′48.81″ W)
CONFR, MD	WP	(Lat. 38°16′10.90″ N, long. 075°24′32.98″ W)
RADDS, DE	FIX	(Lat. 38°38′54.80″ N, long. 075°05′18.48″ W)
WNSTN, NJ	WP	(Lat. 39°05′43.81″ N, long. 074°48′01.20″ W)
AVALO, NJ	FIX	(Lat. 39°16′54.52″ N, long. 074°30′50.75″ W)
BRIGS, NJ	FIX	(Lat. 39°31′24.72″ N, long. 074°08′19.67″ W)
SHAUP, OA	WP	(Lat. 39°44′23.91″ N, long. 073°34′33.84″ W)
VALCO, OA	WP	(Lat. 40°05′29.86″ N, long. 073°08′22.91″ W)
KYSKY, NY	FIX	(Lat. 40°46′52.75″ N, long. 072°12′21.45″ W)

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Q–481 CONFR, MD to Deer Park, NY (DPK) [New]

CONFR, MD	WP	(Lat. 38°16′10.90″ N, long. 075°24′32.98″ W)
MGERK, DE	WP	(Lat. 38°46′16.00″ N, long. 075°18′09.00″ W)
LEEAH, NJ	FIX	(Lat. 39°15′39.27″ N, long. 074°57′11.01″ W)
ZIGGI, NJ	FIX	(Lat. 40°03′07.01″ N, long. 074°00′49.34″ W)
Deer Park, NY (DPK)	VOR/DME	(Lat. 40°47′30.30″ N, long. 073°18′13.17″ W)

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Issued in Washington, DC, on May 24, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–11552 Filed 5–31–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Part 571

RIN 3141–AA72

Audit Standards

AGENCY: National Indian Gaming Commission, Department of the Interior.

ACTION: Proposed rule.

SUMMARY: The National Indian Gaming Commission (NIGC) proposes to amend our Audit Standards regulations. The proposed rule will amend the regulations to eliminate the Commission waiver requirement for reviewed financial statements and allow all operations grossing less than $2 million in the previous fiscal year to submit reviewed financial statements provided that the tribe or tribal gaming regulatory authority (TGRA) permits the gaming operation to submit reviewed financials. The proposed amendment to the rule will also create a third tier of financial reporting for charitable gaming operations with annual gross revenues of $50,000 or less where, if permitted by the tribe, a charitable gaming operation may submit financial information on a monthly basis to the tribe or the TGRA and in turn, the tribe or TGRA provides an annual certification to the NIGC regarding the charitable gaming operation's compliance with the financial reporting. The proposed amendment also adds a provision clarifying that the submission of an adverse opinion does not satisfy the regulation's reporting requirements.

DATES: The agency must receive comments on or before July 1, 2022.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: information@nigc.gov.*
- *Fax:* (202) 632–7066.
- *Mail:* National Indian Gaming Commission, 1849 C Street NW, MS 1621, Washington, DC 20240.
- *Hand Delivery:* National Indian Gaming Commission, 90 K Street NE, Suite 200, Washington, DC 20002, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jennifer Lawson, National Indian Gaming Commission; Telephone: (202) 632–7003.

SUPPLEMENTARY INFORMATION:

I. Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments providing the factual basis behind supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal.

II. Background

The Indian Gaming Regulatory Act (IGRA or Act), Public Law 100–497, 25 U.S.C. 2701 *et seq.,* was signed into law on October 17, 1988. The Act establishes the National Indian Gaming Commission (NIGC or Commission) and sets out a comprehensive framework for the regulation of gaming on Indian lands. On January 22, 1993, the Commission promulgated Part 571.12 establishing audit standards for tribal gaming facilities. On July 27, 2009, the Commission amended the regulation to allow tribes with multiple facilities to consolidate their audit statements into one and to allow operations earning less than $2 million in gross gaming revenue to file an abbreviated statement.

III. Development of the Proposed Rule

On June 9, 2021, the National Indian Gaming Commission sent a Notice of Consultation announcing that the Agency intended to consult on several topics, including proposed changes to the Audit standards. Prior to consultation, the Commission released proposed discussion drafts of the regulations for review. The proposed amendments to the Audit standards are designed to reduce the financial hurdles that small and charitable gaming operations face regarding the audit requirement. The Commission held two virtual consultation sessions in September and one virtual consultation in October of 2021 to receive tribal input on any proposed changes.

The Commission reviewed all comments received through consultation and now proposes these changes.

IV. Regulatory Matters

Regulatory Flexibility Act

The proposed rule will not have a significant impact on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Moreover, Indian tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act.

Unfunded Mandate Reform Act

The Commission, as an independent regulatory agency, is exempt from compliance with the Unfunded Mandates Reform Act, 2 U.S.C. 1502(1); 2 U.S.C. 658(1).

Takings

In accordance with Executive Order 12630, the Commission has determined that the proposed rule does not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Commission has determined that the proposed rule does not unduly burden the judicial system and meets the requirements of section 3(a) and 3(b)(2) of the Order.

National Environmental Policy Act

The Commission has determined that the proposed rule does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.*

Paperwork Reduction Act

The information collection requirements contained in this proposed rule were previously approved by the Office of Management and Budget (OMB) as required by 44 U.S.C. 3501 *et seq.* and assigned OMB Control Number 3141– 0003.

Tribal Consultation

The National Indian Gaming Commission is committed to fulfilling its tribal consultation obligations—whether directed by statute or administrative action such as Executive Order (E.O.) 13175 (Consultation and Coordination with Indian Tribal Governments)—by adhering to the consultation framework described in its Consultation Policy published July 15, 2013. The NIGC's consultation policy specifies that it will consult with tribes on Commission Action with Tribal Implications, which is defined as: Any Commission regulation, rulemaking, policy, guidance, legislative proposal, or operational activity that may have a substantial direct effect on an Indian tribe on matters including, but not limited to the ability of an Indian tribe

to regulate its Indian gaming; an Indian tribe's formal relationship with the Commission; or the consideration of the Commission's trust responsibilities to Indian tribes.

Pursuant to this policy, on June 9, 2021, the National Indian Gaming Commission sent a Notice of Consultation to the public, announcing the Agency intended to consult on several topics, including proposed amendments to NIGC audit standards. The Commission held two virtual consultation sessions in September and one virtual consultation session in October of 2021 to receive tribal input on proposed changes.

List of Subjects in 25 CFR Part 571

Gambling, Indian—lands, Indian—tribal government, reporting and recordkeeping requirements.

Therefore, for reasons stated in the preamble, 25 CFR part 571 is proposed to be amended as follows:

PART 571—MONITORING AND INVESTIGATIONS

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

Authority: 25 U.S.C. 2706(b), 2710(b)(2)(C), 2715, 2716.

■ 2. Revise § 571.12 to read as follows:

§ 571.12 Audit standards.

(a) Each tribe shall prepare comparative financial statements covering all financial activities of each class II and class III gaming operation on the tribe's Indian lands for each fiscal year.

(b) A tribe shall engage an independent certified public accountant to conduct an annual audit of the financial statements of each class II and class III gaming operation on the tribe's Indian lands for each fiscal year. The audit and auditor must meet the following standards:

(1) The independent certified public accountant must be licensed by a state board of accountancy.

(2) Financial statements prepared by the certified public accountant shall conform to generally accepted accounting principles and the annual audit shall conform to generally accepted auditing standards.

(3) The independent certified public accountant expresses an opinion on the financial statements. An adverse opinion must be submitted, but does not satisfy this requirement unless:

(i) It is the result of the gaming operation meeting the definition of a state or local government and the gaming operation prepared its financial statements in accordance with generally accepted accounting principles (GAAP) as promulgated by Financial Accounting Standards Board (FASB), or;

(ii) the adverse opinion pertains to a consolidated audit pursuant to paragraph (d) of this section and the operations not attributable to the adverse opinion are clearly identified.

(c) If a gaming operation has gross gaming revenues of less than $2,000,000 during the prior fiscal year, the annual audit requirement of paragraph (b) of this section is satisfied if:

(1) The independent certified public accountant completes a review of the financial statements conforming to the statements on standards for accounting and review services of the gaming operation; and

(2) The tribe or tribal gaming regulatory authority (TGRA) permits the gaming operation to submit a review of the financial statements according to this paragraph and the tribe or TGRA informs the NIGC of such permission; provided that

(3) If the Chair of the NIGC has reason to believe that the assets of a gaming operation are not being appropriately safeguarded or the revenues are being misused under IGRA, the Chair may, at his or her discretion, require any gaming operation subject to this paragraph (c) to submit additional information or comply with the annual audit requirement of paragraph (b) of this section.

(d) If a gaming operation has multiple gaming places, facilities or locations on the tribe's Indian lands, the annual audit requirement of paragraph (b) of this section is satisfied if:

(1) The tribe chooses to consolidate the financial statements of the gaming places, facilities or locations;

(2) The independent certified public accountant completes an audit conforming to generally accepted auditing standards of the consolidated financial statements;

(3) The consolidated financial statements include consolidating schedules for each gaming place, facility, or location; and

(4) The independent certified public accountant expresses an opinion on the consolidated financial statement as a whole and subjects the accompanying financial information to the auditing procedures applicable to the audit of consolidated financial statements.

(e) If there are multiple gaming operations on a tribe's Indian lands and each operation has gross gaming revenues of less than $2,000,000 during the prior fiscal year, the annual audit requirement of paragraph (b) of this section is satisfied if:

(1) The tribe chooses to consolidate the financial statements of the gaming operations;

(2) The consolidated financial statements include consolidating schedules for each operation;

(3) The independent certified public accountant completes a review of the consolidated schedules conforming to the statements on standards for accounting and review services for each gaming facility or location; and

(4) The independent certified public accountant expresses an opinion on the consolidated financial statements as a whole and subjects the accompanying financial information to the auditing procedures applicable to the audit of consolidated financial statements.

(f)(1) If a tribal or charitable gaming operation has gross gaming revenues of less than $50,000 during the prior fiscal year, the annual audit requirement of paragraph (b) of this section is satisfied if:

(i) The gaming operation creates, prepares, and maintains records in accordance with Generally Accepted Accounting Principles;

(ii) At a minimum, the gaming operation provides the tribe or tribal gaming regulatory authority (TGRA) with the following financial information on a monthly basis:

(A) Each occasion when gaming was offered in a month;

(B) Gross gaming revenue for each month;

(C) Amounts paid out as, or paid for, prizes for each month;

(D) Amounts paid as operating expenses, providing each recipient's name; the date, amount, and check number or electronic transfer confirmation number of the payment; and a brief description of the purpose of the operating expense;

(E) All deposits of gaming revenue;

(F) All withdrawals of gaming revenue;

(G) All expenditures of net gaming revenues, including the recipient's name, the date, amount, and check number or electronic transfer confirmation number of the payment; and a brief description of the purpose of the expenditure; and

(H) The names of each employee and volunteer, and the salary or other compensation paid to each person.

(iii) The tribe or TGRA permits the gaming operation to be subject to this paragraph (f), and the tribe or TGRA informs the NIGC in writing of such permission;

(iv) Within 30 days of the gaming operation's fiscal year end, the tribe or the TGRA provides a certification to the NIGC that the tribe or TGRA reviewed

the charitable gaming operation's financial information, and after such review, the tribe or TGRA concludes that the charitable gaming operation conducted the gaming in a manner that protected the integrity of the games offered and safeguarded the assets used in connection with the gaming operation, and the charitable gaming operation expended net gaming revenues in a manner consistent with IGRA, NIGC regulations, the tribe's gaming ordinance or resolution, and the tribe's gaming regulations.

(2) If the tribe or TGRA does not or cannot provide the NIGC with the certification required by paragraph (f)(1)(v) of this section within 30 days of the gaming operation's fiscal year end, the gaming operation must otherwise comply with the annual audit requirement of paragraph (b) of this section.

(3) The tribe or TGRA may impose additional financial reporting requirements on gaming operations that otherwise qualify under this paragraph (f).

(4) If the Chair of the NIGC has reason to believe that the assets of a charitable operation are not being appropriately safeguarded or the revenues are being misused under IGRA, the Chair may, at his or her discretion, require any gaming operation subject to this paragraph (f) to submit additional information or comply with the annual audit requirement of paragraph (b) of this section.

(5) This paragraph (f) does not affect other requirements of IGRA and NIGC regulations, including, but not limited to, fees and quarterly fee statements (25 U.S.C. 2717; 25 CFR part 514); requirements for revenue allocation plans (25 U.S.C. 2710(b)(3)); requirements for individually-owned gaming (25 U.S.C. 2710(b)(4), (d); 25 CFR 522.10); minimum internal control standards for Class II gaming and agreed-upon procedures reports (25 CFR part 543); background and licensing for primary management officials and key employees of a gaming operation (25 U.S.C. 2710(b)(2)(F); 25 CFR parts 556, 558); and facility licenses (25 CFR part 559).

Dated: May 18, 2022.

E. Sequoyah Simermeyer,

Chairman.

Jeannie Hovland,

Vice Chair.

[FR Doc. 2022–11482 Filed 5–31–22; 8:45 am]

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Copyright Royalty Board

37 CFR Part 385

[Docket No. 21–CRB–0001–PR (2023–2027)]

Determination of Rates and Terms for Making and Distributing Phonorecords (Phonorecords IV)

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Proposed rule.

SUMMARY: The Copyright Royalty Judges publish for comment proposed regulations that set rates and terms applicable during the period beginning January 1, 2023, and ending December 31, 2027, for the section 115 statutory license for making and distributing certain configurations of phonorecords of nondramatic musical works.

DATES: Comments and objections, if any, are due no later than July 1, 2022.

ADDRESSES: You may send comments, identified by docket number 21–CRB–0001–PR (2023–2027), by filing online through eCRB at *https://app.crb.gov.*

Instructions: To send your comment through eCRB, if you don't have a user account, you will first need to register for an account and wait for your registration to be approved. Approval of user accounts is only available during business hours. Once you have an approved account, you can only sign in and file your comment after setting up multi-factor authentication, which can be done at any time of day. All comments must include the Copyright Royalty Board name and the docket number for this proposed rule. All properly filed comments will appear without change in eCRB at *https://app.crb.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to eCRB at *https://app.crb.gov* and perform a case search for docket 21–CRB–0001–PR (2023–2027).

FOR FURTHER INFORMATION CONTACT: Anita Brown, CRB Program Specialist, at 202–707–7658 or *crb@loc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 115 of the Copyright Act, title 17 of the United States Code, requires a copyright owner of a nondramatic musical work to grant a license (also known as the ''mechanical'' compulsory license) to any person who wants to make and distribute phonorecords of that work, provided that the copyright owner has allowed phonorecords of the work to be produced and distributed, and that the licensee complies with the statute and regulations. In addition to the production or distribution of physical phonorecords (compact discs, vinyl, cassette tapes, and the like), section 115 applies to digital transmissions of phonorecords, including permanent digital downloads and ringtones.

Chapter 8 of the Copyright Act requires the Copyright Royalty Judges (Judges) to conduct proceedings every five years to determine the rates and terms for the section 115 license. 17 U.S.C. 801(b)(1), 804(b)(4). Accordingly, the Judges commenced the current proceeding in January 2021, by publishing notice of the commencement and soliciting petitions to participate from interested parties. *See* 86 FR 25 (Jan. 5, 2021).

The Judges received petitions to participate in the current proceeding from Amazon.com Services LLC, Apple Inc., Copyright Owners (joint petitioners Nashville Songwriters Association International (NSAI) and National Music Publishers' Association (NMPA)), Google LLC, George Johnson, Joint Record Company Participants (filed by Recording Industry Association of America, Inc. for joint petitioners Sony Music Entertainment, UMG Recordings, Inc., and Warner Music Group Corp.), Pandora Media, LLC, David Powell, SoundCloud Operations Inc.,[1] Spotify USA Inc., and Brian Zisk.[2]

The Judges gave notice to all participants of the three-month negotiation period required by 17 U.S.C. 803(b)(3) and directed that, if the participants were unable to negotiate a settlement, they should submit Written Direct Statements no later than September 10, 2021. On May 25, 2021, the Judges received a motion stating that several participants [3] had reached a partial settlement regarding the rates and terms for the period commencing in January 2023 under Section 115 of the Copyright Act, namely, the applicable rates for use of musical works in physical phonorecords, permanent downloads, ringtones, and music bundles (Subpart B Configurations) [4]

[1] SoundCloud Operations Inc. withdrew from the proceeding on May 21, 2021.

[2] David Powell and Brian Zisk filed petitions to participate in this proceeding; neither filed a Written Direct Statement.

[3] The participants who filed the motion are the ''Copyright Owners'' (NMPA and NSAI) and the ''Record Company Participants'' (Sony Music Entertainment, UMG Recordings, Inc. and Warner Music Group Corp.). Motion at 1.

[4] Subpart B refers to subpart B, part 385, subchapter E, chapter III, 37 CFR, the regulations

Continued

and seeking approval of that partial settlement. *See Motion to Adopt Settlement of Statutory Royalty Rates and Terms for Subpart B Configurations,* Docket No. 21–CRB–0001–PR (2023–2027) at 1 (May 25, 2021). The Judges published for comment a proposed rule and received comments in opposition to the settlement from twelve interested parties, including joint comments from organizations, trade associations, and self-assembled groups of parties.[5] *See* 86 FR 33601 (June 25, 2021), 86 FR 40793 (Jul. 29, 2021) (reopening comment period), 86 FR 58626 (Oct. 22, 2021) (reopening comment period a second time).

After considering the comments in opposition to the settlement, the Judges withdrew the proposed rule that would have adopted that settlement as statutory royalty rates. *See* Proposed rule; withdrawal; Determination of Royalty Rates and Terms for Making and Distributing Phonorecords (Phonorecords IV), 87 FR 18342 (Mar. 30, 2022).

On May 5, 2022, the Judges received a Joint Motion to Adopt New Settlement of Statutory Royalty Rates and Terms for Subpart B Configurations (Motion). The moving parties are self-identified Copyright Owners and self-identified Record Company Participants.[6] The full text of the Motion is available on eCRB (*https://app.crb.gov*).[7]

On May 19, 2022, George Johnson d/b/a/ GEO, filed a response in opposition to the Motion.[8]

The settlement proposes that the section 115 royalty rate for subpart B configurations for the rate period commencing January 1, 2023, be set at $0.12 per track, with annual inflation-based adjustments for subsequent years of the rate period. Motion at 3. The Moving Parties proposed editorial and substantive changes to applicable regulations found in both subparts A and B of part 385 to accomplish the rate increase.

The proposed editorial changes apply to two definitions in subpart A and would clarify the reach and application of the terms ''Licensed Activity,'' and ''Sound Recording Company.'' The substantive changes occur in secs. 385.10 and 385.11, which state the proposed rate for 2023 and describe the proposed annual inflation-based rate adjustment for subsequent years. The Moving Parties provided a redlined version of the regulations and the proposed changes thereto, along with the stated rationale for each change. Motion at 6–7.

As part of this proposed rule, the Judges propose an additional minor revision to the definition of ''Eligible Digital Download'' in section 385.2. The cross-reference to 17 U.S.C. 115(c)(3)(C) and (D) in that definition is shortened to 17 U.S.C. 115 because, following enactment of the Music Modernization Act, the section no longer has a subsection (c)(3). *See* Orrin G. Hatch-Bob Goodlatte Music Modernization Act, Public Law 115–264, 132 Stat. 3678, 3679–3684 (October 11, 2018).

Section 801(b)(7)(A) of the Copyright Act authorizes the Judges to adopt rates and terms negotiated by ''some or all of the participants in a proceeding at any time during the proceeding'' provided they are submitted to the Judges for approval. This section provides that the Judges shall provide notice and an opportunity to comment on the agreement to (1) those that would be bound by the terms, rates, or other determination set by the agreement and (2) participants in the proceeding that would be bound by the terms, rates, or other determination set by the agreement. *See* sec. 801(b)(7)(A). The Judges may decline to adopt the agreement as a basis for statutory terms and rates for participants not party to the agreement if any *participant* objects and the Judges conclude that the agreement does not provide a reasonable basis for setting statutory terms or rates. *Id.*

If the Judges adopt rates and terms reached pursuant to a negotiated settlement, those rates and terms are binding on all copyright owners of musical works and those using the musical works in the activities described in the proposed regulations.

The Judges solicit comments on whether they should adopt the proposed regulations as statutory rates and terms relating to the making and distribution of physical or digital phonorecords of nondramatic musical works encompassed in subpart B, part 385 of the applicable regulations.

Comments and objections regarding the rates and terms and the revisions to the regulations proposed by the Moving Parties and the Judges must be submitted no later than July 1, 2022.

List of Subjects in 37 CFR Part 385

Copyright, Phonorecords, Recordings.

Proposed Regulations

For the reasons set forth in the preamble, the Copyright Royalty Judges propose to amend 37 CFR part 385 as follows:

PART 385—RATES AND TERMS FOR USE OF NONDRAMATIC MUSICAL WORKS IN THE MAKING AND DISTRIBUTING OF PHYSICAL AND DIGITAL PHONORECORDS

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

Authority: 17 U.S.C. 115, 801(b)(1), 804(b)(4).

■ 2. In § 385.2 revise the introductory text of the definition for ''*Eligible Limited Download*'', the definition for ''*Licensed Activity*'', and the fourth sentence in the definition for *Sound Recording Company* to read as follows:

§ 385.2 Definitions.

* * * * *

Eligible Limited Download means a transmission of a sound recording embodying a musical work to an End User of a digital phonorecord under 17 U.S.C. 115 that results in a Digital Phonorecord Delivery of that sound recording that is only accessible for listening for—

* * * * *

Licensed Activity, as the term is used in subparts C and D of this part, means delivery of musical works, under voluntary or statutory license, via Digital Phonorecord Deliveries in connection with Interactive Eligible Streams, Eligible Limited Downloads, Limited Offerings, mixed Bundles, and Locker Services.

* * * * *

Sound Recording Company means a person or entity that:

* * * * *

(4) Performs the functions of marketing and authorizing the distribution of a sound recording of a musical work under its own label, under

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detailing royalty rates and terms for licensing musical works under the provisions of 17 U.S.C. 115 (Copyright Act).

[5] One participant in the proceeding, George Johnson d/b/a GEO Music, objected to the settlement. Other parties opposing adoption of the settlement as a basis for statutory rates and terms included songwriters, publishers, music industry attorneys, and trade associations.

[6] The composition of the moving parties is the same as in the original motion filed in May 2021.

[7] The Motion stated that the Moving Parties had previously separately entered into a memorandum of understanding (MOU) addressing certain negotiated licensing processes and late fee waivers but that the MOU was ''not consideration'' for any of the terms of the current settlement. *See* Motion at 4 n. 2; 6. (*https://app.crb.gov/document/download/26619*). The Moving Parties contend that predecessor agreements to the MOU, some or all of which may be incorporated by reference in the current MOU, are publicly available online at *http://nmpalatefeesettlement.com/.*

[8] In general, the Judges do not receive pleadings in opposition to a motion that triggers publication of notice, such as the Motion at issue here. Nonetheless, the Judges received and considered GEO's timely opposition. The Judges will not consider that opposition as a formal comment as required by publication in the **Federal Register**. The Moving Parties communicated to the Judges that no reply is forthcoming.

the authority of a person identified in paragraphs (1) through (3) of this section.

* * * * *

■ 3. Revise § 385.10 to read as follows:

§ 385.10 Scope.

This subpart establishes rates and terms of royalty payments for making and distributing physical phonorecords, Permanent Downloads, Ringtones, and Music Bundles, in accordance with the provisions of 17 U.S.C. 115.

■ 4. Revise § 385.11 paragraph (a) to read as follows:

§ 385.11 Royalty rates.

(a) Physical phonorecords and Permanent Downloads.

(1) *2023 Rate.* For the year 2023, for every physical phonorecord and Permanent Download the Licensee makes and distributes or authorizes to be made and distributed, the royalty rate payable for each work embodied in the phonorecord or Permanent Download shall be either 12.0 cents or 2.31 cents per minute of playing time or fraction thereof, whichever amount is larger.

(2) *Annual rate adjustment.* The Copyright Royalty Judges shall adjust the royalty rates in paragraph (a)(1) of this section each year to reflect any changes occurring in the cost of living as determined by the most recent Consumer Price Index for All Urban Consumers (U.S. City Average, all items) (CPI–U) published by the Secretary of Labor before December 1 of the preceding year. The calculation of the rate for each year shall be cumulative based on a calculation of the percentage increase in the CPI–U from the CPI–U published in November, 2022 (the Base Rate) and shall be made according to the following formulas: for the per-work rate, (1 + (Cy − Base Rate)/Base Rate) × 12¢, rounded to the nearest tenth of a cent; for the per-minute rate, (1 + (Cy − Base Rate)/Base Rate) × 2.31¢, rounded to the nearest hundredth of a cent; where Cy is the CPI–U published by the Secretary of Labor before December 1 of the preceding year. The Judges shall publish notice of the adjusted fees in the **Federal Register** at least 25 days before January 1. The adjusted fees shall be effective on January 1.

* * * * *

Dated: May 24, 2022.

Suzanne M. Barnett,

Chief Copyright Royalty Judge.

[FR Doc. 2022–11521 Filed 5–31–22; 8:45 am]

BILLING CODE 1410–72–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2021–0536; FRL–9802–01–R5]

Approval and Promulgation of Air Quality Implementation Plans; Michigan; Federal Implementation Plan for the Detroit Sulfur Dioxide Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing a Federal Implementation Plan (FIP) for attaining the 2010 sulfur dioxide (SO_2) primary national ambient air quality standard (NAAQS) for the Detroit SO_2 nonattainment area. The FIP includes an attainment demonstration and other elements required under the Clean Air Act (CAA). In addition to an attainment demonstration, the FIP addresses the requirement for meeting reasonable further progress (RFP) toward attainment of the NAAQS, reasonably available control measures and reasonably available control technology (RACM/RACT), enforceable emission limitations and control measures to provide for NAAQS attainment, and contingency measures. This action supplements a prior action which found that Michigan had satisfied emission inventory (EI) and nonattainment new source review (NSR) requirements for this area but had not met requirements for the elements addressed in the proposed FIP. EPA is proposing to determine that the FIP provides for attainment of the 2010 primary SO_2 NAAQS in the Detroit SO_2 nonattainment area and meets the other applicable requirements under the CAA.

DATES: Comments must be received on or before July 18, 2022.

Virtual Public Hearing. In order to comply with current Centers for Disease Control and Prevention (CDC) recommendations, as well as state and local orders, for social distancing to limit the spread of COVID–19, EPA is holding a virtual public hearing to provide interested parties the opportunity to present data, views, or arguments concerning the proposal. EPA will hold a virtual public hearing to solicit comments on June 16, 2022. The hearing will convene at 3:00 p.m. Eastern Time (ET) and will conclude at 9:00 p.m. ET, or 15 minutes after the last pre-registered presenter in attendance has presented if there are no additional presenters. EPA will announce further details, including information on how to register for the virtual public hearing, on the virtual public hearing website at *https://www.epa.gov/mi/detroit-so2-federal-implementation-plan.*

EPA will begin pre-registering presenters and attendees for the hearing upon publication of this document in the **Federal Register**. To pre-register to attend or present at the virtual public hearing, please use the online registration form available at *https://www.epa.gov/mi/detroit-so2-federal-implementation-plan* or contact Abigail Teener at 312–353–7314 or by email at *DetroitFIP@epa.gov.* The last day to pre-register to present at the hearing will be June 13, 2022. On June 13, 2022, EPA will post a general agenda for the hearing that will list pre-registered presenters in approximate order at *https://www.epa.gov/mi/detroit-so2-federal-implementation-plan.* Additionally, requests to present will be taken on the day of the hearing as time allows.

EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearing 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 by including it in the registration form or emailing it to *DetroitFIP@epa.gov.* 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 virtual public hearing. A transcript of the virtual public hearing, as well as copies of oral presentations submitted to EPA, will be included in the docket for this action.

EPA is asking all hearing attendees to pre-register, even those who do not intend to present. EPA will send information on how to join the public hearing to pre-registered attendees and presenters.

Please note that any updates made to any aspect of the hearing will be posted online at *https://www.epa.gov/mi/detroit-so2-federal-implementation-plan.* While EPA expects the hearing to go forward as set forth above, please monitor our website or contact Abigail Teener at 312–353–7314 or *DetroitFIP@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 a special accommodation such as audio description/closed captioning, please pre-register for the hearing with Abigail Teener at 312–353–7314 or *DetroitFIP@epa.gov* and describe your needs by June 8, 2022. EPA may not be able to arrange accommodations without advance notice.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2021–0536 at *https://www.regulations.gov,* or via email to *arra.sarah@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Abigail Teener, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–7314, *teener.abigail@epa.gov.* The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19.

SUPPLEMENTARY INFORMATION: This supplementary information section is arranged as follows:

I. SO_2 Background

On June 22, 2010, EPA published a new 1-hour primary SO_2 NAAQS of 75 parts per billion (ppb), which is met at an ambient air quality monitoring site when the 3-year average of the annual 99th percentile of daily maximum 1-hour average concentrations does not exceed 75 ppb, as determined in accordance with appendix T of 40 CFR part 50. *See* 75 FR 35520, codified at 40 CFR 50.17(a)–(b). On August 5, 2013, EPA designated 29 areas of the country as nonattainment for the 2010 SO_2 NAAQS, including the Detroit area within the State of Michigan. *See* 78 FR 47191, codified at 40 CFR part 81, subpart C. These area designations became effective on October 4, 2013. Section 191 of the CAA directs states to submit state implementation plans (SIPs) for areas designated as nonattainment for the SO_2 NAAQS to EPA within 18 months of the effective date of the designation, *i.e.,* by no later than April 4, 2015 in this case. These SIPs were required to demonstrate that their respective areas will attain the NAAQS as expeditiously as practicable, but no later than 5 years from the effective date of designation, which was October 4, 2018.

II. Detroit Background

For a number of nonattainment areas, including the Detroit area, EPA published an action on March 18, 2016, effective April 18, 2016, finding that Michigan and other pertinent states had failed to submit the required SO_2 nonattainment plan by the submittal deadline (81 FR 14736). This finding initiated a deadline under CAA section 179(a) for the potential imposition of 2-to-1 NSR offset and federal highway funding sanctions. Additionally, under CAA section 110(c), the finding triggered a requirement that EPA promulgate a FIP within two years of the finding unless, by that time, (a) the state had made the necessary complete submittal, and (b) EPA had approved the submittal as meeting applicable requirements.

Michigan submitted the Detroit SO_2 attainment plan on May 31, 2016, and submitted associated final enforceable measures on June 30, 2016. Michigan's May 31, 2016, submittal was considered administratively complete six months after its submission to EPA, which terminated the sanctions clock per EPA's sanctions regulations at 40 CFR 52.31 but did not satisfy EPA's FIP obligation under CAA section 110(c). As noted previously, EPA's requirement to promulgate a FIP would remain in place unless (a) the state had made the necessary complete submittal, and (b) EPA had approved the submittal as meeting applicable requirements.

On March 19, 2021, EPA partially approved and partially disapproved Michigan's SO_2 plan as submitted in 2016 (86 FR 14827). EPA approved the base-year emissions inventory and affirmed that the NSR requirements for the area had previously been met on December 16, 2013 (78 FR 76064). EPA also approved the enforceable control measures for two facilities as SIP strengthening. At that time, EPA disapproved the attainment demonstration, as well as the requirements for meeting RFP toward attainment of the NAAQS, RACM/RACT, and contingency measures. Additionally, EPA disapproved the plan's control measures for two facilities as not demonstrating attainment. (For more details, *see* section IV.A of this action.) EPA's March 19, 2021, partial disapproval started a new sanctions clock which is stopped by meeting the conditions of EPA's regulations at 40 CFR 52.31. The partial disapproval did not have any impact on the FIP clock,

which is stopped by a full SIP approval or EPA's promulgation of a FIP.

As Michigan has not submitted an approvable plan for the Detroit area, the remainder of this action describes EPA requirements that SO_2 nonattainment plans must meet and proposes a FIP for the Detroit area with respect to these requirements. Finalizing this action will satisfy EPA's obligation to promulgate a FIP, which was initiated by the March 18, 2016 finding that Michigan had failed to submit the required SO_2 nonattainment plan by the submittal deadline (81 FR 14736). It will also satisfy the requirement in the court order issued on February 15, 2022, in *Center for Biological Diversity, et al. v Regan,* No. 4:21-cv-06166–JST (N.D. Cal.), directing EPA to either approve a SIP for Detroit meeting the applicable CAA requirements or promulgate a FIP for Detroit no later than September 30, 2022.

III. Requirements for SO_2 Nonattainment Area Plans

Nonattainment area plans for SO_2 must meet the applicable requirements of the CAA, and specifically CAA sections 110, 172, 191 and 192. EPA's regulations governing nonattainment area plans are set forth at 40 CFR part 51, with specific procedural requirements and control strategy requirements residing at subparts F and G, respectively. Soon after Congress enacted the 1990 Amendments to the CAA, EPA issued comprehensive guidance on nonattainment plans, in a document entitled the ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' published at 57 FR 13498 (April 16, 1992) (General Preamble). Among other things, the General Preamble addressed SO_2 nonattainment plans and fundamental principles for control strategies. *Id.,* at 13545–49, 13567–68. On April 23, 2014, EPA issued recommended guidance for meeting the statutory requirements in SO_2 SIPs, in a document entitled, ''Guidance for 1-Hour SO_2 Nonattainment Area SIP Submissions,'' available at *https://www.epa.gov/sites/production/files/2016-06/documents/20140423guidance_nonattainment_sip.pdf.* While this guidance was intended for SIP submissions, the requirements outlined in the document are also applicable to FIPs. In this guidance, EPA described the statutory requirements for a complete nonattainment area plan, which includes: an accurate emissions inventory of current emissions for all sources of SO_2 within the nonattainment area; an attainment demonstration; demonstration of RFP; implementation of RACM (including RACT); NSR; emissions limitations and control measures as necessary to attain the NAAQS; and adequate contingency measures for the affected area, which are to apply if the area fails to attain the standard by the attainment date.

In order for a nonattainment area plan to meet the requirements of CAA sections 110, 172 and 191–192, and EPA's regulations at 40 CFR part 51, the plan for the affected area needs to demonstrate that each of the aforementioned requirements have been met. Under CAA sections 110(l) and 193, a nonattainment area plan may not interfere with any applicable requirement concerning NAAQS attainment and RFP, or any other applicable requirement, and no requirement in effect (or required to be adopted by an order, settlement, agreement, or plan in effect before November 15, 1990) in any area which is a nonattainment area for any air pollutant, may be modified in any manner unless it ensures equivalent or greater emission reductions of such air pollutant.

CAA section 172(c)(1) requires nonattainment area plans to demonstrate attainment of the NAAQS. 40 CFR part 51, subpart G, further delineates the control strategy requirements that nonattainment area plans must meet, and EPA has long required that all nonattainment area plans and control strategies reflect four fundamental principles of quantification, enforceability, replicability, and accountability. General Preamble at 13567–68. SO_2 attainment plans must consist of two components: (1) Emission limits and other control measures that ensure implementation of permanent, enforceable and necessary emission controls, and (2) a modeling analysis which meets the requirements of 40 CFR part 51 appendix W, which demonstrates that these emission limits and control measures provide for timely attainment of the primary SO_2 NAAQS as expeditiously as practicable, but by no later than the attainment date for the affected area. In all cases, the emission limits and control measures must be accompanied by appropriate methods and conditions to determine compliance with the respective emission limits and control measures and must be quantifiable (*i.e.,* a specific amount of emission reduction can be ascribed to the measures), fully enforceable (specifying clear, unambiguous and measurable requirements for which compliance can be practicably determined), replicable (the procedures for determining compliance are sufficiently specific and non-subjective so that two independent entities applying the procedures would obtain the same result), and accountable (source specific limits must be permanent and must reflect the assumptions used in the attainment demonstrations).

Preferred air quality models for use in regulatory applications are described in appendix A of EPA's *Guideline on Air Quality Models (40 CFR part 51, appendix W).* In 2005, EPA promulgated AERMOD as the Agency's preferred near-field dispersion modeling for a wide range of regulatory applications addressing stationary sources (for example in estimating SO_2 concentrations) in all types of terrain based on extensive developmental and performance evaluation. Supplemental guidance on modeling for purposes of demonstrating attainment of the SO_2 standard is provided in appendix A to the April 23, 2014 SO_2 nonattainment area SIP guidance document referenced above. Appendix A provides extensive guidance on the modeling domain, the source inputs, assorted types of meteorological data, and background concentrations. Consistency with the recommendations in this guidance is generally necessary for the attainment demonstration to offer adequately reliable assurance that the plan provides for attainment.

As stated previously, attainment demonstrations for the 2010 1-hour primary SO_2 NAAQS must demonstrate future attainment and maintenance of the NAAQS in the entire area designated as nonattainment (*i.e.,* not just at the violating monitor). This is demonstrated by using air quality dispersion modeling (*see* appendix W to 40 CFR part 51) that shows that the mix of sources, enforceable control measures, and emission rates in an identified area will not lead to a violation of the SO_2 NAAQS. For a short-term (*i.e.,* 1-hour) standard, EPA believes that dispersion modeling, using allowable emissions and addressing stationary sources in the affected area (and in some cases those sources located outside the nonattainment area which may affect attainment in the area) is technically appropriate, efficient and effective in demonstrating attainment in nonattainment areas because it takes into consideration combinations of meteorological and emission source operating conditions that may contribute to peak ground-level concentrations of SO_2.

The meteorological data used in the analysis should generally be processed with the most recent version of

AERMET. Estimated concentrations should include ambient background concentrations, should follow the form of the standard, and should be calculated as described in section 2.6.1.2 of the August 23, 2010 clarification memo on ''Applicability of appendix W Modeling Guidance for the 1-hr SO_2 National Ambient Air Quality Standard'' (U.S. EPA, 2010).

IV. Control Strategy

A. Existing Control Strategies

Several control strategies for the Detroit area are already in place as a result of actions taken by the State related to the development of Michigan's 2016 attainment plan. The remainder of this sub-section is a discussion of Michigan's 2016 submittal and the existing control strategies that EPA is proposing to include as part of the FIP.

Michigan's 2016 submittal included a modeling demonstration that contained an assessment of the air quality impacts Michigan expected to result from emission limitations governing the following sources: U.S. Steel (Ecorse and Zug Island), EES Coke, DTE Energy (DTE) River Rouge, DTE Trenton Channel, Carmeuse Lime, DTE Monroe, Cleveland-Cliffs Steel Corporation (formerly AK or Severstal Steel), Dearborn Industrial Generation (DIG), and Marathon Refinery. From the base case modeling scenario, Michigan determined that Carmeuse Lime was causing violations in the model at a group of receptors surrounding the Carmeuse Lime facility, and that U.S. Steel, DTE River Rouge, and DTE Trenton Channel were all contributing to overlapping violations at a group of receptors near the northeast side of Zug Island.[1] No other modeled sources in or nearby the nonattainment area were found to be significantly contributing to the modeled violations.

Michigan ran a variety of control scenarios to determine a reduction strategy for the area and submitted in its attainment demonstration emission limitations for Carmeuse Lime, DTE Trenton Channel, DTE River Rouge, and U.S. Steel. Michigan submitted for approval into the SIP revised construction permits for Carmeuse Lime, DTE Trenton Channel, and DTE River Rouge.

For U.S. Steel, Michigan imposed emission limits it had concluded were necessary to bring the Detroit area into attainment via Michigan Administrative Code (MAC) 336.1430 (''Rule 430''). Michigan submitted Rule 430 to EPA as an enforceable limitation element for approval as part of its SO_2 plan.

Subsequently, U.S. Steel challenged the legality of Rule 430 under state law in the Michigan Court of Claims, which invalidated Rule 430 on October 4, 2017. *United States Steel Corp.* v. *Dept. of Environmental Quality,* No. 16–000202–MZ, 2017 WL 5974195 (Mich. Ct. Cl. Oct. 4, 2017). Because the State's submitted attainment demonstration relied on a limitation that is now unenforceable and, therefore, could not meet the requirements of CAA sections 110 and 172, EPA disapproved the Detroit SO_2 plan on March 19, 2021.

Although the attainment plan as a whole was not approvable, EPA approved two of these three permits—for Carmeuse Lime and DTE Trenton Channel—in its March 19, 2021 action as SIP strengthening, which is appropriate for limits that improve air quality but do not meet a specific CAA requirement. This made the two permits permanent and federally enforceable by EPA and the State of Michigan.

For Carmeuse Lime, on March 18, 2016, the State issued Permit to Install 193–14A, which required the construction of and venting of emissions through a new stack. The permit also established a more stringent, permanent, and enforceable SO_2 limit.[2] The State's modeling indicated that the violation caused by Carmeuse Lime was resolved by this modification, which is well below the creditable stack height of 65 meters as determined based on EPA's regulatory definition of ''good engineering practice (GEP)'' per 40 CFR 51.100(ii)(1). Because this enforceable emission limit reduces ground-level impacts, EPA approved it as SIP strengthening in the March 19, 2021 action. Carmeuse Lime has constructed the new stack and has shown compliance with its limit since October 1, 2018. As further discussed below, EPA has now evaluated the Carmeuse Lime permit as part of the Detroit area attainment plan and is proposing to include it as part of the FIP analysis.

Similarly, EPA approved the DTE Trenton Channel permit (Permit to Install 125–11C).[3] EPA's FIP modeling analysis demonstrates that attainment at the previously modeled violating receptors can be achieved when the emission limits in the DTE Trenton Channel Permit[4] are analyzed together with other control strategies included in the FIP. DTE Trenton Channel has been in compliance with its limit since its compliance date of January 1, 2017. In addition to the Carmeuse Lime permit, EPA is also proposing to include the DTE Trenton Channel permit as part of the FIP analysis.

Since Michigan's 2016 submittal, all DTE River Rouge units with SO_2 emissions have been shut down and the permit has been modified to reflect this.[5] Consequently, the shutdown of the coal-fired boilers at DTE River Rouge is permanent and enforceable, and no restart of their operations can occur without undergoing NSR, including requirements to assess the impacts of future operations on maintaining NAAQS attainment. Likewise, any such restart would require a revision to the source's title V permit, subject to EPA review and possible objection if a permit revision would not ensure compliance with all applicable CAA requirements. For these reasons, it is reasonable for the attainment modeling to treat DTE River Rouge's SO_2 emissions as zero.

For EES Coke, Cleveland-Cliffs Steel Corporation, and DIG, SO_2 emission limits are included in their current operating permits (Permit to Install 51–08C, November 21, 2014, Permit MI–ROP–A8640–2016a, modified January 19, 2017, and Permit MI–ROP–N6631–2012a, modified June 28, 2016, respectively). EPA has included these limits and compliance mechanisms in the FIP regulatory text to ensure permanence and enforceability, with one exception. In addition to an existing daily average limit of 420 lbs/hr for DIG Boilers 1, 2 and 3 (combined), EPA is proposing an additional daily average limit of 840 lbs/hr for DIG Boilers 1, 2, and 3 and Flares 1 and 2 (combined). Both limits will apply at all times. This additional limit is not reflective of any new control strategies, but rather is

[1] The locations of these violations relative to the Southwestern High School (SWHS) monitor triggered the Detroit nonattainment designation. The violating receptors surrounding the Carmeuse Lime facility were approximately two miles to the southwest of the SWHS monitor, and the violating receptors near Zug Island were approximately one mile south of the SWHS monitor. Although the monitor has now been showing attainment for several years, EPA's base case modeling continues to show NAAQS violations.

[2] The Carmeuse Lime permit (Permit to Install 193–14A) requires the construction of and venting of emissions through a new stack with a minimum height above ground of 120 feet (36.6 meters). The permit also establishes an enforceable hourly SO_2 limit of 470 lbs/hr. Compliance must be shown by calculating and recording hourly SO_2 emissions using the most current emission factor and the hourly limestone feed rate data.

[3] Issued April 29, 2016.

[4] The DTE Trenton Channel permit (Permit to Install 125–11C) establishes an enforceable SO_2 limit of 5,907 lbs/hr on a 30-day average basis. Compliance must be shown using a continuous emissions monitoring system (CEMS), which was required to be operational by January 1, 2017.

[5] Permit MI–ROP–B2810–2012c, modified on August 18, 2021.

ensuring that maximum operating conditions are protective of the NAAQS.

The existing control strategies specified in this section are reflected in current clean monitoring data from both monitors in the Detroit area. However, EPA's modeling analysis shows that to model attainment throughout all the receptors in the Detroit area, new emission limits at U.S. Steel are needed, which are discussed in section IV.B below and included in the FIP regulatory language.

B. New Rules

The proposed FIP regulatory language includes new rules for U.S. Steel, which are described in the remainder of this sub-section. Additional details on compliance, recordkeeping, and reporting requirements are included in the FIP proposed regulatory language found in the proposed amendment to 40 CFR part 52 § 52.1189 in this action. The emission limits and other requirements in these rules are reflected in EPA's modeling.

1. U.S. Steel Boilerhouse 2

EPA is proposing two separate limits for Boilerhouse 2 based on two different operating scenarios. When Boilerhouse 2 is the only unit operating at the U.S. Steel facility, EPA is proposing an emission limit of 750.00 lbs/hr for U.S. Steel Boilerhouse 2. When any unit identified in section IV.B.2 of this action is operating in addition to Boilerhouse 2 at the U.S. Steel facility, EPA is proposing an emission limit of 81.00 lbs/hr for U.S. Steel Boilerhouse 2. These limits would be effective two years after the effective date of the FIP, corresponding with the construction compliance schedule described below in this section. To determine compliance with these limits, the owner or operator would be required to install and continuously operate an SO_2 continuous emission monitoring system (CEMS) not later than two years after the effective date of the FIP to measure SO_2 emissions from Boilerhouse 2 in conformance with 40 CFR part 60 appendix F procedure 1.

Additionally, EPA is proposing to require that the owner or operator of Boilerhouse 2 combine all five stacks at U.S. Steel Boilerhouse 2 into a single larger stack, with a minimum height of 170 feet (51.8 meters), which is well below the maximum creditable stack height of 65 meters as determined based on EPA's regulatory definition of de minimis GEP stack height per 40 CFR 51.100(ii)(1). This stack reconfiguration is not considered a dispersion technique under 40 CFR 51.100(hh) as the allowable SO_2 emissions for the entire U.S. Steel facility do not exceed 5,000 tons per year.[6] *See* 40 CFR 51.100(hh)(2)(v). The owner or operator would be required to submit a construction permit application for the new stack to the State of Michigan no later than 90 days after the effective date of the FIP and would be required to commence stack operation not later than two years after the effective date of the FIP. This compliance schedule allows time for the State of Michigan to issue the permit, the owner or operator to send out requests for proposal and award a construction contract and procure materials, and for completion of construction.

2. Other U.S. Steel Units

The proposed FIP SO_2 emission limits for the remaining U.S. Steel units are shown below in Table 1. These limits would become effective on the effective date of the FIP. Compliance with these limits would be determined hourly by calculating SO_2 emissions using all raw material sulfur charged into each affected emission unit and assuming 100 percent conversion of total sulfur to SO_2. For all units except Boilerhouse 2 and any idled units, the owner or operator of the units would be required to implement a compliance assurance plan (CAP) that specifies the calculation methodology, procedures, and inputs used in these calculations and would be required to submit the plan to EPA within 30 days after the effective date of the FIP. The owner or operator would be required to submit a list of idled units within 30 days of the effective date of the FIP and would be required to submit a CAP for any idled units before resuming operation.

TABLE 1—PROPOSED EMISSION LIMITS FOR U.S. STEEL UNITS *

Unit	Proposed SO_2 emission limit (lbs/hr)
Boilerhouse 1 (all stacks combined)	55.00
Hot Strip Mill—Slab Reheat Furnace 1	0.31
Hot Strip Mill—Slab Reheat Furnace 2	0.31
Hot Strip Mill—Slab Reheat Furnace 3	0.31
Hot Strip Mill—Slab Reheat Furnace 4	0.31
Hot Strip Mill—Slab Reheat Furnace 5	0.31
No. 2 Baghouse	3.30
Main Plant Boiler No. 8	0.07
Main Plant Boiler No. 9	0.07
A1 Blast Furnace	0.00
B2 Blast Furnace	40.18
D4 Blast Furnace	40.18
A/B Blast Furnace Flares	60.19
D Furnace Flare	60.19

* This table does not include proposed limits for Boilerhouse 2, which are described in section IV.B.1 of this action.

[6] When Boilerhouse 2 is the only unit operating at the U.S. Steel facility, EPA is proposing an emission limit of 750.00 lbs/hr for U.S. Steel Boilerhouse 2. Assuming maximum operation for every hour in a year, 750.00 lbs/hr equates to 3,285 tons per year. When any unit identified in section IV.B.2 of this action is operating in addition to Boilerhouse 2 at the U.S. Steel facility, EPA is proposing an emission limit of 81.00 lbs/hr for U.S. Steel Boilerhouse 2. The combined total of all emission limits for U.S. Steel (Boilerhouse 2 plus all units identified in section IV.B.2) in this scenario is 341.73 lbs/hr. Assuming maximum operation for every hour in a year, 341.73 lbs/hr equates to 1,497 tons per year. Therefore, in both scenarios, the total U.S. Steel allowable emissions do not exceed 5,000 tons per year.

V. Longer-Term Averaging

EPA's April 2014 guidance recommends that the emission limits be expressed as short-term average limits (*e.g.,* addressing emissions averaged over one or three hours), but also describes the option to utilize emission limits with longer averaging times of up to 30 days so long as various suggested criteria are met. *See* 2014 guidance, pp. 22 to 39. The guidance recommends that, should longer-term averaging times be used, the longer-term average limit should be set at an adjusted level that reflects a stringency comparable to the 1-hour average limit at the critical emission value shown to provide for attainment that the plan otherwise would have set.

The April 2014 guidance provides an extensive discussion of EPA's rationale for concluding that appropriately set comparably stringent limitations based on averaging times as long as 30 days can be found to provide for attainment of the 2010 SO_2 NAAQS. In evaluating this option, EPA considered the nature of the standard, conducted detailed analyses of the impact of use of 30-day average limits on the prospects for attaining the standard, and carefully reviewed how best to achieve an appropriate balance among the various factors that warrant consideration in judging whether a nonattainment area plan provides for attainment. *Id.* at pp. 22 to 39. *See also id.* at appendices B, C, and D.

As specified in 40 CFR 50.17(b), the 1-hour primary SO_2 NAAQS is met at an ambient air quality monitoring site when the 3-year average of the annual 99th percentile of daily maximum 1-hour concentrations is less than or equal to 75 ppb. In a year with 365 days of valid monitoring data, the 99th percentile would be the fourth highest daily maximum 1-hour value. The 2010 SO_2 NAAQS, including this form of determining compliance with the standard, was upheld by the U.S. Court of Appeals for the District of Columbia Circuit in *Nat'l Envt'l Dev. Ass'n's Clean Air Project* v. *EPA,* 686 F.3d 803 (D.C. Cir. 2012). Because the standard has this form, a single hourly exceedance of the 75 ppb level does not create a violation of the standard. Instead, at issue is whether a source operating in compliance with a properly set longer-term average could cause exceedances, and if so, the resulting frequency and magnitude of such exceedances, and in particular whether EPA can have reasonable confidence that a properly set longer-term average limit will provide that the 3-year average of annual fourth highest daily maximum hourly values will be at or below 75 ppb. A synopsis of how EPA judges whether such plans ''provide for attainment,'' based on modeling of projected allowable emissions and in consideration of the form of the NAAQS for determining attainment at monitoring sites follows.

For SO_2 plans based on 1-hour emission limits, the standard approach is to conduct modeling using fixed emission rates. The maximum emission rate that would be modeled to result in attainment (*i.e.,* in an ''average year'' [7] which shows three days with a maximum hourly level exceeding 75 ppb) is labeled the ''critical emission value.'' The modeling process for identifying this critical emissions value inherently considers the numerous variables that affect ambient concentrations of SO_2, such as meteorological data, background concentrations, and topography. In the standard approach, the state would then provide for attainment by setting a continuously applicable 1-hour emission limit at this critical emission value.

EPA recognizes that some sources have highly variable emissions, for example due to variations in fuel sulfur content and operating rate, that can make it extremely difficult, even with a well-designed control strategy, to ensure in practice that emissions for any given hour do not exceed the critical emission value. EPA also acknowledges the concern that longer-term emission limits can allow short periods with emissions above the critical emissions value, which, if coincident with meteorological conditions conducive to high SO_2 concentrations, could in turn create the possibility of a NAAQS exceedance occurring on a day when an exceedance would not have occurred if emissions were continuously controlled at the level corresponding to the critical emissions value. However, for several reasons, EPA believes that the approach recommended in its guidance document suitably addresses this concern. First, from a practical perspective, EPA expects the actual emission profile of a source subject to an appropriately set longer-term average limit to be similar to the emission profile of a source subject to an analogous 1-hour average limit. EPA expects this similarity because it has recommended that the longer-term average limit be set at a level that is comparably stringent to the otherwise applicable 1-hour limit (reflecting a downward adjustment from the critical emissions value such that the longer-term limit has a lower permissible emission rate than that of the critical emissions value) and that takes the source's emissions profile into account. As a result, EPA expects either form of emission limit to yield comparable air quality.

Second, from a more theoretical perspective, EPA has compared the likely air quality with a source having maximum allowable emissions under an appropriately set longer-term limit, as compared to the likely air quality with the source having maximum allowable emissions under the comparable 1-hour limit. In this comparison, in the 1-hour average limit scenario, the source is presumed at all times to emit at the critical emission level, and in the longer-term average limit scenario, the source is presumed occasionally to emit more than the critical emissions value but on average, and presumably at most times, to emit well below the critical emissions value. In an ''average year,'' compliance with the 1-hour limit is expected to result in three exceedance days (*i.e.,* three days with hourly values above 75 ppb) and a fourth day with a maximum hourly value at 75 ppb. By comparison, with the source complying with a longer-term limit, it is possible that additional exceedances would occur that would not occur in the 1-hour limit scenario (if emissions exceed the critical emissions value at times when meteorology is conducive to poor air quality). However, this comparison must also factor in the likelihood that exceedances that would be expected in the 1-hour limit scenario would not occur in the longer-term limit scenario. This result arises because the longer-term limit requires lower emissions most of the time (because the limit is set well below the critical emissions value), so a source complying with an appropriately set longer-term limit is likely to have lower emissions at critical times than would be the case if the source were emitting as allowed with a 1-hour limit.

As a hypothetical example to illustrate these points, suppose a source always emits 1,000 pounds of SO_2 per hour (lbs/hr), which results in air quality at the level of the NAAQS (*i.e.,* results in a design value of 75 ppb). Suppose further that in an ''average year,'' these emissions cause the 5 highest maximum daily average 1-hour concentrations to be 100 ppb, 90 ppb, 80 ppb, 75 ppb, and 70 ppb. Then suppose that the source becomes subject to a 30-

[7] An ''average year'' is used to mean a year with average air quality. While 40 CFR 50 appendix T provides for averaging three years of 99th percentile daily maximum values (*e.g.,* the fourth highest maximum daily concentration in a year with 365 days with valid data), this discussion and an example below use a single ''average year'' in order to simplify the illustration of relevant principles.

day average emission limit of 700 lbs/hr. It is theoretically possible for a source meeting this limit to have emissions that occasionally exceed 1,000 lbs/hr, but with a typical emissions profile emissions would much more commonly be between 600 and 800 lbs/hr. In this simplified example, assume a zero background concentration, which allows one to assume a linear relationship between emissions and air quality. (A nonzero background concentration would make the mathematics more difficult but would give similar results.) Air quality will depend on what emissions happen on what critical hours, but suppose that emissions at the relevant times on these 5 days are 800 lbs/hr, 1,100 lbs/hr, 500 lbs/hr, 900 lbs/hr, and 1,200 lbs/hr, respectively. (This is a conservative example because the average of these emissions, 900 lbs/hr, is well over the 30-day average emission limit.) These emissions would result in daily maximum 1-hour concentrations of 80 ppb, 99 ppb, 40 ppb, 67.5 ppb, and 84 ppb. In this example, the fifth day would have an exceedance that would not otherwise have occurred (84 ppb under the 30-day average limit compared to 70 ppb under the 1-hour limit). However, the third day would not have an exceedance that otherwise would have occurred (40 ppb under the 30-day average limit compared to 80 ppb under the 1-hour limit). The fourth day would have been below, rather than at, 75 ppb (67.5 ppb under the 30-day average limit compared to 75 ppb under the 1-hour limit). In this example, the fourth highest maximum daily concentration under the 30-day average would be 67.5 ppb.

This simplified example illustrates the findings of a more complicated statistical analysis that EPA conducted using a range of scenarios incorporating actual plant data. As described in appendix B of EPA's April 2014 SO_2 nonattainment planning guidance, EPA found that the requirement for lower average emissions is likely to yield as good air quality as is required with a comparably stringent 1-hour limit. Based on analyses described in appendix B of its 2014 guidance and similar subsequent work, EPA expects that emission profiles with maximum allowable emissions under an appropriately set comparably stringent 30-day average limit are likely to have the net effect of no more exceedances and air quality as good as that of an emission profile with maximum allowable emissions under a 1-hour emission limit at the critical emission value.[8] This result provides a compelling policy rationale for allowing the use of a longer averaging period, in appropriate circumstances where the facts indicate this result can be expected to occur.

The question then becomes whether this approach, which is likely to produce a lower number of overall exceedances even though it may produce some unexpected exceedances above the critical emission value, meets the requirement in section 110(a)(1) and 172(c)(1) for SIPs to ''provide for attainment'' of the NAAQS. For SO_2, as for other pollutants, it is generally impossible to design a nonattainment plan in the present that will guarantee that attainment will occur in the future. A variety of factors can cause a well-designed attainment plan to fail and unexpectedly not result in attainment, for example if meteorology occurs that is more conducive to poor air quality than was anticipated in the plan. Therefore, in determining whether a plan meets the requirement to provide for attainment, EPA's task is commonly to judge not whether the plan provides absolute certainty that attainment will in fact occur, but rather whether the plan provides an adequate level of confidence of prospective NAAQS attainment. From this perspective, in evaluating use of a 30-day average limit, EPA must weigh the likely net effect on air quality. Such an evaluation must consider the risk that occasions with meteorology conducive to high concentrations will have elevated emissions leading to exceedances that would not otherwise have occurred, and must also weigh the likelihood that the requirement for lower emissions on average will result in days not having exceedances that would have been expected with emissions at the critical emissions value. Additional policy considerations, such as accommodating real world emissions variability without significant risk of violations, are also appropriate factors for EPA to weigh in judging whether a plan provides a reasonable degree of confidence that the plan will lead to attainment. Based on these considerations, EPA believes that a continuously enforceable limit averaged over as long as 30 days, if determined in accordance with EPA's guidance, can reasonably be considered to provide for attainment of the 2010 SO_2 NAAQS.

The April 2014 guidance offers specific recommendations for determining an appropriate longer-term average limit. The recommended method starts with determination of the 1-hour emission limit that would provide for attainment (*i.e.,* the critical emissions value), then applies an adjustment factor to determine the (lower) level of the longer-term average emission limit that would be estimated to have a stringency comparable to the 1-hour emission limit. This method uses a database of continuous emission data reflecting the type of control that the source will be using to comply with the nonattainment area plan emission limits, which (if compliance requires new controls) may require use of an emission database from another source. The recommended method involves using these data to compute a complete set of emission averages, computed according to the averaging time and averaging procedures of the prospective emission limitation. In this recommended method, the ratio of the 99th percentile among these long-term averages to the 99th percentile of the 1-hour values represents an adjustment factor that may be multiplied by the candidate 1-hour emission limit to determine a longer-term average emission limit that may be considered comparably stringent.[9] The guidance also addresses a variety of related topics, such as the potential utility of setting supplemental emission limits, such as mass-based limits, to reduce the likelihood and/or magnitude of elevated emission levels that might occur under the longer-term emission rate limit.

VI. Modeling

The following discussion is a summary of various features of the modeling that EPA used in developing the proposed FIP. The modeling analysis conducted by EPA to support the FIP was adapted from the modeling analysis conducted by Michigan to support Michigan's 2016 nonattainment plan. A more in-depth discussion of the modeling, including an explanation of

[8] *See also* further analyses described in rulemaking on the SO_2 nonattainment plan for Southwest Indiana. In response to comments expressing concern that the emission profiles analyzed for appendix B represented actual rather than allowable emissions, EPA conducted additional work formulating sample allowable emission profiles and analyzing the resulting air quality impact. This analysis provided further support for the conclusion that an appropriately set longer-term average emission limit in appropriate circumstances can suitably provide for attainment. The rulemaking describing these further analyses was published on August 17, 2020, at 85 FR 49967, available at *https://www.govinfo.gov/content/pkg/FR-2020-08-17/pdf/2020-16044.pdf.* A more detailed description of these analyses is available in the docket for that action, specifically at *https://www.regulations.gov/document?D=EPA-R05-OAR-2015-0700-0023.*

[9] For example, if the critical emission value is 1,000 lbs/hr of SO_2, and a suitable adjustment factor is determined to be 70 percent, the recommended longer term average limit would be 700 lbs/hr.

the differences between EPA's and Michigan's modeling analyses, is presented in a technical support document (TSD) included in the docket for this action.

A. Model Selection

EPA used AERMOD, the preferred model for this application. EPA used version 21112 of this model, which is the most current version. In its 2016 submittal, Michigan had instead used version 15181, which was the current version at that time.[10]

EPA's receptor grid and modeling domain for the Detroit area followed the recommended approaches from EPA's *Guideline on Air Quality Models* (40 CFR part 51, appendix W). A uniform Cartesian receptor grid was used with receptor spacing of 100 meters throughout the modeled domain, which was consistent with the grid Michigan used in its 2016 submittal.

Although EPA's *Guideline on Air Quality Models* recommends that areas such as Detroit should be modeled using urban dispersion coefficients, Michigan found in its 2016 modeling analysis that using urban dispersion coefficients caused the model to overpredict monitored concentrations by 2–3 times due to overpredictions with tall stacks.[11] As discussed further in the TSD, EPA agrees with Michigan's use of rural dispersion coefficients and therefore used rural dispersion options for tall stacks at EES Coke, DTE Trenton Channel, and DTE Monroe, and urban dispersion option for the remaining modeled sources.

B. Meteorological Data

EPA used the Detroit Metropolitan Wayne County Airport's (KDTW) meteorological surface data and the White Lake (DTX) meteorological upper air data for the years 2016–2020 for modeling the Detroit area. The surface station is located less than 22 kilometers from the SO_2 sources in the Detroit area and is located in similar terrain.

C. Emissions Data

EPA included all point sources within 50 kilometers of Detroit in its modeling analysis. These sources included U.S. Steel (Ecorse and Zug Island), EES Coke, DTE Trenton Channel, Carmeuse Lime, DTE Monroe, Cleveland-Cliffs Steel Corporation, DIG, and Marathon Refinery. DTE River Rouge was not included in the modeling analysis as all the units with SO_2 emissions have been permanently and enforceably shut down. EPA found that no other sources outside the nonattainment area were close enough to cause significant concentration gradients.

D. Emission Limits

An important aspect of an attainment plan is that the emission limits that provide for attainment be quantifiable, fully enforceable, replicable, and accountable. *See* General Preamble at 13567–68. The FIP analysis includes limits for U.S. Steel, EES Coke, Cleveland-Cliffs Steel Corporation, DIG, Carmeuse Lime, and DTE Trenton Channel. The limit for Trenton Channel is expressed as a 30-day average limit, and the limits for Cleveland-Cliffs Steel Corporation and DIG are expressed as daily average limits. Therefore, part of the Detroit FIP must address the use of these longer-term average limits, both with respect to the general suitability of using such limits for demonstrating attainment and with respect to whether the particular limits included in the plan have been suitably demonstrated to provide for attainment. The first subsection that follows addresses the enforceability of the limits in the plan, and the second subsection that follows addresses in particular the 30-day and daily average limits.

1. Enforceability

In preparing its 2016 plan, Michigan adopted Permit to Install 193–14A, governing the Carmeuse Lime SO_2 emissions, and Permit to Install 125–11C, governing the DTE Trenton Channel SO_2 emissions. These construction permit revisions were adopted by Michigan following established, appropriate public review procedures. The Carmeuse Lime permit required the construction of and venting of emissions through a new stack with a minimum height above ground of 120 feet (36.6 meters). The permit also established a permanent and enforceable SO_2 limit of 470 lbs/hr. EPA's modeling indicates that the modeling violation caused by Carmeuse has been resolved by this modification, which is well below the maximum creditable stack height of 65 meters as determined based on EPA's regulatory definition of de minimis GEP stack height per 40 CFR 51.100(ii)(1). The DTE Trenton Channel permit established an enforceable SO_2 limit of 5,907 lbs/hr on a 30-day rolling average basis. EPA modeling demonstrates that attainment at violating receptors can be achieved when the emission limits in the DTE Trenton Channel Permit are analyzed together with the shutdown of the River Rouge facility. In accordance with EPA policy, the 30-day average limit is set at a lower level than the emission rate used in the attainment demonstration; the relationship between these two values is discussed in more detail in the following section. The permit compliance dates were October 1, 2018 for Carmeuse Lime and January 1, 2017 for DTE Trenton Channel. Both of these permits were incorporated into Michigan's SIP as part of EPA's March 19, 2021 action, and both facilities have been complying with their limits since their compliance dates.

Michigan adopted a revision to the renewable operating permit governing DTE River Rouge emissions, Permit MI–ROP–B2810–2012c, on August 18, 2021, that reflects the shutdown of the coal-fired boilers. As explained in section IV.A above, the shutdown of the coal-fired boilers at DTE River Rouge is permanent and enforceable.

Emission limits and associated requirements for U.S. Steel, EES Coke, Cleveland-Cliffs Steel Corporation, and DIG will be made permanent and enforceable by the inclusion in the FIP regulatory language. The codification section of the FIP includes new emission limits and associated requirements for the U.S. Steel units and the DIG Boilers 1, 2, and 3 and Flares 1 and 2 flexible group, as well as emission limits and compliance mechanisms for EES Coke, Cleveland-Cliffs Steel Corporation, and DIG (with the one aforementioned exception) that are also required by the sources' existing operating permits.

As described further in the TSD, EPA modeled the maximum uncontrolled emission rate for any unit in the nonattainment area that does not have an SO_2 emission limit already incorporated into the Michigan SIP or included in the codification section of the FIP.

2. Longer-Term Average Limits

The following subsection addresses the 30-day average limit for DTE Trenton Channel and the daily average limits for Cleveland-Cliffs Steel Corporation and DIG. As previously discussed in detail in Section V of this notice, EPA supports adoption of longer-term average limits, as EPA's guidance recommends modeling of a 1-hour ''critical emissions value'' (CEV) and application of a properly derived adjustment factor demonstrates that the longer-term limit is comparably stringent to the modeled 1-hour CEV that would otherwise be reflected in the emission limit.

[10] AERMOD version 21112 resolved errors and bugs that were found in version 15181 and introduced some new modeling options. For more information on the differences between AERMOD versions, *see https://www.epa.gov/scram/air-quality-dispersion-modeling-preferred-and-recommended-models.*

[11] More information on dispersion coefficients can be found in the TSD for this action.

Michigan's 2016 plan included permits with 30-day average emission limits for DTE River Rouge and Trenton Channel that, when modeled using comparably stringent 1-hour emission rates, demonstrated attainment of the SO_2 NAAQS in the areas that had previously shown violations caused by the DTE facilities. Both DTE River Rouge and Trenton Channel requested limits expressed as a 30-day average in order to have longer-term limits that allow for ordinary fluctuations in emissions but are comparably stringent to hourly limits and still provide for attainment. Although Michigan's 2016 plan included a 30-day average emission limit for DTE River Rouge, EPA is not evaluating a longer-term average limit for DTE River Rouge as the facility has since been shut down.

DTE submitted to Michigan an analysis supporting the DTE Trenton Channel Unit 9A 30-day average emission limits using CEMS heat input data, SO_2 emissions factors, and coal blend projections. DTE calculated an adjustment factor of 0.87 for the DTE Trenton Channel unit.

However, as EPA was reviewing Michigan's 2016 submittal, EPA found that DTE's adjustment factor calculation did not account for fuel variability, which increased significantly after 2016 when the Mercury and Air Toxics Standards (MATS) took effect. Therefore, EPA completed its own adjustment factor analysis following the 2014 SO_2 guidance using 2015–2019 DTE Trenton Channel operating data, which was the most recent data at the time of the analysis and included DTE Trenton Channel's transition to compliance with the MATS. EPA calculated an adjustment factor of 0.771.

For DTE Trenton Channel, EPA used its calculated adjustment factor of 0.771 and the permitted 30-day-average emission limit of 5,907 lbs/hr [12] to calculate the comparably stringent 1-hour emission rate for DTE Trenton Channel of 7,661 lbs/hr. EPA used the comparably stringent 1-hour emission rate in its modeling analysis to confirm that the DTE Trenton Channel limit would result in attainment. The 1-hour emission rate that EPA used for its modeling analysis (7,661 lbs/hr) is more stringent than the CEV that would otherwise have been necessary to provide for attainment, as the CEV represents the maximum 1-hour emission rate that would result in attainment when modeled, and the maximum concentration that EPA modeled was below the NAAQS.[13]

Although EPA used a more conservative adjustment factor in its FIP modeling analysis than Michigan used in its 2016 submittal, EPA used the same permitted 30-day-average emission limit of 5,907 lbs/hr. Therefore, the comparably stringent 1-hour emission rate that EPA used was higher than the rate that Michigan used. However, EPA's modeling analysis shows that this higher 1-hour emission rate for DTE Trenton Channel still provides for attainment, largely due to EPA's exclusion of DTE River Rouge emissions in its analysis.

For Cleveland-Cliffs Steel Corporation and DIG, EPA does not have a sufficient historical record of CEMS data to be able to evaluate source-specific emissions variability for purposes of determining source-specific factors by which to calculate the comparably stringent 1-hour limits from the sources' daily average limits. Instead, EPA determined the comparably stringent 1-hour emission rates by applying one of the national average adjustment factors listed in appendix D of EPA's 2014 SO_2 guidance. For Cleveland-Cliffs Steel Corporation, EPA divided the furnace stove daily average limits by an adjustment factor of 0.89, reflecting the national average adjustment factor that EPA found among facilities with wet scrubbers, and the furnace baghouse daily average limits by an adjustment factor of 0.93, reflecting the national average adjustment factor that EPA found among facilities without control equipment. For DIG, EPA divided the daily average limits by an adjustment factor of 0.93, reflecting the national average adjustment factor that EPA found among facilities without control equipment. The Cleveland-Cliffs Steel Corporation and DIG daily average limits and comparably stringent 1-hour emission rates are shown below in Table 2.

TABLE 2—CLEVELAND-CLIFFS STEEL CORPORATION AND DIG DAILY AVERAGE LIMITS AND COMPARABLY STRINGENT 1-HOUR EMISSION RATES

Unit(s)	Daily average emission limit	Adjustment factor	Modeled comparably stringent 1-hour emission rate (lbs/hr)
Cleveland-Cliffs Steel Corporation *			
"B" Blast Furnace Baghouse and Stove Stacks (combined).	77.8 lbs/hr	0.93 for Furnace Baghouse and 0.89 for Furnace Stove.	85.91 lbs/hr (modeled as 33.46 lbs/hr for the furnace baghouse and 52.45 lbs/hr for the furnace stove).
"C" Blast Furnace Baghouse and Stove Stacks (combined).	271.4 lbs/hr	0.93 for Furnace Stove and 0.89 for Furnace Baghouse.	299.70 lbs/hr (modeled as 116.73 lbs/hr for the furnace baghouse and 182.97 lbs/hr for the furnace stove).
DIG			
Boilers 1, 2, and 3 (combined)	420 lbs/hr	0.93	451.62 lbs/hr (modeled as 150.54 lbs/hr per boiler).
Boilers 1, 2, and 3, and Flares 1 and 2 (combined).	840 lbs/hr	0.93	903.24 lbs/hr (modeled as 150.54 lbs/hr per boiler and 451.62 lbs/hr for Flare 2, as Flare 1 is no longer operational).

* **Note:** Modeled emissions were split between the furnace stoves and baghouses at a 60:40 ratio, which was the most conservative option based on capacity data over the last several years.

[12] The DTE Trenton Channel Unit 9A 30-day average SO_2 emissions are calculated on a rolling basis as determined at the end of every calendar day.

[13] *See* section VI.G of this action for a summary of EPA's modeling results.

EPA believes that the 30-day-average limit for DTE Trenton Channel and the daily average limits for Cleveland-Cliffs Steel Corporation and DIG provide suitable alternatives to establishing 1-hour average emission limits for these sources. EPA proposes to find that the adjustment factors of 0.771 for DTE Trenton Channel, 0.89 for Cleveland-Cliffs Steel Corporation furnace stoves, 0.93 for Cleveland-Cliffs Steel Corporation furnace baghouses, and 0.93 for DIG are appropriate. When the longer-term limits were divided by these adjustment factors, they resulted in modeled comparably stringent 1-hour emission rates that are equal to or more stringent than the 1-hour average emission rates represented by the CEV that would otherwise have been necessary to provide for attainment. While the longer-term average limits allow occasions in which emissions may be higher than the level that would be allowed with the 1-hour limits, the longer-term average limits compensate by requiring average emissions to be lower than the level that would otherwise have been required by a 1-hour average limit that would be represented by the CEV. As described above and explained in more detail in EPA's April 2014 guidance for SO_2 nonattainment plans, EPA finds that appropriately set longer-term average limits provide a reasonable basis by which nonattainment plans will provide for attainment.

E. Background Concentrations

EPA determined background concentrations for the Detroit area using monitoring data from the Allen Park monitor (AQS ID 26–163–0001), which is approximately 17 kilometers southwest of Detroit. The background concentration values that EPA used varied by season and hour-of-day and ranged from 0.1 to 11.9 ppb.

F. Comments Made During Previous EPA Rulemakings

During the comment period for EPA's March 19, 2021, partial approval and partial disapproval of Michigan's 2016 plan for the Detroit area, EPA received 21 supportive comments, nine comments not directly relevant to the rulemaking, and a joint comment letter from Sierra Club and Earthjustice that was partially adverse.

Part of the joint letter from Sierra Club and Earthjustice included information about alleged flaws in the State's modeling report. While EPA was not evaluating whether Michigan's modeling report supported attainment of the Detroit area in its March 19, 2021 action, EPA believes these comments are relevant to EPA's modeling analysis for the FIP. Therefore, EPA has considered the comments as part of the FIP development. The remainder of this section summarizes the portion of the comment letter that addressed the commenters' modeling concerns as well as EPA's proposed response to these comments.

First, the commenters expressed concerns that the State did not use an appropriate background concentration in its modeling analysis. Michigan used hourly SO_2 data from the Allen Park monitor for the years 2012–2014 in its 2016 analysis and excluded hourly concentrations associated with wind directions between and including 40 degrees and 205 degrees using meteorological data from Allen Park. In the modeling analysis for the FIP, EPA used a similar method to Michigan's to calculate the background concentration. EPA used hourly SO_2 data from 2018–2020 at the Allen Park monitor, along with Allen Park wind data to generate Season/Hour-of-Day concentrations. Concentrations associated with wind directions between and including 40 degrees and 205 degrees were excluded due to SO_2 concentrations at the Allen Park monitor being influenced by sources explicitly included in the modeling analysis. This includes U.S. Steel, DTE River Rouge, EES Coke, Carmeuse Lime, Marathon, Cleveland-Cliffs Steel Corporation and DIG to the northeast and DTE Trenton Channel and DTE Monroe to the south and southwest. Wind direction checks were made for the preceding hour as well. Only days with eight hours or more of valid observations with wind directions not between and including 40 and 205 degrees were included, and the second highest concentration for each season and hour-of-day combination was selected. EPA's August 2016 ''SO_2 NAAQS Designations Modeling Technical Assistance Document'' (Modeling TAD) discusses that the use of hour-of-day and season background concentrations based on the 99th percentile 1-hour SO_2 concentrations over three years is appropriate for use in modeling against the 1-hour SO_2 NAAQS. The Modeling TAD states that ''to calculate the 99th percentile concentration for a season and hour of day combination, the second highest concentration for that combination should be selected.'' The Modeling TAD also concurs that it is appropriate to exclude periods when the source(s) in question is/are expected to impact the monitored concentrations.

Second, the commenters stated that the state failed to adjust the 30-day average limits for DTE River Rouge and Trenton Channel to a level that was comparably stringent to a 1-hour limit that would achieve the SO_2 NAAQS. As described in section VI.D.2 above, EPA calculated a lower, more conservative adjustment factor than was used in Michigan's 2016 modeling analysis for the DTE River Rouge and Trenton Channel facilities. For DTE Trenton Channel, EPA used the lower adjustment factor and the 30-day average limit to calculate a higher comparably stringent 1-hour emission rate, which EPA used in its modeling analysis to show attainment, that is equal to or more stringent than the 1-hour emission rate represented by the CEV. As all DTE River Rouge units emitting SO_2 have been permanently shut down, EPA removed the source from the modeling analysis and did not include the 30-day average SO_2 emission limits for DTE River Rouge in the FIP. EPA believes that the current adjustment factor being used in the FIP for DTE Trenton Channel is properly calculated and protective of the NAAQS.

Finally, the commenters recommended that EPA evaluate the State's emissions inventory and consider any significant SO_2 sources that were excluded in future modeling. Specifically, the commenters noted that three DIG natural gas combustion turbines, a DIG boiler co-firing natural gas and blast furnace gas, the DTE EES Coke Bypass Bleeder Flare, DTE EES Coke coke oven door leaks, and all Marathon Refinery flares were not included in Michigan's 2016 modeling analysis. EPA has evaluated these sources and they have been included in this modeling analysis for the FIP. The full list of sources included in the modeling, as well as the enforceability mechanism of each emission rate, is included in the TSD, which is included in the docket for this action.

G. Summary of Results

EPA evaluated two separate operating scenarios as part of its modeling analysis based on the separate limits proposed for U.S. Steel Boilerhouse 2. In both scenarios, the modeling for the Detroit area showed a maximum concentration of 73.6 ppb (192.7 micrograms per cubic meter ($\mu g/m^3$)). This maximum concentration resulted from modeling all units at maximum permitted levels based on the proposed emission limits included in the FIP or already incorporated into Michigan's SIP, or maximum uncontrolled emissions, newly adjusted comparably stringent 1-hour emission rates for DTE Trenton Channel, Cleveland-Cliffs Steel Corporation, and DIG, and the

background concentration previously described. Therefore, EPA proposes to conclude that this FIP provides for attainment in the Detroit area.

VII. Other Plan Requirements

A. Emissions Inventory

EPA approved the base year emissions inventory for the Detroit area in its March 19, 2021 action. Therefore, a review of the emissions inventory is not included in the FIP.

B. RACM/RACT and Enforceable Emission Limits

CAA section 172(c)(1) states that nonattainment plans shall provide for the implementation of all RACM as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of RACT) and shall provide for attainment of the national primary ambient air quality standards. For most criteria pollutants, RACT is control technology as needed to meet the NAAQS that is reasonably available considering technological and economic feasibility. However, the definition of RACT for SO_2 is, simply, that control technology which is necessary to achieve the NAAQS (*see* 40 CFR 51.100(o)). CAA section 172(c)(6) requires plans to include enforceable emissions limitations, and such other control measures as may be necessary or appropriate to provide for attainment of the NAAQS. In its March 19, 2021, rulemaking, EPA disapproved Michigan's 2016 attainment plan because it relied on Michigan Administrative Code (MAC) 336.1430 (''Rule 430''), which was invalidated and so was no longer an enforceable mechanism. Therefore, the plan could not be considered to provide an appropriate attainment demonstration, and it did not demonstrate RACM/RACT or meet the requirement for necessary emissions limitations or control measures. The FIP for attaining the 1-hour SO_2 NAAQS in the Detroit area is based on a variety of measures, including permits for Carmeuse Lime (effective date of October 1, 2018) and DTE Trenton Channel (effective date of January 1, 2017) that have been incorporated into Michigan's SIP, as well as the proposed regulatory language regarding U.S. Steel, EES Coke, Cleveland-Cliffs Steel Corporation, and DIG emissions that will be enforceable upon finalization of this action. The FIP requires compliance two years after the effective date of this action for U.S. Steel Boilerhouse 2 and the effective date of this action for all other units. The two-year compliance schedule for U.S. Steel Boilerhouse 2 allows 90 days for the owner or operator to submit a construction permit application to the State of Michigan, as well as time for the State of Michigan to issue the permit, the owner or operator to send out requests for proposal and award a construction contract and procure materials, and for completion of construction. EPA proposes to determine that these measures suffice to provide for attainment and proposes to conclude that the FIP satisfies the requirement in sections 172(c)(1) and (6) to adopt and submit all RACM/RACT and emissions limitations or control measures as needed to attain the standards as expeditiously as practicable.

C. NSR

EPA affirmed in its March 19, 2021, action that NSR requirements had previously been met. Therefore, a review of the NSR requirements is not included in the FIP.

D. RFP

Section 171(1) of the CAA defines RFP as such annual incremental reductions in emissions of the relevant air pollutant as are required by part D or may reasonably be required by EPA for the purpose of ensuring attainment of the applicable NAAQS by the applicable attainment date. This definition is most appropriate for pollutants that are emitted by numerous and diverse sources, where the relationship between any individual source and the overall air quality is not explicitly quantified, and where the emission reductions necessary to attain the NAAQS are inventory-wide. (*See* EPA's April 2014 SO_2 nonattainment planning guidance, page 40.) For SO_2, there is usually a single ''step'' between pre-control nonattainment and post-control attainment. Therefore, for SO_2, with its discernible relationship between emissions and air quality, and significant and immediate air quality improvements, RFP is best construed as adherence to an ambitious compliance schedule. (*See* General Preamble at 74 FR 13547 (April 16, 1992)).

In its March 19, 2021 rulemaking, EPA concluded that Michigan had not satisfied the requirement in section 172(c)(2) to provide for RFP toward attainment. Michigan's 2016 attainment plan did not demonstrate that the implementation of the control measures required under the plan were sufficient to provide for attainment of the NAAQS in the Detroit SO_2 nonattainment area, as some control measures were not enforceable due to the invalidation of Rule 430. Therefore, a compliance schedule to implement those controls was not sufficient to provide for RFP. The FIP regulatory language requires compliance by two years after the effective date of this action for U.S. Steel Boilerhouse 2 and the effective date of this action for all other units. As described in section IV.B above, the 2-year compliance schedule for U.S. Steel Boilerhouse 2 allows 90 days for the owner or operator to submit a construction permit application to the State of Michigan, as well as time for the State of Michigan to issue the permit, the owner or operator to send out requests for proposal and award a construction contract and procure materials, and for completion of construction. For DTE Trenton Channel and Carmeuse lime, compliance was required by January 1, 2017, and October 1, 2018, respectively. EPA concludes that this is an ambitious compliance schedule, as described in April 2014 guidance for SO_2 nonattainment plans, and that this plan therefore provides for RFP in accordance with the approach to RFP described in EPA's 2014 guidance.

E. Contingency Measures

EPA guidance describes special features of SO_2 planning that influence the suitability of alternative means of addressing the requirement in section 172(c)(9) for contingency measures for SO_2, such that in particular an appropriate means of satisfying this requirement is for the air agency to have a comprehensive enforcement program that identifies sources of violations of the SO_2 NAAQS and to undertake an aggressive follow-up for compliance and enforcement. (*See* EPA's April 2014 SO_2 nonattainment planning guidance, page 41.) The FIP provides for satisfying the contingency measure requirement in this manner, and EPA will be responsible for enforcement unless Michigan seeks to take delegation of the FIP. EPA's enforcement authority is contained in section 113(a) of the CAA. Options include: The issuance of an administrative order requiring compliance with the applicable implementation plan; the issuance of an administrative order requiring the payment of a civil penalty for past violations; and the commencement of a civil judicial action.

VIII. What action is EPA taking?

EPA is proposing a FIP for attaining the 2010 SO_2 NAAQS for the Detroit area and for meeting other nonattainment area planning requirements. In accordance with section 172 of the CAA, this FIP

includes an attainment demonstration for the Detroit area and addresses requirements for RFP, RACT/RACM, enforceable emission limitations and control measures, and contingency measures. EPA has previously concluded that Michigan has addressed the requirements for emissions inventories for the Detroit area and nonattainment area NSR.

The FIP is based on the Carmeuse Lime emission limits specified in Permit to Install 193–14A, the DTE Trenton Channel emission limits specified in Permit to Install 125–11C, and the U.S. Steel, EES Coke, Cleveland-Cliffs Steel Corporation, and DIG emission limits specified in the proposed regulatory language of this FIP. The Carmeuse Lime and DTE Trenton Channel permits have already been incorporated into Michigan's SIP, so EPA is not proposing to re-incorporate them into 40 CFR part 52 here.

EPA is taking public comments for forty-five days following the publication of this proposed action in the **Federal Register**. EPA will take all comments into consideration in the final action. If this FIP is finalized, it would satisfy EPA's duty to promulgate a FIP for the area under CAA section 110(c) that resulted from the previous finding of failure to submit. However, it would not affect the sanctions clock started under CAA section 179 resulting from EPA's partial disapproval of the prior SIP, which would be terminated by an EPA rulemaking approving a revised SIP.

IX. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review 13563

This action is exempt from review by the Office of Management and Budget (OMB). As discussed in detail in section B below, the proposed FIP regulatory language contains requirements only for four facilities. It is therefore not a rule of general applicability.

B. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Under the Paperwork Reduction Act, a ''collection of information'' is defined as a requirement for ''answers to . . . identical reporting or recordkeeping requirements imposed on ten or more persons . . .'' 44 U.S.C. 3502(3)(A). Because the proposed FIP applies to just four facilities, the Paperwork Reduction Act does not apply. *See* 5 CFR 1320(c).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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 Office of Management and Budget (OMB) control number. The OMB control numbers for our regulations in 40 CFR are listed in 40 CFR part 9.

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 action on small entities, I certify that this proposed action will not have a significant economic impact on a substantial number of small entities. EPA's proposal adds additional controls to certain sources. None of these sources are owned by small entities, and therefore are not small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 9, 2000), requires 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.'' 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 rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. EPA interprets E.O. 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the E.O. has the potential to influence the regulation. This action is not subject to E.O. 13045 because it is not economically significant under Executive Order 12866 and because it implements specific standards established by Congress in statutes. However, to the extent this proposed rule will limit SO_2 emissions, the rule will have a beneficial effect on

children's health by reducing air pollution.

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

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994), establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

This proposed rule, if finalized, would improve local air quality by reducing SO_2 emissions in a part of the Detroit metropolitan area that includes a higher proportion of minority and low-income populations compared to the State or US averages. Socioeconomic indicators such as low income, unemployment rate and percentage of people of color [14] were all at levels at least two times that of the state-wide averages (in some cases two to five times higher), within one to six miles from facilities affected by this action (see EJScreen analyses provided in the docket for this action). These populations, as well as all affected populations in this area, will stand to benefit from the increased level of environmental protection with the implementation of this rule.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations.

Michael Regan,

Administrator.

For the reasons stated in the preamble, EPA proposes to amend 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. Section 52.1189 is added to read as follows:

§ 52.1189 Control strategy: Sulfur Dioxide (SO_2).

(a) The plan submitted by the State on May 31, 2016 to attain the 2010 1-hour primary sulfur dioxide (SO_2) national ambient air quality standard for the Detroit SO_2 nonattainment area does not meet the requirements of Clean Air Act (CAA) section 172 with respect to SO_2 emissions from the U.S. Steel (Ecorse and Zug Island), EES Coke, Cleveland-Cliffs Steel Corporation (formerly AK or Severstal Steel), and Dearborn Industrial Generation (DIG) facilities in the Detroit, Michigan area. These requirements for these four facilities are satisfied by 40 CFR 52.1189(b)–(e), respectively.

(b) This section addresses and satisfies CAA section 172 requirements for the Detroit SO_2 nonattainment area by specifying the necessary emission limits and other control measures applicable to the U.S. Steel (Ecorse and Zug Island) facility. This section applies to the owner and operator of the facility located at 1 Quality Drive and 1300 Zug Island Road in Detroit, Michigan.

(1) *SO_2 Emission Limits.*

(i) Beginning on the effective date of the FIP, no owner or operator shall emit SO_2 from the following units in excess of the following limits:

Unit	SO_2 emission limit (lbs/hr)
Boilerhouse 1 (all stacks combined)	55.00
Hot Strip Mill—Slab Reheat Furnace 1	0.31
Hot Strip Mill—Slab Reheat Furnace 2	0.31
Hot Strip Mill—Slab Reheat Furnace 3	0.31
Hot Strip Mill—Slab Reheat Furnace 4	0.31
Hot Strip Mill—Slab Reheat Furnace 5	0.31
No. 2 Baghouse	3.30
Main Plant Boiler No. 8	0.07
Main Plant Boiler No. 9	0.07
A1 Blast Furnace	0.00
B2 Blast Furnace	40.18
D4 Blast Furnace	40.18
A/B Blast Furnace Flares	60.19
D Furnace Flare	60.19

(ii) Beginning two years after the effective date of the FIP, no owner or operator shall emit SO_2 from Boilerhouse 2 in excess of the following limits:

(A) When Boilerhouse 2 is the only unit operating at the facility, an emission limit of 750.00 lbs/hr. When any unit identified in paragraph (b)(1)(i) of this section is operating in addition to Boilerhouse 2, an emission limit of 81.00 lbs/hr.

(2) *Stack Restrictions and Permit Requirements.*

(i) The owner or operator shall construct a combined stack for all Boilerhouse 2 emission points. The stack emission point must be at least 170 feet above ground level. The owner or operator shall submit a construction permit application for the stack to the State of Michigan within 90 days of the effective date of the FIP. Where any compliance obligation under this section requires any other state or local permits or approvals, the owner or operator shall submit timely and

[14] See *https://www.epa.gov/ejscreen/overview-demographic-indicators-ejscreen* for the definition of each demographic indicator.

complete applications and take all other actions necessary to obtain all such permits or approvals.

(ii) Beginning two years after the effective date of the FIP, no owner or operator shall emit SO_2 from Boilerhouse 2, except from the stack emission point at least 170 feet above ground level.

(3) *Monitoring Requirements.*

(i) Not later than two years after the effective date of the FIP, the owner or operator shall install and continuously operate an SO_2 continuous emission monitoring system (CEMS) to measure SO_2 emissions from Boilerhouse 2 in conformance with 40 CFR part 60 appendix F procedure 1.

(ii) The owner or operator shall determine SO_2 emissions from Boilerhouse 1, Hot Strip Mill Slab Reheat Furnaces 1–5, Main Plant Boiler No. 8, Main Plan Boiler No. 9, A1 Blast Furnace, B2 Blast Furnace, D4 Blast Furnace, A/B Blast Furnace Flares, and D Furnace Flare using mass balance calculations as described in paragraph (b)(4) of this section.

(iii) Within 180 days of the installation of the CEMS specified in paragraph (b)(3)(i), the owner or operator shall perform an initial compliance test for SO_2 emissions from Boilerhouse 2 while the boilerhouse is operating in accordance with requirements identified in either paragraph (b)(1)(i) or (b)(1)(ii), whichever is applicable during the period of testing. The initial compliance test shall be performed using EPA Test Method 6 at 40 CFR part 60 appendix A–4.

(4) *Compliance Assurance Plan.* To determine compliance with the limits in paragraph (b)(1)(i) of this section, the owner or operator shall calculate hourly SO_2 emissions using all raw material sulfur charged into each affected emission unit and assume 100 percent conversion of total sulfur to SO_2. The owner or operator shall implement a compliance assurance plan (CAP) for all units except Boilerhouse 2 and any idled units that shall specify the calculation methodology, procedures, and inputs used in these calculations and submit the plan to EPA within 30 days after the effective date of the FIP. The owner or operator must submit a list of idled units to EPA within 30 days of the effective date of the FIP. The owner or operator must submit a CAP for any idled units prior to resuming operations.

(5) *Recordkeeping.* The owner/operator shall maintain the following records continuously for five years beginning on the effective date of the FIP:

(i) All records of production for each affected emission unit.

(ii) All records of hourly emissions calculated in accordance with the CAP.

(iii) In accordance with paragraph (b)(3) of this section, all CEMS data, including the date, place, and time of sampling or measurement; parameters sampled or measured; and results.

(iv) Records of quality assurance and quality control activities for emission monitoring systems including, but not limited to, any records required by 40 CFR part 60 appendix F Procedure 1.

(v) Records of all major maintenance activities performed on emission units, air pollution control equipment, CEMS, and other production measurement devices.

(vi) Any other records required by the Quality Assurance Requirements for Gas Continuous Emission Monitoring Systems Used for Compliance Determination rule at 40 CFR part 60 appendix F Procedure 1 or the National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing Facilities rule at 40 CFR part 63 Subpart FFFFF.

(6) *Reporting.* Beginning on the effective date of the FIP, all reports under this section shall be submitted quarterly to Compliance Tracker, Air Enforcement and Compliance Assurance Branch, U.S. Environmental Protection Agency, Region 5, Mail Code AE–17J, 77 W Jackson Blvd., Chicago, IL 60604–3590.

(i) The owner or operator shall submit a CAP in accordance with paragraph (b)(4) of this section within 30 days of the effective date of the FIP.

(ii) The owner or operator shall report CEMS data and hourly mass balance calculations quarterly in accordance with CEMS requirements in paragraph (b)(3) of this section and the CAP requirements set forth in paragraph (b)(4) of this section no later than the 30th day following the end of each calendar quarter.

(iii) The owner or operator shall report the results of the initial compliance test for the Boilerhouse 2 stack within 60 days of conducting the test.

(iv) The owner or operator shall submit quarterly excess emissions reports for all units identified in paragraphs (b)(1)(i) and (ii) of this section no later than the 30th day following the end of each calendar quarter. Excess emissions means emissions that exceed the emission limits specified in paragraph (b)(1) of this section. The reports shall include the magnitude, date(s), and duration of each period of excess emissions, specific identification of each period of excess emissions that occurs during all periods of operation including startups, shutdowns, and malfunctions of the unit, the nature and cause of any malfunction (if known), and the corrective action taken or preventative measures adopted.

(v) The owner or operator of each unit shall submit quarterly CEMS performance reports, to include dates and duration of each period during which the CEMS was inoperative (except for zero and span adjustments and calibration checks), reason(s) why the CEMS was inoperative and steps taken to prevent recurrence, and any CEMS repairs or adjustments no later than the 30th day following the end of each calendar quarter.

(vi) The owner or operator shall also submit results of any CEMS performance tests required by 40 CFR part 60, appendix F, Procedure 1 (*e.g.,* Relative Accuracy Test Audits, Relative Accuracy Audits, and Cylinder Gas Audits) no later than 30 days after the test is performed.

(vii) When no excess emissions have occurred or the CEMS has not been inoperative, repaired, or adjusted during the reporting period, such information shall be stated in the quarterly reports required by paragraph (b)(6) of this section.(c) This section addresses and satisfies CAA section 172 requirements for the Detroit SO_2 nonattainment area by specifying the necessary emission limits and other control measures applicable to the EES Coke facility. This section applies to the owner and operator of the facility located at 1400 Zug Island Road in Detroit, Michigan.

(1) *SO_2 Emission Limits.* Beginning on the effective date of the FIP, no owner or operator shall emit SO_2 from the Underfire Combustion Stack EUCoke-Battery in excess of 544.6 lbs/hr, as a 3-hour average, or 2,071 tons per year, on a 12-month rolling basis as determined at the end of each calendar month, or 0.702 pounds per 1,000 standard cubic feet of coke oven gas, as a 1-hour average.

(2) *Monitoring requirements.* The owner or operator shall maintain and operate in a satisfactory manner a device to monitor and record the SO_2 emissions from the Underfire Combustion Stack EUCoke-Battery on a continuous basis. The owner or operator shall use Continuous Emission Rate Monitoring (CERM) data for determining compliance with the hourly limit in paragraph (c)(1) of this section. The owner or operator shall operate the CERM system in conformance with 40 CFR part 60 Appendix F.

(d) This section addresses and satisfies CAA section 172 requirements

for the Detroit SO_2 nonattainment area by specifying the necessary emission limits and other control measures applicable to the Cleveland-Cliffs Steel Corporation (formerly AK or Severstal Steel) facility. This section applies to the owner and operator of the facility located at 4001 Miller Road in Dearborn, Michigan.

(1) *SO_2 Emission Limits.* Beginning on the effective date of the FIP, no owner or operator shall emit SO_2 from the following units in excess of the following limits:

Unit	SO_2 emission limit	Time period/operating scenario
"B" Blast Furnace Baghouse Stack	71.9 lbs/hr	Calendar day average.
"B" Blast Furnace Stove Stack	38.75 lbs/hr	Calendar day average.
"B" Blast Furnace Baghouse and Stove Stacks (combined).	77.8 lbs/hr	Calendar day average.
"B" Blast Furnace Baghouse and Stove Stacks (combined).	340 tons per year	12-month rolling time period as determined at the end of each calendar month.
"C" Blast Furnace Baghouse Stack	179.65 lbs/hr	Calendar day average.
"C" Blast Furnace Stove Stack	193.6 lbs/hr	Calendar day average.
"C" Blast Furnace Baghouse and Stove Stacks (combined).	271.4 lbs/hr	Calendar day average.
"C" Blast Furnace Baghouse and Stove Stacks (combined).	1188 tons per year	12-month rolling time period as determined at the end of each calendar month.

(2) *Monitoring Requirements.* The owner or operator shall maintain and operate in a satisfactory manner a device to monitor and record the SO_2 emissions and flow from "B" Blast Furnace and "C" Blast Furnace Baghouse and Stove Stacks on a continuous basis. The owner or operator shall use CERM data for determining compliance with the hourly limits in paragraph (d)(1) of this section. The owner or operator shall operate the CERM system in conformance with 40 CFR part 60 Appendix F.

(e) This section addresses and satisfies CAA section 172 requirements for the Detroit SO_2 nonattainment area by specifying the necessary emission limits and other control measures applicable to the Dearborn Industrial Generation (DIG) facility. This section applies to the owner and operator of the facility located at 2400 Miller Road in Dearborn, Michigan.

(1) *SO_2 Emission Limits.*

(i) Beginning on the effective date of the FIP, no owner or operator shall emit SO_2 from the following units in excess of the following limits:

Unit	SO_2 emission limit	Time period/operating scenario
Boilers 1, 2, and 3 (combined)	420 lbs/hr	Daily average.
Boilers 1, 2, and 3 (combined)	1,839.6 tons per year	12-month rolling time period.
Boilers 1, 2, and 3 and Flares 1 and 2 (combined)	840 lbs/hr	Daily average.
Boilers 1, 2, and 3 and Flares 1 and 2 (combined)	2,947.7 tons per year	12-month rolling time period as determined at the end of each calendar month.

(2) *Monitoring Requirements.* The owner or operator shall maintain and operate in a satisfactory manner a device to monitor and record the SO_2 emissions from Boilers 1, 2, and 3 on a continuous basis. Installation and operation of each CEMS shall meet the timelines, requirements and reporting detailed in 40 CFR part 60 Appendix F. If the owner or operator chooses to use a Predictive Emissions Monitoring System (PEMS) in lieu of a CEMS to monitor SO_2 emissions, the permittee shall follow the protocol delineated in Performance Specification 16 in Appendix B of 40 CFR part 60.

[FR Doc. 2022–11269 Filed 5–31–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket Nos. 14–165, 20–36, 04–186 and GN Docket No. 12–268 ; FCC 22–6; FR ID 85914]

Unlicensed Operations in the Television Bands, Repurposed 600 MHz Band, 600 MHz Guard Bands and Duplex Gap, and Channel 37; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions; Unlicensed White Space Device Operations in the Television Bands; Unlicensed Operation in the TV Broadcast Bands

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission's proposes to seek comment on the database re-check interval that should apply to narrowband fixed and Mode II personal/portable white space devices and to mobile white space devices, which were first authorized by the Commission in 2020. In particular, the Commission seeks comment on whether these types of devices, which operate in the TV bands, should be subject to the hourly re-check interval the Commission requires for fixed and Mode II personal portable devices in the TV bands, the daily re-check interval to which these devices are currently subject, or some other re-check interval.

DATES: Comments are due on or before July 1, 2022 and reply comments are due on or before August 1, 2022.

ADDRESSES: You may submit comments, identified by ET Docket No. 14–165, GN Docket No. 12–268, ET Docket No. 20–36, or ET Docket No. 04–186 by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/.*

• *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

• U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554

• Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20–304 (March 19, 2020). *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy*

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

FOR FURTHER INFORMATION CONTACT: Hugh VanTuyl, Office of Engineering and Technology, at (202) 418–7506, *Hugh.VanTuyl@fcc.gov.* For information regarding the Paperwork Reduction Act (PRA) information requirements contained in this document, contact Cathy Williams, Office of Managing Director, at (202) 418–2918 or *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking (*FNPRM*), ET Docket No. 14–165, FCC 22–6, adopted on January 25, 2022 and released on January 26, 2022. The full text of this document is available for public inspection by downloading the text from the Commission's website at *https://www.fcc.gov/document/fcc-takes-action-unlicensed-white-space-device-database-issues.*

Comment Filing Procedures

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

Ex Parte Rules—Permit-But-Disclose

Pursuant to § 1.1200(a) of the Commission's rules, the proceeding this F*NPRM* initiates 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). In proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Paperwork Reduction Act. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

Synopsis

Introduction

The Commission has initiated this *FNPRM* to seek comment on the database re-check interval that should apply to narrowband fixed and Mode II personal/portable white space devices and to mobile white space devices, which were first authorized by the Commission in 2020. In particular, the Commission seeks comment on whether these types of devices, which operate in the TV bands, should be subject to the hourly re-check interval the Commission require for fixed and Mode II personal portable devices in the TV bands, the daily re-check interval to which these devices are currently subject, or some other re-check interval.

Background

When the Commission adopted the push notification rule in 2015, there were two classes of white space devices that had to contact a white space database to obtain a list of available channels—fixed and Mode II personal/portable devices. The Commission did not address narrowband or mobile white space devices.

The Commission established the rules for narrowband and mobile white space devices in 2020. Mobile devices, which operate within a bounded area at power levels comparable to fixed devices, are a new class of white space device. Narrowband devices are a subset of fixed or personal/portable devices, and are subject to technical rules which permit narrower channel bandwidths than other fixed and personal/portable devices. The Commission, consistent with the existing rules, required narrowband and mobile devices to comply with a once daily database check. Narrowband devices also would have had to comply with the push notification requirement if it had not been waived. The Commission did not address whether mobile devices are subject to the push notification rule. Thus, after careful consideration, and out of an abundance of caution, the Commission now seeks to build a record on whether the Commission should modify the database re-check requirements for these types of devices.

Discussion

Narrowband devices. In its recent *ex parte* submission, Microsoft argues that

requiring narrowband fixed white space devices used for IoT applications to comply with an hourly database re-check would negatively impact battery life, limit potential form factors, and increase the costs of those devices. It requests that the Commission maintain its existing requirement that narrowband fixed devices be required to check the white space database once a day to ensure capturing wireless microphone reservations rather than hourly. Microsoft states that this requirement would only apply to master narrowband devices because client devices would obtain available channel information from master devices that obtain information directly from a white space database, similar to the operation of other Mode I white space devices. Microsoft also requests that a narrowband fixed white space device be allowed to continue operating until 11:59 p.m. the following day if the device is unable to contact the database. Microsoft states that keeping the current requirement in place for these devices will particularly benefit precision agriculture applications such as by enabling farmers to obtain information about the conditions of their fields during a disaster when connectivity to the internet has been lost. However, NAB opposes Microsoft's requests, arguing that Microsoft has not shown that narrowband white space devices are less likely to cause harmful interference or that the use cases for narrowband devices will largely be confined to rural areas.

The Commission seeks comment on the database re-check interval that should be required for narrowband white space devices. Should the Commission retain the current requirement for a once daily database check and allow continued operation until 11:59 p.m. the following day if a device is temporarily unable to contact the database? Should the Commission instead require narrowband devices to comply with the same hourly re-check interval as other fixed and Mode II devices, or would another re-check interval be more appropriate? If the Commission allows a longer database re-check interval for narrowband devices than for other fixed and personal/portable devices, to which specific devices should it apply? Should it apply to both fixed and Mode II personal/portable narrowband devices? Should it apply to battery-powered devices only or to AC powered devices as well? Are there any other related database re-check rules that the Commission should modify for narrowband devices?

The Commission seeks comment on the impact of the database re-check interval on the protection of licensed wireless microphones. Microsoft argues that the existing technical rules for narrowband devices (low power, narrow bandwidth, limited transmission time, the requirement for three contiguous vacant channels) are sufficiently conservative to limit the likelihood of interference to wireless microphones. It states that because narrowband devices may operate only where there are three contiguous vacant TV channels, there will always be at least two TV channels available for immediate use by wireless microphones. It further states that the three contiguous channel requirement means there is a very low probability that narrowband devices will operate in more congested areas where wireless microphones used for electronic news gathering typically operate and that the key use case for narrowband white space devices is precision agriculture. Microsoft also notes that narrowband white space devices are limited to lower power than wideband fixed white space devices and to a 36 second per hour limit on channel occupancy. The Commission seeks comment on Microsoft's analysis and NAB's response in this regard. Are the existing rules regarding limited channel availability, low power, and low channel occupancy sufficient to protect licensed wireless microphones if the Commission retains the once daily database re-check as suggested by Microsoft? Are there other safeguards that could be put in place to ensure licensed wireless microphones are protected if the Commission leaves the existing rule in place? Would limiting a daily re-check to only certain narrowband devices, *e.g.,* battery powered devices, be a viable compromise to help improve the protection of wireless microphones? If so, how would such a delineation provide more protection than treating all narrowband white space devices in a consistent fashion? What effect would differing requirements for battery powered devices have on narrowband white space device design and cost?

Mobile devices. Mobile devices can be mounted on vehicles such as buses and farm equipment and may move around within a predetermined geo-fenced area within which the white space database has determined that one or more TV channels are available for the mobile device's use. The technical requirements for mobile devices are similar to those for fixed devices except narrowband, including maximum transmitter power, antenna gain and height limits and required separation distances from protected services, as well as the requirement to re-check the database at least once per day. Because of the technical similarities between fixed and mobile devices, the Commission believes that it would be appropriate to require mobile devices to comply with the same database re-check interval as fixed devices that operate in the TV bands to more effectively protect licensed wireless microphones. The Commission therefore proposes to require mobile devices to comply with the same hourly re-check interval the Commission is requiring for fixed devices in the TV bands. The Commission also proposes to require mobile devices to comply with the other requirements the Commission adopts for fixed devices (except narrowband) in the TV bands, specifically, the requirement to cease operation after two failed attempts to contact the white space database, *i.e.,* 120 minutes, and the requirement to adjust their use of TV channels in accordance with wireless microphone scheduling information provided by the white space database for the two hour period beginning when the device last contacted the database. The Commission also proposes that any modified rules would become effective six months after publication in the **Federal Register**.

The Commission seeks comment on these proposals. Should the Commission require mobile devices to comply with the same hourly re-check interval as fixed devices operating in the TV bands, or would a different interval be more appropriate? If so, what is the appropriate re-check interval? Is a more frequent re-check interval necessary to better protect licensed wireless microphones? Would it be difficult for mobile devices to contact the database at more frequent intervals since they could have their internet access temporarily blocked by trees or hills as they move? Would it be overly burdensome on white space database administrators to recalculate channel availability over a geo-fenced area on an hourly basis? Are any other rule changes necessary if the Commission changes the required re-check interval for mobile devices?

Digital Equity and Inclusion. Finally, the Commission, as part of its continuing effort to advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, the Commission

seeks comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well as the scope of the Commission's relevant legal authority.

Initial regulatory flexibility analysis. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in Unlicensed Operation in the Television Bands, Repurposed 600 MHz Band, 600 MHz Guard Bands and Duplex Gap, and Channel 37, Further Notice of Proposed Rule Making (*FNPRM*) in ET Docket No. 14–165. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM provided in paragraph 56 of the item. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the FNPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules

The *FNPRM* seeks comment on how frequently narrowband and mobile white space devices must contact a database that determines the available operating channels at the devices' location.

Legal Basis

The proposed action is taken pursuant to 4(i), 302, 303(b), (c), (e), (f), (r), and 307 of the Communications Act of 1934, as amended, and sections 6403 and 6407 of the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 126 Stat. 156, 47 U.S.C. 154(i), 302, 303(b), (c), (e), (f), (r), 307, 1452, 1454.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

Small Businesses, Small Organizations, Small Governmental Jurisdictions. Our actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 32.5 million businesses.

Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2018, there were approximately 571,709 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2017 Census of Governments indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 36,931 general purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, the Commission estimates that at least 48,971 entities fall into the category of ''small governmental jurisdictions.''

Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment. The SBA has established a small business size standard for this industry of 1,250 or fewer employees. U.S. Census Bureau data for 2012 show that 841 establishments operated in this industry in that year. Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees and 6 establishments operated with 2,500 or more employees. Based on this data, the Commission concludes that a majority of manufacturers in this industry are small.

Television Broadcasting. This Economic Census category ''comprises establishments primarily engaged in broadcasting images together with sound.'' These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: Those having $41.5 million or less in annual receipts. The 2012 Economic Census reports that 751 firms in this category operated in that year. Of that number, 656 had annual receipts of $25,000,000 or less, and 25 had annual receipts between $25,000,000 and $49,999,999. Based on this data the Commission therefore estimates that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

The Commission has estimated the number of licensed commercial television stations to be 1,368. According to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on November 16, 2017, 1,258 stations (or about 91 percent) had revenues of $38.5 million or less, and therefore these licensees qualified as small entities under the SBA definition. In addition, the Commission has estimated the number

of licensed noncommercial educational television stations to be 390. Notwithstanding, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities. There are also 2,246 low power television stations, including Class A stations (LPTV), and 3,543 TV translator stations. Given the nature of these services, the Commission will presume that all of these entities qualify as small entities under the above SBA small business size standard.

The Commission note, however, that in assessing whether a business concern qualifies as ''small'' under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of ''small business'' requires that an entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive. Also, as noted above, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and its estimates of small businesses to which they apply may be over-inclusive to this extent.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

White space devices are unlicensed devices that operate in the TV bands at locations where frequencies are not in use by licensed services. These devices may be either fixed or portable. To prevent harmful interference to broadcast television stations and other authorized users of these bands, white space devices must obtain a list of available TV channels that may be used at their location from databases administered by private entities selected by the Commission. The database determines channel availability using protection criteria specified in the rules. Most RF transmitting equipment, including white space devices, must be authorized through the certification procedure. Certification is an equipment authorization issued by a designated Telecommunication Certification Body (TCB) based on an application and test data submitted by the responsible party (e.g., the manufacturer or importer). The FNPRM does not propose to change the authorization procedure for white space devices, or the requirement for them to obtain a list of available channels from a database. It seeks comment on possible changes to the requirement on how frequently narrowband and mobile white space devices must contact a database that determines channel availability for white space devices. Current rules require these devices to re-check the database at least once daily, while the Commission has decided to require other white space devices to re-check the database once per hour.

Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

There are currently no approved narrowband or mobile white space devices, so changing the database re-check interval would have no immediate impact on device manufacturers. If manufacturers develop devices that comply with the current daily re-check interval and the Commission subsequently decreases the interval (*e.g.,* to once per hour), manufacturers would have to modify devices to comply. Because a device's database re-check interval would be programmed in software, such modifications would not be burdensome on manufacturers.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

Ordering Clauses

Accordingly, *it is ordered* that, pursuant to the authority contained in Sections 4(i), 302, 303(b), (c), (e), (f), (r), and 307 of the Communications Act of 1934, as amended, and sections 6403 and 6407 of the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 126 Stat. 156, 47 U.S.C. 154(i), 302, 303(b), (c), (e), (f), (r), 307, 1452, 1454, this Second Order on Reconsideration, Further Notice of Proposed Rulemaking, and *Order is hereby adopted.*

It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the Second Order on Reconsideration, Further Notice of Proposed Rulemaking, and Order, including the Initial Regulatory Flexibility Analysis and Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2022–11686 Filed 5–31–22; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 218

[RTID 0648–XC018]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the U.S. Navy Training and Testing Activities in the Hawaii-Southern California Training and Testing Study Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for revision of regulations and Letters of Authorization; request for comments and information.

SUMMARY: NMFS has received a request from the U.S. Navy (Navy) for revision of the existing regulations and Letters of Authorization (LOAs) authorizing the take of marine mammals incidental to Navy training and testing activities conducted in the Hawaii-Southern California Training and Testing (HSTT) Study Area. In 2021, two separate U.S. Navy vessels struck unidentified large whales on two separate occasions, one

whale in June 2021 and one whale in July 2021. NMFS and the Navy discussed the vessel strikes, and the Navy has reanalyzed the potential for vessel strike in the HSTT Study Area. As a result, the Navy has requested two additional takes of large whales by serious injury or mortality by vessel strike for the remainder of the current regulatory period. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of the Navy's application for the development and implementation of revised regulations governing this additional incidental taking of marine mammals. NMFS invites the public to provide information, suggestions, and comments on the Navy's application and request.

DATES: Comments and information must be received no later than July 1, 2022.

ADDRESSES: Comments on the application should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be submitted via email to *ITP.Davis@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Leah Davis, Office of Protected Resources, NMFS, (301) 427–8401. An electronic copy of the Navy's application may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed incidental harassment authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), finds that the taking will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such takings are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA defines ''take'' to mean to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

The National Defense Authorization Act (NDAA) for Fiscal Year 2004 (Pub. L. 108–136) amended section 101(a)(5) of the MMPA to remove the ''small numbers'' and ''specified geographical region'' provisions and amended the definition of ''harassment'' as applied to a ''military readiness activity'' to read as follows (Section 3(18)(B) of the MMPA): (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild (Level A Harassment); or (ii) Any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered (Level B Harassment). On August 13, 2018, the NDAA for Fiscal Year 2019 (Pub. L. 115–232) amended the MMPA to allow incidental take regulations for military readiness activities to be issued for up to seven years.

Summary of Request

On March 31, 2022, NMFS received an adequate and complete application (Navy's 2022 rulemaking/LOA application) from the Navy requesting that NMFS modify the existing regulations and LOAs to authorize two additional takes of large whales by serious injury or mortality by vessel strike over the remainder of the HSTT authorization period. The current HSTT regulations (50 CFR part 218, subpart H) and LOAs authorize the take of marine mammals from the Navy's training and testing activities in the HSTT Study Area through December 20, 2025. These regulations and LOAs authorize the take of three large whales by serious injury or mortality by vessel strike.

The Navy's 2022 request is based upon new information regarding U.S. Navy vessel strikes off the coast of southern California. As described in the Navy's 2022 rulemaking/LOA application, in 2021, two separate U.S. Navy vessels struck unidentified large whales off the coast of southern California on two separate occasions, one whale in June 2021 and one whale in July 2021. (Separately, a foreign naval vessel struck two fin whales off the coast of southern California in May 2021.)

The regulatory revision would be conducted through a proposed and final rulemaking analyzing the total proposed authorized take, including the requested additional takes of large whales by serious injury or mortality, consistent with the requirements of section 101(a)(5)(A) of the MMPA. The Navy's specified activities have not changed. Specifically, the activities include the same level and type of training and testing (all categorized as military readiness activities) including the same use of active acoustic sonar systems and other transducers, in-water detonations, air guns, construction activities involving pile removal and installation, and the operation of a fleet of vessels throughout the HSTT Study Area. These activities may result in the incidental take of marine mammals in the form of Level B harassment (behavioral disruption or temporary hearing impairment), Level A harassment (permanent hearing impairment or tissue damage), or serious injury or mortality in a very small number of cases.

Description of Activity

In the Navy's 2022 rulemaking/LOA application, the Navy proposes no changes to the specified activities covered by the 2020 HSTT final rule (85 FR 41780; July 10, 2020). The level of activity within and between years would be consistent with that previously analyzed in the 2020 HSTT final rule (85 FR 41780; July 10, 2020), and all activities would be conducted within the same boundaries of the HSTT

Study Area identified in the 2020 HSTT final rule (85 FR 41780; July 10, 2020). Therefore, the training and testing activities (*e.g.,* equipment and sources used, exercises conducted) are identical to those described and analyzed in the 2020 HSTT final rule (85 FR 41780; July 10, 2020), including the level of vessel use.

Given the new information regarding U.S. Navy vessel strikes of large whales off the coast of southern California, the Navy's 2022 rulemaking/LOA application includes a revised analysis of vessel strike in the HSTT Study Area and a request for two additional takes by serious injury or mortality for large whales from vessel strikes, beyond that authorized in the 2020 HSTT final rule (85 FR 41780; July 10, 2020).

Regarding the quantification of expected takes from acoustic and explosive sources (by Level A harassment and Level B harassment, as well as mortality resulting from exposure to explosives), the number of takes are based directly on the level of activities (days, hours, counts, *etc.,* of different activities and events) in a given year, and the Navy has not changed these take numbers in its 2022 rulemaking/LOA application.

The Navy has changed its policy regarding Lookouts to require the use of three Lookouts on Navy cruisers and destroyers (the only types of Navy vessels that have struck whales in the Pacific) while underway, as compared to the previous requirement of one Lookout when a vessel was underway and not engaged in sonar training or testing. The Navy has included this update in its 2022 application. Otherwise, the mitigation, monitoring, and reporting measures included in the Navy's rulemaking/LOA application are identical to those described and analyzed in the 2020 HSTT final rule (85 FR 41780; July 10, 2020). Please see Section 11.1 (*Standard Operating Procedures*) and Section 11.2 (*Mitigation Measures*) of the Navy's 2022 rulemaking/LOA application, respectively, for additional detail. Mitigation would continue to include procedural mitigation measures and mitigation areas. Procedural mitigation would continue to include, but not be limited to, the use of trained Lookouts to monitor for marine mammals in mitigation zones, requirements for Lookouts to immediately provide notification of sightings to the appropriate watch station, requirements for implementation of powerdown and shutdown mitigation measures (based on activity defined zones), pre- and post-monitoring requirements for explosive events, and measures to reduce the likelihood of vessel strikes. Chapter 5 of the 2018 HSTT Final Environmental Impact Statement/ Overseas Environmental Impact Statement (FEIS/OEIS) and the *Mitigation Measures* section of the 2018 HSTT final rule include detailed descriptions of mitigation measures for each specified activity in the HSTT Study Area. The Navy would also continue to implement mitigation measures within certain areas (Mitigation Areas) and/or at certain times to avoid or minimize potential impacts on marine mammals in areas and/or times where they are known to engage in biologically important behaviors (*i.e.,* for foraging, migration, reproduction), where the disruption of those behaviors would be more likely to result in population-level impacts. The *Mitigation Measures* section in the 2018 HSTT final rule includes detailed descriptions of geographic mitigation measures in the HSTT Study Area. Maps and tables of the mitigation areas can be found in Chapter 5 of the 2018 HSTT FEIS/OEIS.

The Navy would continue implementation of the robust Integrated Comprehensive Monitoring Program and Strategic Planning Process outlined in the current regulations at 50 CFR part 218, subpart H. The Navy's monitoring strategy, currently required by the existing regulations, is well-designed to work across Navy ranges to help better understand the impacts of the Navy's activities on marine mammals and their habitat by focusing on learning more about marine mammal occurrence in different areas and exposure to Navy stressors, marine mammal responses to different sound sources, and the consequences of those exposures and responses on marine mammal populations. Similarly, the revised regulations would include identical adaptive management provisions and reporting requirements as the existing regulations.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning the Navy's request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by the Navy, if appropriate.

Dated: May 24, 2022.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–11577 Filed 5–31–22; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 87, No. 105
Wednesday, June 1, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Notice of Public Meeting of the Assembly of the Administrative Conference of the United States

AGENCY: Administrative Conference of the United States (ACUS).

ACTION: Notice.

SUMMARY: The Assembly of the Administrative Conference of the United States will meet during a one-day hybrid plenary session to consider proposed recommendations and to conduct other business. Written comments may be submitted in advance, and the meeting will be accessible to the public.

DATES: The meeting will take place on Thursday, June 16, 2022, from 10:00 a.m.–5:00 p.m. The meeting may adjourn early if all business is finished.

ADDRESSES: The meeting will be conducted using a hybrid approach of virtual and in-person participation. Members of the ACUS Assembly and ACUS senior fellows, special counsel, and liaison representatives may participate virtually or in person at the George Washington University Law School, 2000 H Street NW, Washington, DC 20052. Members of the general public may only observe the plenary session by accessing a livestream at *https://www.acus.gov/meetings-and-events/plenary-meeting/77th-plenary-session.* A video recording of the meeting will also be available on that web page after the conclusion of the event. Any changes to the meeting format necessitated by federal and local health guidelines will be announced on the web page linked immediately above.

FOR FURTHER INFORMATION CONTACT: Shawne McGibbon, General Counsel (Designated Federal Officer), Administrative Conference of the United States, Suite 706 South, 1120 20th Street NW, Washington, DC 20036; Telephone 202–480–2080; email *smcgibbon@acus.gov.*

SUPPLEMENTARY INFORMATION: The Administrative Conference of the United States makes recommendations to federal agencies, the President, Congress, and the Judicial Conference of the United States regarding the improvement of administrative procedures (5 U.S.C. 594). The membership of the Conference, when meeting in plenary session, constitutes the Assembly of the Conference (5 U.S.C. 595). For further information about the Conference and its activities, please visit *www.acus.gov.*

Agenda: The Assembly will receive updates on past, current, and pending Conference initiatives; and, pending final action by the Conference's the Council, three proposed recommendations will be considered. Summaries of the recommendations appear below:

Automated Legal Guidance at Federal Agencies. This proposed recommendation identifies best practices for agencies to use when designing and updating automated tools, such as interactive chatbots and virtual assistants, to provide legal guidance to the public. It addresses factors agencies should consider in deciding whether to utilize automated legal guidance tools, how agencies that utilize those tools can ensure that the information they provide is accurate and current, and how agencies can ensure that recipients of such guidance understand its limitations and do not rely on it to their detriment.

Contractors in Rulemaking. This proposed recommendation identifies best practices for managing contractors that assist agencies in the rulemaking process. It recommends that agencies clearly delineate responsibility between contractors and agency staff, provide proper oversight of contractors, and ensure transparency in connection with the agency's contractual activities.

Improving Notice of Regulatory Changes. This proposed recommendation offers best practices for agencies to ensure that members of the public receive effective notice of regulatory changes, focusing especially on the needs of parties with limited resources to monitor agency actions. It recommends that agencies consider a variety of possible strategies for improving notice of regulatory changes, including designing agency websites to provide clear notice of regulatory changes, publicizing regulatory changes through social media and email lists, and providing direct notice of regulatory changes to those affected by them.

In addition to discussing and voting on the proposed recommendations mentioned above, the Assembly will also discuss two ongoing projects. The first is a study examining how nationwide injunctions and similar equitable remedies affect the administration of federal programs. The second is a project designed to produce a Statement of Principles that synthesizes the dozens of Conference recommendations that promote the public availability of administrative materials.

Additional information about the proposals and the agenda, as well as any changes or updates to the same, can be found at the 77th Plenary Session page on the Conference's website prior to the start of the meeting: *https://www.acus.gov/meetings-and-events/plenary-meeting/77th-plenary-session.*

Public Participation: The Conference welcomes the virtual attendance of the public at the meeting. A link to a livestream of the meeting will be posted the morning of the meeting at *https://www.acus.gov/meetings-and-events/plenary-meeting/77th-plenary-session.* A video recording of the meeting will also be available on that web page shortly after the conclusion of the event.

Written Comments: Persons who wish to comment on any of the proposed recommendations may do so by submitting a written statement either online by clicking ''Submit a comment'' on the 77th Plenary Session web page shown above or by mail addressed to: June 2022 Plenary Session Comments, Administrative Conference of the United States, Suite 706 South, 1120 20th Street NW, Washington, DC 20036. Written submissions must be received no later than 10:00 a.m. (EDT), Friday, June 10, 2022, to ensure consideration by the Assembly.

(Authority: 5 U.S.C. 595)

Dated: May 25, 2022.

Shawne McGibbon,

General Counsel.

[FR Doc. 2022–11698 Filed 5–31–22; 8:45 am]

BILLING CODE 6110–01–P

DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

Notice of Intent To Reinstate a Previously Approved Information Collection

AGENCY: National Institute of Food and Agriculture, USDA.

ACTION: Notice and request for comments.

SUMMARY: The National Institute of Food and Agriculture, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on the ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery'' for approval under the Paperwork Reduction Act (PRA). This collection was developed to create a vehicle for obtaining stakeholder feedback and was previously approved in 2017. The collection approval expired on June 30, 2020. This notice announces our intent to revise and re-submit this collection to Office of Management and Budget for approval and solicits comments on specific aspects for the proposed information collection.

DATES: Written comments on this notice must be received by August 1, 2022 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: You may submit comments through the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Robert Martin, 202–445–5388, *Robert.martin3@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title of Collection: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Control Number: 0524–0051.

Expiration Date of Current Approval: 06/30/2020.

Type of Request: Notice of intent to reinstate and revise a previously approved information collection. The burden for this collection remains unchanged.

NIFA is requesting approval to reinstate a previously approved, but expired, information collection.

Abstract: The National Institute of Food and Agriculture (NIFA), U.S. Department of Agriculture, oversees roughly $1.7 billion to fund research, education, and extension efforts in a wide range of scientific fields related to agricultural and behavioral sciences. NIFA achieves its mission through partnerships with Land-Grant Universities (LGU), non-profit organizations, private sector firms, and other government agencies. These partners, through research, education, and extension activities, help NIFA and USDA address highly complex and multidimensional challenges in food and agriculture. To ensure that our programs address the Nation's food and agricultural priorities, and our processes minimize burden without jeopardizing accountability, NIFA seeks OMB approval of a generic clearance to collect qualitative feedback on our service delivery. By qualitative feedback, we mean information that provides insights on perceptions and opinions but are not statistical surveys or quantitative results that can be generalized to the population of study.

This collection of information is necessary to enable NIFA, herein ''the Agency,'' to garner feedback from customers, stakeholders, and partners (herein ''stakeholders'') in an efficient and timely manner, and in accordance with our commitment to providing the highest quality service delivery.

The information collected from our stakeholders will help NIFA identify emerging and significant priorities in food and agriculture; refine NIFA's business processes; and promote inclusiveness and diversity to ensure that NIFA drives outcomes that meet the needs of all Americans.

Improving agency programs requires ongoing assessment of NIFA's programs and processes, by which we mean systematic review of the operation of a program compared to a set of explicit or implicit standards. NIFA will collect, analyze, and interpret information gathered through this generic clearance to identify strengths and weaknesses of current services and make improvements based on stakeholder feedback.

If this information is not collected, NIFA's ability to respond to stakeholders' needs and continuously improve programs and services will be greatly diminished.

The solicitation of feedback will target areas in: Strategic, portfolio, and programmatic planning; competitive and non-competitive awards processes; post-award management; information technology systems and websites; and, grants management training. Responses will inform efforts to improve or maintain the quality of service offered to the public.

The Agency will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Information gathered will be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency;
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual

behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Estimated Number of Respondents: 11,250.

Below we provide projected average estimates for the next three years:

Average Expected Annual Number of activities: 15.

Average number of Respondents per Activity: 750.

Annual responses: 11,250.

Frequency of Response: Once per request.

Average minutes per response: 30.

Burden hours: 5,625.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request to OMB for approval. All comments will become a matter of public record.

Obtaining a Copy of the Information Collection: A copy of the information collection and related instructions may be obtained free of charge by contacting Robert Martin as directed above.

Done at Washington, DC, this day of May 13, 2022.

Dionne Toombs,

Acting Director, National Institute of Food and Agriculture, U.S. Department of Agriculture.

[FR Doc. 2022–11747 Filed 5–31–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

[Docket No: RUS–22–ELECTRIC–0030]

Notice of Request for Extension of a Currently Approved Information Collection; Comments Requested

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed collection; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the United States Department of Agriculture's (USDA) Rural Utilities Service (RUS) invites comments on this information collection for which the Agency intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by August 1, 2022.

FOR FURTHER INFORMATION CONTACT: Lynn Gilbert, Regulatory Management Division, USDA Rural Development, 1400 Independence Ave. SW, Washington, DC 20250–1522. Email: *lynn.gilbert@usda.gov* Telephone: (202) 690–2682.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB as a extension to an existing collection. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments May Be Sent by the Federal eRulemaking Portal: Go to *https://www.regulations.gov* and, in the ''Search'' box, type in the Docket No. RUS–22–ELECTRIC–0030. A link to the Notice will appear. You may submit a comment here by selecting the ''Comment'' button or you can access the ''Docket'' tab, select the ''Notice,'' and go to the ''Browse & Comment on Documents'' Tab. Here you may view comments that have been submitted as well as submit a comment. Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''FAQ'' link at the bottom. Comments on this information collection must be received by August 1, 2022.

Title: 7 CFR Part 1728, Electric Standards and Specifications for Materials and Construction.

OMB Control Number: 0572–0131.

Type of Request: Extension of a currently approved collection.

Abstract: RUS provides loans and loan guarantees in accordance with the Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.,* as amended, (RE Act). Section 4 of the RE Act requires that the Agency make or guarantee a loan only if there is reasonable assurance that the loan, together with all outstanding loans and obligations of the Borrower, will be repaid in full within the time agreed. In order to facilitate the programmatic interests of the RE Act and, in order to assure that loans made or guaranteed by the Agency are adequately secure, RUS, as a secured lender, has established certain standards and specifications for materials, equipment, and the construction of electric systems. The use of standards and specifications for materials, equipment and construction units helps assure the Agency that: (1) Appropriate standards and specifications are maintained; (2) RUS loan security is not adversely affected, and; (3) Loan and loan guarantee funds are used effectively and for the intended purposes. The regulation, 7 CFR part 1728, establishes Agency policy that materials and equipment purchased by RUS Electric Borrowers or accepted as contractor-furnished material must conform to Agency standards and specifications where established and, if included in RUS Publication IP 202–1, ''List of Materials Acceptable for Use on Systems of Agency Electrification Borrowers'' (List of Materials), must be selected from that list or must have received technical acceptance from RUS.

Estimate of Burden: This collection of information is estimated to average 20 hours per response.

Respondents: Business or other for-profits.

Estimated Number of Respondents: 38.

Estimated Number of Responses per Respondent: 2.63.

Estimated Total Annual Burden on Respondents: 2,000 hours.

Copies of this information collection can be obtained from Lynn Gilbert, Regulatory Management Division, at (202) 690–2682.

All responses to this notice will be summarized and included in the request

for OMB approval. All comments will also become a matter of public record.

Christopher A. McLean,

Acting Administrator, Rural Utilities Service.

[FR Doc. 2022–11767 Filed 5–31–22; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

[Docket No. RUS–22–Electric–0029]

Notice of Request for Extension of a Currently Approved Information Collection; Comments Requested

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed collection; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the United States Department of Agriculture's (USDA) Rural Utilities Service (RUS) invites comments on this information collection for which the Agency intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by August 1, 2022.

FOR FURTHER INFORMATION CONTACT: Lynn Gilbert, Regulations Management Division, USDA Rural Development, 1400 Independence Ave. SW, Washington, DC 20250–1522. Email: *lynn.gilbert@usda.gov.* Telephone: (202) 690–2682.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB as an extension to an existing collection. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent by the Federal eRulemaking Portal: Go to *https://www.regulations.gov* and, in the ''Search'' box, type in the Docket No. RUS–22–ELECTRIC–0029. A link to the Notice will appear. You may submit a comment here by selecting the ''Comment'' button or you can access the ''Docket'' tab, select the ''Notice,'' and go to the ''Browse & Comment on Documents'' Tab. Here you may view comments that have been submitted as well as submit a comment. Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''FAQ'' link at the bottom. Comments on this information collection must be received by August 1, 2022.

Title: 7 CFR Part 1786, Prepayment of Rural Utilities Service Guaranteed and Insured Loans to Electric and Telephone Borrowers.

OMB Control Number: 0572–0088.

Type of Request: Extension of a currently approved collection.

Abstract: The Rural Utilities Service relies on the information provided by the borrowers in their financial statements to make lending decisions as to borrowers' credit worthiness and to assure that loan funds are approved, advanced and disbursed for proper RE Act purposes. These financial statements are audited by a certified public accountant to provide independent assurance that the data being reported are properly measured and fairly presented.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2.00 hours per response.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 38.

Estimated Number of Responses per Respondent: 1.00.

Estimated Total Annual Burden on Respondents: 76 hours.

Copies of this information collection can be obtained from Lynn Gilbert, Regulations Management Division, at (202) 690–2682.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Christopher A. McLean,

Acting Administrator, Rural Utilities Service.

[FR Doc. 2022–11768 Filed 5–31–22; 8:45 am]

BILLING CODE 3410–15–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of a Public Meeting of the Maine Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of a public meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that the Maine Advisory Committee to the Commission will hold a virtual meeting for project planning on Wednesday, June 22, 2022, at 12:00 p.m. (ET).

DATES: Wednesday, June 22, 2022, at 12:00 p.m. (ET).

ADDRESSES:

Public Web Conference Link (video and audio): https://tinyurl.com/36rwc9st; Password, if needed: USCCR.

If Joining by Phone Only, Dial: 1–551–285–1373; Meeting ID: 161 688 4474#.

FOR FURTHER INFORMATION CONTACT: Liliana Schiller, DFO, at *lschiller@usccr.gov* or (202) 770–1856.

SUPPLEMENTARY INFORMATION: These meeting is available to the public through the WebEx link above. If joining only via phone, callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Individuals who are deaf, deafblind and hard of hearing. may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the call-in number found through registering at the web link provided for this meeting.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be emailed to Liliana Schiller at *lschiller@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (202) 539–8246. Records and documents discussed during the meeting will be available for public viewing as they become available at *www.facadatabase.gov.* Persons

interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Regional Programs Unit at the above phone number or email address.

Agenda

June 22, 2022, at 12 p.m. ET

I. Roll Call
II. Project Planning
III. Public Comment
IV. Adjournment

Dated: May 25, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–11692 Filed 5–31–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Puerto Rico Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the Puerto Rico Advisory Committee to the Commission will convene by virtual web conference on Wednesday, June 29, 2022, at 1:00 p.m. (AT). The purpose is to for project planning.

DATES: June 29, 2022, Wednesday, at 1:00 p.m. (AT):

- *To join by web conference, use Zoom link: https://tinyurl.com/2p8mwcpz;* password, if needed: USCCR–PR.
- *To join by phone only, dial:* 1–551–285–1373; Meeting ID: 161 203 2453#.

FOR FURTHER INFORMATION CONTACT: Victoria Moreno at *vmoreno@usccr.gov* or by phone at 434–515–0204.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the WebEx link above. If joining only via phone, callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the call-in number found through registering at the web link provided above for the meeting.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the respective meeting. Written comments may be emailed to Victoria Moreno at *vmoreno@usccr.gov.* All written comments received will be available to the public.

Persons who desire additional information may contact the Regional Programs Unit at (202) 809–9618. Records and documents discussed during the meeting will be available for public viewing as they become available at the *www.facadatabase.gov.* Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Regional Programs Unit at the above phone number or email address.

Agenda

Wednesday, June 29, 2022; 1:00 p.m. (AT)

1. Welcome & Roll Call
2. Committee Discussion and Project Planning
3. Next Steps
4. Public Comment
5. Other Business
6. Adjourn

Dated: May 25, 2022

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–11690 Filed 5–31–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the South Carolina Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the South Carolina Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a briefing via WebEx at 1:30 p.m. ET on Thursday, June 9, 2022, for the purpose of hearing testimony on Civil Asset Forfeiture in South Carolina.

DATES: The briefing will take place on Thursday, June 9, 2022, at 1:30 p.m. ET.

ADDRESSES:

- *To join the meeting, please click the following link: https://tinyurl.com/ysacxa54*
- *To join by phone only, dial:* 1 (800) 360–9505; Access code: 2761 254 9212

FOR FURTHER INFORMATION CONTACT: Barbara Delaviez, DFO, at *ero@usccr.gov* or (202) 376–8473.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the meeting link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Individuals who are deaf, deafblind, and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1 (800) 877–8339 and providing the Service with the conference details found through registering at the web link above. To request additional accommodations, please email *ero@usccr.gov* at least ten (10) days prior to the meeting.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Sarah Villanueva at *svillanueva@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (310) 464–7102.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, South Carolina Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at the above email or street address.

Agenda

I. Welcome and Roll Call
II. Speaker: Sheriff Leon Lott
III. Committee Questions
IV. Next Steps
V. Public Comment
VI. Adjournment

Dated: May 25, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–11693 Filed 5–31–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Georgia Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Georgia Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold business meetings via web conference on Monday, June 13, 2022, at 1:00 p.m. Eastern time and Thursday, July 28, 2022, at 1:00 p.m. Eastern Time for the purpose of discussing findings and recommendations from panels I–IV on Civil Asset Forfeiture and its Impact on Communities of Color in Georgia.

DATES: The meetings will take place on the following dates and times:

- Monday, June 13, 2022, at 1:00 p.m. Eastern time
- Thursday, July 28, 2022, at 1:00 p.m. Eastern time

ADDRESSES:

Online Registration (Audio/Visual)

- Monday, June 13, 2022: *https://tinyurl.com/yckuurm5*
  - TELEPHONE (Audio Only): Dial 551–285–1373 USA Toll Free; Meeting ID: 161 628 2620
- Thursday, July 28, 2022: *https://tinyurl.com/5n8pxcxu*
  - TELEPHONE (Audio Only): Dial 551–285–1373 USA Toll Free; Meeting ID: 160 976 2068

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 202–618–4158.

SUPPLEMENTARY INFORMATION: Members of the public can listen to these discussions. Committee meetings are available to the public through the above call-in number. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Individuals who are deaf, deafblind and hard of hearing may follow the proceedings by first calling the Federal Relay Service at 800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Sarah Villanueva at *svillanueva@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at 202–618–4158.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Georgia Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda:

I. Welcome and Roll Call
II. Approval of Minutes
III. Announcements and Updates
IV. Discussion: Civil Asset Forfeiture in Georgia
V. Next Steps
VI. Public Comment
VII. Adjournment

Dated: May 25, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–11696 Filed 5–31–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–52–2022]

Approval of Subzone Status, Coreworks Heat Exchangers, LLC, Waller, Texas

On April 5, 2022, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the Port of Houston Authority, grantee of FTZ 84, requesting subzone status subject to the existing activation limit of FTZ 84, on behalf of Coreworks Heat Exchangers, LLC, in Waller, Texas.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (87 FR 21092, April 11, 2022). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval.

Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR Sec. 400.36(f)), the application to establish Subzone 84AG was approved on May 26, 2022, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 84's 2,000-acre activation limit.

Dated: May 26, 2022.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2022–11765 Filed 5–31–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–887]

Carbon and Alloy Steel Cut-to-Length Plate From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2020–2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty order on carbon and alloy steel cut-to-length plate from the Republic of Korea. The period of review (POR) is May 1, 2020, through April 30, 2021. The review covers one producer/exporter of the subject merchandise, POSCO, POSCO International Corporation and its affiliated companies (collectively, the POSCO single entity). We preliminarily determine that sales of subject merchandise by the POSCO single entity were made at prices below normal value (NV). Interested parties are invited to comment on these preliminary results.

DATES: Applicable June 1, 2022.

FOR FURTHER INFORMATION CONTACT: William Horn or Jaron Moore, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4868 or (202) 482–3640, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 6, 2021, based on timely requests for review, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review on certain carbon

and alloy steel cut-to-length plate from the Republic of Korea produced or exported by POSCO.[1]

On January 11, 2022, we extended the preliminary results of this review to no later than May 25, 2022.[2] For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[3]

Scope of the Order

The merchandise subject to the *Order*[4] is carbon and alloy steel cut-to-length plate. The product is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7225.40.1110, 7225.40.1180, 7225.40.3005, 7225.40.3050, 7226.20.0000, and 7226.91.5000.

The products subject to the *Order* may also enter under the following HTSUS subheadings: 7208.40.6060, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.19.1500, 7211.19.2000, 7211.19.4500, 7211.19.6000, 7211.19.7590, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.10.000, 7214.30.0010, 7214.30.0080, 7214.91.0015, 7214.91.0060, 7214.91.0090, 7225.11.0000, 7225.19.0000, 7225.40.5110, 7225.40.5130, 7225.40.5160, 7225.40.7000, 7225.99.0010, 7225.99.0090, 7206.11.1000, 7226.11.9060, 7229.19.1000, 7226.19.9000, 7226.91.0500, 7226.91.1530, 7226.91.1560, 7226.91.2530, 7226.91.2560, 7226.91.7000, 7226.91.8000, and 7226.99.0180. The HTSUS subheadings are provided for convenience and customs purposes only; the written product description of the scope of the *Order* is dispositive.

For a complete description of the merchandise subject to the *Order, see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) and (2) of the Tariff Act of 1930, as amended (the Act). Export price and constructed export price are calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed at *https://access.trade.gov/public/FRNoticesListLayout.aspx.* A list of the topics discussed in the Preliminary Decision Memorandum is attached as an Appendix to this notice.

Preliminary Results of the Review

As a result of our analysis of the record information, we preliminarily determine a weighted-average dumping margin of 2.80 percent for the POSCO single entity[5] for the period May 1, 2020, through April 30, 2021.[6] Therefore, Commerce preliminarily determines that the POSCO single entity made sales of subject merchandise at prices below NV.

Disclosure and Public Comment

Commerce intends to disclose the calculations performed in connection with these preliminary results to interested parties with an Administrative Protective Order within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance. Interested parties may submit case briefs to Commerce no later than 30 days after the date of publication of this notice.[7] Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than seven days after the date for filing case briefs.[8] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

All submissions to Commerce must be filed electronically using ACCESS and must also be served on interested parties.[9] An electronically filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Time on the date that the document is due. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[10]

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance within 30 days of publication of this notice.[11] Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Final Results of Review

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), Commerce intends to issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice.[12]

[1] *See Initiation of Antidumping and Countervailing Duty Administration Reviews,* 86 FR 35481 (July 6, 2021) (*Initiation Notice*).

[2] *See* Memorandum, ''Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Extension of Deadline for the Preliminary Results of the 2020–2021 Antidumping Duty Administrative Review,'' dated January 11, 2022.

[3] *See* Memorandum, ''Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Certain Carbon and Alloy Steel Cut-To-Length Plate from the Republic of Korea,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Certain Carbon and Alloy Steel Cut-to-Length Plate from Austria, Belgium, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, and Taiwan: Amended Final Affirmative Antidumping Determinations for France, the Federal Republic of Germany, the Republic of Korea and Taiwan, and Antidumping Duty Orders,* 82 FR 24096 (May 25, 2017) (*Order*).

[5] Commerce continues to find that POSCO, POSCO International Corporation, POSCO SPS, and certain distributors and service centers (Taechang Steel Co., Ltd. and Winsteel Co., Ltd.) are affiliated pursuant to section 771(33)(E) of the Act, and further that these companies should be treated as a single entity (collectively, the POSCO single entity) pursuant to 19 CFR 351.401(f). *See* Preliminary Decision Memorandum.

[6] *See* Preliminary Decision Memorandum.

[7] *See* 19 CFR 351.309(c)(1)(ii).

[8] *See* 19 CFR 351.309(d); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020); and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020) (collectively, *Temporary Rule*).

[9] *See* 19 CFR 351.303(b) and 19 CFR 351.303(f).

[10] *See Temporary Rule.*

[11] *See* 19 CFR 351.310(c).

[12] *See* section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b)(1), Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this administrative review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Commerce will calculate importer-specific antidumping duty assessment rates when a respondent's weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.5 percent). Pursuant to 19 CFR 351.212(b)(1), where the respondent reported the entered value of its U.S. sales, we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to each importer to the total entered value of those sales. Where the respondent did not report entered value, we will calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for the examined sales to each importer to the total quantity of those sales, in accordance with 19 CFR 351.212(b)(1).[13] We will also calculate an estimated *ad valorem* importer-specific assessment rate with which to assess whether the per-unit assessment rate is *de minimis.* We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific *ad valorem* assessment rate calculated in the final results of this review is not zero or *de minimis.* Where either the respondent's *ad valorem* weighted-average dumping margin is zero or *de minimis,* or an importer-specific *ad valorem* assessment rate is zero or *de minimis,*[14] we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Commerce's ''reseller policy'' will apply to entries of subject merchandise during the POR produced by the POSCO single entity for which the POSCO single entity did not know that the merchandise it sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[15]

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the POSCO single entity will be equal to the weighted-average dumping margin established in the final results of this review, except if the rate is *de minimis* within the meaning of 19 CFR 351.106(c)(1) (*i.e.,* less than 0.50 percent), in which case the cash deposit rate will be zero; (2) for merchandise exported by a company not covered in this review but covered in a prior completed segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently-completed segment; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the producer is, the cash deposit rate will be the rate established for the most recently-completed segment for the producer of the merchandise; and (4) the cash deposit rate for all other producers and exporters will continue to be 7.10 percent, the all-others rate established in the less-than-fair-value investigation.[16]

These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: May 25, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2022–11766 Filed 5–31–22; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (Sunset) Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with the Tariff Act of 1930, as amended (the Act), the Department of Commerce (Commerce) is automatically initiating the five-year reviews (Sunset Reviews) of the antidumping and countervailing duty (AD/CVD) order(s) and suspended investigation(s) listed below. The International Trade Commission (the ITC) is publishing concurrently with this notice its notice of *Institution of Five-Year Reviews* which covers the same order(s) and suspended investigation(s).

DATES: Applicable June 1, 2022.

FOR FURTHER INFORMATION CONTACT: Commerce official identified in the *Initiation of Review* section below at AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230. For information from the ITC, contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

Commerce's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (Sunset) Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR

[13] In these preliminary results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

[14] *See* 19 CFR 351.106(c)(2).

[15] For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[16] *See Order.*

62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to Commerce's conduct of Sunset Reviews is set forth in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

Initiation of Review

In accordance with section 751(c) of the Act and 19 CFR 351.218(c), we are initiating the Sunset Reviews of the following antidumping and countervailing duty order(s) and suspended investigation(s):

DOC case No.	ITC case No.	Country	Product	Commerce contact
A–588–815	731–TA–461	Japan	Cement and Cement Clinker (5th Review)	Thomas Martin (202) 482–3936.
A–588–876	731–TA–1338	Japan	Steel Concrete Reinforcing Bar (1st Review)	Jacky Arrowsmith (202) 482–5255.
A–583–859	731–TA–1339	Taiwan	Steel Concrete Reinforcing Bar (1st Review)	Jacky Arrowsmith (202) 482–5255.
A–489–829	731–TA–1340	Turkey	Steel Concrete Reinforcing Bar (1st Review)	Jacky Arrowsmith (202) 482–5255.
C–489–830	701–TA–564	Turkey	Steel Concrete Reinforcing Bar (1st Review)	Jacky Arrowsmith (202) 482–5255.

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Commerce's regulations, Commerce's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on Commerce's website at the following address: *https://enforcement.trade.gov/sunset/.* All submissions in these Sunset Reviews must be filed in accordance with Commerce's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), can be found at 19 CFR 351.303.

In accordance with section 782(b) of the Act, any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information. Parties must use the certification formats provided in 19 CFR 351.303(g). Commerce intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

Letters of Appearance and Administrative Protective Orders

Pursuant to 19 CFR 351.103(d), Commerce will maintain and make available a public service list for these proceedings. Parties wishing to participate in any of these five-year reviews must file letters of appearance as discussed at 19 CFR 351.103(d). To facilitate the timely preparation of the public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry of appearance within 10 days of the publication of the Notice of Initiation. Because deadlines in Sunset Reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order (APO) to file an APO application immediately following publication in the **Federal Register** of this notice of initiation. Commerce's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[1]

Information Required From Interested Parties

Domestic interested parties, as defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with Commerce's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, Commerce will automatically revoke the order without further review.[2]

If we receive an order-specific notice of intent to participate from a domestic interested party, Commerce's regulations provide that *all parties* wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that Commerce's information requirements are distinct from the ITC 's information requirements. Consult Commerce's regulations for information regarding Commerce's conduct of Sunset Reviews. Consult Commerce's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at Commerce.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: May 9, 2022.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2022–11764 Filed 5–31–22; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[2] *See* 19 CFR 351.218(d)(1)(iii).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID: 0648–XB900]

Notice of Intent To Prepare a Programmatic Environmental Impact Statement for Identification of Aquaculture Opportunity Areas in Federal Waters of the Gulf of Mexico and To Conduct Public Scoping Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of intent to prepare a programmatic environmental impact statement and conduct public scoping meetings.

SUMMARY: In compliance with Section 7 of Executive Order 13921, ''Promoting American Seafood Competitiveness and

Economic Growth'' NMFS intends to prepare a programmatic environmental impact statement (PEIS) to evaluate alternatives for identifying Aquaculture Opportunity Areas (AOAs) in Federal waters of the Gulf of Mexico. The PEIS will be prepared in accordance with the requirements of the National Environmental Policy Act (NEPA), the regulations published by the Council on Environmental Quality, and NOAA's NEPA implementing procedures, NOAA Administrative Order 216–6A and its Companion Manual. Input from stakeholders and the public is essential to identifying AOAs; and this notice initiates the public scoping process for the PEIS, which includes a 60-day public comment period. The intent of this PEIS is to support long-term planning for offshore aquaculture by analyzing potential locations for one or more offshore AOAs in the Gulf of Mexico and the types of impacts that could be associated with future proposed aquaculture projects in those locations. Comments that are provided prior to the close of the comment period and clearly articulate opinions or concerns will provide the greatest assistance to NMFS in the preparation of the PEIS.

DATES: The 60-day public scoping period begins Wednesday, June 1, 2022, and will continue until August 1, 2022. NMFS will consider all written comments received by August 1, 2022.

Three virtual public scoping meetings will be held on:

- Wednesday, June 8, 2022, 6:30 p.m.–8:30 p.m. CDT/7:30 p.m.–9:30 p.m. EDT
- Thursday, June 16, 2022, 5:30 p.m.–7:30 p.m. CDT/6:30 p.m.–8:30 p.m. EDT
- Tuesday, July 12, 2022, 6:30 p.m.–8:30 p.m. CDT/7:30 p.m.–9:30 p.m. EDT

ADDRESSES: You may submit written comments on this PEIS identified by ''NOAA–NMFS–2022–0044'' by any of the following methods:

Electronic submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to: *http://www.regulations.gov* and enter ''NOAA–NMFS–2022–0044'' in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Mail: Submit written comments by mail to Andrew Richard, Regional Aquaculture Coordinator, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701. Please include ''Gulf AOA PEIS'' on the envelope.

Instructions: Oral comments will be accepted during the three virtual public scoping meetings described under **DATES**. Information on how to join these meetings can be found at: *https://www.fisheries.noaa.gov/news/gulf-mexico-aquaculture-opportunity-area-programmatic-environmental-impact-statement.* Comments sent or provided by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and may be posted for public viewing on *http://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Andrew Richard, Southeast Regional Aquaculture Coordinator, telephone: (727) 551–5709; or email: *nmfs.ser.aquaculture@noaa.gov.*

Individuals who use telecommunication devices for the deaf may call the Federal Information Relay Service at 800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for the Proposed Action

NMFS proposes to consider identifying one or more locations, referred to as Aquaculture Opportunity Areas or AOAs, that may be suitable for multiple future offshore aquaculture projects in Federal waters in the Gulf of Mexico, and to evaluate the general impacts of siting aquaculture in those locations, which could occur through future proposals and project level review. AOAs identified through this process would be considered suitable for finfish, shellfish, macroalgae or multi-species aquaculture. The proposed action is a long-term planning effort. It is not a regulatory or permitting action and does not propose to authorize or permit any specific aquaculture-related activities or individual aquaculture projects.

An AOA is a defined geographic area that has been evaluated to determine its potential suitability for commercial aquaculture. NMFS will use a combination of scientific analysis and public engagement to identify AOAs that may be environmentally, socially, and economically suitable for commercial aquaculture. AOAs may only be identified by NMFS after completion of a final programmatic environmental impact statement and issuance of a Record of Decision (ROD). Should NMFS ultimately select an alternative that identifies one or more AOAs, the ROD will serve as the agency's decision document.

On May 7, 2020, the White House issued an Executive Order on Promoting American Seafood Competitiveness and Economic Growth (E.O. 13921), which requires the Secretary of Commerce to identify geographic areas containing locations suitable for commercial aquaculture. The purpose of the proposed action is to apply a science-based approach to identify AOAs in Federal waters of the Gulf of Mexico. The goal of identifying AOAs is to promote American seafood competitiveness, food security, economic growth, and support the facilitation of the development of domestic commercial aquaculture, consistent with sustaining and conserving marine resources and applicable laws, regulations and policies.

The proposed action is needed to meet the directives of E.O. 13921 to address the increasing demand for seafood; facilitate long-term planning for marine aquaculture development; and address interests and concerns regarding offshore marine aquaculture siting.

Background Information

E.O. 13921 instructs NOAA to lead a multi-agency, public planning effort to identify 10 AOAs over the course of 7 years. In order to select the first two geographic regions in which AOAs would be identified, NMFS, on behalf of NOAA, took into consideration existing aquaculture industry interest; existing foundational work (siting analyses and environmental reviews) that could support AOA development; the maturity of the existing interagency communication and collaboration structure; and the history of engagement with stakeholders on aquaculture in regions throughout the United States. As a result of these considerations, NMFS selected Federal waters off the coast of southern California and Federal waters in the Gulf of Mexico as the first two geographic regions in which to identify AOAs.

The National Centers for Coastal Ocean Science initiated a marine spatial planning process to assist agency decision makers in identifying areas that may be suitable for locating AOAs as mandated by E.O. 13921. This process was based on spatial suitability

modeling that included data layers relevant to administrative boundaries, national security (*i.e.,* military), navigation and transportation, energy and industry infrastructure, commercial and recreational fishing, natural and cultural resources, and oceanography (*i.e.,* non-living resources). This spatial modeling approach was specific to the planning goal of identifying discrete areas that are 500–2,000 acres (202–809 hectares) that met the industry and engineering requirements of depth and distance from shore and that may be suitable for all types of aquaculture development including the cultivation of finfish, macroalgae, shellfish, or a combination of species.

This work resulted in an ''Aquaculture Opportunity Atlas for the U.S. Gulf of Mexico'' (Riley, K.L., Wickliffe, L.C., Jossart, J.A., MacKay, J.K., Randall, A.L., Bath, G.E., Balling, M.B., Jensen, B.M., and Morris, J.A. Jr. 2021. An Aquaculture Opportunity Area Atlas for the U.S. Gulf of Mexico. NOAA Technical Memorandum NOS NCCOS 299. Beaufort, NC. 545 pp. *https://doi.org/10.25923/8cb3-3r66*), which is referred to herein as the Atlas and is available online at *https://repository.library.noaa.gov/view/noaa/33304.*

The Atlas used a precision-siting, scoring, and ranking process to narrow the suitability analysis results to nine, 500–2,000-acre (202–809 hectares) ''AOA options'' that have high potential suitability for an AOA in the Gulf of Mexico: Three off the coast of Texas, three off the coast of Louisiana, and three off the west coast of Florida, depicted in Figure 3.30 on pages vii and 133 of the Atlas. The Atlas includes peer-reviewed technical information that may be used to assist agency decision makers in identifying areas that may be suitable for locating AOAs. The Atlas does not reflect any agency decision to identify specific AOAs or foreclose the agency's ability to evaluate alternate locations for consideration as AOAs.

The Atlas is a technical document providing geospatial analysis information that will be used as one source of information to assist the agency in identifying one or more AOAs within Federal waters of the Gulf of Mexico. The draft and final PEIS will assess the environmental impacts related to the potential siting of aquaculture facilities in potential AOA locations in Federal waters in the Gulf of Mexico, as informed by the Atlas and other relevant sources of information. AOAs may only be identified by NMFS after completion of a final PEIS and issuance of a ROD. Should NMFS ultimately select an alternative that identifies one or more AOAs, the ROD will serve as the agency's decision document.

Preliminary Description of Proposed Action and Alternatives

NMFS proposes to consider identifying one or more locations, referred to as Aquaculture Opportunity Areas or AOAs, that may be suitable for multiple future offshore aquaculture projects in Federal waters in the Gulf of Mexico, and to evaluate the general impacts of siting aquaculture in those locations, which could occur through future proposals and project level review. The nine locations identified as ''AOA options'' in the Atlas may be considered in the draft PEIS, in addition to the no action alternative. NMFS will determine the number and scope of alternatives explored and select the locations to be evaluated in the draft PEIS based on the comments received during this public scoping period. NMFS is also considering the suitability of evaluating alternatives that would focus on specific aquaculture types (*e.g.,* finfish, shellfish, macroalgae or multi-species), specific species that could be cultivated, or gears that could be used in the nine ''AOA options'' identified in the Atlas, depending upon input from the public.

This effort to identify AOAs in the Gulf of Mexico will be focused exclusively on Federal waters. Future efforts to identify AOAs may consider locations in State waters if there is interest and support from a State.

Three of the nine ''AOA options'' are located off the coast of Texas and are referred to as W–1, W–4 and W–8. Location W–1 is depicted as a polygon in Figure 3.31 on page 141 of the Atlas, is 2,000 acres (809 hectares), and is situated approximately 35 nmi (65 km) east of the Port Mansfield Channel, Texas. Location W–4 is depicted as a polygon in Figure 3.43 on page 158 of the Atlas, is 2,000 acres (809 hectares), and is situated approximately 50 nmi (91.5 km) southeast of Port Aransas, Texas. Location W–8 is depicted as a polygon in Figure 3.55 on page 175 of the Atlas, is 500 acres (202 hectares), and is situated approximately 58 nmi (107.4 km) southeast of Freeport, Texas.

Three of the nine ''AOA options'' in the Atlas are located off the coast of Louisiana and are referred to as C–3, C–11 and C–13. Location C–3 is depicted as a polygon in Figure 3.67 on page 194 of the Atlas, is 2,000 acres (809 hectares), and is situated approximately 72 nmi (133.4 km) from Pecan Island (Morgan City, Louisiana, is the closest town with significant infrastructure). Location C–11 is depicted as a polygon in Figure 3.79 on page 211 of the Atlas, is 2,000 acres (809 hectares), and is situated approximately 41 nmi (76.7 km) south of Port Fourchon, Louisiana. Location C–13 is depicted as a polygon in Figure 3.91 on page 228 of the Atlas, is 500 acres (202 hectares), and is situated approximately 5 nmi (9.6 km) south of the inlet to South Pass, Louisiana.

Three of the nine ''AOA options'' in the Atlas are located off the west coast of Florida and are referred to as E–1, E–3 and E–4. Location E–1 is depicted as a polygon in Figure 3.128 on page 281 of the Atlas, is 500 acres (202 hectares), and is situated approximately 56–58 nmi (104 km–107.7 km) from the inlets off of Fort Myers, Florida. Location E–3 is depicted as a polygon in Figure 3.116 on page 264 of the Atlas, is 2,000 acres (809 hectares), and is situated approximately 49 nmi (91.6 km) to the inlet off Tampa, Florida. Location E–4 is depicted as a polygon in Figure 3.104 on page 247 of the Atlas, is 2,000 acres (809 hectares) and is situated approximately 58 nmi (107.8 km) from the inlet in Clearwater, Florida.

Copies of the figures from the Atlas depicting the nine ''AOA options'' can be found on the NMFS Gulf of Mexico Aquaculture Opportunity Area website, *https://www.fisheries.noaa.gov/news/gulf-mexico-aquaculture-opportunity-area-programmatic-environmental-impact-statement.*

Summary of Expected Impacts

NEPA requires identification and evaluation of impacts to the human environment likely to be caused by an agency's proposed action. Under NEPA, the human environment is interpreted comprehensively to include the biological and physical environment and the relationship of people with that environment. The PEIS proposed in this Notice of Intent will be a planning-level document. The PEIS will analyze potential impacts to the human environment that may occur should projects be proposed in one or more AOAs, if identified. The following discussion reflects NMFS's preliminary identification of biological and physical resources that may be relevant to identification of AOAs and NMFS solicits the public's input on these matters.

Biological and physical resources impacted by potential future offshore aquaculture development in proposed AOA locations may include water quality, air quality, habitat (*e.g.,* benthic and water column habitats), managed and non-managed fishery resources (*e.g.,* fish, elasmobranchs, such as

sharks, and invertebrates), and protected resources including migratory birds, corals, fish (including elasmobranchs such as sharks), sea turtles and marine mammals. Impacts to these biological and physical resources that may be considered include protected species interactions (*e.g.,* entanglement, vessel strikes); alteration to habitats; disease transmission risk; escapement risk (*e.g.,* genetic impacts); water quality changes (*e.g.,* nutrients, contaminants); habitat displacement and fragmentation; gear failure risk (*e.g.,* storm risk, operator error); marine debris; impacts to essential fish habitat; ecosystem impacts (*e.g.,* alteration of predator prey interactions, broodstock sourcing, fish aggregating device effects); and noise, lighting and visual disturbance. Impacts to the biological and physical environment could occur during the aquaculture development, implementation, and decommissioning phases of a project, which include siting, construction, operation, maintenance, and removal.

Socioeconomic impacts considered may include impacts to commercial and recreational fishing; tourism and recreation; public health and safety; transportation; communications infrastructure; domestic and international seafood markets; oil, gas and alternative energy development and infrastructure; military preparedness; local ports, marinas and communities; and local job markets. Cultural and historic resources impacted could include archaeological sites, traditional fishing grounds and American Indian traditional uses. Environmental justice impacts considered may include impacts to vulnerable communities, impacts of aquaculture on climate change, and impacts of climate change on aquaculture.

Wherever possible and supported by the best available science, the PEIS will recommend mitigation strategies to address impacts associated with offshore aquaculture siting and development in the proposed AOAs.

Anticipated Permits and Other Authorizations

The Federal action to identify AOAs is a planning process. Neither the final PEIS nor the resulting ROD will authorize any specific activities or approve any individual projects.

Any future aquaculture operations proposed within an AOA would be required to comply with all applicable Federal and state laws and regulations, including but not limited to the Clean Water Act, Rivers and Harbors Act, Endangered Species Act, the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), Marine Mammal Protection Act, National Historic Preservation Act, and National Marine Sanctuaries Act. Compliance may include Endangered Species Act and essential fish habitat (Magnuson-Stevens Act) consultations, and Marine Mammal Protection Act authorizations.

Additional NEPA analysis may be required as part of permitting and authorization processes. Cooperating agencies may adopt the PEIS and utilize the information to support their permitting decisions.

Schedule for the Decision-Making Process

The PEIS planning process is expected to take 2 years from the date of this notice. The draft PEIS is tentatively scheduled for publication in fall 2023. The draft PEIS will be released for public comment, and all public comments will be considered before issuing a final PEIS. The final PEIS is tentatively scheduled for publication in spring 2024, with a record of decision to follow no sooner than 30 days later.

Public Scoping Process

This notice initiates the scoping process, which in turn guides the scope of environmental issues, impacts, alternatives and mitigation measures to be included in the draft PEIS. Comments will be accepted until August 1, 2022. Interested parties may submit public comments according to the instructions described in the **DATES** and **ADDRESSES** sections above.

Request for Identification of Potential Alternatives, Information, and Analyses Relevant to the Proposed Action

NMFS requests data, comments, views, information, analysis, alternatives, or suggestions on the proposed action from the public; affected Federal, State, Tribal, and local governments, agencies, and offices; the scientific community; non-governmental organizations; industry; and all other interested parties. Specifically, we are soliciting information and feedback on:

1. The scope of the NEPA analysis, including the range of reasonable alternatives and how many or which locations should be considered and evaluated;

2. The type of aquaculture (*e.g.,* finfish, shellfish, seaweed, multi-species aquaculture) that could be supported or analyzed in a proposed AOA location;

3. Ecologically, economically and socially suitable species and gear for aquaculture that could be analyzed for a proposed AOA location;

4. Monitoring and reporting requirements for owners and operators of aquaculture facilities that could mitigate impacts to managed and non-managed fishery resources, protected species, habitat, water quality, storm, navigation, economic, social, cultural and other impacts;

5. Potential adverse, beneficial, neutral, or cumulative impacts to biological, physical and ecological resources, including potential interactions with marine mammals and other species protected by the Marine Mammal Protection Act or Endangered Species Act, essential fish habitat designated under the Magnuson-Stevens Act, and other sensitive, managed, or protected habitats in the Gulf of Mexico;

6. Potential adverse, beneficial, neutral, or cumulative impacts to the social, economic, and cultural environment, including commercial and recreational fishing industries and coastal communities;

7. Promotion of environmental justice, diversity, equity, and inclusion when considering alternative AOA locations and other aspects of offshore aquaculture development in Federal waters of the Gulf of Mexico;

8. Underserved communities and underrepresented groups, and/or regions and communities that could either benefit from or be adversely impacted by the siting of AOAs in the Gulf of Mexico;

9. The impact of climate change or changing environmental conditions (*e.g.,* storm intensity, sea level rise, water quality) on siting and other aspects of aquaculture;

10. Current or planned activities in or near the areas highlighted in this notice and their possible impacts on aquaculture development or the impact of aquaculture developments on those activities;

11. Other topics relevant to the Proposed Action and its impacts on the human environment.

Lead and Cooperating Agencies

NMFS is the lead agency for this PEIS. The U.S. Environmental Protection Agency, U.S. Army Corps of Engineers, Bureau of Ocean Energy Management, and U.S. Air Force will be cooperating agencies on this PEIS.

Decision Maker

Mr. Andrew J. Strelcheck, Regional Administrator, NMFS, Southeast Regional Office.

Nature of Decision To Be Made

NMFS will use a combination of best available scientific information and public engagement to evaluate and consider identifying areas that may be environmentally, socially, and economically suitable for commercial aquaculture as AOAs. Geographic areas proposed as AOAs will be described in the draft and final PEIS along with the no action alternative. Selection of AOAs will follow evaluation in the draft and final PEIS with the agency's issuance of a ROD explaining the factors considered in making the final decision. The identification of an AOA in the ROD is not a regulatory action and does not bind NMFS or the cooperating agencies to take any specific action related to an AOA.

No specific aquaculture projects are being proposed or will be permitted through the PEIS. The analysis presented in the draft and final PEIS and the identification of AOAs in the ROD will serve to guide and inform future decision-making (*e.g.,* environmental review and permitting processes) if and when specific proposals to conduct aquaculture operations are proposed within these areas.

Future aquaculture operations proposed within an AOA would be required to comply with all applicable Federal and state laws and regulations, including but not limited to the Clean Water Act, Rivers and Harbors Act, Endangered Species Act, the Magnuson-Stevens Act, Marine Mammal Protection Act, National Historic Preservation Act, and National Marine Sanctuaries Act. Compliance may include Endangered Species Act and essential fish habitat (Magnuson-Stevens Act) consultations, and Marine Mammal Protection Act authorizations. Additional NEPA analysis may be required as part of permitting and authorization processes. Cooperating agencies may adopt the PEIS and utilize the information in their permitting decisions.

Identifying AOAs is an opportunity for NMFS to use best available science-based guidance on sustainable aquaculture management, meaningfully take into account the views of the public and stakeholders, and support the ''triple bottom line'' of environmental, economic, and social sustainability.

(Authority: Executive Order on Promoting American Seafood Competitiveness and Economic Growth, E.O. 13921)

Dated: May 13, 2022.

Danielle Blacklock,

Director, Office of Aquaculture, National Marine Fisheries Service.

[FR Doc. 2022–11564 Filed 5–31–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC055]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: NMFS is notifying the public of the issuance of a permit for implementation of the Rescue and Rearing Management Plan (RRMP) for Petaluma River Steelhead.

SUMMARY: Notice is hereby given that NMFS has issued a permit pursuant to Section 10 of the Endangered Species Act (ESA) for the implementation of the RRMP by the United Anglers of Casa Grande (UACG).

FOR FURTHER INFORMATION CONTACT: Jodi Charrier, Santa Rosa, California (ph.: 707–575–6069; email: *jodi.charrier@noaa.gov*).

SUPPLEMENTARY INFORMATION:

ESA-Listed Species Covered in This Notice

- Steelhead (*Oncorhynchus mykiss*)—Central California Coast (CCC) distinct population segment (DPS)

Discussion of the Biological Analysis Underlying Permit Issuance

NMFS has issued a permit for UACG to implement the RRMP, which is intended to increase adult CCC steelhead DPS abundance in the Petaluma River Watershed. Fish rearing will occur at the UACG Hatchery and will be run by Casa Grande High School located in Petaluma, California. The RRMP has two main components: (1) Rescue and translocate wild steelhead from drying stream reaches; and (2) captively rear wild fry at the UACG Hatchery to be released as smolts into natal tributaries. There is no spawning of steelhead at the Hatchery. These management actions should result in higher survival rates; thereby increasing the abundance of the population over time.

The program uses natural-origin fish, and the permit for this program is issued under ESA section 10(a)(1)(A). Description of the programs was provided in the RRMP submitted by the UACG. NMFS has analyzed the effects of the RRMP on CCC DPS steelhead listed under the ESA, and has concluded that the program is not likely to jeopardize the continued existence of CCC steelhead or destroy or adversely modify its designated critical habitat. Authorization of the activities is contingent upon implementation of all of the monitoring, evaluation, reporting tasks or assignments, and enforcement activities included in the permit.

Summary of Comments Received on the RRMP

NMFS made the permit application available for public comment on February 16, 2022 (87 FR 8787) for 30 days, as required by the ESA. No comments were received.

Dated: May 26, 2022.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–11754 Filed 5–31–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC073]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Summer Flounder, Scup, and Black Sea Bass Advisory Panel will hold a public meeting, jointly with the Atlantic States Marine Fisheries Commission's Summer Flounder, Scup and Black Sea Bass Advisory Panel.

DATES: The meeting will be held on Thursday, June 16, 2022, from 2 p.m. to 5 p.m. EDT. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held via webinar. Webinar connection, agenda items, and any additional information will be available at *www.mafmc.org/council-events.*

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331 or on their website at *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to discuss recent performance of the summer flounder, scup, and black sea bass commercial and recreational fisheries and develop Fishery Performance Reports. These reports will be considered by the Scientific and Statistical Committee, the Monitoring Committee, Mid-Atlantic Fishery Management Council, and Atlantic States Marine Fisheries Commission when reviewing 2023 catch and landings limits and management measures for summer flounder, scup, and black sea bass.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shelley Spedden at the Council Office, (302) 526–5251, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 26, 2022.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–11759 Filed 5–31–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC0075]

Management Track Assessment for Atlantic Herring and Southern New England/Mid-Atlantic Winter Flounder

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: NMFS and the Assessment Oversight Panel (AOP) will convene the Management Track Assessment Peer Review Meeting for the purpose of reviewing both Atlantic herring and southern New England/mid-Atlantic winter flounder stocks. The Management Track Assessment Peer Review is a formal scientific peer-review process for evaluating and presenting stock assessment results to managers for fish stocks in the offshore U.S. waters of the northwest Atlantic. Assessments are prepared by the lead stock assessment analyst and reviewed by an independent panel of stock assessment experts called the AOP. The public is invited to attend the presentations and discussions between the review panel and the scientists who have participated in the stock assessment process.

DATES: The public portion of the Management Track Assessment Peer Review Meeting will be held from June 27, 2022–June 29, 2022. The meeting will conclude on June 29, 2022 at 5 p.m. Eastern Standard Time. Please see **SUPPLEMENTARY INFORMATION** for the daily meeting agenda.

ADDRESSES: The meeting will be held via Google Meet (*https://meet.google.com/gwr-scrv-roh*).

FOR FURTHER INFORMATION CONTACT: Michele Traver, phone: 508–257–1642; email: *michele.traver@noaa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please visit the Northeast Fisheries Science Center (NEFSC) website at *https://www.fisheries.noaa.gov/new-england-mid-atlantic/population-assessments/fishery-stock-assessments-new-england-and-mid-atlantic.* For additional information about the AOP meeting and the stock assessment peer review, please visit the NMFS/NEFSC web page at *https://www.fisheries.noaa.gov/new-england-mid-atlantic/population-assessments/management-track-stock-assessments.*

Daily Meeting Agenda—Management Track Peer Review Meeting

The agenda is subject to change; all times are approximate and may be changed at the discretion of the Peer Review Chair.

MONDAY, JUNE 27, 2022

Time	Activity	Lead
10 a.m.–10:15 a.m	Welcome/Logistics Introductions/Process	Michele Traver, Russ Brown, and Tom Miller (Chair).
10:15 a.m.–11:45 a.m	Atlantic herring	Jon Deroba.
11:45 a.m. –12:15 p.m	Discussion/Review/Summary	Review Panel.
12:15 p.m.–12:30 p.m	Public Comment	Public.
12:30 p.m.–1:30 p.m	Lunch.	
1:30 p.m.–3 p.m	Atlantic herring cont	Jon Deroba.
3 p.m.–3:15 p.m	Break.	
3:15 p.m.–4:30 p.m	Atlantic herring cont	Jon Deroba.
4:30 p.m.–5 p.m	Discussion/Review/Summary	Review Panel.
5 p.m.–5:15 p.m	Public Comment	Public.
5:15 p.m	Adjourn.	

TUESDAY, JUNE 28, 2022

Time	Activity	Lead
9 a.m.–9:05 a.m	Brief Overview and Logistics	Michele Traver/ Tom Miller (Chair).
9:05 a.m.–10:35 a.m	Southern New England/mid-Atlantic winter flounder.	Tony Wood.
10:35 a.m.–10:50 a.m	Break.	
10:50 a.m.–11:45 a.m	Southern New England/mid-Atlantic winter flounder cont.	Tony Wood.
11:45 a.m.–12:15 p.m	Discussion/Review/Summary	Review Panel.
12:15 p.m.–12:30 p.m	Public Comment	Public.
12:30 p.m.–1:30 p.m	Lunch.	
1:30 p.m.–3 p.m	Follow-ups	Review Panel.
3 p.m.–5 p.m	Report Writing	Review Panel.

TUESDAY, JUNE 28, 2022—Continued

Time	Activity	Lead
5 p.m	Adjourn.	

WEDNESDAY, JUNE 29, 2022

Time	Activity	Lead
9 a.m.–5 p.m 5 p.m	Report Writing Adjourn.	Review Panel.

The meeting is open to the public; however, during the 'Report Writing' session on Tuesday, June 28th, and Wednesday, June 29th, the public should not engage in discussion with the Peer Review Panel.

Special Accommodations

This meeting is physically accessible to people with disabilities. Special requests should be directed to Michele Traver, via email.

Dated: May 25, 2022.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–11661 Filed 5–31–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC061]

Endangered Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of receipt; one application for a scientific enhancement permit.

SUMMARY: Notice is hereby given that NMFS received an application from NMFS' California Coastal Office in Santa Rosa, California for an U.S. Endangered Species Act (ESA) Section 10(a)(1)(A) scientific enhancement permit (permit 26495). The purpose of this permit is to enhance the survival of the endangered Central California Coast (CCC) Evolutionary Significant Unit (ESU) of coho salmon (*Oncorhynchus kisutch*) and threatened CCC Distinct Population Segment (DPS) of steelhead (*O. mykiss*) in coastal streams of California's Santa Cruz Mountains through rescue and relocation of these species from drying streams. The public is hereby notified that the application for Permit 26495 is available for review and comment before NMFS either approves or disapproves the application.

DATES: Written comments on the permit application must be received at the appropriate email address (see **ADDRESSES**) on or before July 1, 2022.

ADDRESSES: Written comments on the permit application should be submitted to Joel Casagrande via email at *joel.casagrande@noaa.gov* with ''permit 26495'' referenced in the subject line. The permit application is available for review online at the Authorizations and Permits for Protected Species web site: *https://apps.nmfs.noaa.gov/preview/preview_open_for_comment.cfm*.

FOR FURTHER INFORMATION CONTACT: Joel Casagrande (phone: 707–575–6016 or email: *joel.casagrande@noaa.gov*).

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

Central California Coast (CCC) Evolutionary Significant Unit (ESU) of coho salmon (*Oncorhynchus kisutch*) and threatened CCC Distinct Population Segment (DPS) of steelhead (*O. mykiss*).

Authority

Scientific research and enhancement permits are issued in accordance with Section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et. seq*) and regulations governing listed fish and wildlife permits (50 CFR 222–227). NMFS issues permits based on findings that such permits: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in Section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits.

This notice is provided pursuant to Section 10(c) of the ESA. NMFS will evaluate the application, associated documents, and any comment submitted to determine whether the application meets the requirements of Section 10(a) of the ESA and Federal regulations. The final permit decisions will not be made until after the end of the 30-day comment period and consideration of any comment submitted therein. NMFS will publish notice of its final action in the **Federal Register**.

Those individuals requesting a hearing on the application listed in this notice should provide the specific reasons why a hearing on the application would be appropriate (see **ADDRESSES**). Such a hearing is held at the discretion of the Assistant Administrator for NOAA Fisheries.

Permit Application Received

Permit 26495

NMFS' California Coastal Office in Santa Rosa, California applied for a Section 10(a)(1)(A) scientific enhancement permit (permit 26495). This application involves enhancing the survival of endangered Central California Coast (CCC) Evolutionary Significant Unit (ESU) of coho salmon (*Oncorhynchus kisutch*) and threatened CCC Distinct Population Segment (DPS) of steelhead (*O. mykiss*) in coastal streams of California's Santa Cruz Mountains through rescue and relocation of these species from drying streams. This application also includes research and monitoring elements. To assess the efficacy of these rescue activities, a subset of the juvenile salmonids may receive a Passive Integrated Transponder tag (PIT-tag) prior to release. The tagged fish will be tracked by fixed antennas positioned in multiple regional watersheds which will provide information on their movements and survival in the freshwater environment. Otoliths and tissue samples will be collected opportunistically from spawned adult carcasses encountered to learn about the individual's life history. Tissue samples (fin clips and scales) will be collected from carcasses and a subset of live fish for genetic information (fin clips) and age-structure and growth patterns (scales). In the event that adult, pre-

spawned coho salmon are rescued, these fish may receive a floy tag for identification purposes in subsequent spawning ground surveys. Activities associated with rescue and relocation could occur anywhere within the coastal watersheds of the Santa Cruz Mountains including San Gregorio, Pescadero, Gazos, Waddell, Scott, San Vicente, Laguna, Liddell, Majors, San Lorenzo, Soquel, and Aptos watersheds. A summary of these components is provided as follows.

Rescue-Relocation and Research-Monitoring

This component involves rescuing and relocating coho salmon and steelhead from stream sections experiencing natural dewatering during the dry season or prolonged periods of below average rainfall. Specific staff listed on the application from both NMFS and the California Department of Fish and Wildlife (CDFW) will follow a predetermined communication and documentation protocol while implementing these relocation efforts. Standard scientific methods and equipment (*e.g.,* backpack-electrofishing, nets, seines, portable air pumps, transport containers, water chillers, *etc.*) will be used during the capture and relocation of coho salmon and steelhead. Captured coho salmon and steelhead will be transported for release into habitats within the same watershed (when possible) that are likely to maintain adequate water and habitat quality through the remainder of the dry season. Because these are endangered and threatened populations with low abundance, relocating coho salmon and steelhead from sections of stream where they will likely perish is expected to benefit the survival of these individual fish and enhance the population. The proposed tagging and tissue collection are intended to provide information on the survival and early life history of rescued fish, contributions of rescued fish to subsequent adult returns, and information on the genetic diversity within basins, particularly where natural origin fish are present.

Field activities for the various proposed enhancement components can occur year-round starting in June 2022 through December 31, 2032. The annual sum of take requested across the various components of this effort is as follows: (1) Non-lethal capture and release of up to 1,000 juvenile natural origin coho salmon and 3,000 juvenile steelhead while electrofishing, seining, or dip-netting; (2) non-lethal capture and release of up to 1000 juvenile hatchery origin coho salmon, 500 juvenile natural origin coho salmon, and 1000 juvenile steelhead for the purpose of applying Passive Integrated Transponder-tags (PIT-tags) and collecting tissue samples; (3) non-lethal capture and release of up to 40 adult natural origin coho salmon and 60 adult hatchery origin coho salmon by beach seine for the purpose of applying PIT-tags, floy tags, and collecting tissue samples; (4) non-lethal capture and release of up to 150 adult steelhead by beach seine for the purpose of applying PIT-tags and collecting tissue samples; and (5) tissue collection from up to 250 adult natural origin coho salmon carcasses and 150 adult steelhead. The potential annual unintentional lethal coho salmon and steelhead take expected to result from the proposed enhancement activities is up to 75 juvenile natural origin coho salmon, 50 juvenile hatchery origin coho salmon, 200 juvenile steelhead, 2 adult natural origin coho salmon, 3 adult hatchery origin coho salmon, and 7 adult steelhead. These estimates assume up to 5 percent incidental mortality rate. For research and monitoring, incidental mortality rates for capture and handling are generally less than or equal to 2 percent. However, in many cases fish targeted for rescue and relocation are located in isolated habitats and declining habitats with stressful environmental conditions, and therefore it is reasonable to assume a higher potential incidental mortality rate from capture and handling. Absent these rescue efforts, salmonids left in these declining environmental conditions are expected to die.

This proposed scientific enhancement effort is expected to enhance survival and support coho salmon and steelhead recovery within the CCC ESU of coho salmon and CCC DPS of steelhead and is consistent with recommendations and objectives outlined in NMFS' Central California Coast ESU Coho Salmon Recovery Plan and Coastal Multispecies Recovery Plan. See the Permit 26495 application for greater details on the various components of this scientific enhancement effort including the specific scientific methods proposed and take allotments requested for each.

Dated: May 26, 2022.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–11749 Filed 5–31–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Call for Review Editor Nominations for the Fifth National Climate Assessment (NCA5)

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Request for public nominations.

SUMMARY: NOAA, on behalf of USGCRP, is soliciting nominations for Review Editors for the Fifth National Climate Assessment (NCA5). Refer to the NCA5 Draft Prospectus (presented in a previous **Federal Register** Notice and accessible via *www.globalchange.gov/notices* and the USGCRP website (*www.globalchange.gov/nca5*) for further information on the scope, topics, and overarching themes for the report.

NCA5 will adhere to the Global Change Research Act (GCRA), Information Quality Act, and Evidence Act requirements for quality, transparency, and accessibility as appropriate for a Highly Influential Scientific Assessment.

DATES: Nominations should be submitted via the web address specified below *https://contribute.globalchange.gov/* and must be received by 30 days after publication of this notice.

ADDRESSES: Nominations for Review Editors must be submitted electronically via a web form accessible via *https://contribute.globalchange.gov/.* Nominees are asked to identify their areas of expertise based on NCA5's covered topics (see NCA5 Table of Contents below). A CV/resume of no more than 4 pages should be included for optimal consideration. Nominees will also be asked to select all NCA5 chapters for which they seek consideration for selection.

Instructions: Response to this notice is voluntary. Responses to this notice may be used by the government for program planning on a non-attribution basis. NOAA therefore requests that no business proprietary information or copyrighted information be submitted in response to this notice. Please note that the U.S. Government will not pay for response preparation, or for the use of any information contained in the response.

FOR FURTHER INFORMATION CONTACT: Chris Avery, (202) 419–3474, *cavery@usgcrp.gov,* U.S. Global Change Research Program.

SUPPLEMENTARY INFORMATION:

Background information and additional details on NCA5 can be found at *https://www.globalchange.gov/nca5.*

This notice seeks nominations for NCA5 Review Editors with pertinent subject matter expertise and scientific background. The Review Editor serves a critical role on the NCA, ensuring that each public and peer review comment has been considered by the author team. Review Editors do not provide additional comments on assigned draft chapters; rather they attest that the annotation is sufficiently responsive to the comment and indicates any revision made to the chapter(s), including the scientific or logical rationale for said action.

Specifically, the Review Editor is charged with:

(a) Ensuring all substantive comments submitted during multiple Public Comment Periods and via a National Academies of Sciences, Engineering, and Medicine panel review are appropriately addressed by authors, and that agreed-upon changes to the chapter are reflected in the draft text of the chapter;

(b) advising Chapter Leads how to manage conflicting comments or contentious issues, as well as supporting discussions between Chapter Leads, Chapter Authors, and Coordinating Lead Authors on how best to consider and incorporate reviewer's feedback into the chapter; and

(c) submitting all necessary materials confirming execution of the above charges.

Potential nominees should be technical experts with climate-related proficiency in at least one of the regions, sectors, or responses topics outlined in the NCA5 Table of Contents (accessible via *http://www.globalchange.gov/nca5.* Nominees must have demonstrated expertise such that the nominees could contribute to the development of a robust scientific, technical assessment as subject matter experts in one or more of the topics listed.

Responses to this request for nominations for Review Editors must be submitted by 30 days after publication of this FRN. Users can access the nominations form via *https://contribute.globalchange.gov/.* Interested persons may nominate themselves or third parties, and may nominate more than one person. Each nomination must include:

(1) The nominee's full name, title, institutional affiliation, and contact information;

(2) the desired chapter(s) the nominee wishes to serve as Review Editor on (*i.e.,* area(s) of expertise); and

(3) a short description of his/her qualifications relative to contributing to the report. Nominees are encouraged to submit a CV of no more than 4 pages for optimal consideration.

More information on the function of Review Editors, the tasks (including reporting) expected of them, as well as the tentative dates of commitment can be found at *https://contribute.globalchange.gov.*

Report Table of Contents

The full list of NCA5 chapters is below and can also be found *https://www.globalchange.gov/nca5.* Chapter titles reflect the target topics or regions for the chapters. Final titles for the chapter may evolve as authors assess published literature.

Introduction and Summary

1. Overview

Physical Sciences

2. Climate Trends
3. Earth Systems Processes

National Topics

4. Water
5. Energy
6. Land Cover & Land-Use Change
7. Forests
8. Ecosystems
9. Coastal Effects
10. Oceans
11. Agriculture, Food Systems, and Rural Communities
12. Built Environment
13. Transportation
14. Air Quality
15. Human Health
16. Tribes & Indigenous Peoples
17. U.S. International Interests
18. Complex Systems
19. Economics
20. Human Social Systems

Regions

21. Northeast
22. Southeast
23. U.S. Caribbean
24. Midwest
25. Northern Great Plains
26. Southern Great Plains
27. Northwest
28. Southwest
29. Alaska
30. Hawai'i & U.S.-Affiliated Pacific Islands

Response

31. Adaptation
32. Mitigation

Appendices

A1. Report Development Process
A2. Information Quality
A3. Data Tools
A4. Indicators

David Holst,

Chief Financial Officer Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2022–11719 Filed 5–31–22; 8:45 am]

BILLING CODE 3510–KB–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC059]

Atlantic Coastal Fisheries Cooperative Management Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an Exempted Fishing Permit application contains all of the required information and warrants further consideration. The Exempted Fishing Permit would allow commercial fishing vessels to fish outside fishery regulations in support of research conducted by the applicant. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act and the Atlantic Coastal Fisheries Cooperative Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed Exempted Fishing Permits.

DATES: Comments must be received on or before June 16, 2022.

ADDRESSES: You may submit written comments by the following method:

- *Email: nmfs.gar.efp@noaa.gov.* Include in the subject line ''NEFSC On-Demand Gear EFP.''

FOR FURTHER INFORMATION CONTACT: Laura Deighan, Fishery Management Specialist, *Laura.Deighan@noaa.gov,* (978) 281–9184.

SUPPLEMENTARY INFORMATION: The NOAA Northeast Fisheries Science Center submitted a complete application for an Exempted Fishing Permit (EFP) to conduct commercial fishing activities that the regulations would otherwise restrict to expand trials of on-demand fishing gear that uses one or no surface buoys and to test the ability of gear

marking systems to consistently locate gear. This EFP would exempt the participating vessels from the gear marking requirements at 50 CFR 697.21(b)(2) to allow the use of trawls of more than three traps that have one or no surface markers.

This project would be a continuation and expansion of the Center's trials of on-demand fishing systems aimed at reducing the entanglement risk to protected species, mainly the North Atlantic right whale, in the American lobster and Jonah crab fisheries. If granted, this permit would allow up to 100 vessels to replace up to 10 of their existing trawls with modified trawls that replace one or both vertical lines with acoustic on-demand systems or other alternatives to static buoy lines (including, but not limited to, spooled systems, buoy and stowed rope systems, lift bag systems, and grappling). The previous permit authorized gear trials on 5 vessels, and this project would expand the trial to up to 100 participating vessels at a time, for a total of up to 1,000 modified trawls, between the issue date and May 1, 2023.

This project would include the opportunity for up to 30 of the participating vessels at a time to trial gear (up to 300 trawls) without static vertical lines in Atlantic Large Whale Take Reduction Plan (ALWTRP) Restricted Areas. In recognition of industry's interest in grappling as a low-cost alternative to acoustic on-demand systems, this project would also allow up to 25 vessels to retrieve buoyless gear via grappling to enable the Center to collect data on the viability of grappling at a commercial scale.

One of the goals of this project is to test the efficacy of on-demand fishing gear and other alternatives to static buoy lines under a variety of oceanographic conditions. To achieve this goal, participation would not be limited to tightly prescribed and predetermined areas, but would occur in areas where fishermen are willing to participate and data collection will be useful. Priority would be given to participants who are seasonally excluded from fishing in certain areas and/or participants in offshore fisheries that have limited entanglement mitigation options available. This project would prioritize the following times and areas of interest (though many participants would likely use experimental gear in the months outside of a closure to gain familiarity with the systems):

- Lobster Management Area (LMA) 1, Restricted Area in the Gulf of Maine between October 1 and January 31;
- LMA 1, Massachusetts Bay Restricted Area or Massachusetts state waters, between February 1 and May 15 (with the exception of the area defined under 322 MA Regulation 12.05);
- LMA 1, areas in Downeast Maine where participants may trial gear as part of a Gear Innovation Plan that gains access to markets lost by the Monterey Bay Red-Listing;
- LMA 2, LMA 2/3 overlap, and LMA 3, Large South Island Closure between February 1 and April 30; and
- LMA 3, offshore areas, including in Groundfish Closed Area 2, between May 1 and December 31.

Note that this permit would exempt participating vessels from the specified Federal regulations in Federal waters only. The Center is responsible for obtaining all required state authorizations for any activities in state waters.

The second goal of this project is to trial gear marking systems (using GPS points or alternatively subsurface markings) to determine the ability to consistently relocate fishing gear and improve the ability to notify other fishermen, including those in the fixed and mobile fleet, that the gear is present. These systems are intended to prevent increases in gear conflicts despite the absence of surface markings.

This EFP does not exempt the vessels from any requirements imposed by any state, the Endangered Species Act, the Marine Mammal Protection Act, or any other applicable laws. Other than gear markings, the trawls would be consistent with the regulations of the management area where the vessel is fishing and would include no more than 50 traps per trawl. The trawls would be fished in accordance with the participating vessels' standard operations and all applicable regulations in terms of the number and length of trips, soak times, trap limits, etc. The Center would implement additional protocols to mitigate risks of impacts to whales or of gear conflicts:

- For all participants, fishing within and outside of the Restricted Areas, at all times:
  - The Center would provide information on species identification and protocols to report live, dead, or entangled sightings of North Atlantic right whales;
  - All vessels would provide mandatory, weekly gear loss reports;
  - All vessels would retrieve on-demand vertical lines as quickly as possible to minimize time in the water column;
  - Typical soak times would be no longer than 30 days, but are anticipated to be less than 14 days (weather permitting and without unforeseen circumstances);
  - All vessels would adhere to current approach regulations—a 500-yard (457.2-m) buffer zone created by a surfacing right whale—and must depart immediately at a safe and slow speed, in accordance with current regulations. Hauling any lobster gear would immediately cease, by either removal or resetting, to accommodate the regulation and be reinitiated only after it is reasonable to assume the whale has left the area;
  - Vessels would operate within a 10-knot speed limit when transiting Restricted Areas or when whales are observed;
- For all participants fishing in the Restricted Areas, and for participants fishing outside the Restricted Areas, opportunistically:
  - Smart buoy technology would be used to provide alerts to the fishermen and the Center within two hours of an unplanned release of a stowed line;
  - Participants would record visual right whale sightings on data sheets when in the fishing area;
  - Participants would use Trap Tracker or an equivalent application for retrieval and set positioning details, which would be available to Federal, State and corresponding enforcement personnel, as well as other fishermen. The Edge Tech Trap Tracker App uploads the location of subsurface gear to the cloud, which allows other users to see the location, similar to the way a surface buoy would, to reduce gear conflicts.
- For all participants in the Restricted Areas:
  - On demand vertical lines will be marked with unique markings in addition to Atlantic Large Whale Take Reduction Plan regulations. Specifically, the Center worked with NMFS Atlantic Large Whale Take Reduction Team Coordinator for specific markings/color combinations unique to the proposed project, which will be provided to the Office of Law Enforcement; and
  - All vessels would fly a unique flag for enforcement recognition.

In addition, the following measures would be implemented to reduce potential gear conflicts:

- The Center will regularly provide the approximate location and intensity of fishing in restricted areas where trawls will not have any surface markers;
- Industry members that are fishing in areas identified as having trap gear without surface markings are encouraged to contact the Center for additional information on gear location; and

• Project participants and Center personnel will proactively communicate within local ports with mobile and fixed gear fleets on fishing effort and location under the EFP, with particular focus on restricted areas.

The Center would provide training to ensure all participants achieve a sufficient level of experience with the gear prior to borrowing from their gear cache library. Center staff and engineering teams would oversee deployments. In some cases, a scientific observer may be on board, but they would not be required due to space and COVID considerations. Participants may use GoPro Systems (or equivalent or better) to record some or all of the gear retrievals for later review.

The Center would provide standardized data collection sheets to all participants. These data may be included in analyses for a final report to determine the efficacy of the experiment, but individually-identifiable data will only be made available with the express permission of the vessel owner. The results of this project would be used to inform future regulatory and National Environmental Policy Act (NEPA) analysis and to provide feedback to manufacturers of on-demand gear on improvements that would increase performance of on-demand systems under commercial fishery conditions. The ultimate goal of this project is to enable the continuation of one of the region's most valuable fisheries, while also meeting the requirements set forth by the ALWTRP and section 118(f) of the MMPA, specifically reducing the level of serious injury and mortality of North Atlantic right, humpback, and fin whales in commercial trap/pot fisheries.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 25, 2022.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–11600 Filed 5–31–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Health Board; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Health Board (DHB) will take place.

DATES: Open to the public Monday, June 6, 2022 from 12:00 p.m. to 4:00 p.m. Eastern time.

ADDRESSES: The meeting will be held by videoconference/teleconference. To participate in the meeting, see the Meeting Accessibility section for instructions.

FOR FURTHER INFORMATION CONTACT: CAPT Gregory H. Gorman, U.S. Navy, 703–275–6060 (voice), *gregory.h.gorman.mil@mail.mil* (email). Mailing address is 7700 Arlington Boulevard, Suite 5101, Falls Church, Virginia 22042. Website: *http://www.health.mil/dhb.* The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Designated Federal Officer (DFO), the DHB was unable to provide public notification required by 41 CFR 102–3.150(a) concerning its June 6, 2022 meeting of the DHB. 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.

This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C.), the Government in the Sunshine Act (5 U.S.C. 552b), and 41 CFR 102–3.140 and 102–3.150.

Availability of Materials for the Meeting: Additional information, including the agenda, is available at the DHB website, *http://www.health.mil/dhb.* A copy of the agenda or any updates to the agenda for the June 6, 2022 meeting will be available on the DHB website. Any other materials presented in the meeting may be obtained at the meeting.

Purpose of the Meeting: The DHB provides independent advice and recommendations to maximize the safety and quality of, as well as access to, health care for DoD health care beneficiaries. The purpose of the meeting is to provide briefings to DHB members on current issues related to military medicine and new DHB taskings.

Agenda: The DHB anticipates receiving an information briefing on active duty women's health, introductions to new DHB taskings on optimizing virtual health and eliminating racial and ethnic health disparities in the Military Health System, as well as two briefings on mental health care access for beneficiaries, with one of those being an introduction to the new DHB tasking. Any changes to the agenda can be found at the link provided in this **SUPPLEMENTARY INFORMATION** section.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, this meeting is open to the public from 12:00 p.m. to 4:00 p.m. on June 6, 2022. The meeting will be held by videoconference/teleconference. The number of participants is limited and is on a first-come basis. All members of the public who wish to participate must register by emailing their name, rank/title, and organization/company to *dha.ncr.dhb.mbx.defense-health-board@mail.mil* or by contacting Mr. Rubens Lacerda at (703) 275–6012 no later than Friday, June 3, 2022. Once registered, the web address and audio number will be provided.

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact Mr. Rubens Lacerda at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Written Statements: Any member of the public wishing to provide comments to the DHB related to its current taskings or mission may do so at any time in accordance with section 10(a)(3) of the FACA, 41 CFR 102–3.105(j) and 102–3.140, and the procedures described in this notice. Written statements may be submitted to the DHB's DFO, Captain Gorman, at *gregory.h.gorman.mil@mail.mil.* Supporting documentation may also be included, to establish the appropriate historical context and to provide any necessary background information. If the written statement is not received at least five (5) business days prior to the meeting, the DFO may choose to postpone consideration of the statement until the next open meeting. The DFO will review all timely submissions with the DHB President and ensure they are provided to members of the DHB before the meeting that is subject to this notice. After

reviewing the written comments, the President and the DFO may choose to invite the submitter to orally present their issue during an open portion of this meeting or at a future meeting.

Dated: May 25, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–11723 Filed 5–31–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

2022–2023 Award Year Deadline Dates for Reports and Other Records Associated with the Free Application for Federal Student Aid (FAFSA), the Federal Supplemental Educational Opportunity Grant Program (FSEOG) Program, the Federal Work-Study (FWS) Program, the Federal Pell Grant (Pell Grant) Program, the William D. Ford Federal Direct Loan (Direct Loan) Program, the Teacher Education Assistance for College and Higher Education (TEACH) Grant Program, and the Iraq and Afghanistan Service Grant Program

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice.

SUMMARY: The Secretary announces deadline dates for the receipt of documents and other information from applicants and institutions participating in certain Federal student aid programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA), for the 2022–2023 award year. These programs, administered by the Department of Education (Department), provide financial assistance to students attending eligible postsecondary educational institutions to help them pay their educational costs. The Federal student aid programs (title IV, HEA programs) covered by this deadline date notice are the Pell Grant, Direct Loan, TEACH Grant, Iraq and Afghanistan Service Grant, and campus-based (FSEOG and FWS) programs. Assistance Listing Numbers: 84.007 FSEOG Program; 84.033 FWS Program; 84.063 Pell Grant Program; 84.268 Direct Loan Program; 84.379 TEACH Grant Program; 84.408 Iraq and Afghanistan Service Grant Program.

DATES:

Deadline and Submission Dates: See Tables A and B at the end of this notice.

FOR FURTHER INFORMATION CONTACT: Michael Ruggless, U.S. Department of Education, Federal Student Aid, 830 First Street NE, Union Center Plaza, Room 114B4, Washington, DC 20202–5345. Telephone: (202) 377–4098. Email: *michael.ruggless@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Table A—2022–2023 Award Year Deadline Dates by Which a Student Must Submit the FAFSA, by Which the Institution Must Receive the Student's Institutional Student Information Record (ISIR) or Student Aid Report (SAR), and by Which the Institution Must Submit Verification Outcomes for Certain Students.

Table A provides information and deadline dates for receipt of the FAFSA, corrections to and signatures for the FAFSA, ISIRs, and SARs, and verification documents.

The deadline date for the receipt of a FAFSA by the Department's Central Processing System (CPS) is June 30, 2023, regardless of the method that the applicant uses to submit the FAFSA. The deadline date for the receipt of a signature page for the FAFSA (if required), corrections, notices of change of address or institution, or requests for a duplicate SAR is September 9, 2023.

For all title IV, HEA programs, an ISIR or SAR for the student must be received by the institution no later than the student's last date of enrollment for the 2022–2023 award year or September 16, 2023, whichever is earlier. Note that a FAFSA must be submitted and an ISIR or SAR received for the dependent student for whom a parent is applying for a Direct PLUS Loan.

Except for students selected for Verification Tracking Groups V4 and V5, verification documents must be received by the institution no later than 120 days after the student's last date of enrollment for the 2022–2023 award year or September 16, 2023, whichever is earlier. For students selected for Verification Tracking Groups V4 and V5, institutions must submit identity and high school completion status verification results no later than 60 days following the institution's first request to the student to submit the documentation.

For all title IV, HEA programs except for (1) Direct PLUS Loans that will be made to parent borrowers, and (2) Direct Unsubsidized Loans that will be made to dependent students who have been determined by the institution, pursuant to section 479A(a) of the HEA, to be eligible for such a loan without providing parental information on the FAFSA, the ISIR or SAR must have an official expected family contribution (EFC) and the ISIR or SAR must be received by the institution no later than the earlier of the student's last date of enrollment for the 2022–2023 award year or September 16, 2023. For the two exceptions mentioned above, the ISIR or SAR must be received by the institution by the same dates noted in this paragraph but the ISIR or SAR is not required to have an official EFC.

For a student who is requesting aid through the Pell Grant, FSEOG, or FWS programs or for a student requesting Direct Subsidized Loans, who does not meet the conditions for a late disbursement under 34 CFR 668.164(j), a valid ISIR or valid SAR must be received by the institution by the student's last date of enrollment for the 2022–2023 award year or September 16, 2023, whichever is earlier.

In accordance with 34 CFR 668.164(j)(4)(i), an institution may not make a late disbursement of title IV, HEA program funds later than 180 days after the date of the institution's determination that the student was no longer enrolled. Table A provides that, to make a late disbursement of title IV, HEA program funds, an institution must receive a valid ISIR or valid SAR no later than 180 days after its determination that the student was no longer enrolled, but not later than September 16, 2023.

Table B—2022–2023 Award Year Deadline Dates by Which an Institution Must Submit Disbursement Information for the Pell Grant, Iraq and Afghanistan Service Grant, Direct Loan and TEACH Grant Programs.

For the Pell Grant, Iraq and Afghanistan Service Grant, Direct Loan, and TEACH Grant programs, Table B provides the earliest disbursement date, the earliest dates for institutions to submit disbursement records to the Department's Common Origination and Disbursement (COD) System, and deadline dates by which institutions must submit disbursement and origination records.

An institution must submit Pell Grant, Iraq and Afghanistan Service Grant, Direct Loan, and TEACH Grant disbursement records to COD, no later than 15 days after making the disbursement or becoming aware of the need to adjust a previously reported disbursement. In accordance with 34 CFR 668.164(a), title IV, HEA program funds are disbursed on the date that the institution: (a) Credits those funds to a student's account in the institution's general ledger or any subledger of the general ledger; or (b) pays those funds to a student directly. Title IV, HEA program funds are disbursed even if an institution uses its own funds in

advance of receiving program funds from the Department.

An institution's failure to submit disbursement records within the required timeframe may result in the Department rejecting all or part of the reported disbursement. Such failure may also result in an audit or program review finding or the initiation of an adverse action, such as a fine or other penalty for such failure, in accordance with subpart G of the General Provisions regulations in 34 CFR part 668.

Deadline Dates for Enrollment Reporting by Institutions

In accordance with 34 CFR 674.19(f), 682.610(c), 685.309(b), and 690.83(b)(2), upon receipt of an enrollment report from the Secretary, institutions must update all information included in the report and return the report to the Secretary in a manner and format prescribed by the Secretary and within the timeframe prescribed by the Secretary. Consistent with the *National Student Loan Data System (NSLDS) Enrollment Reporting Guide,* the Secretary has determined that institutions must report at least every two months. Institutions may find the *NSLDS Enrollment Reporting Guide* in the ''Knowledge Center'' via Federal Student Aid's (FSA) Partner Connect website at: *https://fsapartners.ed.gov/knowledge-center.*

Other Sources for Detailed Information

We publish a detailed discussion of the FAFSA application process in the Application and Verification Guide volume of the 2022–2023 *Federal Student Aid Handbook* and in the 2022–2023 *ISIR Guide.*

Information on the institutional reporting requirements for the Pell Grant, Iraq and Afghanistan Service Grant, Direct Loan, and TEACH Grant programs is included in the 2022–2023 *Common Origination and Disbursement (COD) Technical Reference.* Also, see the *NSLDS Enrollment Reporting Guide.*

You may access these publications by visiting the ''Knowledge Center'' via FSA's Partner Connect website at: *https://fsapartners.ed.gov/knowledge-center.*

Additionally, the 2022–2023 award year reporting deadline dates for the Federal Perkins Loan, FWS, and FSEOG programs were published in the **Federal Register** on January 31, 2022 (87 FR 4871).

Applicable Regulations: The following regulations apply:

(1) Student Assistance General Provisions, 34 CFR part 668.

(2) Federal Pell Grant Program, 34 CFR part 690.

(3) William D. Ford Direct Loan Program, 34 CFR part 685.

(4) Teacher Education Assistance for College and Higher Education Grant Program, 34 CFR part 686.

(5) Federal Work-Study Programs, 34 CFR part 675.

(6) Federal Supplemental Education Opportunity Grant Program, 34 CFR part 676.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of the Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 20 U.S.C. 1070a, 1070b–1070b–4, 1070g, 1070h, 1087a–1087j, 1087aa–1087ii, and 1087–51–1087–58.

Richard Cordray,

Chief Operating Officer, Federal Student Aid.

TABLE A—2022–2023 AWARD YEAR DEADLINE DATES BY WHICH A STUDENT MUST SUBMIT THE FAFSA, BY WHICH THE INSTITUTION MUST RECEIVE THE STUDENT'S INSTITUTIONAL STUDENT INFORMATION RECORD (ISIR) OR STUDENT AID REPORT (SAR), AND BY WHICH THE INSTITUTION MUST SUBMIT VERIFICATION OUTCOMES FOR CERTAIN STUDENTS

Who submits?	What is submitted?	Where is it submitted?	What is the deadline date for receipt?
Student	FAFSA—*fafsa.gov* (original or renewal)	Electronically to the Department's Central Processing System (CPS).	June 30, 2023.
	Signature page (if required)	To the address printed on the signature page.	September 9, 2023.
Student through an Institution	An electronic FAFSA (original or renewal).	Electronically to the Department's CPS using ''Electronic Data Exchange'' (EDE) or ''FAA Access to CPS Online''.	June 30, 2023.[1]
Student	A paper original FAFSA	To the address printed on the FAFSA ..	June 30, 2023.
Student	Electronic corrections to the FAFSA using *fafsa.gov.*	Electronically to the Department's CPS	September 9, 2023.[1]
	Signature page (if required)	To the address printed on the signature page.	September 9, 2023.
Student through an Institution	Electronic corrections to the FAFSA	Electronically to the Department's CPS using EDE or ''FAA Access to CPS Online''.	September 9, 2023.[1]
Student	Paper corrections to the FAFSA using a SAR, including change of mailing and email addresses and change of institutions.	To the address printed on the SAR	September 9, 2023.
Student	Change of mailing and email addresses, change of institutions, or requests for a duplicate SAR.	To the Federal Student Aid Information Center by calling 1–800–433–3243.	September 9, 2023.

TABLE A—2022–2023 AWARD YEAR DEADLINE DATES BY WHICH A STUDENT MUST SUBMIT THE FAFSA, BY WHICH THE INSTITUTION MUST RECEIVE THE STUDENT'S INSTITUTIONAL STUDENT INFORMATION RECORD (ISIR) OR STUDENT AID REPORT (SAR), AND BY WHICH THE INSTITUTION MUST SUBMIT VERIFICATION OUTCOMES FOR CERTAIN STUDENTS—Continued

Who submits?	What is submitted?	Where is it submitted?	What is the deadline date for receipt?
Student	A SAR with an official EFC calculated by the Department's CPS, except for Parent PLUS Loans and Direct Unsubsidized Loans made to a dependent student under HEA section 479A(a), for which the SAR does not need to have an official EFC.	To the institution	The earlier of: —The student's last date of enrollment for the 2022–2023 award year; or —September 16, 2023.[2]
Student through CPS	An ISIR with an official EFC calculated by the Department's CPS, except for Parent PLUS Loans and Direct Unsubsidized Loans made to a dependent student under HEA section 479A(a), for which the ISIR does not need to have an official EFC.	To the institution from the Department's CPS.	
Student	Valid SAR (Pell Grant, FSEOG, FWS, and Direct Subsidized Loans).	To the institution	Except for a student meeting the conditions for a late disbursement under 34 CFR 668.164(j), the earlier of: —The student's last date of enrollment for the 2022–2023 award year; or —September 16,2023.[2]
Student through CPS	Valid ISIR (Pell Grant, FSEOG, FWS, and Direct Subsidized Loans).	To the institution from the Department's CPS.	
Student	Valid SAR (Pell Grant, FSEOG, FWS, and Direct Subsidized Loans).	To the institution	For a student receiving a late disbursement under 34 CFR 668.164(j)(4)(i), the earlier of: —180 days after the date of the institution's determination that the student withdrew or otherwise became ineligible; or —September 16, 2023.[2]
Student through CPS	Valid ISIR (Pell Grant, FSEOG, FWS, and Direct Subsidized Loans).	To the institution from the Department's CPS.	
Student	Verification documents	To the institution	The earlier of:[3] —120 days after the student's last date of enrollment for the 2022–2023 award year; or —September 16, 2023.[2]
Institution	Identity and high school completion verification results for a student selected for verification by the Department and placed in Verification Tracking Group V4 or V5.	Electronically to the Department's CPS using ''FAA Access to CPS Online''.	60 days following the institution's first request to the student to submit the required V4 or V5 identity and high school completion documentation.[4]

[1] The deadline for electronic transactions is 11:59 p.m. (Central Time) on the deadline date. Transmissions must be completed and accepted before 12:00 midnight to meet the deadline. If transmissions are started before 12:00 midnight but are not completed until after 12:00 midnight, those transmissions do not meet the deadline. In addition, any transmission submitted on or just prior to the deadline date that is rejected may not be reprocessed because the deadline will have passed by the time the user gets the information notifying him or her of the rejection.

[2] The date the ISIR/SAR transaction was processed by CPS is considered to be the date the institution received the ISIR or SAR regardless of whether the institution has downloaded the ISIR from its Student Aid Internet Gateway (SAIG) mailbox or when the student submits the SAR to the institution.

[3] Although the Secretary has set this deadline date for the submission of verification documents, if corrections are required, deadline dates for submission of paper or electronic corrections and, for Pell Grant applicants and applicants selected for verification, deadline dates for the submission of a valid SAR or valid ISIR to the institution must still be met. An institution may establish an earlier deadline for the submission of verification documents for purposes of the campus-based programs and the Direct Loan Program, but it cannot be later than this deadline date.

[4] Note that changes to previously submitted Identity Verification Results must be updated within 30 days of the institution becoming aware that a change has occurred.

TABLE B—2022–2023 AWARD YEAR DEADLINE DATES BY WHICH AN INSTITUTION MUST SUBMIT DISBURSEMENT INFORMATION FOR THE PELL GRANT, IRAQ AND AFGHANISTAN SERVICE GRANT, DIRECT LOAN AND TEACH GRANT PROGRAMS [1]

Which program?	What is submitted?	Under what circumstances is it submitted?	Where is it submitted?	What are the deadlines for disbursement and for submission of records and information?
Pell Grant, Direct Loan, TEACH Grant, and Iraq and Afghanistan Service Grant programs.	An origination or disbursement record.	The institution has made or intends to make a disbursement.	To the Common Origination and Disbursement (COD) System using the Student Aid Internet Gateway (SAIG); or to the COD System using the COD web site at: *https://cod.ed.gov*.	The earliest disbursement date for Pell Grant, Iraq and Afghanistan Service Grant Programs is January 31, 2022. The earliest disbursement date for Direct Loan Program is October 1, 2021. The earliest disbursement date for TEACH Grant Program is January 1, 2022. The earliest submission date for anticipated disbursement information is March 27, 2022. The earliest submission date for actual disbursement information is March 27, 2022, but no earlier than: (a) 7 calendar days prior to the disbursement date under the advance payment method or the Heightened Cash Monitoring Payment Method 1 (HCM1); or (b) The disbursement date under the reimbursement or the Heightened Cash Monitoring Payment Method 2 (HCM2).
Pell Grant, Iraq and Afghanistan Service Grant, and TEACH Grant programs.	An origination or disbursement record.	The institution has made a disbursement and will submit records on or before the deadline submission date.	To COD using SAIG; or to COD using the COD web site at: *https://cod.ed.gov*.	The deadline submission date [2] is the earlier of: (a) 15 calendar days after the institution makes a disbursement or becomes aware of the need to make an adjustment to previously reported disbursement data, except that records for disbursements made between January 31, 2022 and March 27, 2022 must be submitted no later than April 11, 2022; or (b) September 29, 2023.
Direct Loan Program	An origination or disbursement record.	The institution has made a disbursement and will submit records on or before the deadline submission date.	To COD using SAIG; or to COD using the COD web site at: *https://cod.ed.gov*.	The deadline submission date [2] is the earlier of: (a) 15 calendar days after the institution makes a disbursement or becomes aware of the need to make an adjustment to previously reported disbursement data, except that records of disbursements made between October 1, 2021 and April 26, 2022, may be submitted no later than May 11, 2022; or (b) July 31, 2024.
Pell Grant and Iraq and Afghanistan Service Grant programs.	A downward (decrease) adjustment to an origination or disbursement record.	It is after the deadline submission date.	To COD using SAIG; or to COD using the COD web site at: *https://cod.ed.gov*.	No later than September 29, 2028.[2] No request for extension to the deadline submission date is required.
TEACH Grant and Direct Loan	A downward (decrease) adjustment to an origination or disbursement record.	It is after the deadline submission date.	To COD using SAIG; or to COD using the COD web site at *https://cod.ed.gov*.	No later than 15 calendar days after the institution becomes aware of the need to make an adjustment to previously reported data. No request for extension to the deadline submission date is required.

TABLE B—2022–2023 AWARD YEAR DEADLINE DATES BY WHICH AN INSTITUTION MUST SUBMIT DISBURSEMENT INFORMATION FOR THE PELL GRANT, IRAQ AND AFGHANISTAN SERVICE GRANT, DIRECT LOAN AND TEACH GRANT PROGRAMS [1]—Continued

Which program?	What is submitted?	Under what circumstances is it submitted?	Where is it submitted?	What are the deadlines for disbursement and for submission of records and information?
Pell Grant and Iraq and Afghanistan Service Grant programs.	An upward (increase) adjustment to an origination or disbursement record.	It is after the deadline submission date and the institution has received approval of its request for an extension to the deadline submission date.	Via the COD web site at: *https://cod.ed.gov*.	The earlier of: (a) When the institution is fully reconciled and is ready to submit all additional data for the program and the award year; or (b) September 29, 2028.
TEACH Grant and Direct Loan programs.	An upward (increase) adjustment or a new origination or disbursement record.	Requests for extensions to the established submission deadlines may be made for reasons including, but not limited to: (a) A program review or initial audit finding under 34 CFR 690.83; (b) A late disbursement under 34 CFR 668.164(j); or (c) Disbursements previously blocked as a result of another institution failing to post a downward adjustment		When the institution is fully reconciled and is ready to submit all additional data for the program and the award year.
Pell Grant and Iraq and Afghanistan Service Grant programs.	An origination or disbursement record.	It is after the deadline submission date and the institution has received approval of its request for an extension to the deadline submission date based on a natural disaster, other unusual circumstances, or an administrative error made by the Department.	Via the COD web site at: *https://cod.ed.gov*.	The earlier of: (a) A date designated by the Secretary after consultation with the institution; or (b) February 1, 2024.
Pell Grant and Iraq and Afghanistan Service Grant programs.	An origination or disbursement record.	It is after the deadline submission date and the institution has received approval of its request for administrative relief to extend the deadline submission date based on a student's reentry to the institution within 180 days after initially withdrawing [3].	Via the COD web site at: *https://cod.ed.gov*.	The earlier of: (a) 15 days after the student reenrolls; or (b) May 2, 2024.

[1] A COD Processing Year is a period of time in which institutions are permitted to submit Direct Loan records to the COD System that are related to a given award year. For a Direct Loan, the period of time includes loans that have a loan period covering any day in the 2022–2023 award year.

[2] Transmissions must be completed and accepted before the designated processing time on the deadline submission date. The designated processing time is published annually via an electronic announcement posted to the Knowledge Center via FSA's Partner Connect web site at: (*https://fsapartners.ed.gov/knowledge-center.*). If transmissions are started at the designated time, but are not completed until after the designated time, those transmissions will not meet the deadline. In addition, any transmission submitted on or just prior to the deadline date that is rejected may not be reprocessed because the deadline will have passed by the time the user gets the information notifying him or her of the rejection.

[3] Applies only to students enrolled in clock-hour and nonterm credit-hour educational programs.

Note: The COD System must accept origination data for a student from an institution before it accepts disbursement information from the institution for that student. Institutions may submit origination and disbursement data for a student in the same transmission. However, if the origination data is rejected, the disbursement data is rejected.

[FR Doc. 2022–11721 Filed 5–31–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2022–SCC–0076]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; School Pulse Panel 2022 Quarter 3 Revision

AGENCY: Institute of Educational Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before July 1, 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 Carrie Clarady, 202–245–6347.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also

helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: School Pulse Panel 2022 Quarter 3 Revision.

OMB Control Number: 1850–0969.

Type of Review: A revision of a currently approved collection.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 17,280.

Total Estimated Number of Annual Burden Hours: 4,752.

Abstract: The School Pulse Panel (SPP) is a new data collection originally designed to collect voluntary responses from a nationally representative sample of public schools to better understand how schools, students, and educators are responding to the ongoing stressors of the coronavirus pandemic. The SPP monthly data collection (OMB #1850–0969) was formally cleared in April 2022, with change requests (OMB# 1850–0969 v.2–3) to clear the May and June 2022 Questionnaires cleared shortly thereafter. This collection allows NCES to comply with the January 21, 2021 E.O. 14000 Executive Order on Supporting the Reopening and Continuing Operation of Schools and Early Childhood Education Providers. Information is collected monthly from a nationally representative sample of public schools to better understand how schools, students, and educators are responding to the ongoing stressors of the coronavirus pandemic, along with other priority items for the White House, Centers for Disease Control and Prevention, and Department of Education program offices. The SPP study is extremely important particularly now that COVID–19 has not waned, and the pulse model is one that the agency will need after the pandemic subsides for other quick-turnaround data needs. The purpose of this submission is to propose and seek 30-day public comment on new items (within the scope of research domains both previously established and minimally revised in this request) to be collected on the August and September instruments (Appendix B.4). These items are considered very close to final and will go through minimal testing with school personnel to examine any comprehension concerns with item wording. Feedback from this testing, as well as additional input from SPP stakeholders, will result in modifications and additions that will be reflected in future change requests. Some previously approved items that are considered core content will be collected in August and September. Specifically, items on learning modes, quarantine, and some mitigation items will be repeated to maintain trend over time. Screener questions confirming point of contact information are also included in this revision. We would like to ask for updated contact information at the end of each survey to ensure we have the most up to date information for mailings and communications. Lastly, we plan to now add schools in the outlying areas to the sample, as described in revisions to Part B. All current study operations will be the same for the outlying areas, but we do need to send an introductory email to school principals. That email has been added to Appendix A. There are no changes to burden or costs associated with this revision.

Dated: May 26, 2022.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022–11707 Filed 5–31–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2022–SCC–0026]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Integrated Postsecondary Education Data System (IPEDS) 2022–23 Through 2024–25

AGENCY: Institute of Educational Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before July 1, 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 Carrie Clarady, 202–245–6347.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Integrated Postsecondary Education Data System (IPEDS) 2022–23 through 2024–25.

OMB Control Number: 1850–0582.

Type of Review: A revision of a currently approved collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 62,970.

Total Estimated Number of Annual Burden Hours: 760,351.

Abstract: The National Center for Education Statistics (NCES) seeks authorization from OMB to make a change to the Integrated Postsecondary Education Data System (IPEDS) data collection. Current authorization expires August 31, 2022 (OMB# 1850–0582 v.24–29). NCES is requesting a new clearance for the 2022–23, 2023–24, and 2024–25 data collections to enable us to make changes to the IPEDS data collection components, clarify definitions and instructions throughout the components, and to continue the IPEDS collection of postsecondary data over the next three years. IPEDS is a web-based data collection system designed to collect basic data from all postsecondary institutions in the United States and the other jurisdictions. IPEDS enables NCES to report on key dimensions of postsecondary education such as enrollments, degrees and other awards earned, tuition and fees, average net price, student financial aid, graduation rates, student outcomes, revenues and expenditures, faculty salaries, and staff employed. The IPEDS web-based data collection system was implemented in 2000–01. In 2020–21, IPEDS collected data from 6,063 postsecondary institutions in the United States and the other jurisdictions that are eligible to participate in Title IV Federal financial aid programs. All Title IV institutions are required to respond to IPEDS (Section 490 of the Higher Education Amendments of 1992 [Pub. L. 102–325]). IPEDS allows other (non-title IV) institutions to participate on a voluntary basis; approximately 300 non-title IV institutions elect to respond each year. Institution closures and mergers have led to a decrease in the number of institutions in the IPEDS universe over the past few years. Due to these fluctuations, combined with the addition of new institutions, NCES uses rounded estimates for the number of institutions in the respondent burden calculations for the upcoming years (estimated 6,100 Title IV institutions plus 300 non-title IV institutions for a total of 6,400 institutions estimated to submit IPEDS data during the 2022–23 through 2024–25 IPEDS data collections). IPEDS data are available to the public through the College Navigator and IPEDS Data Center websites. This clearance package includes a number of proposed changes to the data collection. As part of the public comment period review, NCES requests that IPEDS data submitters and other stakeholders respond to the directed questions found in Appendix D of this submission.

Dated: May 26, 2022.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022–11712 Filed 5–31–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Innovative Technologies Loan Guarantee Program

AGENCY: Loan Programs Office, Department of Energy.

ACTION: Request for information (''RFI'').

SUMMARY: The Loan Programs Office (''LPO'') of the Department of Energy (''DOE'') is seeking information to understand how it could improve its Title XVII Innovative Technologies Loan Guarantee Program (the ''Title XVII Loan Guarantee Program'') and implement provisions of the Energy Act of 2020 and the Infrastructure Investment and Jobs Act (the ''IIJA'') that expand or modify the authorities applicable to the Title XVII Loan Guarantee Program.

DATES: Comments must be received on or before July 1, 2022. If you anticipate difficulty in submitting comments within that period, contact the person listed in **FOR FURTHER INFORMATION CONTACT** as soon as possible.

ADDRESSES: Interested persons are encouraged to submit comments, identified by ''Title XVII Loan Guarantee Program RFI,'' by any of the following methods:

Email: LPO.ProposedRuleComments@hq.doe.gov. Include ''Title XVII Loan Guarantee Program RFI'' in the subject line of the message. Email attachments can be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format, prepared in accordance with the detailed instructions in section III of this document.

Postal Mail: Loan Programs Office, Attn: LPO Legal Department, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585–0121. Please submit one signed original paper copy. Due to potential delays in DOE's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt.

FOR FURTHER INFORMATION CONTACT: Steven Westhoff, Attorney-Adviser, Loan Programs Office, email: *LPO.ProposedRuleComments@hq.doe.gov,* or phone: (240) 220–4994.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

A. Background

LPO administers certain DOE lending programs, including under Title XVII of the Energy Policy Act of 2005, as amended (''Title XVII'').[1] Title XVII authorizes the Secretary of Energy (the ''Secretary'') to make loan guarantees for projects that ''avoid, reduce, utilize, or sequester air pollutants or anthropogenic emissions of greenhouse gases'' and ''employ new or significantly improved technologies as compared to commercial technologies in service in the United States.'' [2] LPO has administered the Title XVII Loan Guarantee Program pursuant to its regulations set forth at 10 CFR part 609 (the ''Title XVII Rule''), as required by the authorizing statute.[3] LPO provides additional guidance to applicants and establishes requirements in the solicitations for loan guarantee applications, which are issued and updated from time to time.

The Title XVII Rule sets forth the policies and procedures that DOE uses for the application process, which includes receiving, evaluating, and approving applications for loan guarantees to support eligible projects under Title XVII. The rule establishes the process by which DOE issues solicitations for applications for loan guarantees for eligible projects. The rule applies to all applications, conditional commitments, and loan guarantee agreements under the Title XVII Loan Guarantee Program and provides specific guidance to program applicants regarding eligibility for the program, the loan guarantee application process and requirements, criteria for DOE's evaluation of applications, and the process for negotiation and execution of a loan guarantee agreement term sheet, conditional commitment, and loan guarantee agreement. The Title XVII

[1] Public Law 109–58, title XVII (2005); 42 U.S.C. 16511 *et seq.*

[2] 42 U.S.C. 16513(a).

[3] 42 U.S.C. 16515(b), (d).

Rule also describes the terms applicable to the loan guarantee. DOE is in the process of evaluating how it can improve the Title XVII Rule, in line with its statutory authority, including recent amendments.

B. Energy Act of 2020

The Energy Act of 2020 was enacted in December 2020, as Division Z of the Consolidated Appropriations Act, 2021.[4] Section 9010 of the Energy Act of 2020 is entitled ''Loan Program Office Title XVII Reform'' and sets forth several modifications to the Title XVII Loan Guarantee Program through amendments to Sections 1702, 1703, and 1704 of the Energy Policy Act of 2005. The modifications include, but are not limited to, clarifying that the Secretary shall pay the cost of a guarantee, subject to availability of appropriations; specifying the time period for collection of fees for projects that reach financial closing; providing the Secretary the authority to reduce the fee for a guarantee; providing for certain interagency consultation requirements in connection with loan guarantees; requiring that the Secretary respond to certain applicant requests regarding the status of its applications under the program; and expanding and clarifying project eligibility under the program.

C. IIJA

The IIJA [5] was enacted in November 2021, as a historic investment in the Nation's infrastructure. The IIJA gives DOE express authority to support projects that increase the domestically produced supply of critical minerals [6] and to provide loan guarantees to projects receiving financial support or credit enhancements from a State energy financing institution.[7]

II. Request for Information

The purpose of this RFI is to solicit feedback from project developers and sponsors, industry members, investors, developers, academia, research laboratories, government agencies, potentially impacted communities and other stakeholders on potential changes to DOE's Title XVII Rule. Specifically, DOE is seeking input on how it could revise the Title XVII Rule to (i) improve its Title XVII Loan Guarantee Program and (ii) implement certain provisions of the Energy Act of 2020 and the IIJA that expand or modify the authorities applicable to the Title XVII Loan Guarantee Program.

DOE seeks public input on the following questions regarding LPO's administration of the Title XVII Loan Guarantee Program:

A. Energy Act of 2020

Section 9010(a)(3)(A) of the Energy Act of 2020 amended Section 1703(h) of the Energy Policy Act of 2005 to require that the Secretary charge and collect a guarantee fee sufficient to cover applicable administrative expenses (including costs associated with third-party consultants) only on or after the transaction's financial closing.[8] This amendment to Title XVII changed the way that DOE engaged and contracted with applicants and third-party advisors to DOE. Prior to the Energy Act of 2020, DOE required applicants to the Title XVII Loan Guarantee Program to enter into a ''Borrower Support Letter'' with third-party advisors, requiring that applicants directly pay the costs and expenses of DOE's third-party advisors on a monthly basis and as soon as advisors were engaged. DOE also charged an application fee for each of Part I and Part II of its application process and a portion of a ''facility fee'' upon execution of a Conditional Commitment. The borrower's responsibility for these fees and costs resulted in the borrower bearing a portion of the costs of the significant resources required to evaluate an application to the Title XVII Loan Guarantee Program at earlier stages of the application process. The fee and cost structure mimicked those typical of private sector debt markets.

Following the Energy Act of 2020, DOE modified its practices to eliminate application fees and to defer collection of the costs of DOE's third-party advisors until financial closing of a loan guarantee. These modifications require DOE to obligate funds appropriated for the administration of the Title XVII Loan Guarantee Program to support the potential costs of DOE's third-party advisors for each application.

(A–1) With respect to costs incurred for DOE's use of its third-party advisors, should DOE consider other applicant fee structures or arrangements not currently contemplated by the Title XVII Rule that are consistent with the provisions of the Energy Act of 2020?

i. What fee structures should DOE consider to ensure both equitable access to the Title XVII Loan Guarantee Program and responsible use of agency resources, and enable LPO to retain sufficient funds to advance the purposes of Title XVII?

ii. Should DOE consider entering into arrangements with applicants to require them to pay a fee to cover the costs of third-party advisors or otherwise require an applicant to reimburse DOE for its third-party costs and expenses if the applicant's project does not result in financial closing of a loan guarantee?

iii. Should DOE offer to enter into arrangements with applicants to allow them, solely at their discretion, to reimburse DOE's third-party costs *before* financial closing?

iv. What additional factors and criteria should DOE consider regarding recouping its costs incurred on applications that are denied, are withdrawn, or otherwise do not result in financial closing?

Section 9010(b) of the Energy Act of 2020 amends Section 1703 of the Energy Policy Act of 2005 to provide flexibility to the Secretary to, if regional variation significantly affects deployment, guarantee up to 6 projects deploying the same or similar technology as another project so long as no more than 2 guaranteed projects that use the same or similar technology are located in the same region of the United States.[9] The Energy Act of 2020 does not provide guidance to the Secretary regarding how to define ''regions'' or ''regional variation'' for the purposes of implementing this provision under Title XVII.

(A–2) What criteria should the Secretary consider when identifying specific regions of the United States and the effect of regional variation on technology deployment for the purposes of implementing this provision of the Energy Act of 2020?

i. Are there certain categories of projects or technologies that would not be eligible for the Title XVII Loan Guarantee Program unless DOE utilized particular criteria to evaluate ''regions'' or ''regional variation'' under this provision? If so, what criteria should LPO consider? Are there other examples from governmental programs with

[4] Public Law 116–260, Div. Z (2020).

[5] Public Law 117–58 (2021).

[6] 42 U.S.C. 16513(b)(13), as added by Public Law 117–58, sec. 40401(a)(2)(A) (2021). Although projects that increase the domestically produced supply of critical minerals are eligible under Title XVII, additional congressional appropriation is required before DOE may provide loan guarantees for this category of projects. Public Law 117–58, sec. 40401(a)(2)(B)–(C) (2021). Domestic projects related to critical minerals may, however, also separately qualify under preexisting categories of eligible projects under Title XVII. *See* 10 CFR 609.2(a). *See also* Executive Order 14017, ''America's Supply Chains,'' 86 FR 11849 (March 1, 2021); DOE, *America's Strategy to Secure the Supply Chain for a Robust Clean Energy Transition* (Feb. 24, 2022), available at *https://www.energy.gov/policy/articles/americas-strategy-secure-supply-chain-robust-clean-energy-transition.*

[7] 42 U.S.C. 16512(a), as amended through Public Law 117–58, sec. 40401(c)(2)(A) (2021).

[8] 42 U.S.C. 16512(h)(1), as amended by Public Law 116–260, sec. 9010(a)(3)(A) (2020).

[9] 42 U.S.C. 16513(f), as added by Public Law 116–260, sec. 9010(b)(3) (2020).

region-based requirements or criteria that DOE should consider?

ii. What additional factors and criteria should DOE consider when reviewing and evaluating multiple applications for projects that use the same or similar technology?

Section 9010(b) of the Energy Act of 2020 amends Section 1703 of the Energy Policy Act of 2005 to clarify that eligible projects under Title XVII may include ''projects that employ elements of commercial technologies in combination with new or significantly improved technologies.'' [10]

(A–3) How should DOE consider innovative software, information technology applications, or control system technology under Title XVII, including DOE's determination of eligible project costs?

B. IIJA

Section 40401(c) of the IIJA amends Section 1702 of the Energy Policy Act of 2005 to allow the Secretary to issue loan guarantees to projects receiving financial support or credit enhancements from a State energy financing institution.[11] ''State energy financing institution'' is defined by the statute as:

A quasi-independent entity or an entity within a State agency or financing authority established by a State:

(i) To provide financing support or credit enhancements, including loan guarantees and loan loss reserves, for eligible projects; and

(ii) to create liquid markets for eligible projects, including warehousing and securitization, or take other steps to reduce financial barriers to the deployment of existing and new eligible projects.[12]

''State'' is defined as any state, the District of Columbia, and any territory or possession of the United States.[13] State energy financing institutions may enter into partnerships with private entities, Tribal entities, and Alaska Native corporations in carrying out a project receiving a loan guarantee under Title XVII.[14]

(B–1) What types of entities should be considered ''State energy financing institutions'' for the purposes of implementing these amendments to the Title XVII Loan Guarantee Program?

i. What are some examples of ''quasi-independent'' entities?

ii. Could a private entity formed for the above purposes be considered a ''State energy financing institution''? If so, what other requirements should apply to such entities?

iii. Should there be minimum ownership requirements or governance requirements for an entity to be considered an eligible State energy financing institution?

(B–2) What types of financial support or credit enhancements from State energy financing institutions should DOE consider in evaluating projects under this authority? How can the loan or loan guarantee be applied in conjunction with the financial support or credit enhancements to most effectively achieve the objectives of the program?

(B–3) How can DOE facilitate a nationwide program for partnering with State energy financing institutions? Is it feasible for DOE to establish a single program for State energy financing institutions, with uniform terms and requirements?

C. Title XVII Financing Structures

LPO is evaluating the types of financing structures that will best allow it to achieve its objective of utilizing its authorities to accelerate the deployment and commercialization of new and innovative technologies that are the key to achieving its greenhouse gas reduction goals. DOE wants to ensure that its Title XVII Rule facilitates applications for loan guarantees in support of each of the categories of eligible projects under Title XVII, including projects for critical minerals and supply chain projects.

(C–1) Are there projects or financing structures, such as co-lending, funding a warehouse financing vehicle, or guaranteeing capital market instruments, that may be eligible under Title XVII but that are not contemplated by the existing Title XVII Rule?

(C–2) For any such projects or structures proposed under C–1, how might DOE address or facilitate those projects or structures under a revised Title XVII Rule?

(C–3) Should DOE enhance its support of eligible supply chain projects by allowing borrowers the ability to provide additional types of collateral security, such as security interests in purchase orders, and if so what types of collateral security should DOE consider? How should DOE evaluate such projects?

(C–4) Should DOE enhance its support of eligible projects that employ innovative software, information technology applications, control system technology, or other such technologies by allowing the borrowers the ability to provide additional types of collateral security, such as security interests in or rights to future cash flows from intellectual property? How should DOE evaluate such projects?

D. Title XVII Loan Guarantee Program Improvements

The Title XVII Rule has been largely the same since its original issuance pursuant to DOE's rulemaking at the onset of the program.[15] LPO has received a significantly higher volume of applications to its Title XVII Loan Guarantee Program in the past twelve months than in recent years. Considering this increased volume of applications and its new authorities, DOE is seeking to ensure that the Title XVII Rule establishes clear requirements and procedures for potential applicants and implements its statutory authority under Title XVII as intended by Congress and in line with the Administration's policies.

(D–1) Should DOE consider alternatives to its current practice of issuing separate solicitations for applications for Title XVII loan guarantees based on particular eligibility or funding categories? For example, similar to other federal loan programs, should LPO issue an open solicitation for all applications for loan guarantees for eligible projects under Title XVII? If so, how should DOE use programmatic, technical, financial, and other factors to evaluate each application on a rolling basis?

(D–2) Should the Title XVII Rule clarify what DOE considers a ''project'' for purposes of Title XVII applications? Should the rule provide criteria regarding the eligibility of distributed energy resources as a single project? If so, could DOE then improve the definition of ''project cost''?

(D–3) Would applicants be prejudiced or disadvantaged if the application process were to not include the negotiation of a preliminary term sheet with DOE?

(D–4) How else can DOE modify its application process or requirements in a manner that improves its implementation of the Title XVII Loan Guarantee Program?

[10] 42 U.S.C. 16513(a), as amended by Public Law 116–260, sec. 9010(b)(1) (2020).

[11] 42 U.S.C. 16512(a), as amended through Public Law 117–58, sec. 40401(c)(2)(A) (2021). Projects receiving financial support or credit enhancements from a State energy financing institution need not employ new or significantly improved technologies to be eligible, but additional congressional appropriation is required before DOE may provide loan guarantees for such projects. 42 U.S.C. 16512(r), as added by Public Law 117–58, sec. 40401(c)(2)(C).

[12] 42 U.S.C. 16511, as amended through Public Law 117–58, sec. 40401(c)(1) (2021).

[13] *Id.;* 42 U.S.C. 6802.

[14] 42 U.S.C. 16512(r)(2), as added by Public Law 117–58, sec. 40401(c)(2)(C) (2021).

[15] 72 FR 60116 (October 23, 2007).

III. Submission of Comments

DOE invites all interested parties to submit in writing by July 1, 2022, comments and information on matters addressed in this RFI.

Submitting comments via email or postal mail. 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.

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, that are written in English, and that are 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. Attachments should be limited to no more than 10 megabytes (MB) in size.

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. According 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. Submit these documents via email. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Signing Authority

This document of the Department of Energy was signed on May 26, 2022, by Dong Kim, Deputy Director, Loan Programs Office, 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 26, 2022.

Treena V. Garrett,

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

[FR Doc. 2022–11734 Filed 5–31–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: Department of Energy.

ACTION: Submission for Office of Management and Budget (OMB) review; comment request.

SUMMARY: The Department of Energy (DOE) has submitted an information collection request to the OMB for extension under the provisions of the Paperwork Reduction Act of 1995. The information collection requests a three-year extension of its Contractor Legal Management Requirements, OMB Control Number 1910–5115. The proposed collection will require covered DOE contractors and subcontractors to submit to DOE counsel a legal management plan within 60 days following execution of a contract or request of the contracting officer. Covered contractors must also submit an annual legal budget that includes cost projections for matters defined as significant matters. The budget detail will depend on the nature of the activities and complexity of the matters included in the budget. The regulation further requires covered contractors to submit staffing and resource plans addressing matters defined as significant matters in litigation. The regulation requires covered contractors to submit certain information related to litigation initiated against the contractor before initiating defensive litigation, offensive litigation, or entering into a settlement agreement.

DATES: Comments regarding this collection must be received on or before July 1, 2022. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–881–8585.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Eric Mulch, *eric.mulch@hq.doe.gov,* (202) 287–5746.

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) *OMB No.:* 1910–5115; (2) *Information Collection Request Title:* Contractor Legal Management Requirements; (3) *Type of Review:* extension; (4) *Purpose:* the information collection to be extended has been and will be used to form the basis for DOE actions on requests from the contractors for reimbursement of litigation and other legal expenses. The information collected related to annual legal budget, staffing and resource plans, and initiation or settlement of defensive or offensive litigation is and will be similarly used.; (5) *Annual Estimated Number of Respondents:* 45; (6) *Annual Estimated Number of Total Responses:* 154; (7) *Annual Estimated Number of Burden Hours:* 1150; (8) Annual Estimated Reporting and Recordkeeping Cost Burden: 0.

Statutory Authority: Section 161 of the Atomic Energy Act of 1954, 42 U.S.C. 2201, the Department of Energy Organization Act, 42 U.S.C 7101, *et seq.,* and the National Nuclear Security Administration Act, 50 U.S.C. 2401, *et seq.*

Signing Authority

This document of the Department of Energy was signed on May 26, 2022, by Brian J. Lally, Acting Deputy General Counsel for Transactions, Technology and Contractor Human Resources, 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 26, 2022.

Treena V. Garrett,

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

[FR Doc. 2022–11757 Filed 5–31–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings in Existing Proceedings

Docket Numbers: RP21–788–001.

Applicants: ANR Pipeline Company.

Description: Compliance filing: Operational Purchase and Sales Report 2021—Revised to be effective N/A.

Filed Date: 5/25/22.

Accession Number: 20220525–5022.

Comment Date: 5 p.m. ET 6/6/22.

Docket Numbers: RP22–858–001.

Applicants: ANR Pipeline Company.

Description: Compliance filing: Operational Purchase and Sales Report 2022—Amendment to be effective N/A.

Filed Date: 5/25/22.

Accession Number: 20220525–5026.

Comment Date: 5 p.m. ET 6/6/22.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date. The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 25, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–11725 Filed 5–31–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–2574–002.

Applicants: Southwest Power Pool, Inc., American Electric Power Service Corporation.

Description: Compliance filing: American Electric Power Service Corporation submits tariff filing per 35: AEP West Operating Companies Compliance Filing Pursuant to Order Issued to be effective 1/27/2020.

Filed Date: 5/25/22.

Accession Number: 20220525–5047.

Comment Date: 5 p.m. ET 6/15/22.

Docket Numbers: ER21–1807–003.

Applicants: Hill Top Energy Center LLC.

Description: Refund Report: Refund Report to be effective N/A.

Filed Date: 5/25/22.

Accession Number: 20220525–5171.

Comment Date: 5 p.m. ET 6/15/22.

Docket Numbers: ER22–1439–001.

Applicants: EdSan 1B Group 1 Edwards, LLC.

Description: Tariff Amendment: Amendment to Petition for Market-Based Rate Authorization to be effective 5/24/2022.

Filed Date: 5/25/22.

Accession Number: 20220525–5140.

Comment Date: 5 p.m. ET 6/15/22.

Docket Numbers: ER22–1440–001.

Applicants: EdSan 1B Group 1 Sanborn, LLC.

Description: Tariff Amendment: Amendment to Petition for Market-Based Rate Authorization to be effective 5/24/2022.

Filed Date: 5/25/22.

Accession Number: 20220525–5145.

Comment Date: 5 p.m. ET 6/15/22.

Docket Numbers: ER22–1441–001.

Applicants: EdSan 1B Group 2, LLC.

Description: Tariff Amendment: Amendment to Petition for Market-Based Rate Authorization to be effective 5/24/2022.

Filed Date: 5/25/22.

Accession Number: 20220525–5150.

Comment Date: 5 p.m. ET 6/15/22.

Docket Numbers: ER22–1948–000.

Applicants: Public Service Company of New Mexico.

Description: § 205(d) Rate Filing: TRANSFER OF OPERATIONAL CONTROL AND MAINTENANCE AGREEMENT to be effective 5/24/2022.

Filed Date: 5/24/22.

Accession Number: 20220524–5153.

Comment Date: 5 p.m. ET 6/14/22.

Docket Numbers: ER22–1949–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA, Service Agreement No. 6103; Queue Nos. AC1–091/AC1–092 et al to be effective 6/10/2021.

Filed Date: 5/25/22.

Accession Number: 20220525–5051.

Comment Date: 5 p.m. ET 6/15/22.

Docket Numbers: ER22–1950–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: Revisions to Update the Transmission Owner Selection Process to be effective 7/25/2022.

Filed Date: 5/25/22.

Accession Number: 20220525–5075.

Comment Date: 5 p.m. ET 6/15/22.

Docket Numbers: ER22–1951–000.

Applicants: American Transmission Systems, Incorporated, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: American Transmission Systems, Incorporated submits tariff filing per 35.13(a)(2)(iii: ATSI AMPT Revised IA No. 5196 to be effective 5/26/2022.

Filed Date: 5/25/22.

Accession Number: 20220525–5088.

Comment Date: 5 p.m. ET 6/15/22.

Docket Numbers: ER22–1952–000.

Applicants: Priogen Power LLC.

Description: Notice of Cancellation of Market Based Rate Tariff of Priogen Power LLC.

Filed Date: 5/25/22.

Accession Number: 20220525–5107.

Comment Date: 5 p.m. ET 6/15/22.

Docket Numbers: ER22–1953–000.

Applicants: Unitil Energy Systems, Inc.

Description: Notice of Termination of Interim Distribution Wheeling Agreement of Unitil Energy Systems, Inc.

Filed Date: 5/24/22.

Accession Number: 20220524–5200.

Comment Date: 5 p.m. ET 6/14/22.

Docket Numbers: ER22–1954–000.

Applicants: Mid-Georgia Cogen L.P.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 7/24/2022.

Filed Date: 5/25/22.

Accession Number: 20220525–5161.

Comment Date: 5 p.m. ET 6/15/22.

Docket Numbers: ER22–1955–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2022–05–25_Att FF Upgrades related to Competitive Transmission Process to be effective 7/25/2022.

Filed Date: 5/25/22.

Accession Number: 20220525–5166.

Comment Date: 5 p.m. ET 6/15/22.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH22–15–000.

Applicants: Unison Energy, LLC, AIM Universal Holdings, LLC, Hunt Companies, Inc.

Description: Unison Energy, LLC, et al., submits FERC–65A Notice of Change in Fact to Waiver Notification.

Filed Date: 5/25/22.

Accession Number: 20220525–5109.

Comment Date: 5 p.m. ET 6/15/22.

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 25, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–11724 Filed 5–31–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Proposed 2025 Olmsted Power Marketing Plan

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed 2025 Olmsted power marketing plan and announcement of public information and comment forum.

SUMMARY: Western Area Power Administration (WAPA), a federal Power Marketing Administration of the Department of Energy (DOE), is seeking comments on its proposed 2025 Olmsted Power Marketing Plan including the general power marketing criteria to be used as the basis for marketing the hydroelectric generation of the Olmsted Powerplant Replacement Project (Olmsted Project). The current Olmsted Power Marketing Plan will expire on September 30, 2024, and the proposed 2025 Olmsted Power Marketing Plan would take effect October 1, 2024.

DATES: The public comment period on the Proposed 2025 Olmsted Power Marketing Plan begins June 1, 2022 and ends August 30, 2022. To be assured of consideration, WAPA must receive all written comments by the end of the comment period.

WAPA will hold a virtual public information forum about this proposed marketing plan on Thursday, June 28, 2022, from 9:30 a.m. to 12:00 p.m. MDT. The virtual public comment forum is scheduled for the afternoon of the same day, Thursday, June 28, 2022, beginning at 1:00 p.m. MDT and concluding when comments are complete, or no later than 4:00 p.m. MDT. Due to the COVID–19 pandemic, neither the public information nor comment forums will be held in-person. Information on the virtual meeting may be found on the Colorado River Storage Project (CRSP) website at: *https://www.wapa.gov/regions/CRSP/PowerMarketing/Pages/power-marketing.aspx*. WAPA will post webinar and dial in information at this link 14 days before the scheduled forums.

ADDRESSES: Submit written comments about this proposed marketing plan to: Mr. Rodney Bailey, Acting CRSP Manager, CRSP Management Center (MC), Western Area Power Administration, 1800 South Rio Grande Avenue, Montrose, CO 81401. Comments also may be emailed to *Olmsted-Marketing@wapa.gov* or faxed to 970–240–6282. All documentation developed or retained by WAPA for the purpose of developing the proposed marketing plan is available for inspection and copying at the CRSP MC.

FOR FURTHER INFORMATION CONTACT: Mr. Randolph Manion, CRSP Contracts and Energy Services Manager, *Manion@wapa.gov,* 720–201–3285. Written requests for information should be mailed to the CRSP Management Center at the **ADDRESSES** section.

SUPPLEMENTARY INFORMATION: WAPA is responsible for marketing power from CRSP, of which the Olmsted Project is a feature. WAPA is also responsible for marketing power from other CRSP projects which include the Salt Lake City Area Integrated Projects, the Falcon-Amistad Project, and the Provo River Project. CRSP operates approximately 2,316 miles of transmission line and associated infrastructure related to these federal hydroelectric projects across Arizona, New Mexico, Colorado, Utah, and Wyoming. This **Federal Register** notice formally initiates WAPA's public process and request for public comments on the proposed 2025 Olmsted Power Marketing Plan. WAPA will prepare and publish the final 2025 Olmsted Power Marketing Plan after considering public comments on the proposed marketing plan. This **Federal Register** notice is not a call for applications. A call for applications from those interested in an allocation of Olmsted Project power will occur in a future notice.

The Olmsted Project is located at the mouth of Provo Canyon in northern Utah and is part of the Central Utah Project, a participating project of CRSP. In 1987, the United States Department of the Interior, Bureau of Reclamation (Reclamation) secured ownership of the Olmsted Flowline, located in northern Utah, from PacifiCorp (formerly known as Utah Power and Light), and the associated water rights as an essential part of the Central Utah Project. In the related 1990 Settlement Agreement, the Olmsted facilities were acquired in condemnation proceedings by the United States and added to the Central Utah Project to better secure and develop water rights. As part of the condemnation proceedings, PacifiCorp continued Olmsted operations until September 22, 2015. Power generation at the site ceased on that date, and the Department of Interior (DOI) assumed responsibility for operating the Olmsted Project.

The continued operation of the Olmsted facilities is essential to maintaining the non-consumptive Olmsted water rights necessary for the Central Utah Project. A comprehensive evaluation of the 100-year-old project determined the facility greatly exceeded its operational life, and a replacement hydroelectric facility was necessary. On February 4, 2015, an Implementation Agreement (Agreement) for the Olmsted Project was signed by the Central Utah Water Conservancy District (District), Reclamation, DOE, and WAPA (Participants). The Agreement set forth the responsibilities of the Participants and how the Olmsted Project would be funded. The second quarter of calendar year 2016, pursuant to the Agreement, the District began construction of the 12-megawatt, $42 million replacement hydroelectric facility and new power transmission line to the Provo Power system. Olmsted Powerplant construction was completed in July 2018 and started commercial power production in October 2018. The

Olmsted Project is a federal facility operated and maintained by the District in connection with its Central Utah Project operations. The Olmsted Project is a ''run-of-the-river'' plant producing power only when water demands from downstream users necessitate water deliveries.

Current Marketing Plan Background

WAPA published the Final 2018 Olmsted Power Marketing Plan and Call for Applications in the **Federal Register** on October 11, 2017 (82 FR 47201). The ''Final Allocations of the Olmsted Powerplant Replacement Project'' was published in the **Federal Register** on September 5, 2018 (83 FR 45121), and WAPA began marketing energy under the marketing plan on October 5, 2018. The Olmsted Project's 3-year net generation average is 24,650,000 kilowatt-hours (kWh). This hydropower is currently marketed to Utah Municipal Power Agency; and the District, Lehi City, Kaysville City, Weber Basin Water Conservancy District, and Springville City through the Utah Associated Municipal Power Systems (Customers). Customers with an allocation receive a proportional share of the energy and annually pay a proportional share of the operation, maintenance, and replacement (OM&R) expenses in 12 monthly installments.

Proposed 2025 Olmsted General Power Marketing Criteria

In the proposed 2025 Olmsted Power Marketing Plan, WAPA proposes to offer a resource extension to existing Customers and a portion of the resource to new applicants under the following general marketing criteria:

A. *Marketing Area:* Due to the relatively small size of the resource and its operating characteristics, eligible applicants must be located within the following counties in Utah: Davis, Juab, Morgan, Salt Lake, Summit, Utah, Weber, and Wasatch.

B. *Resource Extensions and Resource Pool Allocations:* WAPA proposes to provide 95 percent of its available energy resource to existing Customers and to establish a resource pool up to 5 percent for eligible new preference entities and the ''June Sucker'' fish restoration efforts required by the Central Utah Project Completion Act. WAPA will take into consideration all existing federal hydropower allocations an applicant is currently receiving when determining each new allocation. Allocations of Olmsted Project energy will be determined solely by WAPA. Eligible applicant(s) who receive an allocation will be allocated a percentage of the annual energy output of the powerplant rather than fixed quantities of energy.

C. *Eligible Applicants:* Eligible applicants must qualify as preference entities, in accordance with section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c). WAPA will provide allocations only to preference entities in the marketing area. WAPA, through a separate public process, will determine the amount of energy to allocate in accordance with the marketing criteria and administrative discretion under Reclamation Law (*e.g.,* Reclamation Act of 1902, 32 Stat. 388, as amended). As operator of the Olmsted Power Plant and as a result of priority status under the current marketing plan, the District will not be impacted by the 5 percent set aside for eligible new preference entities.

D. *Preference Entities:* Municipalities, rural electric cooperatives, and political subdivisions including irrigation or other districts, and other governmental organizations that have electric utility status by October 1, 2023, and federally recognized Native American tribes are all preference entities in accordance with section 9(c) of the Reclamation Project Act of 1939, as amended (43 U.S.C. 485h(c)). A Native American applicant must be an ''Indian Tribe'' as that term is defined in section 4 of the Indian Self Determination and Education Assistance Act, as amended (25 U.S.C. 5304(e)). ''Electric utility status'' means that the entity has responsibility to meet load growth, has a distribution system, and is ready, willing, and able to purchase federal power from WAPA on a wholesale basis.

E. *Ready, Willing, and Able:* Eligible applicants must be ready, willing, and able to receive and distribute or consume energy from WAPA. ''Ready, willing, and able'' means the applicant has the facilities needed for the receipt of power or has made the necessary arrangements for transmission and/or distribution service, and its power supply contracts with third parties permit the delivery of WAPA's power.

F. *Contract Obligations:* Eligible applicants that receive an allocation must execute electric service contracts within 6 months of receiving a contract offer from WAPA, unless WAPA agrees otherwise in writing. Furthermore, applicants must comply with all terms and conditions stated within that contract, including scheduling, accounting, and billing procedures; Energy Planning and Management Program requirements; General Power Contract Provisions; and power factor, among others.

G. *Contract Term:* The term of the contract will be limited to 10 years. Resource extensions and new allocations would begin on October 1, 2024, and remain in effect through September 30, 2034. However, the contract will automatically renew for up to two additional 5-year terms, commencing on October 1, 2034, and October 1, 2039, respectively, unless no later than 3 years before the beginning of an extension (by October 1, 2031, and October 1, 2036, respectively), any party to the contract gives written notice not to renew. If such notice is given, the automatic renewal option will be revoked, and all contracts will expire on September 30, 2034, or September 30, 2039, respectively.

H. *Delivery Point:* The Olmsted Project is electrically interconnected to the City of Provo, Utah, distribution and transmission facilities (Provo System), and delivery of power to each Customer will be where the 12.47 Provo System interconnects at PacifiCorp's Hale Substation.

I. *Transmission Beyond Delivery Point:* Any associated transformation/transmission beyond the delivery point at Hale Substation is the sole responsibility of each Customer. Eligible applicants that receive an allocation must have the necessary arrangements for transmission and/or distribution service in place by October 1, 2023.

J. *Regional Transmission Organization:* Should PacifiCorp, as the balancing authority operator where the Olmsted Project is interconnected, join a full electricity market (*e.g.,* Regional Transmission Organization and/or an Independent System Operator), and in joining that market create unintended delivery point/point of receipt financial impacts to the Olmsted Project, and/or other unintended financial impacts, such financial impacts will be included as part of the Olmsted operation expenses, and WAPA will work with the Customers in good faith in an attempt to minimize those financial impacts.

K. *Rates and Payment:* Olmsted Project is a ''take all, pay all'' project (*i.e.* the Olmsted Project annual revenue requirement is not dependent upon the amount of energy available each year). For additional information see the Provisional Formula Rate Schedule Olmsted F–1, effective through May 6, 2023, under Olmsted Powerplant Replacement Project-Rate Order No. WAPA–177, published in the **Federal Register** on May 7, 2018 (83 FR 20065).

Legal Authority

WAPA is responsible for marketing the Federal power produced by the

Olmsted Project, as well as the other participating projects of CRSP, in accordance with the following Acts of Congress: Reclamation Act of June 17, 1902 (Pub. L. 57–161) (32 Stat. 388), Revision of the Reclamation Act of August 4, 1939 (Pub. L. 76–260) (53 Stat. 1187), Colorado River Storage Project Act of April 11, 1956 (Pub. L. 84–485) (70 Stat. 105), Department of Energy Organization Act of August 4, 1977 (Pub. L. 95–91) (91 Stat. 565), Energy Policy Act of October 30, 1992 (Pub. L. 102–575) (106 Stat. 4600, 4605), as amended.

Availability of Information

Documents developed or retained by WAPA during this public process will be available on WAPA's website, by appointment, for inspection and copying at the CRSP MC at the **ADDRESSES** Section above. Written comments received as part of the Proposed 2025 Olmsted Power Marketing Plan formal public process will be available for viewing on CRSP's website.

Regulatory Procedure Requirements

A. Review Under the National Environmental Policy Act (NEPA)

WAPA has determined that this proposed action fits within the categorical exclusion listed in appendix B to subpart D of 10 CFR part 1021 (B4.1 Contracts, policies, and marketing and allocation plans for electric power). Categorically excluded projects and activities do not require preparation of either an environmental impact statement or an environmental assessment.[1] Specifically, WAPA has determined that this rulemaking is consistent with activities identified in part B4, Categorical Exclusions Applicable to Specific Agency Actions (see 10 CFR part 1021, appendix B to subpart D, part B4). A copy of the categorical exclusion determination is available on the CRSP website at: *https://www.wapa.gov/regions/CRSP/environment/Pages/environment.aspx.*

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.,* requires a federal agency to perform a regulatory flexibility analysis whenever the agency is required by law to publish a general notice of proposed rulemaking for any proposed rule, unless the agency can certify that the rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, a ''rule'' does not include ''a rule of particular applicability relating to rates [and] services . . . or to valuations, costs or accounting, or practices relating to such rates [and] services . . .'' 5 U.S.C. 601. WAPA has determined that this action relates to services offered by WAPA and, therefore, is not a rule within the purview of the RFA.

C. 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.

D. Review Under Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*), WAPA has received approval from the Office of Management and Budget to collect applicant data, under OMB control number 1910–5136.

Signing Authority

This document of the Department of Energy was signed on [DATE], 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 24, 2022.

Treena V. Garrett,

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

[FR Doc. 2022–11475 Filed 5–31–22; 8:45 am]

BILLING CODE 6450–01–P

[1] The determination was done in compliance with NEPA (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).

DEPARTMENT OF ENERGY

Western Area Power Administration

Proposed 2025 Provo River Project Marketing Plan

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed 2025 Provo River project marketing plan and announcement of public information and comment forum.

SUMMARY: Western Area Power Administration (WAPA), a federal Power Marketing Administration of the Department of Energy (DOE), is seeking comments on this proposed 2025 Provo River Project (PRP) Marketing Plan, including the general power marketing criteria to be used as the basis for marketing the hydroelectric generation of the PRP. The current PRP Marketing Plan expires September 30, 2024, and the proposed 2025 PRP Marketing Plan would take effect October 1, 2024.

DATES: The public comment period on the Proposed 2025 PRP Marketing Plan begins June 1, 2022 and ends August 30, 2022. To be assured of consideration, WAPA must receive all written comments by the end of the comment period.

WAPA will hold a virtual public information forum about this proposed marketing plan on Thursday, June 28, 2022, from 9:30 a.m. to 12:00 p.m. MDT. The virtual public comment forum is scheduled the same day, Thursday, June 28, 2022, beginning at 1:00 p.m. MDT and concluding when comments are complete, or no later than 4:00 p.m. MDT. Due to the COVID–19 pandemic, neither the public information nor comment forums will be held in-person. Information on the virtual meeting may be found on the Colorado River Storage Project (CRSP) website at: *https://www.wapa.gov/regions/CRSP/PowerMarketing/Pages/power-marketing.aspx*. WAPA will post webinar and dial in information at this link 14 days before the scheduled forums.

ADDRESSES: Submit written comments about this proposed marketing plan to: Mr. Rodney Bailey, Acting CRSP Manager, CRSP Management Center (MC), Western Area Power Administration, 1800 South Rio Grande Avenue, Montrose, CO 81401. Comments also may be emailed to *Provo-Marketing@wapa.gov* or be faxed to 970–240–6282. All documentation developed or retained by WAPA for the purpose of developing the proposed marketing plan is available for inspection and copying at the CRSP MC.

FOR FURTHER INFORMATION CONTACT: Mr. Randolph Manion, CRSP Contracts and Energy Services Manager, *Manion@wapa.gov,* 720–201–3285. Written requests for information should be mailed to CRSP MC at the **ADDRESSES** section.

SUPPLEMENTARY INFORMATION: WAPA is responsible for marketing power from the PRP, which is done independently from the other projects marketed by WAPA's CRSP, including the Salt Lake City Area Integrated Projects (SLCA/IP), Olmsted Project, and the Falcon-Amistad Project. In addition to marketing power from the PRP and other projects, WAPA's CRSP operates approximately 2,316 miles of transmission line and associated infrastructure related to these federal hydroelectric projects across Arizona, New Mexico, Colorado, Utah, and Wyoming. This **Federal Register** notice formally initiates WAPA's public process and request for public comments on the proposed 2025 PRP Marketing Plan. WAPA will prepare and publish the final 2025 PRP Marketing Plan after public comments on the proposed marketing plan are considered. This **Federal Register** notice is not a call for applications. A call for applications from those interested in an allocation of PRP power will occur in a future **Federal Register** notice.

The PRP is a small water development project, with a powerplant, in northern Utah. It was authorized by President Franklin D. Roosevelt, in part, as a response to the Great Depression and a severe drought that devasted Utah's agriculture and threatened municipal water supplies in the 1930s. PRP's primary function is to provide irrigation, municipal, and industrial water to users in Salt Lake and Utah Counties, Utah. The Department of the Interior, Bureau of Reclamation (Reclamation) finished construction of the Deer Creek Dam in 1938 and the Deer Creek Powerplant in 1958, which included two 2.475-megawatt generators. On June 27, 1936, Reclamation signed contract number Ilr-874 making the Provo River Water Users' Association (PRWUA) the operator of the dam and responsible for repayment of the PRP. The initial investment in the power facilities was repaid in 1984 but there are ongoing costs associated with operation, maintenance, and replacement (OM&R) of equipment. Surplus power revenues may be used to aid the repayment of the PRP irrigation investment.

Between October 15 and April 15, water may be diverted from the adjacent Weber River Basin into the Provo River and stored in Deer Creek Reservoir for irrigation purposes pursuant to the terms of the 1938 contract number Ilr–1082 between the PRWUA, PacifiCorp (formerly Utah Power and Light Company), and Reclamation, among others. The diversion creates a loss of power generation at the Weber Powerplant on the Weber River, downstream from the diversion. As a result, PacifiCorp, the owner of the Weber Powerplant, is reimbursed for its winter energy losses with PRP energy (Weber/Provo Water Exchange). During this winter period, PRP generation above the reimbursement amount is sold to WAPA's CRSP as non-firm surplus energy; during the summer period, PRP generation is sold to WAPA's CRSP as firm energy.

Current Marketing Plan Background

Under the Final Provo River Project Marketing Plan published in the **Federal Register** November 21, 1994 (59 FR 60007), WAPA markets PRP power and energy, independent from the SLCA/IP, to eight preference entities including Heber City, Lehi, Springville, Strawberry Electric Service District, and Payson through Intermountain Consumers Power Association (in 1995, WAPA's contract with Intermountain Consumers Power Association was transferred to Utah Associated Municipal Power Systems); and Provo, Salem, and Spanish Fork through the Utah Municipal Power Agency, hereinafter referred to as Customers.

Under the current Marketing Plan, PRP is a ''take all, pay all'' contractual arrangement, *i.e.,* the annual revenue requirement is not dependent upon the amount of marketable energy available each year. Customers with an allocation pay their share of all PRP annual OM&R costs, including a separate annual payment to Reclamation for the PRP irrigation investments, in return for receiving all marketable energy produced by PRP each year. For additional information, see the February 14, 2020 **Federal Register** Notice announcing the Provo River Project—Rate Order No. WAPA–189, Provisional Formula Rate PR–2, effective April 1, 2020, through March 31, 2025, (85 FR 8583) (''WAPA–189'').

Proposed 2025 Provo River Project General Power Marketing Criteria

In the proposed 2025 PRP Marketing Plan, WAPA proposes to offer a resource extension to existing Customers, and to offer a portion of the resource to new applicants under the following general marketing criteria.

A. *Marketing Area:* Due to the relatively small size of the resource and its operating characteristics, eligible applicants must be located within Utah and Wasatch counties, Utah.

B. *Resource Extension and Resource Pool Allocations:* WAPA proposes to provide 95 percent of its available energy resource to existing Customers and to establish a resource pool up to 5 percent for new eligible applicants. WAPA will take into consideration all existing federal hydropower allocations an applicant is currently receiving when determining each allocation. Eligible applicants who receive an allocation from the Deer Creek Powerplant will receive a percentage of available annual winter (October–March) and summer (April–September) generation rather than fixed quantities of energy; percentages will be solely determined by WAPA. Historically, marketable energy has averaged 23,000,000 kilowatt-hours (kWh), with 15,000,000 kWh generated during the summer months, and the remaining 8,000,000 kWh from winter surplus energy. Most recently, PRP's five-year net generation average is 23,500,000 kWh.

C. *Preference Entities:* Municipalities, rural electric cooperatives, and political subdivisions including irrigation or other districts, and other governmental organizations that have electric utility status by October 1, 2023, and federally recognized Native American tribes are all preference entities in accordance with section 9(c) of the Reclamation Project Act of 1939, as amended (43 U.S.C. 485h(c)). A Native American applicant must be an ''Indian Tribe'' as that term is defined in section 4 of the Indian Self Determination and Education Assistance Act, as amended (25 U.S.C. 5304). ''Electric utility status'' means that the entity has responsibility to meet load growth, has a distribution system, and is ready, willing, and able to purchase federal power from WAPA on a wholesale basis.

D. *Ready, Willing, and Able:* Eligible applicants must be ready, willing, and able to receive and distribute or use energy from WAPA. ''Ready, willing, and able'' means the applicant has the facilities needed for the receipt of power or has made the necessary arrangements for transmission and/or distribution service, and its power supply contracts with third parties permit the delivery of WAPA's power.

E. *Eligible Applicants:* Eligible applicants must qualify as preference entities, in accordance with section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c). WAPA will provide allocations only to preference entities in the marketing area. WAPA, through a separate public process, will determine the amount of energy, if any, to allocate in accordance with the marketing criteria and administrative discretion under Reclamation Law (*e.g.,* Reclamation Act of 1902, 32 Stat. 388, as amended).

F. *Contract Obligations:* Eligible applicants that receive an allocation must execute electric service contracts

within 6 months of receiving a contract offer from WAPA, unless WAPA agrees otherwise in writing. Furthermore, the applicant must comply with all terms and conditions stated within that contract, including scheduling, accounting, and billing procedures; Energy Planning and Management Program requirements; General Power Contract Provisions; and power factor, among others.

G. *Separate Contractual Arrangements with PacifiCorp:* Eligible applicants that receive an allocation must execute a separate multi-party agreement among WAPA, Reclamation, Central Utah Water Conservation District, PRWUA, and PacifiCorp to ensure repayment of energy to PacifiCorp for the loss of power generation due to the Weber/Provo Water Exchange.

H. *Contract Term:* The term of the contract will be 10 years. Resource extensions and new allocations would begin on October 1, 2024, and remain in effect through September 30, 2034. However, the contract will automatically renew for up to two additional 5-year terms, commencing on October 1, 2034, and October 1, 2039, respectively, unless no later than 3 years before the beginning of an extension (by October 1, 2031, and October 1, 2036, respectively), any party to the contract gives written notice not to renew. If such notice is given, the automatic renewal option will be revoked, and all contracts will expire on September 30, 2034, or September 30, 2039, respectively.

I. *Delivery Point:* PRP is electrically interconnected to PacifiCorp's 138-kilovolt (kV) transmission system (PacifiCorp's System). Eligible applicants taking delivery of power from WAPA must do so at the PacifiCorp System 138-kV Hale Powerplant Switchyard, South Provo Tap, or Spanish Fork Substation. Costs for transmission will be paid by the eligible applicants through appropriate contractual arrangements.

J. *Transmission Beyond Delivery Point:* Any associated transformation/transmission beyond the PacifiCorp System 138-kV Hale Powerplant Switchyard, South Provo Tap, or Spanish Fork Substation is the sole responsibility of the eligible applicants. Eligible applicants that receive an allocation must have the necessary arrangements for transmission and/or distribution service in place by October 1, 2023.

K. *Regional Transmission Organization:* Should PacifiCorp, as the balancing authority operator in the PRP area, join a full electricity market (*e.g.,* a Regional Transmission Organization and/or an Independent System Operator), and in joining that market create an unintended delivery point or point of receipt financial impact to the PRP and/or other unintended financial impacts, such financial impacts will be included as part of the PRP operation expenses, and WAPA will work with the Customers in good faith in an attempt to minimize those financial impacts.

L. *Rates and Payment:* PRP is a ''take all, pay all'' project. This means the annual revenue requirement does not depend on the amount of energy available each year. Each eligible applicant that receives an allocation will receive a proportional share of the energy and will annually pay a proportional share of the OM&R expenses, including a separate annual payment to Reclamation for the PRP irrigation investments, in 12 monthly installments. For additional information, see Rate Order No. WAPA–189.

Legal Authority

WAPA is responsible for marketing the federal power produced by the PRP, as well as the other participating projects of CRSP, in accordance with the following Acts of Congress: Reclamation Act of June 17, 1902 (Pub. L. 57–161) (32 Stat. 388), Provo River Project of December 5, 1924 (43 Stat. 701), Revision of the Reclamation Act of August 4, 1939 (Pub. L. 76–260) (53 Stat. 1187), Colorado River Storage Project Act of April 11, 1956 (Pub. L. 84–485) (70 Stat. 105), Department of Energy Organization Act of August 4, 1977 (Pub. L. 95–91) (91 Stat. 565), as amended.

Availability of Information

Documents developed or retained by WAPA during this public process will be available on CRSP's website, by appointment, for inspection and copying at the CRSP MC at the **ADDRESSES** Section above. Written comments received as part of the Proposed 2025 PRP Marketing Plan formal public process will be available for viewing on CRSP's website.

Regulatory Procedure Requirements

A. Review Under the National Environmental Policy Act (NEPA)

WAPA has determined that this proposed action fits within the categorical exclusion listed in appendix B to subpart D of 10 CFR part 1021 (B4.1 Contracts, policies, and marketing and allocation plans for electric power). Categorically excluded projects and activities do not require preparation of either an environmental impact statement or an environmental assessment.[1] Specifically, WAPA has determined that this rulemaking is consistent with activities identified in part B4, Categorical Exclusions Applicable to Specific Agency Actions (see 10 CFR part 1021, appendix B to subpart D, part B4). A copy of the categorical exclusion determination is available on CRSP's website at: *https://www.wapa.gov/regions/CRSP/environment/Pages/environment.aspx*.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA) 5 U.S.C. 601 *et seq.,* requires a federal agency to perform a regulatory flexibility analysis whenever the agency is required by law to publish a general notice of proposed rulemaking for any proposed rule, unless the agency can certify that the rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, a ''rule'' does not include ''a rule of particular applicability relating to rates [and] services . . . or to valuations, costs or accounting, or practices relating to such rates [and] services . . .'' 5 U.S.C. 601. WAPA has determined that this action relates to services offered by WAPA and, therefore, is not a rule within the purview of the RFA.

C. 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.

D. Review Under Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*), WAPA has received approval from the Office of Management and Budget to collect applicant profile data, under OMB control number 1910–5136.

Signing Authority

This document of the Department of Energy was signed on [DATE], 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

[1] The determination was done in compliance with NEPA (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).

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 24, 2022.

Treena V. Garrett,

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

[FR Doc. 2022–11476 Filed 5–31–22; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9535–02–OA]

Local Government Advisory Committee (LGAC) and Small Communities Advisory Subcommittee (SCAS) Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), EPA herby provides notice of a meeting for the Local Government Advisory Committee (LGAC) and its Small Communities Advisory Subcommittee (SCAS) on the date and time described below. This meeting will be open to the public. For information on public attendance and participation, please see the registration information under **SUPPLEMENTARY INFORMATION**.

DATES: The LGAC will have a hybrid virtual/in-person meeting June 23rd, 2022, starting at 8:30 a.m. through 3:00 p.m. Eastern Daylight Time. The public comment period will be 2:15–2:30 p.m.

The SCAS will have a hybrid virtual/in-person meeting June 24th, 2022, starting at 8:30 a.m. through 12:00 p.m. Eastern Daylight Time. The public comment period will be 9:45 a.m.–9:55 a.m.

The LGAC and SCAS will also have a joint hybrid virtual/in-person meeting June 24th, 2022, starting at 10:30 a.m. through 12:00 p.m. Eastern Daylight Time.

FOR FURTHER INFORMATION CONTACT: Paige Lieberman, Designated Federal Officer (DFO), at *LGAC@epa.gov* or 202–564–9957

Information on Accessibility: For information on access or services for individuals requiring accessibility accommodations, please contact Paige Lieberman by email at *LGAC@epa.gov.* To request accommodation, please do so five (5) business days prior to the meeting, to give EPA as much time as possible to process your request.

SUPPLEMENTARY INFORMATION: These meetings will be held at EPA's Offices in Washington, DC, at 1200 Constitution Ave. NW. Virtual participation via Zoom will also be available. The EPA has charged the LGAC and SCAS with the following questions, which will be discussed at these meetings. Drafts of the recommendations will be available prior to the meeting for all registered attendees. The joint meeting of the SCAS and LGAC on June 24 will include a panel discussion on technical assistance with several nongovernmental organizations.

Current Charge Questions for Local Government Advisory Committee (LGAC)

1. The Bipartisan Infrastructure Law is delivering more than $50 billion to EPA to improve our nation's drinking water, wastewater, and stormwater infrastructure. As EPA works to implement this law, the LGAC is providing input on:

- Are there tools, resources, or technical assistance that EPA can provide to help local governments access BIL funding to upgrade their water and wastewater infrastructure?
- How can EPA work with the LGAC to educate, engage, and celebrate local successes from BIL implementation?

2. As EPA implements the Bipartisan Infrastructure Law, how can we do so in a way that supports the Administration's priorities of tackling the climate crisis?

- Is there specific technical assistance that EPA should offer local governments to ensure they plan for, develop and build infrastructure that supports multiple community goals, including improving environmental and economic outcomes, supporting equity and environmental justice, and increasing communities' abilities to create climate resilience?

3. In October 2021, EPA announced a PFAS Strategic Roadmap, which laid out a whole-of-agency approach to addressing PFAS. This Roadmap includes several regulatory and policy actions regarding PFAS contamination. Given that these processes can take several years, how can EPA support local governments to address PFAS contamination in the interim?

4. How can EPA meet the needs and environmental priorities of overburdened communities while also strengthening local government capacity to provide ongoing environmental protections in partnership with the states and EPA?

Current Charge Questions for Small Communities Advisory Subcommittee (SCAS)

1. As EPA works to implement the BIL, how can the Agency best:

- Support clean and sustainable air, water, and land priorities for small and rural communities.
- Support capacity needs/advancement for small and rural communities.
- Ensure long-lasting communication between EPA and local officials from small and rural communities.
- Ensure small communities are positioned to benefit from this generational investment in environmental infrastructure.

Registration: All interested persons are invited to attend and participate, either in person or virtually. The LGAC will hear comments from the public from 2:15–2:30 p.m. (EDT) on June 23rd. The SCAS will hear comments from the public 9:45–9:55 a.m. (EDT) on June 24th. Individuals or organizations wishing to address the Committee or Subcommittee will be allowed a maximum of five (5) minutes to present their point of view. Also, written comments should be submitted electronically to *LGAC@epa.gov* for the LGAC and SCAS. Please contact the DFO at the email listed under **FOR FURTHER INFORMATION CONTACT** to schedule a time on the agenda by June 16, 2022. Time will be allotted on a first-come first-served basis, and the total period for comments may be extended if the number of requests for appearances requires it.

The agenda and other supportive meeting materials will be available online at *https://www.epa.gov/ocir/local-government-advisory-committee-lgac* and can be obtained by written request to the DFO. In the event of cancellation for unforeseen circumstances, please contact the DFO or check the website above for reschedule information.

All in-person meeting attendees must comply with current Agency COVID–19 protocols. This information will be shared with all registered attendees prior to the meeting.

Dated: May 25, 2022.

Jack Bowles,

Director, State and Local Relations, Office of Congressional and Intergovernmental Relations.

[FR Doc. 2022–11705 Filed 5–31–22; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

Sunshine Act Meetings; Notice of Open Meeting of the Advisory Committee of the Export-Import Bank of the United States (EXIM)

TIME AND DATE: Monday, June 13th, 2022, from 2:30 p.m.–4:30 p.m. ET.

PLACE: Hybrid meeting—811 Vermont Ave. NW, Washington, DC 20571 and Virtual. The meeting will be conducted in person for committee members, EXIM's Board of Directors, and support staff, and virtually for all other participants.

STATUS: *Virtual Public Participation:* The meeting will be open to public participation virtually and time will be allotted for questions or comments submitted online. Members of the public may also file written statements before or after the meeting to *external@exim.gov.* Interested parties may register for the meeting at: *https://teams.microsoft.com/registration/PAFTuZHHMk2Zb1GDkIVFJw,5M1LfonJMEi2VFUgYRv6oQ,i145n2l9vkmDj5btNlkuGw,VTUQOf0ElEOQNCL5M1TaFQ,K2OcDrV0J02pkcm6-gM0Jg,uuGSaQQTnkC8jMnni1JJ8w?mode=read&tenantId=b953013c-c791-4d32-996f-518390854527.*

MATTERS TO BE CONSIDERED: Discussion of EXIM policies and programs to provide competitive financing to expand United States exports and comments for inclusion in EXIM's Report to the U.S. Congress on Global Export Credit Competition.

CONTACT PERSON FOR MORE INFORMATION: For further information, contact India Walker, External Enagagement Specialist, at 202–480–0062 or at *india.walker@exim.gov.*

Joyce B. Stone,

Assistant Corporate Secretary.

[FR Doc. 2022–11805 Filed 5–27–22; 11:15 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK

Sunshine Act Meetings Notice of Open Meeting of the Sub-Saharan Africa Advisory Committee of the Export-Import Bank of the United States (EXIM)

TIME AND DATE: Monday, June 13th, 2022, from 10:00 a.m.–12:00 p.m. ET.

PLACE: Hybrid meeting—811 Vermont Ave. NW, Washington, DC 20571 and Virtual. The meeting will be conducted in person for committee members, EXIM's Board of Directors, and support staff, and virtually for all other participants.

STATUS: *Virtual Public Participation:* The meeting will be open to public participation virtually and time will be allotted for questions or comments submitted online. Members of the public may also file written statements before or after the meeting to *external@exim.gov.* Interested parties may register for the meeting at: *https://teams.microsoft.com/registration/PAFTuZHHMk2Zb1GDkIVFJw,5M1LfonJMEi2VFUgYRv6oQ,i145n2l9vkmDj5btNlkuGw,8rb_9sSaCEGH4WHtr4cqpg,G7ibD_7kR0qIRk59N8Khmw,yXCBkryUB0OxZTf2xcPoOw?mode=read&tenantId=b953013c-c791-4d32-996f-518390854527.*

MATTERS TO BE CONSIDERED: Discussion of EXIM policies and programs designed to support the expansion of financing support for U.S. manufactured goods and services in Sub-Saharan Africa.

CONTACT PERSON FOR MORE INFORMATION: For further information, contact India Walker, External Enagagement Specialist, at 202–480–0062 or at *india.walker@exim.gov.*

Joyce B. Stone,

Assistant Corporate Secretary.

[FR Doc. 2022–11801 Filed 5–27–22; 11:15 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1297; FR ID 89569]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before July 1, 2022.

ADDRESSES: Comments should be sent 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. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Nicole Ongele, FCC, via email to *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and

(d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–1297.

Title: COVID–19 Vaccine Attestation Form for Non-paid Employees.

Form No.: FCC Form 5644.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households.

Number of Respondents and Responses: 140 respondents and 140 responses.

Estimated Time per Response: 0.25 hours.

Frequency of Response: One-time reporting requirement.

Obligation to Respond: Mandatory. The statutory authority to collect this information derives from General Duty Clause; Section 5(a)(1) of the Occupational Safety and Health (OSH) Act of 1970 (29 U.S.C. 654); Executive Order 12196, Occupational safety and health programs for Federal employees (Feb. 26, 1980); Executive Order 13991, Protecting the Federal Workforce and Requiring Mask-Wearing; Executive Order 14043, Requiring Coronavirus Disease 2019 Vaccination for Federal Employees; OMB Memorandum M 21–15, COVID–19 Safe Federal Workplace: Agency Model Safety Principles (Jan. 24, 2021), as amended; and the National Defense Authorization Act For Fiscal Year 2017 (5 U.S.C. 6329c(b)). Information will be collected and maintained in accordance with the Rehabilitation Act of 1973 (29 U.S.C. 791 *et seq.*).

Total Annual Burden: 35 hours.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: Yes. Health information collected about FCC staff and visitors to a FCC facility, which may include immunization and vaccination information, is covered by the FCC's Systems of Records Notice (SORN) OMD–33, Ensuring Workplace Health and Safety in Response to a Public Health Emergency, posted at *https://www.fcc.gov/sites/default/files/sor-fcc-omd-33.pdf.* This system is part of the FCC's ServiceNow platform, which has a Privacy Impact Assessment (PIA) posted at *https://www.fcc.gov/sites/default/files/servicenow-pia-10292019.pdf.*

Nature and Extent of Confidentiality: As Privacy Act-protected records, these records are kept confidential and will not be disclosed except under applicable Privacy Act exceptions, including the routine uses identified in the FCC/OMD–3 SORN.

Needs and Uses: On September 9, 2021, President Biden issued Executive Order 14043 to protect the health and safety of the Federal workforce and to promote the efficiency of the civil service. Pursuant to the Executive Order and implementing guidance, the Federal Communications Commission (FCC) informed its workforce that, other than in limited circumstances where a reasonable accommodation is legally required, all employees needed to be fully vaccinated against COVID–19 by November 22, 2021, regardless of where they are working. To ensure compliance with this mandate, the FCC established a requirement for employees to complete and submit a form attesting to their current vaccination status. Since then, the Executive Order was enjoined by a nationwide injunction, which has recently been overturned although this latter decision may still be appealed. Regardless of the status of the Executive Order, the FCC has developed and implemented health and safety protocols to ensure and maintain the safety of all occupants during standard operations and public health emergencies or similar health and safety incidents, such as the current pandemic, and will continue to request that workers report on their vaccination status. For some special categories of individuals who perform (or will perform) work for the agency but are not considered employees, the FCC is required to obtain OMB approval prior to collecting such information. These include incoming employees, unpaid interns, unpaid legal fellows, individuals performing work for the FCC pursuant to an Intergovernmental Personnel Agreement, participants in advisory committees, and possibly other similar classes of individuals who are not on the FCC payroll but are performing work for the agency.

Federal Communications Commission.

Marlene Dortch,

Secretary. Office of the Secretary.

[FR Doc. 2022–11738 Filed 5–31–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–XXXX; FR ID 89474]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before July 1, 2022.

ADDRESSES: Comments should be sent 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. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Nicole Ongele, FCC, via email to *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the

section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–XXXX.

Title: Required Disclosure of Exclusive Marketing Arrangements in MTEs, Rule Sections 64.2500(e) and 76.2000(d).

Form Number: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 515 respondents; 24,000,000 responses.

Estimated Time per Response: 3 hours.

Frequency of Response: Third-party disclosure requirement.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. 201(b) and 628(b).

Total Annual Burden: 1,545 hours.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: No questions of a confidential nature are asked.

Needs and Uses: The Commission is requesting Office of Management and Budget (OMB) approval for an initial three-year term for this new information collection. In *Improving Competitive Broadband Access to Multiple Tenant Environments,* GN Docket No. 17–142, Report and Order and Declaratory Ruling, FCC 22–12 (Feb. 11, 2022), the Commission, among other things, adopted new rules requiring providers (common carriers and multichannel video programming distributors (MVPDs) subject to 47 U.S.C. 628(b)) to disclose the existence of exclusive marketing arrangements that they have with owners of multi-tenant premises (MTEs). An exclusive marketing arrangement is an arrangement, either written or in practice, between an MTE owner and a provider that gives the provider, usually in exchange for some consideration, the exclusive right to certain means of marketing its service to tenants of the MTE. The required disclosure must be included on all written marketing material from the provider directed at tenants or prospective tenants of an MTE subject to the arrangement. The disclosure must explain in clear, conspicuous, legible, and visible language that the provider has the right to exclusively market its communications services to tenants in the MTE, that such a right does not suggest that the provider is the only entity that can provide communications services to tenants in the MTE, and that service from an alternative provider may be available. The purposes of the compelled disclosure are to remedy tenant confusion regarding the impact of exclusive marketing arrangements, prevent the evasion of our exclusive access rules, and, in turn, promote competition for communications services in MTEs.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2022–11689 Filed 5–31–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0986; FR ID 89297]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before July 1, 2022.

ADDRESSES: Comments should be sent 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. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Nicole Ongele, FCC, via email to *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the

section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–0986.

Title: High-Cost Universal Service Support.

Form Number: FCC Form 481 and FCC Form 525.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions and state, local or tribal government.

Number of Respondents and Responses: 2,229 respondents; 13,804 responses.

Estimated Time per Response: 0.1–15 hours.

Frequency of Response: On occasion, quarterly and annual reporting requirements, recordkeeping requirement and third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151–154, 155, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, 405, 410, and 1302.

Total Annual Burden: 50,857 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Federal Communications Commission (Commission) notes that the Universal Service Administrative Company (USAC or Administrator) must preserve the confidentiality of all data obtained from respondents and contributors to the universal service support program mechanism; must not use the data except for purposes of administering the universal service program; must not use the data except for purposes of administering the universal support program; and must not disclose data in company-specific form unless directed to do so by the Commission. Parties may submit confidential information in relation pursuant to a protective order. Also, respondents may request materials or information submitted to the Commission or to the Administrator believed confidential to be withheld from public inspection under 47 CFR 0.459 of the FCC's rules.

Needs and Uses: The Commission is requesting the Office of Management and Budget (OMB) approval for this revised information collection. On November 18, 2011, the Commission adopted an order reforming its high-cost universal service support mechanisms. *Connect America Fund; A National Broadband Plan for Our Future; Establish Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform—Mobility Fund,* WC Docket Nos. 10–90, 07–135, 05–337, 03–109; GN Docket No. 09–51; CC Docket Nos. 01–92, 96–45; WT Docket No. 10–208, Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*). The Commission and Wireline Competition Bureau have since adopted a number of orders that implement the *USF/ICC Transformation Order; see also Connect America Fund et al.,* WC Docket No. 10–90 et al., Third Order on Reconsideration, 27 FCC Rcd 5622 (2012); *Connect America Fund et al.,* WC Docket No. 10–90 et al., Order, 27 FCC Rcd 605 (Wireline Comp. Bur. 2012); *Connect America Fund et al.,* WC Docket No. 10–90 et al., Fifth Order on Reconsideration, 27 FCC Rcd 14549 (2012); *Connect America Fund et al.,* WC Docket No. 10–90 et al., Order, 28 FCC Rcd 2051 (Wireline Comp. Bur. 2013); *Connect America Fund et al.,* WC Docket No. 10–90 et al., Order, 28 FCC Rcd 7227 (Wireline Comp. Bur. 2013); *Connect America Fund,* WC Docket No. 10–90, Report and Order, 28 FCC Rcd 7766 (Wireline Comp. Bur. 2013); *Connect America Fund,* WC Docket No. 10–90, Report and Order, 28 FCC Rcd 7211 (Wireline Comp. Bur. 2013); *Connect America Fund,* WC Docket No. 10–90, Report and Order, 28 FCC Rcd 10488 (Wireline Comp. Bur. 2013); *Connect America Fund et al.,* WC Docket No. 10–90 et al., Report and Order, Order and Order on Reconsideration and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087 (2016); *Connect America Fund, et al.,* WC Docket No. 10–90, et al., Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949 (2016); *Connect America Fund et al.,* WC Docket Nos. 10–90, 16–271; WT Docket No. 10–208, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 10139 (2016); *Connect America Fund; ETC Annual Reports and Certifications,* WC Docket Nos. 10–90, 14–58, Order, 32 FCC Rcd 968 (2017); *Connect America Fund et al.,* WC Docket No. 10–90 et al., Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, 33 FCC Rcd 11893 (2018); *Connect America Fund; ETC Annual Reports and Certifications,* WC Docket Nos. 10–90, 14–58, Report and Order, 32 FCC Rcd 5944 (2017).

In 2019, the Commission adopted an order establishing a separate, parallel high-cost program for the U.S. territories suffering extensive infrastructure damage due to Hurricanes Irma and Maria. *The Uniendo a Puerto Rico Fund and the Connect USVI Fund, et al.,* WC Docket No. 18–143, et al., Report and Order and Order on Reconsideration, 34 FCC Rcd 9109 (2019) (*Puerto Rico and USVI Stage 2 Order).* Also, in the *2019 Supply Chain Order,* the Commission adopted a rule prohibiting the use of Universal Service Fund (USF) support, including high-cost universal service support, to purchase or obtain any equipment or services produced or provided by a covered company posing a national security threat to the integrity of communications networks or the communications supply chain. *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs,* WC Docket No. 18–89, Report and Order, Further Notice of Proposed Rulemaking,

and Order, 34 FCC Rcd 11423, 11433, para. 26. *See also* 47 CFR 54.9.

Through several orders, the Commission has changed, modified, and eliminated certain reporting obligations for high-cost support. These changes are outlined in the following:

On January 30, 2020, the Commission adopted an order establishing the framework for the Rural Digital Opportunity Fund (RDOF), building on the successful Connect America Fund (CAF) Phase II auction. *Rural Digital Opportunity Fund; Connect America Fund,* WC Docket Nos. 19–126 and 10–90, Report and Order, 35 FCC Rcd 686 (2020) (*RDOF Order*). The RDOF represents the Commission's single biggest step to close the digital divide by providing up to $20.4 billion to connect millions more rural homes and small businesses to high-speed broadband networks. In the *RDOF Order,* ''[t]o ensure that support recipients are meeting their deployment obligations,'' the Commission ''adopt[ed] essentially the same reporting requirements for the RDOF that the Commission adopted for the CAF Phase II auction.'' *Id.* at 712, para. 56.

In the *2020 Supply Chain Order,* the Commission adopted two additional supply chain rules associated with newly required certifications. *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs,* WC Docket No. 18–89, Second Report and Order, 35 FCC Rcd 14284 (2020) (*2020 Supply Chain Order*). First, the Commission adopted a rule, 47 CFR 54.10, to prohibit the use of a Federal subsidy made available through a program administered by the Commission that provides funds to be used for the capital expenditures necessary for the provision of advanced communications services has been or will be used to purchase, rent, lease, or otherwise obtain, any covered communications equipment or service, or maintain any covered communications equipment or service previously purchased, rented, leased, or otherwise obtained. Second, the Commission adopted a rule, 47 CFR 54.11, which requires each eligible telecommunications carrier receiving universal service fund support to remove and replace all covered communications equipment and services from their networks, and subsequently certify prior to receiving a funding commitment or support that it does not use covered communications equipment or services. The Commission also adopted procedures, consistent with the Secure and Trusted Communications Networks Act of 2019 (Pub. L. 116–124), to identify such covered equipment and services and publish a Covered List. That list was published March 12, 2021 and will be updated as needed.

In the *Rate Floor Repeal Order,* the Commission decided to ''eliminate the rate floor and, following a one-year period of monitoring residential retail rates, eliminate the accompanying reporting obligations after July 1, 2020.'' *Connect America Fund,* WC Docket No. 10–90, Order, 34 FCC Rcd 2621, 2621 para. 2 (2019) (*Rate Floor Repeal Order*); *see also* 47 CFR 54.313(h). As explained in the *Order,* the rate floor was ''[i]ntended to guard against artificial subsidization of rural end user rates significantly below the national urban average'' but, practically speaking, ''increase[d] the telephone rates of rural subscribers . . . and individuals living on Tribal lands.'' *Rate Floor Repeal Order,* 34 FCC Rcd at 2621 para. 1.

The Commission therefore proposes to revise this information collection, as well as the Form 481 and its accompanying instructions, to reflect these modified and eliminated requirements. Finally, the Commission proposes to increase the respondents associated with existing reporting requirements to account for additional carriers that will be subject to those requirements.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2022–11695 Filed 5–31–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1178; FR ID 88994]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it can further reduce the information collection burden for small business concerns with fewer than 25 employees.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before July 1, 2022.

ADDRESSES: Comments should be sent 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. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper

performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–1178.

Title: TV Broadcast Relocation Fund Reimbursement Form, FCC Form 2100, Schedule 399; Section 73.3700(e), Reimbursement Rules.

Form Number: FCC Form 2100, Schedule 399.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not for profit institutions.

Number of Respondents and Responses: 2,080 respondents; 24,153 responses.

Estimated Hours per Response: 1–4 hours.

Frequency of Response: One-time reporting requirement; On occasion reporting requirement, Recordkeeping requirement.

Total Annual Burden: 46,133 hours.

Total Annual Cost: $7,350,000.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in 47 U.S.C. 151, 154(j), 157 and 309(j) as amended; and Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 6402 (codified at 47 U.S.C. 309(j)(8)(G)), 6403 (codified at 47 U.S.C. 1452), 126 stat. 156 (2012) (Spectrum Act).

Needs and Uses: The following information collection requirements are covered under this collection: Section 73.3700(e)(2) requires all broadcast television station licensees and MVPDs that are eligible to receive payment of relocation costs to file an estimated cost form providing an estimate of their reasonably incurred relocation costs no later than three months following the release of the Channel Reassignment Public Notice. If a broadcast television station licensee or MVPD seeks reimbursement for new equipment, it must provide a justification as to why it is reasonable under the circumstances to purchase new equipment rather than modify its corresponding current equipment in order to change channels or to continue to carry the signal of a broadcast television station that changes channels. Entities that submit their own cost estimates, as opposed to the predetermined cost estimates provided in the estimated cost form, must submit supporting evidence and certify that the estimate is made in good faith. Entities must also update the form if circumstances change significantly.

Section 73.3700(e)(3) requires all broadcast television station licensees and MVPDs that received an initial allocation from the TV Broadcaster Relocation Fund, upon completing construction or other reimbursable changes, or by a specific deadline prior to the end of the Reimbursement Period to be established by the Media Bureau, whichever is earlier, to provide the Commission with information and documentation, including invoices and receipts, regarding their actual expenses incurred as of a date to be determined by the Media Bureau. If a broadcast television station licensee or MVPD has not yet completed construction or other reimbursable changes by the Final Allocation Deadline, it must provide the Commission with information and documentation regarding any remaining eligible expenses that it expects to reasonably incur.

Section 73.3700(e)(4) requires broadcast television station licensees and MVPDs that have received money from the TV Broadcaster Relocation Fund, after completing all construction or reimbursable changes, to submit final expense documentation containing a list of estimated expenses and actual expenses as of a date to be determined by the Media Bureau. Entities that have finished construction and have submitted all actual expense documentation by the Final Allocation Deadline will not be required to file at the final accounting stage.

Section 73.3700(e)(6) requires broadcast television station licensees and MVPDs that receive payment from the TV Broadcaster Relocation Fund to retain all relevant documents pertaining to construction or other reimbursable changes for a period ending not less than 10 years after the date on which it receives final payment from the TV Broadcaster Relocation Fund and to make available all relevant documentation upon request from the Commission or its contractor.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2022–11687 Filed 5–31–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS22–04]

Appraisal Subcommittee; Notice of Meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of meeting.

Description: In accordance with Section 1104 (b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in open session for its regular meeting:

Location: This will be a virtual meeting via Zoom. Please visit the agency's homepage (*www.asc.gov*) and access the provided registration link in the What's New box. You MUST register in advance to attend this Meeting.

Date: June 8, 2022.

Time: 10:00 a.m. ET.

Status: Open.

Reports

Chair

Executive Director

Grants Report

Financial Report

Notation Vote

Action and Discussion Items

Approval of Minutes

March 9, 2022 Quarterly Meeting Minutes

Appraiser Census/Survey

Budget Amendment

How To Attend and Observe an ASC Meeting

The meeting will be open to the public via live webcast only. Visit the agency's homepage (*www.asc.gov*) and access the provided registration link in the What's New box. The meeting space is intended to accommodate public attendees. However, if the space will not accommodate all requests, the ASC may refuse attendance on that reasonable basis. The use of any video or audio tape recording device, photographing device, or any other electronic or mechanical device designed for similar purposes is prohibited at ASC Meetings.

James R. Park,

Executive Director.

[FR Doc. 2022–11700 Filed 5–31–22; 8:45 am]

BILLING CODE 6700–01–P

GENERAL SERVICES ADMINISTRATION

[Notice–ME–2022–02; Docket No. 2022–0002; Sequence No. 10]

Notice of GSA Live Webinar Regarding the Federal Government's Implementation of M–21–07 ''Progress in the Transition to Internet Protocol Version 6 (IPv6 Summit)''

AGENCY: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Virtual webinar meeting notice.

SUMMARY: GSA is hosting another IPv6 Summit to bring together the federal and industry communities for an engaging series of panels covering IPv6 implementation progress, opportunities, and best practices.

DATES: Thursday, June 23rd, 2022, at 1:00 p.m. Eastern Daylight Time (EDT).

ADDRESSES: This is a virtual event, and the call-in information will be made available upon registration. All attendees, including industry partners, must register for the ZoomGov event here: *https://gsa.zoomgov.com/webinar/register/WN_vdbyTqyqSGq2YwZoK6CKig.*

Members of the press are invited to attend but are required to register with GSA Press office (via email *press@gsa.gov*) by June 16th, 2022, for further information.

FOR FURTHER INFORMATION CONTACT: Lee Ellis at *lee.ellis@gsa.gov* or 202–501–0282.

SUPPLEMENTARY INFORMATION:

Background

The Office of Management and Budget (OMB) issued M–21–07, ''Completing the Transition to Internet Protocol Version 6 (IPv6)'' located at: *https://www.whitehouse.gov/wp-content/uploads/2020/11/M-21-07.pdf* in November 2020 to update guidance on the Federal government's operational deployment and use of IPv6. The memo communicates five categories of agency-level requirements for completing the deployment of IPv6 across all Federal information systems and services:

- Preparing for an IP6-only infrastructure
- Adhering to Federal IPv6 Acquisition Requirements
- Evolving the USGv6 Program
- Ensuring Adequate Security
- Government-wide Responsibilities

Format

The IPv6 Summit convenes leaders from the Federal Government and industry to discuss their experiences implementing IPv6. If you have questions, you would like to ask the panelists about IPv6, you can submit them via email to *dccoi@gsa.gov* by COB June 10, 2022.

Special Accommodations

For those who need accommodations, Zoom will have an option to turn on closed captioning. If additional accommodations are needed, please indicate this on the Zoom registration form.

Live Webinar Speakers (Subject To Change Without Notice)

Hosted by:

- Tom Santucci, *Director, IT Modernization Office of Government-wide Policy Host*
- Carol Bales, *Senior Policy Analyst (invited) Office of Management and Budget Office of the Federal CIO*
- Robert Sears, *Direct, N-Wave IPv6 Task Force Chair National Oceanic and Atmosphere Administration Office of CIO*

Keynote Speakers:

- Mr. John Curran, *President, and Chief Executive Officer, American Registry of Internet Numbers*

AGENDA (SUBJECT TO CHANGE WITHOUT NOTICE)

Start time	Topic
1:00 PM	Welcome and Introduction.
1:05 PM	Opening Remarks: ''*Implementing IPv6 for US Government*''.
1:15 PM	Keynote Speaker: ''*World IPv6 Trends and IPv6 Address Space Dynamics*''.
1:45 PM	Panel #1: Federal Government Perspective.
2:15 PM	Panel #2: Private Sector Companies use of IPv6.
2:50 PM	Agency Story #2: Department of Defense.
3:10 PM	Panel #3: IP Asset Discovery, Best Practices and Pitfalls.
3:30 PM	Panel #4: Real World Deployment, Providing Services.
3:55 PM	Panel #5: ZTA and IPv6 Technologies Brief.
3:30 PM	Closing Keynote: ''*Evolution of IP and World IPv6 Trends*''.
3:55 PM	Conclusion Remarks.
4:00 PM	Meeting Concludes.

Lee Ellis,

IPv6 Task Force Program Manager, General Services Administration.

[FR Doc. 2022–11641 Filed 5–31–22; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Extension and Modification of Temporary Suspension of Dogs Entering the United States From High-Risk Rabies Countries

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), within the Department of Health and Human Services (HHS), announces an extension and modification of the current temporary suspension of the importation into the United States of dogs from high-risk rabies-enzootic countries (high-risk countries). This suspension includes dogs that have been in any high-risk countries during the previous six months.

DATES: The extension and modification of the temporary suspension of the importation of dogs into the United States from high-risk rabies countries will be implemented on June 10, 2022 and will remain in effect through January 31, 2023.

FOR FURTHER INFORMATION CONTACT: Ashley C. Altenburger, J.D., Division of Global Migration and Quarantine, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H16–4, Atlanta, GA 30329. Telephone: 1–800–232–4636. For information regarding CDC regulations for the importation of dogs: Dr. Emily Pieracci, D.V.M., Division of Global Migration and Quarantine, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS V–18–2, Atlanta, GA 30329. Telephone: 1–800–232–4636.

SUPPLEMENTARY INFORMATION: While CDC is modifying the terms of the suspension to allow more dog importations, a suspension remains necessary to protect the public's health against the reintroduction of the canine rabies virus variant (CRVV) into the United States. This extension and modification is based on various factors, including: The threat that unvaccinated or inadequately vaccinated dogs from high-risk countries continue to pose; insufficient veterinary controls in place in high-risk countries to prevent the export of inadequately vaccinated dogs; and ongoing limited availability of public health resources at the Federal, State, and local levels, particularly in the global context of the coronavirus disease 2019 (COVID–19) pandemic.

CDC anticipates that these factors are likely to continue into 2023.

I. Background and Authority

Rabies, one of the deadliest zoonotic diseases, accounts for an estimated 59,000 human deaths globally each year.[1] This equates to one human death every nine minutes.[2] CRVV is responsible for 98 percent of these deaths.[2] The rabies virus can infect any mammal, and once clinical signs appear, the disease is almost always fatal.[3] In September 2007, at the Inaugural World Rabies Day Symposium, CDC declared the United States to be free of CRVV.[4] However, this rabies virus variant is still a serious public health threat in the more than 100 countries where CRVV remains enzootic. Preventing the entry of animals infected with CRVV into the United States is a public health priority.

CDC subject matter experts review publicly available data and conduct an annual assessment to determine high-risk countries. This assessment considers the following factors: Presence or prevalence of domestically acquired cases of CRVV in humans and animals; efforts towards control of CRVV in dogs (such as dog vaccination coverage, dog population management, and existence and enforcement of legal codes to limit rabies transmission in dogs); and the quality of rabies surveillance systems and laboratory capacity. If data are not available, the most conservative determination is applied, and the country is not considered to have a robust control program. If a country has provided additional substantial data to support a CRVV-free status, CDC can review that information and re-assess the country's status.

Under section 361 of the Public Health Service Act (PHS Act) (42 U.S.C. 264), the Secretary of Health and Human Services may make and enforce such regulations as in the Secretary's judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the United States and from one state or possession into any other state or possession.[5] Such regulations may provide for inspection, fumigation, disinfection, sanitation, pest extermination, destruction of animals or articles found to be sources of dangerous infection to human beings, and other measures. Under section 362 of the PHS Act (42 U.S.C. 265), the Secretary, and by delegation the Director of CDC (CDC Director),[6] may prohibit entries and imports from foreign countries into the United States ''in whole or in part'' if there is a serious risk of introducing communicable disease and when required in the interest of public health.

Under 42 CFR 71.51, all dogs admitted into the United States must be accompanied by a valid rabies vaccination certificate,[7] unless the dogs' owner or importer submits satisfactory evidence that dogs under six months of age have not been in a high-risk country or dogs older than six months have not been in a high-risk country for the six months before arrival.[8] CDC maintains a publicly available list of high-risk countries [9] and provides guidance for dog entry requirements based on the dog's country of import.

Under 42 CFR 71.51(e), dogs may be subject to ''additional requirements as may be deemed necessary'' or ''to exclusion if coming from areas which the [CDC] Director has determined to have high rates of rabies.'' Based on the previously described criteria, CDC determined that high-risk countries constitute areas that have high rates of rabies and dogs imported from these countries are thus subject to additional requirements and/or exclusion.

Under 42 CFR 71.63, CDC may also temporarily suspend the entry of animals, articles, or things from designated foreign countries and places into the United States when it determines there exists in a foreign country a communicable disease that threatens the public health of the United States and the entry of imports from that country increases the risk that the communicable disease may be introduced. When such a suspension is issued, CDC designates the period of time or conditions under which imports into the United States are suspended. CDC likewise determined that CRVV exists in high-risk countries and that, if reintroduced into the United States, CRVV would threaten the public health of the United States.

Based on these legal authorities and determinations, on June 16, 2021,[10] CDC announced a temporary suspension of the importation of dogs from high-risk countries into the United States (86 FR 32041) (the temporary suspension). The temporary suspension went into effect on July 14, 2021. CDC issued the temporary suspension to protect the public health against the reintroduction of CRVV into the United States at a time when resources were being diverted to the agency-wide response to the COVID–19 pandemic.

At the time the temporary suspension was issued, CDC noted an increase in importers circumventing dog import regulations. Between January 1 and July 14, 2021, CDC documented more than 560 dogs arriving from high-risk countries with incomplete, inadequate, or fraudulent rabies vaccination certificates, resulting in the denial of entry for the dogs and subsequent return to their country of departure. This represented a 33 percent increase compared to all of 2020. Despite a decrease in international travel volumes due to the global COVID–19 pandemic, there was a 52 percent increase in dogs ineligible for entry in 2020 as compared to 2018 and 2019. Additionally, four rabid dogs were imported into the United States between 2015 and 2021.

The limited availability of public health resources due to the unprecedented global response to the COVID–19 pandemic resulted in reduced capacity at the Federal, State, and local levels to address the increased risk of the reintroduction of CRVV. For these reasons, CDC implemented a temporary suspension prohibiting the

[1] World Health Organization (2018). *WHO Expert Consultation on Rabies* (WHO Technical Report Series 1012). Retrieved from *https://www.who.int/publications/i/item/WHO-TRS-1012.*

[2] World Health Organization (2018). *WHO Expert Consultation on Rabies* (WHO Technical Report Series 1012). Retrieved from *https://www.who.int/publications/i/item/WHO-TRS-1012.*

[3] Fooks, A.R., Banyard, A.C., Horton, D.L., Johnson, N., McElhinney, L.M., and Jackson, A.C. (2014) Current status of rabies and prospects for elimination. *Lancet, 384(9951),* 1389–1399. doi: 10.1016/S0140–6736(13)62707–5.

[4] Velasco-Villa, A., Mauldin, M., Shi, M., Escobar, L., Gallardo-Romero, N., Damon, I., Emerson, G. (2017) The history of rabies in the Western Hemisphere. *Antiviral Res,* 146, 221–232. doi:10.1016/j.antiviral.2017.03.013.

[5] Although the statute assigns authority to the Surgeon General, all statutory powers and functions of the Surgeon General were transferred to the Secretary of HHS in 1966, 31 FR 8855, 80 Stat. 1610 (June 25, 1966), *see also* Pub. L. 96–88, 509(b), October 17, 1979, 93 Stat. 695 (codified at 20 U.S.C. 3508(b)). The Secretary has retained these authorities despite the reestablishment of the Office of the Surgeon General in 1987.

[6] See 42 CFR 71.51(e), 71.63.

[7] Centers for Disease Control and Prevention (2022). What is a valid rabies vaccination certificate? Retrieved from *https://www.cdc.gov/importation/bringing-an-animal-into-the-united-states/vaccine-certificate.html.*

[8] Centers for Disease Control and Prevention (2019). Guidance Regarding Agency Interpretation of ''Rabies-Free'' as It Relates to the Importation of Dogs Into the United States. **Federal Register**, Vol. 84,724–730. Retrieved from *https://www.federalregister.gov/documents/2019/01/31/2019-00506/guidance-regarding-agency-interpretation-of-rabies-free-as-it-relates-to-the-importation-of-dogs.*

[9] Centers for Disease Control and Prevention (2022). What is a valid rabies vaccination certificate? Retrieved from *https://www.cdc.gov/importation/bringing-an-animal-into-the-united-states/rabies-vaccine.html.*

[10] Temporary Suspension of Dogs Entering the United States from High-Risk Rabies Countries. **Federal Register**, 86 FR 32041, June 16, 2021.

importation of dogs from high-risk countries for rabies in July 2021.

CDC implemented a *CDC Dog Import Permit* [11] [(OMB Control Number 0920–0134 Foreign Quarantine Regulations (exp. 06/30/2022), or as revised] during the temporary suspension to verify the documentation of imported dogs before they are flown to the United States. Eligibility to import dogs during the temporary suspension was limited to people relocating to the United States with their personal pets, service dog owners, United States Government or foreign Government employees traveling on official orders with their personal pets, and importers of dogs for science, education, exhibition, or bona fide law enforcement purposes.

Since the temporary suspension went into effect in July 2021, CDC has used its enforcement discretion to reduce the burden on eligible importers. Per the **Federal Register** notice announcing the temporary suspension, importers are required to enter the United States at a port of entry with a live animal facility with a Facilities Information and Resource Management System (FIRMS) code issued by U.S. Customs and Border Protection (CBP). At the time the **Federal Register** notice was published, there was one animal facility. However, from the beginning of the temporary suspension, CDC used its enforcement discretion to expand the list of the approved ports of entry to include 18 airports with a CDC quarantine station. CDC planned to narrow the list of approved ports of entry to only those with an animal facility on October 31, 2021, which would have been three ports of entry at that time. However, after considering the reduction in the number of dogs abandoned by their importers and the number of dogs arriving sick or dead at the 18 airports between the time the temporary suspension went into effect (July 14, 2021) and December 1, 2021, CDC determined that the 18 airports could continue serving as approved ports of entry through the remainder of the suspension.

On December 1, 2021, following an evaluation of the latest scientific information on rabies serologic titer test results, CDC reduced the waiting period requirement, which is the number of days between when a dog's sample is taken for a serologic titer test and when the dog can be imported into the United States, from 90 days to 45 days.

Lastly, effective December 1, 2021, CDC has allowed importers whose dog is at least six months old, has a microchip, and a valid U.S.-issued rabies vaccination certificate to enter the United States without a *CDC Dog Import Permit* at one of the 18 airports with a CDC quarantine station provided the dog appears healthy upon arrival. CDC made this change because of the reliability of the United States' rabies vaccine supply and to ease the burden on these importers.

At this time, CDC is extending and modifying the temporary suspension due to the continued risk for the reintroduction of CRVV into the United States and the ongoing need to commit public health resources towards the COVID–19 pandemic. Based on improvements in CDC's ability to track and monitor dog imports from high-risk countries, and the significant decrease in the dog importation issues that existed prior to the suspension, CDC is modifying the terms of the temporary suspension to allow for more dog imports from a wider range of importers.

II. Public Health Rationale

A. Dog Importation Into the United States

The United States was declared CRVV-free in 2007. Importing dogs from high-risk countries involves a significant public health risk. The importation of just one dog infected with CRVV risks re-introduction of the virus into the United States, resulting in a potential public health risk with consequent monetary cost and potential loss of human and animal life.[12] [13] [14] CRVV has been highly successful at adapting to new host species, particularly wildlife.[15] One CRVV-infected dog could result in transmission to humans, domestic pets, or wildlife. In 2019, the importation of a single dog with rabies cost more than $400,000 for the public health investigations and rabies post-exposure prophylaxis (PEP) of exposed persons.[16] [17] To mitigate the risk of importing dogs with CRVV, CDC requires compliance with its public health entry requirements.

Although the U.S. Government does not track the total number of dogs imported each year, it is estimated that approximately 1 million dogs are imported into the United States annually, of which 100,000 dogs are from high-risk countries.[18] This estimate was based on information provided by airlines, the Department of Homeland Security's Customs and Border Protection (CBP) staff, and a study conducted at a U.S.-Mexico land border crossing.[19]

CBP does record, by country, the number of dogs imported with formal entry under Harmonized Tariff Schedule (HTS) code 0106199120 and HTS description: Other live animals, other, dogs. The total number of dogs imported into the United States from all countries under this HTS category varied from 25,232 in 2018 to 58,540 in 2020. The number of dogs from high-risk countries under this HTS category averaged 16,390 per year and varied from 9,966 to 24,031 over this three-year period. The number of dogs reported under this HTS category does not include dogs imported as checked baggage, hand-carried in airplane cabins, or crossing at land borders without formal entry. Thus, the number underestimates the true number of dogs imported into the United States.

Since 2015, there have been four known rabid dogs imported into the United States. All four dogs were imported by rescue organizations for the purposes of adoption. These four cases, discussed below, highlight the immense public health resources required to investigate, respond to, and mitigate the public health threat posed by the importation.

[11] *https://www.cdc.gov/dogpermit.*

[12] World Bank (2012). People, Pathogens and Our Planet: The Economics of One Health. Retrieved from *https://openknowledge.worldbank.org/handle/10986/11892.*

[13] Raybern, C., Zaldivar, A., Tubach, S., Ahmed, F., Moore, S., Kintner, C., Garrison, I. (2020) Rabies in a dog imported from Egypt-Kansas, 2019. *Morbidity and Mortality Weekly Report,* 69(38), 1374–1377. Retrieved from *https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6938a5-H.pdf.*

[14] Jeon, S., Cleaton, J., Meltzer, M., Kahn, E., Pieracci, E., Blanton, J., Wallace, R. (2019). Determining the post-elimination level of vaccination needed to prevent re-establishment of dog rabies. *PLoS Neglected Tropical Diseases,* 13(12). *https://doi.org/10.1371/journal.pntd.0007869.*

[15] Velasco-Villa, A., Mauldin, M., Shi, M., Escobar, L., Gallardo-Romero, N., Damon, I., Emerson, G. (2017). The history of rabies in the Western Hemisphere. *Antiviral Research,* 146, 221–232.doi:10.1016/j.antiviral.2017.03.013.

[16] Raybern, C., Zaldivar, A., Tubach, S., Ahmed, F., Moore, S., Kintner, C., Garrison, I. (2020) Rabies in a dog imported from Egypt-Kansas, 2019. *Morbidity and Mortality Weekly Report,* 69(38), 1374–1377. Retrieved from *https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6938a5-H.pdf.*

[17] Centers for Disease Control and Prevention (2022). Rabies Postexposure Prophylaxis. Retrieved from *https://www.cdc.gov/rabies/medical_care/index.html.*

[18] Centers for Disease Control and Prevention (2019). Guidance Regarding Agency Interpretation of ''Rabies-Free'' as It Relates to the Importation of Dogs Into the United States. **Federal Register**, Vol. 84,724–730. Retrieved from *https://www.federalregister.gov/documents/2019/01/31/2019-00506/guidance-regarding-agency-interpretation-of-rabies-free-as-it-relates-to-the-importation-of-dogs.*

[19] McQuiston, J.H., Wilson, T., Harris, S., Bacon, R.M., Shapiro, S., Trevino, J., Marano, N. (2008.) Importation of dogs into the United States: Risks from rabies and other zoonotic diseases. *Zoonoses Public Health,* 55(8–10),421–6. doi:10.1111/j.1863–2378.2008.01117.

In 2015, a rabid dog was part of a group of eight dogs and 27 cats imported from Egypt by a rescue group. The dog had an unhealed leg fracture and began showing signs of rabies four days after arrival. Following the rabies diagnosis, the rescue workers in Egypt admitted that the dog's rabies vaccination certificate had been intentionally falsified to evade CDC entry requirements.[20] Eighteen people were recommended to receive rabies PEP, seven dogs underwent a six-month quarantine, and eight additional dogs housed in the same home as the rabid dog had to receive rabies booster vaccinations and undergo a 45-day monitoring period.

In 2017, a ''flight parent'' (a person typically solicited through social media, often not affiliated with the rescue organization, and usually compensated with an airline ticket) imported four dogs on behalf of a rescue organization. One of the dogs appeared agitated at the airport and bit the flight parent prior to the flight. A U.S. veterinarian examined the dog one day after its arrival and then euthanized and tested the dog for rabies. A post-mortem rabies test showed that the dog was positive for the virus. Public health officials recommended that at least four people receive rabies PEP, and the remaining three dogs underwent quarantine periods ranging from 30 days to six months. An investigation revealed the possibility of falsified rabies vaccination documentation presented on entry to the United States.[21]

In 2019, a rescue group imported 26 dogs, all of which had rabies vaccination certificates and serologic documentation, indicating the development of rabies antibodies (in response to immunization), based on results from an Egyptian Government-affiliated rabies laboratory. However, one dog developed signs of rabies three weeks after arrival and had to be euthanized. The dog tested positive for rabies. Forty-four people received PEP, and the 25 dogs imported on the same flight underwent re-vaccination and quarantines of four to six months. An additional 12 dogs had contact with the rabid dog and had to be re-vaccinated and undergo quarantine periods ranging from 45 days to six months based on their previous vaccination status.[22]

On June 10, 2021, shortly before CDC published the temporary suspension, 33 dogs were imported into the United States from Azerbaijan by a rescue organization. All dogs had rabies vaccination certificates that appeared valid upon arrival in the United States. One dog developed signs of rabies three days after arrival and was euthanized. CDC confirmed the dog was infected with a variant of CRVV known to circulate in the Caucus Mountain region of Azerbaijan. The remaining rescue animals exposed to the rabid dog during travel were dispersed across nine states, leading to what is believed to be the largest, multi-state, imported rabid dog investigation in U.S. history.[23]

Eighteen people received PEP to prevent rabies as a result of exposure to this one rabid dog. Post serologic monitoring and the public health investigation revealed that improper vaccination practices by the veterinarian in Azerbaijan likely contributed to the inadequate vaccination response documented in 48 percent of the imported animals, including the rabid dog.[24] The 33 exposed animals were placed in quarantines ranging from 45 days to six months based on individual serologic titer test results and local jurisdictional requirements.[25]

CDC estimates costs for public health investigations and subsequent cost of care for people exposed to rabid dogs range from $220,897 to $521,828 per importation event, as summarized in the Appendix found at the end of this notice.[26] [27] This cost estimate does not account for the worst-case outcomes, which include: (1) Transmission of rabies to a person who dies from the disease and (2) ongoing transmission to other domestic and wildlife species in the United States. A previous campaign to eliminate domestic dog-coyote rabies virus variant jointly with gray fox (Texas fox) rabies virus variant in Texas over the period from 1995 through 2003 cost $34 million,[28] [29] or $48 million in 2020 U.S. dollars. Re-establishment of CRVV into the United States could result in costly efforts over several years to again eliminate the virus.

B. COVID–19 Response Activities

Since January 2020, public health resources globally have been dedicated to responding to COVID–19 response activities. This context caused a lapse in canine rabies vaccination efforts in high-risk countries.[30] [31] In the United States, the public health response to combatting the emergence of SARS–CoV–2 variants such as Delta and Omicron have required sustained Federal, State, and local public health resources.

The importation of a rabid dog on June 10, 2021, diverted public health resources from CDC, the U.S. Department of Agriculture (USDA), and nine states away from critical COVID–19 response activities. Any increase in the number of dogs with inadequate or falsified rabies vaccination certificates arriving in the United States increases the likelihood of a CRVV-importation event and threatens the diversion of critical public health resources.[32]

[20] Sinclair J., Wallace, R., Gruszynski K., Bibbs Freeman, M., Campbell, C., Semple, S., Murphy, J. (2015). Rabies in a dog imported from Egypt with a falsified rabies vaccination certificate—Virginia. *Morbidity and Mortality Weekly Report,* 64, 1359–62. doi:10.15585/mmwr.mm6449a2.

[21] Hercules, Y., Bryant, N., Wallace, R., Nelson, R., Palumbo, G., Williams, J., Brown, C. (2018). Rabies in a dog imported from Egypt—Connecticut, 2017. *Morbdity and Mortality Weekly Report* 67, 1388–91. doi:10.15585/mmwr.mm6750a3.

[22] Raybern, C., Zaldivar, A., Tubach, S., Ahmed, F., Moore, S., Kintner, C., Garrison, I. (2020) Rabies in a dog imported from Egypt-Kansas, 2019. *Morbidity and Mortality Weekly Report,* 69(38), 1374–1377. Retrieved from *https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6938a5-H.pdf.*

[23] Whitehill F., Bonaparte S., Hartloge C., et al. Rabies in a Dog Imported from Azerbaijan-Pennsylvania, 2021. *MMWR Morb Mortal Wkly Rep* 2022; 71: 686–689.

[24] Centers for Disease Control and Prevention (2021). CDC responds to a case of rabies in an imported dog. Retrieved from *https://www.cdc.gov/worldrabiesday/disease-detectives/rabies-imported-dog.html.*

[25] Whitehill F., Bonaparte S., Hartloge C., et al. Rabies in a Dog Imported from Azerbaijan-Pennsylvania, 2021. *MMWR Morb Mortal Wkly Rep* 2022; 71: 686–689.

[26] Raybern, C., Zaldivar, A., Tubach, S., Ahmed, F., Moore, S., Kintner, C., Garrison, I. (2020) Rabies in a dog imported from Egypt-Kansas, 2019. *MMWR Morb Mort Wkly Rep,* 69(38), 1374–1377. Retrieved from *https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6938a5-H.pdf*

[27] Centers for Disease Control and Prevention (2019). Guidance Regarding Agency Interpretation of ''Rabies-Free'' as It Relates to the Importation of Dogs Into the United States. **Federal Register**, Vol. 84,724–730. Retrieved from *https://www.federalregister.gov/documents/2019/01/31/2019-00506/guidance-regarding-agency-interpretation-of-rabies-free-as-it-relates-to-the-importation-of-dogs.*

[28] Thomas, S., Wilson, P., Moore, G., Oertli, E., Hicks, B., Rohde, R., Johnston, D. (2005). Evaluation of oral rabies vaccination programs for control of rabies epizootics in coyotes and gray foxes: 1995–2003. *Journal of the American Veterinary Medicine Association,* 227(5),785–92. doi: 10.2460/javma.2005.227.785.

[29] Sterner, R., Meltzer, M., Shwiff, S., Slate, D. (2009). Tactics and Economics of Wildlife Oral Rabies Vaccination, Canada and the United States. *Emerging Infectious Diseases,* 15(8), 1176–1184. doi: 10.3201/eid1508.081061.

[30] Kunkel, A., Jeon, S., Joseph, H., Dilius, P., Crowdis, K., Meltzer, M., Wallace, R. (2021). The urgency of resuming disrupted dog rabies vaccination campaigns: A modeling and cost-effectiveness analysis. *Scientific Reports,* 11, 12476. doi:10.1038/s41598–021–92067–5.

[31] Raynor, B., Díaz, E., Shinnick, J., Zegarra, E., Monroy, Y., Mena. C., . . . Castillo-Neyra, R.(2021). The impact of the COVID–19 pandemic on rabies reemergence in Latin America: The case of Arequipa, Peru. *PLoS Neglected Tropical Diseases,* 15(5), e0009414. doi:10.1371/journal.pntd.0009414.

[32] Pieracci, E., Williams, C., Wallace, R., Kalapura, C., Brown, C. U.S. dog importations during the COVID–19 pandemic: Do we have an erupting problem? *PLoS ONE,*16(9), e0254287. doi: 10.1371/journal.pone.0254287.

C. Insufficient Veterinary Controls in High-Risk Countries To Prevent the Export of Inadequately Vaccinated Dogs

Historically, approximately 60 to 70 percent of CDC's dog entry denials (or about 200 cases annually) have been based on fraudulent, incomplete, or inaccurate paperwork.[33] This number is less than one percent of dog importations. However, between January and December 2020 (*i.e.,* during the COVID–19 pandemic), CDC documented more than 450 instances of incomplete, inadequate, or fraudulent rabies vaccination certificates for dogs arriving from high-risk countries. This number increased for the first six months of 2021, during which time CDC documented more than 550 instances of incomplete, inadequate, or fraudulent rabies vaccination certificates for dogs arriving from high-risk countries.[34] These cases resulted in dogs being denied entry into the United States and ultimately returned to their country of origin. Additionally, because of fewer international flights worldwide, several dogs were denied entry and subsequently placed in conditions later found to be unsafe.

During the COVID–19 pandemic, canine rabies vaccination campaigns were suspended in many high-risk countries, which resulted in an increase in canine and human rabies cases.[35] [36] The pause in canine vaccination campaigns, combined with insufficient veterinary controls in place to prevent the exportation of inadequately vaccinated dogs with fraudulent rabies vaccination certificates, presents a significant public health risk.

D. Potentially Unsafe Conditions for Dogs Arriving From High-Risk Countries Without Appropriate Rabies Vaccination Certificates

Prior to the implementation of the suspension, dogs arriving from high-risk countries without appropriate rabies vaccination certificates were denied entry and returned to the country of origin on the next available flight.[37] Airlines were required to house dogs awaiting return to their country of origin at a facility, preferably a live animal care facility with an active custodial bond and a Facilities Information and Resource Management System (FIRMS) code issued by CBP, which meets the USDA's Animal Welfare Act standards. If a live animal care facility with a CBP-issued FIRMS code was not available, the airline was required, at a minimum, to provide accommodation meeting the USDA's Animal Welfare Act standards.[38]

Some airlines housed dogs in cargo warehouses that created an unsafe environment for dogs due to the prolonged periods of time between flights, inadequate cooling and heating, poor cleaning and sanitization of crates, and inability to physically separate the animals from areas of the warehouse where other equipment, machinery, and goods are used and stored. Cargo warehouse staff who are not trained to house, clean, and care for live animals with appropriate personal protective equipment were at risk of bites, scratches, and exposures to potentially infectious bodily fluids from dogs left in cargo warehouses.

During 2020, due to the COVID–19 pandemic, there were fewer international flights worldwide,[39] [40] resulting in delayed returns for dogs denied entry. While international flights in 2021–2022 increased compared to 2020, the number of flights remain below pre-pandemic levels with uncertainty regarding how quickly international passenger traffic will recover.[41] In August 2020, a dog denied entry based on falsified rabies vaccination certificates later died while in the custody of an airline at Chicago O'Hare International Airport. Despite CDC's request to find appropriate housing at a local kennel or veterinary clinic, the airline left the dog, along with 17 other dogs, in a cargo warehouse without food and water for more than 48 hours.[42]

While airlines are ultimately responsible for finding appropriate housing for dogs denied entry (and paying the cost of housing if importers abandon the animal), the inconsistent number of flights and frequent changes to flight schedules due to the emergence of SARS–CoV–2 variants in 2021 created significant administrative and financial burden for Federal, State, and local Governments. Uncertainty regarding the number of available international passenger flights is likely to continue through 2022, and possibly into 2023. The challenge of housing dogs denied entry pending their return to their country of origin is complicated by the limited numbers of animal care facilities with a CBP-issued FIRMS code for holding animals at ports of entry. In such cases, the Government may be required to find and pay the costs for individualized solutions to ensure appropriate accommodations for prolonged periods of time for these animals.

During 2020, CDC observed a 52 percent increase in the number of dogs ineligible for entry compared to 2018 and 2019.[43] The trend continued in the first half of 2021 when there was an 18 percent increase in the number of dogs ineligible for entry compared to full-year 2020.[44] From January 1, 2021, to July 13, 2021, prior to CDC's suspension taking effect, there were 16 sick dogs and 18 dead dogs reported to CDC upon arrival in the United States. From July 14, 2021, to December 31, 2021, since

[33] Centers for Disease Control and Prevention (2021). Quarantine Activity Reporting System (version 4.9.8.8.2.2A). Dog Importation data, 2010–2019. Accessed 15 February 2021.

[34] Pieracci, E., Williams, C., Wallace, R., Kalapura, C., Brown, C. U.S. dog importations during the COVID–19 pandemic: Do we have an erupting problem? *PLoS ONE,* 16(9), e0254287. doi: 10.1371/journal.pone.0254287.

[35] The urgency of resuming disrupted dog rabies vaccination campaigns: A modeling and cost-effectiveness analysis. *Scientific Reports,* 11, 12476. doi:10.1038/s41598–021–92067–5.

[36] The urgency of resuming disrupted dog rabies vaccination campaigns: A modeling and cost-effectiveness analysis. *Scientific Reports,* 11, 12476. doi:10.1038/s41598–021–92067–5.

[37] Centers for Disease Control and Prevention (2019). Guidance Regarding Agency Interpretation of ''Rabies-Free'' as It Relates to the Importation of Dogs Into the United States. **Federal Register**, Vol. 84,724–730. Retrieved from *https://www.federalregister.gov/documents/2019/01/31/2019-00506/guidance-regarding-agency-interpretation-of-rabies-free-as-it-relates-to-the-importation-of-dogs.*

[38] U.S. Department of Agriculture (2020). Animal Welfare Regulations; Part 3, Subpart A: Transportation Standards. Sections 3.14–3.20. Retrieved from *https://www.aphis.usda.gov/animal_welfare/downloads/AC_BlueBook_AWA_508_comp_version.pdf.*

[39] Josephs, L. (2020). American Airlines cutting international summer schedule by 60% as coronavirus drives down demand. *CNBC.* Retrieved from *https://www.cnbc.com/2020/04/02/coronavirus-update-american-airlines-cuts-summer-international-flights-by-60percent-as-demand-suffers.html.*

[40] American Airlines (2020). American Airlines announces additional schedule changes in response to customer demand related to COVID–19. *American Airlines Newsroom.* Retrieved from *https://news.aa.com/news/news-details/2020/American-Airlines-Announces-Additional-Schedule-Changes-in-Response-to-Customer-Demand-Related-to-COVID-19-031420-OPS-DIS-03/default.aspx.*

[41] International Civil Aviation Organization (2022). Effects of novel coronavirus (COVID–19) on civil aviation: Economic impact analysis. Retrieved from *https://www.icao.int/sustainability/Documents/Covid-19/ICAO_coronavirus_Econ_Impact.pdf.*

[42] CBS Broadcasting (2020). Dog dies at O'Hare Airport warehouse, 17 others saved after being left without food or water for 3 days. *CBS Chicago.* Retrieved from *https://www.cbsnews.com/chicago/news/dog-dies-at-ohare-airport-warehouse-17-others-saved-after-being-left-without-food-or-water-for-3-days.*

[43] Pieracci, E., Williams, C., Wallace, R., Kalapura, C., Brown, C. U.S. dog importations during the COVID–19 pandemic: Do we have an erupting problem? *PLoS ONE,* 16(9), e0254287. doi: 10.1371/journal.pone.0254287.

[44] Centers for Disease Control and Prevention. Quarantine Activity Reporting System (version 4.9.8.8.2.2A). Dog Importation data, January 1, 2021–July 14, 2021. Accessed: 04 January 2022.

the suspension was implemented, CDC has denied entry to 72 dogs, and only one sick dog and nine deaths have been reported to CDC. This significant decrease in the number of dogs denied entry since the implementation of the suspension and decrease in the number of sick and dead dogs arriving in the United States has resulted in an estimated $55,000 to $190,000 in cost savings to importers and $3,400 to $170,000 in cost savings to Federal and State partners when comparing the two periods.

During the timeframe of the current suspension, the number of dogs denied entry and the number of sick dogs has significantly decreased. Lifting the suspension at this time would likely result in a return to pre-suspension levels of dogs denied entry along with an associated large increase of sick, dead, or inadequately vaccinated dogs arriving in the United States that would quickly overwhelm an already strained public health system. Remedying this situation may involve more live-animal care facilities to house dogs safely, and the ability and commitment by airline carriers to return dogs to the country of departure within one to two days of denial of entry.

While costs associated with housing, caring for dogs, and returning dogs are the responsibility of the importer (or airline if the importer abandons the dog), some importers and airlines are reluctant to pay these costs, requiring the Federal Government to find appropriate interim housing facilities and veterinary care. The cost for housing, care, and returning improperly vaccinated dogs ranges between $1,000 and $4,000 per dog, depending on the location and time required until the next available return flight. Because there is no reimbursement system in place, and seeking reimbursement is administratively challenging, the Federal Government is left to bear these costs when airlines and importers do not.

The increasing demand to vaccinate and quarantine dogs that have been denied entry presents an increased burden to Federal, State, and local public health agencies still engaged in response activities related to the COVID–19 pandemic. The increased inspections, medical care, and appropriate quarantine of dogs inadequately vaccinated against rabies has financially burdened Federal and State public health agencies.

From May through December 2020, CDC spent more than 3,000 personnel-hours at an estimated cost of $270,000 to respond to the attempted importation of unvaccinated or inadequately vaccinated dogs from high-risk countries during these eight months. The time spent represented a substantial increase from previous years due to: (1) The increase in dogs with inadequate documentation; and (2) the additional time spent identifying interim accommodations for the dogs because of the reduced outbound international flight schedules due to the pandemic.

Although the burden of U.S. COVID–19 cases, hospitalizations, and deaths decreased during the first four months of 2022, resources continue to be required for COVID–19 response efforts. The COVID–19 response remains a priority for HHS/CDC and state, tribal, local, and territorial authorities, and CDC foresees the need to continue COVID–19 public health response efforts into 2023. Because mitigating the current COVID–19 pandemic remains CDC's paramount objective and responding to imports of potentially rabid dogs would divert resources and personnel from CDC and other Federal, State, and local public health partners, completely lifting the suspension would be unwarranted at this time.

Instead, CDC is modifying the temporary suspension to allow for a wider range of importers to import dogs into the United States from high-risk countries. Given that the conditions for dog importations under the suspension have decreased the number of issues that existed prior to the suspension (suspected fraudulent documentation, dogs abandoned by importers, sick and dead dogs arriving in the United States), increasing importer eligibility should not result in the diversion of public health resources from the COVID–19 pandemic response to dog importation issues. Additionally, because there are more flights now than during earlier stages of the pandemic, dogs denied entry can be returned more quickly to their country of departure, if needed.

III. Conditions for Dog Importation Under the Temporary Suspension

During the temporary suspension, eligible importers, including owners of service dogs, U.S. and foreign-government personnel, and persons permanently relocating to the United States, could apply to import their personally owned pet dogs. People were also permitted to import dogs for science, education, or exhibition purposes. To receive a permit, eligible importers had to provide a rabies vaccination certificate prior to the dog's arriving in the United States that meets the criteria outlined below, as well as rabies serologic titers from an approved laboratory if the dog was vaccinated outside the United States. Dogs were also required to be at least six months of age and have a microchip implanted prior to arrival in the United States.

For dogs arriving from high-risk countries, the rabies vaccination certificates had to include the following information to be considered complete and accurate:

- Name and address of owner;
- Breed, sex, date of birth (approximate age if date of birth unknown), color, markings, and other identifying information for the dog;
- Microchip number;
- Date of rabies vaccination and vaccine product information;
- Date the vaccination expires; and
- Name, license number, address, and signature of veterinarian who administered the vaccination.

For a rabies vaccine to be effective, the dog must be at least 12 weeks (84 days) of age at the time of administration. A dog's initial vaccine must also be administered at least four weeks (28 days) before arrival in the United States.

A. Modifications to Conditions for Dog Importation Under the Temporary Suspension

CDC has been exercising its enforcement discretion to allow dogs six months of age or older that are microchipped and accompanied by valid U.S. rabies vaccination certificates to re-enter the United States without a CDC *Dog Import Permit.* Because these dogs had been previously vaccinated in the United States, CDC determined that allowing them to enter without a CDC *Dog Import Permit* would be unlikely to endanger the public's health. For dogs vaccinated outside the United States, consistent with public health standards of practice, CDC also expanded the number of approved rabies titer labs [45] from five to 60 labs and reduced the timeframe between when a sample is collected and when a dog is eligible to enter the United States from 90 days to 45 days for foreign-vaccinated dogs.

Additionally, CDC has allowed imported dogs to enter through any of the 18 CDC-staffed ports of entry listed below during the temporary suspension period, as opposed to only the four ports (and only one port in July 2021 when the suspension was first implemented) of entry with live animal care facilities. This decision was based on CDC's review of dog importation data during the temporary suspension period that noted a significant decrease in the

[45] Centers for Disease Control and Prevention (2022). Approved Rabies Serology Laboratories for Testing Dogs. Retrieved from *https://www.cdc.gov/importation/bringing-an-animal-into-the-united-states/approved-labs.html.*

arrival of ill dogs or dogs denied entry, reducing the need for dogs to only enter through ports with a live animal care facility. CDC intends to continue to allow travelers importing two or fewer personally owned pet dogs from high-risk countries to enter the United States through any of the 18 ports of entry with CDC-staffed Quarantine Stations for the remainder of the suspension in accordance with sections IV and V of this **Federal Register** notice. The approved ports of entry include Anchorage (ANC), Atlanta (ATL), Boston (BOS), Chicago (ORD), Dallas (DFW), Detroit (DTW), Honolulu (HNL), Houston (IAH), Los Angeles (LAX), Miami (MIA), Minneapolis (MSP), New York (JFK), Newark (EWR), Philadelphia (PHL), San Francisco (SFO), San Juan (SJU), Seattle (SEA), and Washington DC (IAD).

Table 1 compares the requirements in the June 2021 **Federal Register** notice with the current practice that has been in effect since December 1, 2021.

TABLE 1—IMPORT REQUIREMENTS FOR DOGS OUTLINED IN THE JUNE 2021 FEDERAL REGISTER NOTICE AND CURRENT PRACTICES DURING THE SUSPENSION.

June 2021 suspension	Current practice (since December 1, 2021)
Only eligible * importers may apply for a permit	Only eligible * importers may apply for a permit.
Six-month age requirement	Six-month age requirement.
Microchip	Microchip.
U.S. or foreign-issued rabies vaccination certificate	U.S.** or foreign-issued rabies vaccination certificate.
Titer from approved lab (five labs) drawn 90 days before planned entry	Titer from approved lab (60 labs) drawn at least 45 days before planned entry for dogs with a foreign-issued rabies vaccination certificate.
Entry only through approved port of entry with a live animal care facility (one port of entry).	Entry only through approved port of entry (18 ports of entry).

* Eligible importers include: U.S. citizens and lawful residents relocating to the United States (including U.S. and foreign government personnel); owners of service animals; and importers who wish to import dogs for purposes related to science, education, exhibition, or law enforcement.

** Dogs returning to the United States from high-risk countries with a valid U.S.-issued rabies vaccination certificate are allowed to enter the United States without a *CDC Dog Import Permit* provided that all requirements in Section IV were met.

IV. Conditions for Entry of U.S.-Vaccinated Dogs During the Extension

Through this notice, CDC is modifying the conditions for entry of U.S.-vaccinated dogs to reduce the burden on importers. Dogs returning to the United States from high-risk countries with a valid U.S.-issued rabies vaccination certificate will be allowed to enter the United States without a *CDC Dog Import Permit,* if the dog:

- Is six months of age or older;
- Has a microchip;
- Arrives at one of 18 CDC-approved ports of entry with CDC quarantine stations; and
- Has a valid U.S. rabies vaccination certificate documenting that the dog was vaccinated against rabies by a U.S.-licensed veterinarian in the United States on or after the date the dog was 12 weeks of age. The rabies vaccination certificate must include:
  - Name and address of owner;
  - Breed, sex, date of birth (approximate age if date of birth unknown), color, markings, and other identifying information for the dog;
  - Microchip number;
  - Date of rabies vaccination and date next vaccine is due (*i.e.,* date the vaccination expires);
  - Vaccine manufacturer, product name, lot number and product expiration date; and
  - Name, license number, address, and signature of veterinarian who administered the vaccination.

This is consistent with CDC's practices as of December 1, 2021, and is a modification to the terms of the original temporary suspension announced in the June 2021 **Federal Register** notice (86 FR 32041, June 16, 2021).

V. Conditions for Entry of Foreign-Vaccinated Dogs With a CDC Dog Import Permit During the Extension

CDC is further modifying the terms of the original temporary suspension published in the June 2021 **Federal Register** notice (86 FR 32041, June 16, 2021). All importers are now eligible to import dogs; therefore, there are no longer eligibility criteria as to who may import dogs. Under the temporary suspension, importers who met the eligibility criteria could make a one-time request to import up to three dogs as part of a single importation. CDC is herein modifying the terms of the temporary suspension to allow importers of personal pet dogs the opportunity to receive up to two *CDC Dog Import Permits* (*i.e.,* permits for two dogs) during the suspension. Further, under the modified temporary extension, personal pet owners no longer need to provide documentary proof of their eligibility (*e.g.,* employment relocation letter or official orders). Commercial importers and personal pet owners who do not have a serologic titer result for their dog also now have an alternate pathway for importation.

All importers of personal pet dogs (defined for the purpose of this notice as owners or importers attempting to import fewer than three dogs during the suspension) from high-risk countries are now eligible to apply for a *CDC Dog Import Permit.* Commercial dog importers (defined for the purpose of this notice as importing three or more dogs during the suspension) are not eligible for a *CDC Dog Import Permit* and must meet the requirements for entry outlined in Section VI below. In summary, CDC has removed the requirement to submit documentary proof of eligibility for personal pet owners to be able to receive permits and reduced the number of personal pets that can receive permits during the temporary suspension from three to two. Additionally, CDC is allowing importers of personal pets without serologic titer results and commercial importers to import dogs during the extension, as set forth in Section VI.

Foreign-vaccinated dogs arriving from high-risk countries with a valid *CDC Dog Import Permit* will be allowed to enter the United States if the dogs:

- Are six months of age or older (photographs of the dog's teeth are required for age verification);
- Have a microchip;
- Have a valid rabies vaccination certificate from a non-U.S.-licensed veterinarian. The certificate must state that the vaccine was administered on or after the date the dog was 12 weeks (84 days) of age and at least 28 days prior

to entry, if it was the dog's initial vaccine. The certificate must be in English or accompanied by a certified English translation;

- Have serologic evidence of rabies vaccination (titer) from an approved rabies serology laboratory [46] (serologic titer results ≥0.5 IU/mL are required) with the sample collected at least 45 days prior to entry and no greater than 365 days before entry; and
- Arrive at one of the 18 CDC-approved ports of entry with CDC-staffed quarantine stations.

To apply for a *CDC Dog Import Permit,* importers whose dogs meet the entry requirements listed above must submit the *Application for Special Exemption for a Permitted Dog Import,* [approved under OMB Control Number 0920–0134 Foreign Quarantine Regulations (exp. 06/30/2022), or as revised]. The permit application is available online at *www.cdc.gov/dogpermit.*

The importer's request, with all supporting documentation, must be submitted at least 30 business days before the date on which the dog will enter the United States. Importers may submit an application electronically at *www.cdc.gov/dogpermit.* Applicants should submit all required materials with their permit application at least 30 business days prior to their planned arrival date in the United States. A request cannot be made at the port of entry upon the dogs' arrival in the United States; dogs that arrive without a *CDC Dog Import Permit* will be returned to their country of origin on the next available flight or quarantined at the importer's expense at a CDC-approved animal facility (see Section VI).

Consistent with CDC's current policies but representing a modification of the terms of the original temporary suspension published in the June 2021 **Federal Register** notice (86 FR 32041, June 16, 2021), dogs arriving from a high-risk country with a valid *CDC Dog Import Permit* must enter the United States at one of 18 CDC-approved ports of entry. This revision eases the burden on importers compared to the temporary suspension, which limited entry to one approved port of entry at the time the **Federal Register** notice was published.

Within 10 days of arrival, foreign-vaccinated dogs with a *CDC Dog Import Permit* must receive a USDA-licensed rabies booster vaccination by a U.S. veterinarian.

[46] Centers for Disease Control and Prevention (2022). Approved Rabies Serology Laboratories for Testing Dogs. Retrieved from *https://www.cdc.gov/importation/bringing-an-animal-into-the-united-states/approved-labs.html.*

VI. Conditions for Entry of Foreign-Vaccinated Dogs Without a CDC Dog Import Permit During the Extension

CDC is also modifying the terms of the temporary suspension published in the June 2021 **Federal Register** notice (86 FR 32041, June 16, 2021) to reduce the burden and provide a pathway for commercial dog importers to import dogs. While importers of commercial shipments of dogs cannot apply for a *CDC Dog Import Permit,* a separate entry process, as outlined below, has been established. All commercial dog importers from high-risk countries may now import dogs provided that the dogs, upon entering the United States, are examined, revaccinated, and have proof of an adequate titer from a CDC-approved laboratory upon arrival or are held in quarantine at a CDC-approved animal facility until they meet CDC entry requirements. Importers of personally owned pets may also choose to use this pathway in lieu of obtaining a *CDC Dog Import Permit.*

Foreign-vaccinated dogs without a valid *CDC Dog Import Permit* must meet all other entry requirements (sections VI–VII) prior to arrival and also meet the following requirements:

- Dogs must enter at a port of entry with a CDC-approved animal facility.[47]
- Dogs must be six months of age or older at the time of entry.
- *Prior* to arrival in the United States, importers must arrange for an examination date and time and reserve space with a CDC-approved animal facility.
- Importers must arrange for transportation by a CBP-bonded transporter (*i.e.,* provided by the airline carrier or a CDC-approved animal facility) to a CDC-approved animal facility immediately upon arrival.
- Dogs must undergo veterinary examination and revaccination against rabies at a CDC-approved animal facility upon arrival at the importer's expense.

Dogs must also be held at the CDC-approved animal facility until the following entry requirements are completed:

- Veterinary health examination by a USDA-accredited veterinarian for signs of zoonotic or foreign disease. Suspected or confirmed zoonotic or foreign animal diseases must be reported to CDC, USDA, the state or territorial public health veterinarian. The state or territorial veterinarian and the CDC-approved animal facility must not release the dog without the written approval of CDC.
- Vaccination against rabies with a USDA-licensed rabies vaccine and administered by a USDA-accredited veterinarian.
- Confirmation of microchip number.
- Confirmation of age through dental examination by a USDA-accredited veterinarian.
- Verification of adequate rabies titer from an approved lab. Serologic titer results of ≥0.5IU/mL are required from a CDC-approved laboratory, with the sample collected at least 45 days prior to entry and no greater than 365 days before entry. Dogs that arrive without documentation of an adequate rabies titer from an approved lab must be housed at the CDC-approved animal facility for a 28-day quarantine at the expense of the importer following administration of the U.S. rabies vaccine in addition to meeting the criteria listed above. Dogs cannot be released from quarantine unless all requirements have been met.

Importers are responsible for all fees associated with the importation of dogs into the United States, including transportation, examination, vaccination, and quarantine fees.

Foreign-vaccinated dogs arriving without a *CDC Dog Import Permit* must enter the United States through a CDC-approved port of entry with a CDC-approved animal facility. As of May 2022, these facilities are located at: Atlanta Hartsfield-Jackson International Airport, John F. Kennedy International Airport (New York), Los Angeles International Airport, and Miami International Airport. Importers are responsible for reserving examination times and space at the CDC-approved animal facility prior to arrival in the United States. Dogs that arrive at unapproved ports of entry or without reservations at the animal facility will be denied entry and returned to the country of departure.

VII. Continued Conditions for All Dogs From High-Risk Countries During the Extension

Consistent with the terms of the original temporary suspension published in the June 2021 **Federal Register** notice (86 FR 32041, June 16, 2021), all dogs arriving from high-risk countries must be microchipped prior to arrival in the United States. The microchip can be administered in any country and does not need to be a U.S.-issued microchip. The microchip number must be listed on the rabies vaccination certificate.

Any dog from a high-risk country will be excluded from entering the United States and returned to its country of origin on the next available flight,

[47] Centers for Disease Control and Prevention (2022). Bringing a dog into the United States. Retrieved from *www.cdc.gov/dogtravel.*

regardless of carrier or route, if the dog arrives under the following circumstances:

- A dog arrives in the United States and does not meet the minimum pre-arrival requirements (*i.e.,* age greater than six months, microchip, valid rabies vaccination certificate).
- A dog presented does not match the description of the animal listed on the permit (if required) or rabies vaccination certificate.
- A dog arrives at an unapproved port of entry.
- A dog arrives at an airport with a CDC-approved animal facility without a reservation (if required) and no space at the facility is available.
- Importer refuses transportation to, or receipt of or payment for services at, a CDC-approved animal facility (if required).

The importer shall be financially responsible for all housing, care, and return costs. If an importer abandons a dog while it is at a CDC-approved animal facility, the carrier shall become responsible for all costs associated with the care, housing, and return of the dog to the country of departure. In keeping with current practice, importers should continue to check with Federal, State, and local Government officials regarding additional requirements of the final destination prior to entry or re-entry into the United States.

VIII. Additional Determinations Relating to This Notice

Pursuant to the terms of this notice, CDC is modifying the temporary suspension for the importation of dogs from high-risk rabies-enzootic countries. This suspension includes dogs originating in CRVV low-risk or CRVV-free countries that have been in a high-risk country in the previous six months (not including animals transiting through high-risk countries).

To enter the United States, dogs must meet certain entry requirements as described in Sections IV through VII of this notice, including, as applicable: having a valid U.S. rabies vaccination certificate; having a *CDC Dog Import Permit;* and being examined, vaccinated, and subject to quarantine at a CDC-approved animal facility.

Importers wishing to import foreign-vaccinated dogs that are their personally owned pets from high-risk countries must:

1. Submit a request for advanced written permission (*i.e., Application for Special Exemption for a Permitted Dog Import,* [approved under OMB Control Number 0920–0134 Foreign Quarantine Regulations (exp. 06/30/2022, or as revised)] at least 30 business days prior to planned importation in the United States at *www.cdc.gov/dogpermit.*

2. Submit all documentation listed above in Section V *Application for Special Exemption for a Permitted Dog Import.*

The *Application for Special Exemption for a Permitted Dog Import* must include proof of the dog's identity, including pictures of the dog's teeth, other descriptive details, proof of rabies vaccination, serologic titer results, and microchip information. Dogs arriving from high-risk countries must enter the United States at a CDC-approved port of entry or a port of entry with a CDC-approved animal facility if they do not possess a valid U.S.-issued rabies vaccination certificate or *CDC Dog Import Permit.*

Pursuant to the terms of this notice, CDC is not requiring U.S.-vaccinated dogs returning to the United States from a high-risk country for dog rabies to apply for a *CDC Dog Import Permit* provided the dog meets the criteria outlined in Section IV. Additionally, CDC does not require a *CDC Dog Import Permit* for commercial dogs because they must be examined, vaccinated, and are subject to quarantine at a CDC-approved animal facility upon arrival as outlined in Section VI.

TABLE 2—ENTRY CONDITIONS FOR DOGS UNDER MODIFIED SUSPENSION GUIDELINES

Dogs with valid U.S. rabies vaccination certificate (RVC)	Dogs with valid foreign RVC (fewer than three dogs being imported) with titer	Dogs with valid foreign RVC (fewer than three dogs being imported) without titer	Dogs with valid foreign RVC (three or more dogs being imported) with titer	Dogs with valid foreign RVC (three or more dogs being imported) without titer
At least six months of age Microchip ..... Entry allowed at 18 ports of entry with CDC quarantine station.	At least six months of age Microchip ..... Entry allowed at 18 ports of entry with CDC quarantine station with valid *CDC Dog Import Permit* issued prior to arrival.	At least six months of age Microchip ..... Entry allowed at four ports of entry with CDC-approved animal facility.	At least six months of age Microchip ..... Entry allowed at four ports of entry with CDC-approved animal facility.	At least six months of age. Microchip. Entry allowed at four ports of entry with CDC-approved animal facility.
Titer not needed	Serologic titer (≥0.5 IU/mL) from a CDC-approved laboratory. Titer drawn at least 45 days before entry and not more than 365 days before entry.	Not applicable*	Serologic titer (≥0.5 IU/mL) from a CDC-approved laboratory. Titer drawn at least 45 days before entry and not more than 365 days before entry.	Not applicable*.
No quarantine	No quarantine	28-day quarantine at CDC-approved animal facility.	No quarantine	28-day quarantine at CDC-approved animal facility.
Veterinary exam, booster vaccination or quarantine not required unless the animal appears ill upon arrival.	Veterinary exam or quarantine not required with valid *CDC Dog Import Permit* unless the animal appears ill upon arrival. Booster vaccination is required within 10 days of arrival by U.S. veterinarian.	Veterinary examination, booster vaccination, and paperwork verification at CDC-approved animal facility required upon arrival.	Veterinary examination, booster vaccination, and paperwork verification at CDC-approved animal facility required upon arrival.	Veterinary examination, booster vaccination, and paperwork verification at CDC-approved animal facility required upon arrival.

*This is an alternate pathway for importation in the event documentation of an adequate titer is not available upon arrival.

The suspension will continue to reduce the risk of importation of CRVV, ensure public health safeguards are in place for the importation of dogs from high-risk countries, and preserve public health resources needed for the COVID–19 response. The terms of the suspension allow for sufficient safeguards to mitigate the public health risk. The suspension will also allow CDC to continue to work with Federal and State partners, airlines, and other affected parties to consider options for a more streamlined and efficient dog importation process that will be safer for pets. It will allow all importers, including commercial importers, a pathway to import dogs. Most importantly, it will ensure that U.S. public health remains protected.

Therefore, pursuant to 42 CFR 71.51(e) and 42 CFR 71.63, CDC hereby excludes the entry and suspends (subject to the terms, conditions, and modifications outlined in this notice) the importation of dogs from high-risk countries, including dogs from CRVV low-risk and CRVV-free countries if the dogs have been present in a high-risk country in the previous six months.

Additionally, under 42 CFR 71.63, CDC continues to find that CRVV exists in countries designated as high-risk countries and that, if reintroduced into the United States, CRVV would threaten the public health of the United States. The continued entry of dogs from high-risk countries in the context of the current limited CDC resources and personnel dedicated to COVID–19 response activities and the insufficient safeguards in place to prevent the exportation of inadequately vaccinated dogs from high-risk countries further increases the risk that CRVV may be introduced, transmitted, or spread into the United States. CDC has coordinated in advance with other Federal agencies as necessary to implement and enforce this notice.

This notice is not a legislative rule within the meaning of the Administrative Procedure Act (APA), but rather a notice of an exclusion and temporary suspension taken under the existing authority of 42 CFR 71.51(e) and 42 CFR 71.63, which were previously promulgated with full notice and comment. If this notice qualifies as a legislative rule under the APA, notice and comment and a delay in effective date are not required because there is good cause to dispense with prior public notice and the opportunity to comment on this notice. Considering the public health emergency caused by the virus associated with COVID–19, the insufficient safeguards in place to prevent the exportation of inadequately vaccinated dogs from high-risk countries, the ongoing diversion of global public health resources and personnel to respond to the pandemic, and the risk of reintroduction of CRVV from dogs being imported from high-risk countries, it would be impractical and contrary to the public's health, and by extension the public's interest, to delay the issuance and effective date of this notice. Notwithstanding, CDC is publishing this notice in advance of its effective date, to allow potential dog importers and other interested parties sufficient time to adjust their practices in accordance with the terms of this modified suspension.

This temporary suspension will enter into effect on June 10, 2022, and remain in effect through January 31, 2023, unless modified or rescinded by the CDC Director based on public health or other considerations.

Dated: May 26, 2022.

Sherri Berger,

Chief of Staff, Centers for Disease Control and Prevention.

APPENDIX

Economic Impact of this Temporary Suspension

Executive Orders 12866: ''Regulatory Planning and Review'' and 13563: ''Improving Regulation and Regulatory Review'' 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 (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

Although the extension of the temporary suspension of dogs from countries at high-risk for CRVV is expected to reduce the number of dogs imported into the United States, importers or dogs with valid rabies vaccination certificates administered in the United States should not be affected by the suspension. In addition, for dogs vaccinated outside the United States, eligible importers of dogs from high-risk countries will be able to apply for a *CDC Dog Import Permit* at least 30 business days prior to planned importation in the United States for two or fewer dogs. In addition, any importer can bring in dogs that are appropriately followed up in the United States at a CDC-approved facility. Appropriate follow up will depend on whether importers have obtained serologic evidence of rabies immunity from titer testing prior to arrival in the United States. For dogs with serologic evidence of immunity, such dogs will need to be transported to a CDC-approved facility, re-vaccinated, and undergo a veterinary examination. For dogs lacking serologic evidence, such dogs would need to be examined, re-vaccinated, and quarantined for 28 days. Thus, all importers will be able to import dogs from high-risk countries if they are willing to take appropriate precautions to protect public health. However, CDC assumes that the additional costs to comply with these requirements will reduce the number of dogs vaccinated outside the United States and imported from high-risk countries by 20 percent.

CDC has previously estimated that between 87,000 and 116,000 dogs are imported from high-risk countries each year.[48] This estimate is significantly greater than the numbers recorded by CBP for formal entry under HTS code 0106199120 and HTS Description: Other live animals, other, dogs, which averaged 16,390 and varied from 9,966 to 24,031 over the 3-year period from 2018 through 2020.

The number of dogs reported under this HTS category does not include hand-carried dogs traveling in airplane cabins or crossing at land borders without formal entry and, thus, are not inclusive of all dog imports. To account for the uncertainty in the number of dogs imported to the United States from high-risk countries without formal entry, CDC used the following assumptions in the analysis of this action: 1) Most likely estimate: three times the average number of dogs with formal entry from reported in 2020 was 60,696 dogs per year, 2) Lower bound: two times the average number of dogs with formal entry from 2020 (32,781), and 3) Upper bound: five times the number of dogs arriving in the highest year (2019) (120,155). These baseline estimates are used throughout the analysis (Table A1).

The suspension will impact importers differently depending on whether their dogs were vaccinated in the United States or outside the United States. For dogs vaccinated in the United States, CDC assumed the extension of the suspension would have a negligible impact on the number of dogs imported. During the first four and a halfmonths of the temporary suspension, dogs with valid U.S. RVCs were required to apply for permits. During this period, about 61 percent of dogs had U.S. RVCs among those for which permits were requested; however, the temporary suspension limited the categories of importers eligible to receive permits. Thus, these data have limited generalizability to a scenario in which all importers would be eligible for permits. Given this uncertainty, CDC assumed that about 50 percent of imported dogs have U.S. RVCs, while the other 50 percent would have RVCs from other countries. To account for uncertainty, CDC also considered a range of 35 to 60 percent of imported dogs from high-risk countries would have U.S. RVCs.

CDC assumed that the temporary suspension would reduce the number of dogs imported from high-risk countries with non-

[48] Centers for Disease Control and Prevention (2019). Guidance Regarding Agency Interpretation of ''Rabies-Free'' as It Relates to the Importation of Dogs Into the United States. **Federal Register**, Vol. 84,724–730. Retrieved from *https://www.federalregister.gov/documents/2019/01/31/2019-00506/guidance-regarding-agency-interpretation-of-rabies-free-as-it-relates-to-the-importation-of-dogs.*

U.S. RVCs by 20 percent and considered a range of 10–40 percent to calculate lower and upper bound estimates. This would result in estimates of 54,626 (range: 27,536 to 112,345 dogs) dogs imported per year with the suspension in place. The temporary suspension would reduce the estimated numbers of dogs imported per year by 6,070 (range: 5,245 to 7,810 dogs). Among imported dogs, CDC estimated that about 12,139 dogs (range: 3,934 to 35,145 dogs) would have import permits. Another 11,896 dogs (range: 3,855 to 34,442 dogs) would arrive with titers, but without permits. Finally, about 243 dogs (range: 79 to 703 dogs) would arrive without titers and would require a 28-day quarantine period.

CDC also estimated the numbers of dogs denied entry under the baseline and with the temporary suspension in effect (see Table A1 below). An estimated 500 dogs (range: 300 to 750 dogs) would be denied entry under the baseline based on data from 2020 and previous years. The temporary suspension and CDC permit process are expected to reduce the number of dogs denied entry by 90 percent (range: 85 to 100 percent) such that only 50 (range: 0 to 50) dogs would be denied entry with this temporary suspension. During the first six and a halfmonths of the previous temporary suspension, about 72 dogs were denied entry, corresponding to about 133 dogs over a full year. However, dogs would be allowed to undergo a 28-day quarantine at a CDC-approved facility in lieu of being returned to their countries of origin, provided space was available at the CDC-approved facility.

TABLE A1—ESTIMATED NUMBERS OF DOGS FROM HIGH-RISK COUNTRIES IMPORTED OR DENIED ENTRY UNDER THE BASELINE AND WITH THE TEMPORARY SUSPENSION

	Most likely estimate	Lower bound	Upper bound
Estimated number of dogs imported from high-risk countries at baseline (A)	60,696	32,781	120,155
Estimated percent with U.S. rabies vaccination certificates (RVCs) (B)	50%	60%*	35%
Number of dogs with U.S. RVCs at baseline and with temporary suspension (C) = (A) × (B)	30,348	19,669	42,054
Number of dogs with non-U.S. RVCs at baseline (D) = (A) − (C)	30,348	13,112	78,101
Assumed percent of dogs with non-U.S. RVCs that would not be imported due to additional requirements under the temporary suspension (E)	20%	40%*	10%
Assumed percent of dogs with non-U.S. RVCs that would be imported with CDC permits under the temporary suspension (F)	40%	30%	45%
Assumed percent of dogs imported with an adequate rabies titer and requiring follow-up at CDC-approved facility under the temporary suspension (G)	39%	29%	44%
Assumed percent of dogs imported without titer and requiring 28-day quarantine at CDC-approved facility under the temporary suspension (H)	0.8%	0.6%	0.9%
Estimated number of dogs Arriving with CDC permit (I) = (D) × (F)	12,139	3,934	35,145
Estimated number of dogs imported with titer, but no CDC permit (J) = (D) × (G)	11,896	3,855	34,442
Estimated number of dogs without titer and requiring 28-day quarantine (K) = (D) × (H)	243	79	703
Total imported dogs with non-U.S. RVCs (L) = (I) + (J) + (K)	24,278	7,867	70,291
Estimated number of dogs imported from high-risk countries with temporary suspension (M) = (C) + (L)	54,626	27,536	112,345
Change in number of dogs imported from high-risk countries (N) = (A) − (M)	6,070	5,245	7,810
Number of dogs denied entry			
Estimated number of dogs denied entry from high-risk countries at baseline (O)	500	300	750
Estimated % reduction in dogs denied entry with temporary suspension (P)	90%	85%	100%
Estimated number of dogs denied entry with temporary suspension (Q) = (O) × (1 − (P))	50	45	–
Change in numbers of dogs denied entry with temporary suspension (R) = (O) − (Q)	450	255	750

* Although not a lower bound estimate for this parameter, the larger percentage results in smaller total cost estimates. As the percentage reduction in the number of dogs imported from high-risk countries increases, the estimated cost of the temporary suspension decreases. This results, in part, from the unknown cost per dog imported from a high-risk country that would otherwise not be imported due to the suspension. The revised suspension allows all dogs to enter if the importer complies with the entry requirements. Therefore, importers could determine whether the additional costs are greater than the value of importing dogs from high-risk countries. This would vary by importer depending on their own operating costs and CDC cannot estimate these costs.

The estimated costs and benefits (in 2020 U.S. dollars) associated with the temporary suspension of dogs from countries at high-risk for CRVV are summarized in Table A2. CDC estimates that importers, CDC, and DHS/CBP will incur a total of about $22 million in costs (range: $4.6 to $88 million) over a one-year period with the suspension. The large difference between the lower and upper bound is due to both uncertainty in the number of dogs imported from high-risk countries under the baseline as well as uncertainty in many of the costs associated with the suspension. Although the one-year costs are presented in the table, the expected costs (and benefits) of the extension will depend on the duration in which the extension is in effect. If the suspension ends on January 31, 2023 (approximately 0.64 years), the estimated total costs of the extension would be pro-rated to about $14 million (range: $3.0 to $56 million).

Most of the costs will be incurred by importers (most likely one-year estimate of $21 million, or 93 percent of the total cost estimate), among whom most of the costs will be incurred by importers of dogs vaccinated outside the United States, who will have to: (1) Spend time completing the application for a *CDC Dog Import Permit* or incur costs for veterinary examination and revaccination after arrival at a CDC-approved facility; (2) pay for serologic testing; and (3) incur the potential economic costs of being unable to import a dog from a high-risk country (either the inability to travel with a pet from a high-risk country or the need to substitute the importation of a dog from CRVV-free or low-risk country instead of a dog from a high-risk country). In addition, all importers of dogs from high-risk countries will be required to have microchips implanted in their dogs.[49] Finally, some importers will need to re-route travel to a port of entry with a CDC quarantine station (if they have a CDC permit or U.S. RVC) or to a smaller number of airports with a CDC-approved animal facility (if they do not have a CDC permit).

[49] In the cost estimate, CDC assumed that the majority of dogs (90%) would be implanted with microchips with or without this requirement.

In addition, airlines will incur about 3.1 percent of the most likely total cost estimate (reported in Table A2) to spend additional time reviewing documentation of importers and due to the reduction in number of dogs transported. CDC will incur about 3.9 percent of the most likely total cost estimate, primarily for review of permit applications.

The one-year benefits (averted costs) from the temporary suspension are estimated to be $1.2 million (range: $0.47 to $2.9 million). If the suspension extension ends on January 31, 2023, the estimated benefits over 0.64 years would be $740,000 (range: $300,000 to $1.9 million). About 31 percent of the benefits of the temporary suspension accrue to CBP due to the reduction in: The number of dogs imported from high-risk countries that require time for screening and review of RVCs; the number of dogs denied entry; and the time to review a *CDC Dog Import Permit* instead of the time required to review documentation under the baseline. Importers, CDC, and airlines also benefit from the costs averted by the reduction in the number of dogs denied entry with the suspension relative to baseline. The net cost of the temporary suspension is calculated as the difference between the annual costs and the annual benefits resulting in a net estimate cost of $21 million (range: $4.2 to $85 million).

TABLE A2—SUMMARY TABLE OF BENEFITS AND COSTS, IN 2020 U.S. DOLLARS, OVER A ONE-YEAR TIME HORIZON *

Category	Most likely estimate	Lower bound	Upper bound
Benefits			
Annual monetized benefits to importers of dogs from high-risk countries	$481,281	$254,614	$2,173,957
Annual monetized benefits to airlines	108,000	20,400	450,000
Annual monetized benefits to DHS/CBP	360,084	160,309	854,518
Annual monetized benefits to CDC	204,399	84,960	548,100
Total annualized monetized benefits	1,153,764	471,045	2,878,428
Quantified, but unmonetized, benefits	The estimated costs associated with a public health response to a dog imported while infected with canine rabies virus variant (CRVV) are $323,742, range: $220,897 to $521,828. The permit requirement for high-risk countries should reduce the risk of importation of dogs infected with CRVV.		
Qualitative benefits	Any importation of a dog with CRVV will require the reallocation of limited public health resources to support a response to mitigate the risk of transmission of CRVV. This could reduce the resources available for COVID–19 response activities and vaccination programs. In addition, these competing priorities may increase the risk of unlikely, but very costly outcomes associated with an importation of a dog with CRVV such as 1) the potential risk of death in a person who may be unaware of his/her exposure to a dog with CRVV and 2) the risk of re-introduction of CRVV in the United States.		
Costs			
Category	Most Likely estimate	Lower bound	Upper bound
Annualized monetized costs to importers of dogs from high-risk countries	$20,525,815	$4,050,735	$83,458,642
Annual monetized costs to airlines	673,604	262,817	2,000,407
Annualized monetized costs to DHS/CBP	0	0	0
Annual monetized costs to CDC	853,956	320,538	2,270,323
Total annualized monetized costs	22,053,375	4,634,090	87,729,371

* Although the one-year costs are presented in the table, the expected costs and benefits of the extension will depend on the duration in which the extension is in effect. If the suspension ends on January 31, 2023 (approximately 0.64 years), the estimated total costs of the extension would be pro-rated to about $14 million (range: $3.0 to $57 million). The expected benefits would be similarly pro-rated to $740,000 (range: $300,000 to $1.9 million).

The primary public health benefit of the temporary suspension is the reduced risk that a dog with CRVV will be imported from a high-risk country into the United States. Based on experience with previous importations, CDC estimated the cost per imported dog with CRVV to be $323,742 (range: $220,897 to $521,828).[50,51] This cost estimate includes health department staff time for the public health response, payments for post-exposure prophylaxis

[50] Raybern, C., Zaldivar, A., Tubach, S., Ahmed, F., Moore, S., Kintner, C. Garrison, I. (2020) Rabies in a dog imported from Egypt-Kansas, 2019. *Morbidity and Mortality Weekly Report,* 69(38), 1374–1377. Retrieved from *https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6938a5-H.pdf.*

[51] Centers for Disease Control and Prevention (2019). Guidance Regarding Agency Interpretation of ''Rabies-Free'' as It Relates to the Importation of Dogs Into the United States. **Federal Register,** Vol. 84,724–730. Retrieved from *https://www.federalregister.gov/documents/2019/01/31/2019-00506/guidance-regarding-agency-interpretation-of-rabies-free-as-it-relates-to-the-importation-of-dogs.*

for exposed persons,[52,53] and the costs associated with quarantining or euthanizing exposed animals.

The most likely estimates of the net cost ($21 million) and the most likely estimate of the potential benefits of averting the importation of a dog with CRVV from a high-risk country ($324,000) can be used to calculate how many dogs with CRVV would need to be imported under the baseline for the benefits to equal costs. The net cost ($21 million) divided by the cost per importation ($324,000) suggests that at least 65 dogs with CRVV would need to be imported under the baseline for benefits to exceed costs. This would require an increase in the number of dogs imported into the United States while infected with CRVV, which could occur because of failures of rabies control programs in multiple high-risk countries.

The above estimate of the cost of an importation of a dog with CRVV does not account for the worst-case outcomes, which include (1) transmission of rabies to a person who dies from the disease or (2) ongoing transmission to other domestic and wildlife species in the United States. While the risk of re-establishing CRVV into the United States is low, it would result in costly efforts over several years to re-eliminate the virus.

The cost of re-introduction could be especially high if CRVV spreads to other species of U.S. wildlife. Both worst-case outcomes may be more likely to occur during the COVID–19 pandemic because public health resources in countries where CRVV is endemic are likely to have been diverted to COVID–19 response activities and vaccination programs. These countries would already have limited resources available to mitigate CRVV and the prevalence of CRVV in dogs may increase relative to the pre-COVID–19 period in those countries.

Human deaths from rabies continue to occur in the United States after exposures to wild animals. However, no U.S. resident has died after exposure to an imported dog with CRVV in at least 20 years. CDC uses the value of statistical life (VSL) to assign a value to interventions that can result in mortality risk reductions. For 2020, the estimated VSL is $11.6 million, with a range of $5.5 to $17.7 million.[54] CDC is unable to estimate the potential magnitude of the mortality risk reduction associated with the temporary suspension. If three deaths were averted because of the suspension extension, the potential benefits would exceed costs.

Re-establishment of CRVV into the United States would also result in costly efforts over several years to re-eliminate the virus. A previous campaign to eliminate domestic dog-coyote rabies virus variant jointly with gray fox (Texas fox) rabies virus variant in Texas over the period from 1995 through 2003 cost $34 million,[55,56] or $48 million, in 2020 U.S. dollars. The costs to contain any reintroduction would depend on the time period before the reintroduction was realized, the wildlife species in which CRVV was transmitted, and the geographic area over which reintroduction occurs. The above estimate is limited to the cost of rabies vaccination programs for targeted wildlife and does not include the costs to administer post-exposure prophylaxis to any persons exposed after the reintroduction has been identified.

Relative to the previously published **Federal Register** notice announcing the temporary suspension,[57] this version allows more dogs to be imported. If importers are willing to absorb the additional costs for pre-arrival titers and for the other requirements to obtain a CDC permit or to pay for the post-arrival costs for veterinary examination and revaccination at a CDC-approved facility (in lieu of obtaining a CDC permit), there may not be a large reduction in the number of imported dogs. In the previous analysis, CDC estimated that only about 15,174 dogs would be imported over one year with the suspension in effect. With this suspension extension, CDC estimated that 54,626 dogs may be imported over a one-year period.

A significant source of uncertainty in the analysis for the previous suspension was due to assigning a value to the reduction in the number of imported dogs. CDC lacked data to estimate this value, which was likely to vary considerably depending on the relationships between importers and imported dogs. CDC assumed a marginal cost of $100 per dog.

The estimated annual costs for this extension of the suspension ($21 million) have increased relative to the annual estimate for the previous suspension ($12 million) because CDC assumed that a most non-U.S.-vaccinated dogs (80 percent) would be imported with the provisions of this suspension extension in place. In general, the original requirements to import dogs from high-risk countries in the temporary suspension were stricter than what is proposed in this notice announcing the extension. Specifically, dogs with U.S. RVCs will be allowed to be imported without permits. This change will greatly increase the number of dogs eligible to enter the United States without a CDC permit or the need for post-arrival follow-up at a CDC-approved facility. In addition, the original **Federal Register** notice indicated that all dogs would have to arrive ports of entry with a live animal care facility with a CBP-issued FIRMS code (currently only available at four airports). However, this requirement was relaxed to allow dogs from high-risk countries to arrive at the 18 airports with CDC quarantine stations if the importer has a CDC permit. The additional costs result primarily from the increased number of dogs imported with non-U.S. RVCs, about half of which were assumed to require post-arrival follow-up at a CDC-approved facility and a smaller fraction would require a 28-day quarantine period.

The expected benefits to CBP associated with a reduction in the number of dog imports and the time spent on screening dogs with U.S. RVCs are reduced relative to the previous analysis for the 2021 suspension. This is because CDC assumed more dogs would be imported into the United States during the extension and because CDC

[52] Raybern, C., Zaldivar, A., Tubach, S., Ahmed, F., Moore, S., Kintner, C. Garrison, I. (2020) Rabies in a dog imported from Egypt-Kansas, 2019. *Morbidity and Mortality Weekly Report,* 69(38), 1374–1377. Retrieved from *https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6938a5-H.pdf.*

[53] Centers for Disease Control and Prevention (2022). Rabies Postexposure Prophylaxis. Retrieved from *https://www.cdc.gov/rabies/medical_care/index.html.*

[54] U.S. Department of Health and Human Services (2016). Guidelines for Regulatory Impact Analysis. *Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services.* Retrieved from *https://aspe.hhs.gov/system/files/pdf/242926/HHS_RIAGuidance.pdf.*

[55] Thomas, S., Wilson, P., Moore, G., Oertli, E., Hicks, B., Rohde, R., Johnston, D. (2005). Evaluation of oral rabies vaccination programs for control of rabies epizootics in coyotes and gray foxes: 1995–2003. *Journal of the American Veterinary Medicine Association,* 227(5),785–92. doi: 10.2460/javma.2005.227.785.

[56] Sterner, R., Meltzer, M., Shwiff, S., Slate, D. (2009). Tactics and Economics of Wildlife Oral Rabies Vaccination, Canada and the United States. *Emerging Infectious Diseases,* 15(8), 1176–1184. doi: 10.3201/eid1508.081061.

[57] Centers for Disease Control and Prevention (2019). Guidance Regarding Agency Interpretation of ''Rabies-Free'' as It Relates to the Importation of Dogs Into the United States. **Federal Register**, Vol. 84, 724–730. Retrieved from *https://www.federalregister.gov/documents/2019/01/31/2019-00506/guidance-regarding-agency-interpretation-of-rabies-free-as-it-relates-to-the-importation-of-dogs.*

assumed it would require more CBP time per dog to review U.S. RVCs and for dogs transported to a CDC-approved facility than to review information in *CDC Dog Import Permits.* The estimated benefits to CBP are reduced by about 76 percent. There is also an increased risk that a dog infected with CRVV may be imported because of the increase in the number of dog imports and because CDC would not review documentation for dogs with U.S. RVCs prior to arrival.

Assumptions Used to Estimate Costs and Benefits

CDC estimated costs and benefits to importers, CDC, CBP, and airlines under the baseline and with the extension in place. All cost estimates were converted to 2020 U.S. dollars. The costs to importers with the extension were calculated using the following assumptions:

- The opportunity costs for importer time were estimated at $37.09 (range: $27.07 to $47.10) per hour based on the average U.S. wage rate and a Department of Transportation estimate specific to international travelers.[58] [59]
- Importers seeking advance written permission (*CDC Dog Import Permits*) for 12,139 (range: 3,934 to 35,145) dogs.
  - An assumption of 1 hour (range 0.5 to 2 hours) to submit advance written approval for a *CDC Dog Import Permit* and fulfill the informational and testing requirements for a permit.
  - Estimated costs of $80 per dog (range: $60 to $100) for a rabies titer test at an approved rabies serology laboratory.[60] [61] [62] [63] [64] [65] [66] [67] [68] [69] [70]
  - Assumed cost of $150 per dog shipment (range: $100 to $200) for a veterinarian to draw blood samples and ship them to an approved rabies serology laboratory.[71] [72] [73]
  - Estimated cost of $35 (range: $20 to $50) to implant a microchip.[74] [75] [76] [77] [78] [79] [80]
  - Assumed that 10 percent of imported dogs would receive a microchip solely due to the requirements included in the temporary suspension.[81]
  - An assumption that 50 percent (range: 35 to 60 percent) of importers will already have a valid rabies vaccination certificate issued by a U.S.-licensed veterinarian and will not need permits or testing from an approved rabies serology laboratory.
  - An assumption that there would be a 20 percent reduction in the number of imported dogs with non-U.S. RVCs due to the additional cost of obtaining a CDC permit or for post-arrival follow-up by a veterinarian at a CDC-approved facility.
  - An assumption that 40 percent (range: 30 to 45 percent) of non-U.S. vaccinated dogs would arrive with a CDC permit.
    - An assumption that 39 percent (range: 29 to 44 percent) of non-U.S. vaccinated dogs would arrive *without* a CDC permit but would receive a serologic test for rabies immunity prior to arrival. These dogs would require transportation to a CDC-approved facility, revaccination, and a veterinary exam at an estimated cost of $500 per dog (range: $300 to $600). It was also estimated to require about 17 minutes of importer time (range: 14 to 20 minutes) to make a reservation with the facility.
    - In addition, there may be additional delays for importers to wait for their dogs to be seen by a veterinarian at a CDC-approved animal facility. However, CDC was unable to predict how likely this would be to occur.
  - An assumption that 0.8 percent (range: 0.6 to 0.9 percent) of non-U.S. vaccinated dogs would arrive *without* a CDC permit or serologic test result and would require quarantine.
    - These dogs would require transportation to a CDC-approved facility, revaccination, a veterinary exam, and would need to be quarantined for 28 days at an estimated cost of $4,700 per dog (range: $3,100 to $5,500). It was also estimated to require about 51 minutes of importer time (range: 41 to 61 minutes) to make a reservation with the facility and to make arrangements during the quarantine.
  - An assumption that 35 percent of importers of dogs from high-risk countries would need to re-route travel to a port of entry with a CDC quarantine station, which would incur an increased ticket cost of $200 and 4 additional hours of travel time.
- Importers who are unable to import a dog from a high-risk country because of the temporary suspension (6,070, range: 5,425 to 7,810 dogs) would incur an assumed cost of $100 (range: $50 to $150) per dog because owners would be unable to bring their dog(s) to a country at high risk for CRVV or if importers incurred increased costs associated with substitution of imported dog(s) from CRVV-free or low-risk countries.

[58] Bureau of Labor Statistics (2020). May 2020 National Occupational Employment and Wage Estimates: United States. Retrieved from *https://www.bls.gov/oes/current/oes_nat.htm.*

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[61] Kansas State University Veterinary Diagnostic Lab (2021). FAVN test cost. Retrieved from *https://vetview2.vet.k-state.edu/LabPortal/catalog/list?CatalogSearch=favn&lab=&section=.*

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[68] Australian Animal Health Laboratory (2021). FAVN test cost. Retrieved from *https://aahllab services.csiro.au/info/companion_and_equine_testing.aspx.*

[69] Xe.com (2021) Xe Currency Converter. Retrieved from.

[70] Bureau of Labor Statistics (2022) CPI inflation calculator. *https://www.bls.gov/data/inflation_calculator.htm.* Accessed Feb 5, 2022.

[71] Pieracci, E. (2021). Personal communication, December 2, 2021.

[72] Fedex (2021). Cold Shipping Solutions. Retrieved on *https://orderboxesnow.com/.*

[73] Fedex (2021). Packaging UN 3373 Shipments. Retrieved from *https://www.fedex.com/content/dam/fedex/us-united-states/services/UN3373_fxcom.pdf#:~:text=If%20you%20use%20any%20of%20the%20following%20clinical,Large%20Cold%20Box%20%282%E2%80%938%C2%B0%29%20Extended%20Duration%20%2896%20Hours%29.*

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[78] K. (2012). Fit a microchip, identify your lost pet pooch. *DNA India.* Retrieved from *https://www.dnaindia.com/pune/report-fit-a-microchip-identify-your-lost-pet-pooch-1690440.*

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[80] World Bank (2022). Consumer price index (2010 = 100). Retrieved from *https://data.worldbank.org/indicator/FP.CPI.TOTL?end=2020&start=1960.*

[81] Pieracci, E. (2021). Personal communication, December 2, 2021.

The costs for CDC were estimated based on:

- An assumed staff time cost of 20 minutes (range: 15 to 30 minutes) per permit issued by a GS–13, step 5 reviewer.
- Oversight of the permit process by two GS–13, step 5 veterinarians to support communications, policy, and decision-making during the suspension.
- CDC staffing costs are estimated using the GS pay scale for the Atlanta area and multiplying by two to account for non-wage benefits and overhead.

CBP has reported the fully loaded wage rate for CBP officers at the GS–12, step 3 average wage level ($57.85 in 2020 USD) as part of their analysis of the costs associated with reviewing import information for formal entry.[82] CDC assumed that this fully loaded wage rate included non-wage benefits but did not include agency overhead. In the absence of other information, CDC assumed that overhead may add another 33 percent to the average hourly cost for CBP officer time. This would result in a total cost to CBP of $76.94 per hour for CBP staff engaged in screening dogs at ports of entry.

CDC assumed that airlines would incur additional costs for this temporary suspension associated with the time required to review documentation for dogs imported from high-risk countries. This would require 10 minutes (range: 7 to 15) of airline staff time. CDC assumed that this additional time would be spent by aircraft cargo handling supervisors whose average hourly wage was reported to be $28.66 on average.[83] To account for non-wage benefits and overhead, CDC multiplied this wage rate by 2.[84] There may be some reduction in cargo fees revenue associated with the reduction in dogs imported from countries at high risk for CRVV (range: 5,425 to 7,810 dogs), which was assumed to result in lost revenue of $25 per dog transported since CDC does not have any data on the profit to airlines for transporting dogs.

The expected annual benefits (averted costs) were estimated for importers, CDC, CBP, and airlines based on the reduced numbers of dogs delayed entry and the reduced time spent by CBP officers to screen dogs from high-risk countries.

The estimated benefits (averted costs) for importers were estimated based on:

- An estimated reduction in time spent by CBP to review documentation for dogs from high-risk countries arriving with CDC permits (*i.e.,* dogs that were vaccinated outside the United States) assuming an estimate of 17 minutes (range: 13.6 to 20.4 minutes) per dog to review documentation under the baseline[85] to five minutes (range: 3 to 8 minutes) per dog to review permits during the suspension.
- An estimated two hours per dog denied entry (estimated at 450 fewer dogs denied entry, range: 255 to 750) with the suspension relative to baseline.
- CDC assumed that 60 percent of dogs denied entry would be re-imported to the United States at a round-trip cost of $1,200 per dog to the importer.[86]
- CDC assumed that 40 percent of dogs denied entry would be abandoned by importers at a cost of $600 per dog to the importer.

The estimated benefits (averted costs) to CDC were estimated based on:

- An estimated four hours of CDC staff time per dog denied entry at an average GS-level 13, step 5 at CDC Headquarters and an average of 30 minutes of CDC quarantine station staff time per dog denied entry at an average GS-level 11, step 5. The actual mix of staff at CDC Headquarters who need to support denials of entry would vary from GS–11 through Senior Executive Staff and varies depending on time spent on appeals and finding shelter for abandoned dogs.

The estimated benefits (averted costs) to CBP were estimated based on:

- An estimated reduction in the number of dogs imported from high-risk countries due to the temporary suspension: 6,070 (range: 5,245 to 7,810) relative to baseline.
- Under the baseline, CDC estimated that each dog imported from a high-risk country requires 17 minutes (range: 13.6 to 20.4 minutes) of CBP officer time to review documents.[87]
- With the temporary suspension in place, CDC estimates that the time required to review CDC-issued permits would decrease from the above to five minutes (range: 3 to 8 minutes) per dog for the estimated 12,139 (range: 3,934 to 35,145) dogs arriving with permits. The amount of time required for dogs with US RVCs or for dogs transported to a CDC-approved facility would be unchanged.
- An estimated reduction in the number of dogs denied entry because of the temporary suspension: (estimated at 450 fewer dogs denied entry, range: 255 to 750).
- An estimate of 71 (range: 47 to 95) minutes of CBP staff time required per dog denied entry (GS–12, step 5).[88]

The estimated benefits (averted costs) for airlines were estimated based on:

- The reduction in the estimated numbers of dogs denied entry and abandoned by importers (200 under the baseline vs. 20 with the suspension of entry).
- An assumed cost of $600 per dog for airlines to fly abandoned dogs back to their countries of origin.[89]

The costs associated with an importation of a dog with CRVV include health department staff time for the public health response, payments for post-exposure prophylaxis for exposed persons, and the costs associated with quarantining or euthanizing exposed animals. CDC estimated the response cost per imported dog with CRVV to be $323,742 (range: $220,897 to $521,828) based on the following assumptions:

- An estimate of 800 hours of health department staff time per importation.[90]

[82] U.S. Customs and Border Protection (2021). Supporting Statement: Application to Use Automated Commercial Environment (ACE) 1651–0105. Retrieved from *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202106-1651-002.*

[83] Bureau of Labor Statistics (2020). May 2020 National Occupational Employment and Wage Estimates, Job category 53–1041. Retrieved from *https://www.bls.gov/oes/current/oes_nat.htm.*

[84] U.S. Department of Health and Human Services (2016). Guidelines for Regulatory Impact Analysis. *Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services.* Retrieved from *https://aspe.hhs.gov/system/files/pdf/242926/HHS_RIAGuidance.pdf.*

[85] Centers for Disease Control and Prevention (2019). Guidance Regarding Agency Interpretation of ''Rabies-Free'' as It Relates to the Importation of Dogs Into the United States. **Federal Register**, Vol. 84, 724–730. Retrieved from *https://www.federalregister.gov/documents/2019/01/31/2019-00506/guidance-regarding-agency-interpretation-of-rabies-free-as-it-relates-to-the-importation-of-dogs.*

[86] Centers for Disease Control and Prevention (2019). Guidance Regarding Agency Interpretation of ''Rabies-Free'' as It Relates to the Importation of Dogs Into the United States. **Federal Register**, Vol. 84, 724–730. Retrieved from *https://www.federalregister.gov/documents/2019/01/31/2019-00506/guidance-regarding-agency-interpretation-of-rabies-free-as-it-relates-to-the-importation-of-dogs.*

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[89] Centers for Disease Control and Prevention (2019). Guidance Regarding Agency Interpretation of ''Rabies-Free'' as It Relates to the Importation of Dogs Into the United States. **Federal Register**, Vol. 84,724–730. Retrieved from *https://www.federalregister.gov/documents/2019/01/31/2019-00506/guidance-regarding-agency-interpretation-of-rabies-free-as-it-relates-to-the-importation-of-dogs.*

[90] Centers for Disease Control and Prevention (2019). Guidance Regarding Agency Interpretation of ''Rabies-Free'' as It Relates to the Importation of

• The public health response time is split evenly among veterinarians (code 29–1131, $52.09 per hour), epidemiologists (19–1041, $40.20 per hour), registered nurses (29–1141, $38.47 per hour), licensed practical nurses (29–2061, $24.08 per hour), and office and administrative assistants (43–0000, $20.38 per hour).[91,92] These wage estimates are multiplied by two to account for non-wage benefits and overhead.

• An average of 25 (range: 16 to 44) individuals will require post-exposure prophylaxis because of exposure to the dog with CRVV.[93 94]

• The average cost of post-exposure prophylaxis was estimated to be $9,524 per person.[95]

• An estimated 29.6 animals would need to be quarantined or euthanized due to exposure to the dog with CRVV.

• Public health follow-up of each exposed animal would incur economic costs of $1,000 for quarantine or euthanasia.[96]

[FR Doc. 2022–11752 Filed 5–26–22; 4:15 pm]

BILLING CODE 4163–18–P

Dogs Into the United States. **Federal Register**, Vol. 84,724–730. Retrieved from *https://www.federalregister.gov/documents/2019/01/31/2019-00506/guidance-regarding-agency-interpretation-of-rabies-free-as-it-relates-to-the-importation-of-dogs.*

[91] Bureau of Labor Statistics (2020). May 2020 National Occupational Employment and Wage Estimates: United States. Retrieved from *https://www.bls.gov/oes/current/oes_nat.htm.*

[92] Bureau of Labor Statistics (2020). May 2020 National Occupational Employment and Wage Estimates: United States. Retrieved from *https://www.bls.gov/oes/current/oes_nat.htm.*

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[94] Centers for Disease Control and Prevention (2019). Guidance Regarding Agency Interpretation of ''Rabies-Free'' as It Relates to the Importation of Dogs Into the United States. **Federal Register**, Vol. 84,724–730. Retrieved from *https://www.federalregister.gov/documents/2019/01/31/2019-00506/guidance-regarding-agency-interpretation-of-rabies-free-as-it-relates-to-the-importation-of-dogs.*

[95] Raybern, C., Zaldivar, A., Tubach, S., Ahmed, F., Moore, S., Kintner, C., Garrison, I. (2020) Rabies in a dog imported from Egypt-Kansas, 2019. *Morbidity and Mortality Weekly Report,* 69(38), 1374–1377. Retrieved from *https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6938a5-H.pdf.*

[96] Centers for Disease Control and Prevention (2019). Guidance Regarding Agency Interpretation of ''Rabies-Free'' as It Relates to the Importation of Dogs Into the United States. **Federal Register**, Vol. 84,724–730. Retrieved from *https://www.federalregister.gov/documents/2019/01/31/2019-00506/guidance-regarding-agency-interpretation-of-rabies-free-as-it-relates-to-the-importation-of-dogs.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request: Health Center Workforce Well-Being Survey Evaluation and Technical Assistance; 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 1, 2022.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or by mail to the HRSA Information Collection Clearance Officer, Room 14N136B, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Samantha Miller, the acting HRSA Information Collection Clearance Officer at (301) 443–9094.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information collection request title for reference.

Information Collection Request Title: Health Center Workforce Well-being Survey Evaluation and Technical Assistance OMB No. 0906–XXXX—New.

Abstract: The Health Center Program, authorized by section 330 of the Public Health Service Act, 42 U.S.C. 254b, and administered by HRSA, Bureau of Primary Health Care, supports the provision of community-based preventive and primary health care services to millions of medically underserved and vulnerable people. Health centers employ over 400,000 health care staff (*i.e.,* physicians, medical, dental, mental and behavioral health, vision services, pharmacy, enabling services, quality improvement, and facility and non-clinical support staff.)

Provider and non-provider staff well-being is essential to recruiting and retaining staff, thus supporting access to quality health care and services through the Health Center Program. HRSA has created a nationwide Health Center Workforce Well-being Survey to identify and address challenges related to provider and staff well-being. The survey will be administered to all full-time and part-time health center staff in the fall of 2022 to identify conditions and circumstances that affect staff well-being at HRSA funded health centers, including the scope and nature of workforce well-being, job satisfaction, and burnout. This information can inform efforts to improve workforce well-being and maintain high quality patient care.

The Health Center Workforce Well-being Survey aims to collect and analyze data from no less than 85 percent of health center staff. HRSA will utilize stakeholder engagement strategies to support survey completion targets. The HRSA contractor will request email addresses for all health center staff from health center leadership. Using the email addresses provided, the contractor will administer the online survey to ensure data quality and respondent confidentiality. Participation in the Health Center Workforce Well-being Survey is voluntary for all health center staff. The contractor will analyze the responses and provide analytic reports. HRSA will disseminate the summary level data for public use, including preparing preliminary findings and analytic reports.

A 60-day Notice was published in the **Federal Register**, 87, FR 14019 (March 11, 2022). One public comment was received and recommended shortening the survey from the current 30 minutes to 10–15 minutes to complete and provided suggestions on how to shorten the survey. This comment also recommended distributing the survey to Look-Alikes (LALs) to increase the number of survey respondents and for more diverse survey analysis.

HRSA received four public requests for materials that included one request for a copy of the draft ICR for the Health Center Workforce Well-being Survey, and three requests for a copy of the Health Center Workforce Well-being Survey. In response to receiving a copy of the Health Center Workforce Well-being Survey, one of the requesters noted concerns about sending individual health center staff email addresses to HRSA's contractor carrying out the survey. In response to this

concern, HRSA informed the commenter that the contractor conducting the survey would address this by issuing each health center a document ''in advance of the survey roll out that will detail the extensive precautions and guarantees regarding the collection, storage, use, and destruction of the email addresses provided, as well as the data security, de-identification, and reporting aggregation procedures that will be utilized to protect the content of the responses and the confidentiality of the respondents. If a health center has remaining concerns that are not addressed by those procedures, our team will directly discuss alternate means by which a tracked and closed response could be collected from staff at that organization.''

Need and Proposed Use of the Information: Health care workforce burnout has been a challenge even prior to COVID–19 and other recent public health crises. Clinicians and health care staff have reported experiencing alarming rates of burnout, characterized as a high degree of emotional exhaustion, depersonalization, and a low sense of personal accomplishment at work.[1] Understanding the factors impacting workforce well-being and satisfaction, reducing burnout, and applying evidence-based technical assistance and other quality improvement strategies around workforce well-being is essential as the health center program health care workforce continues to respond to and recover from the COVID–19 pandemic and prepare for future health care delivery challenges.

Administration of the Health Center Workforce Well-being Survey will provide a comprehensive baseline assessment of health center workforce well-being and identify opportunities to improve workforce well-being and bolster technical assistance and other strategies. These efforts will further HRSA's goal of providing access to quality health care and supporting a robust primary care workforce.

Likely Respondents: Health center staff in HRSA funded health centers.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Health Center Workforce Survey	400,000	1	400,000	.50	200,000
Health Center Leader Support Activities	1,400	1	1,400	2.00	2,800
Total	401,400		401,400		202,800

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2022–11710 Filed 5–31–22; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Establishment of the Office of Environmental Justice

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Office of the Assistant Secretary for Health (OASH) has modified its structure. This notice announces the establishment of the Office of Environmental Justice in OASH's Office of Climate Change and Health Equity.

DATES: This reorganization was approved by the Secretary of Health and Human Services and takes effect May 31, 2022.

SUPPLEMENTARY INFORMATION: Statement of Organization and Functions, Part A, Office of the Secretary, Statement of Organization and Function for the U.S. Department of Health and Human Services (HHS or the Department) is being amended at Chapter AC, Office of the Assistant Secretary for Health (OASH), as last amended at 86 FR 48745, dated August 31, 2021, 75 FR 53304, dated August 31, 2010, and 72 FR 58095–96, dated October 12, 2007.

Background: Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad,* directs agencies, including Department of Health and Human Services to make achieving environmental justice part of its mission by developing programs, policies, and activities to address the disproportionately high and adverse human health, environmental, and climate-related and other cumulative impacts on disadvantaged communities. This amendment reflects the establishment of an office to coordinate and provide expertise to support the Department's efforts to protect the health of disadvantaged communities and vulnerable populations on the frontlines of pollution and environmental hazards. Specifically, the changes are as follows:

A. Under Part A, Chapter AC, under the Office of the Assistant Secretary for Health, add the following:

1. The Office of Environmental Justice (OEJ) is headed by a Director who reports to the Assistant Secretary for

[1] West, CP, Dyrbye, L.N., Satele, D.V, Sloan, J.A., & Shanafelt, T.D. (2012). Concurrent validity of single-item measures of emotional exhaustion and depersonalization in burnout assessment. *J Gen Intern Med, 27(11 PG–1445–52), 1445–1452. https://doi.org/10.1007/s11606-012-2015-7.*

Health through the Director of the Office of Climate Change and Health Equity.

2. OEJ shall work with the Immediate Office of the Secretary, Staff Divisions, and Operating Divisions to focus on:

- Leading initiatives that integrate environmental justice in the HHS mission to improve health in disadvantaged communities and vulnerable populations across the nation.
- Supporting senior leadership at OASH and HHS on environmental justice and health issues.
- Developing and implementing an HHS-wide strategy on environmental justice and health.
- Coordinating annual HHS environmental justice reports.
- Providing expertise and coordination to the White House, Secretary of HHS, and federal agencies related to environmental justice deliverables and activities, including executive order implementation.
- Providing HHS Office of Civil Rights with environmental justice expertise to support compliance under Title VI of the Civil Rights Act of 1964.
- Promoting training opportunities to build an environmental justice workforce.

Xavier Becerra,

Secretary.

[FR Doc. 2022–11192 Filed 5–31–22; 8:45 am]

BILLING CODE 4150–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Research on Current Topics in Alzheimer's Disease and Its Related Dementias.

Date: June 22, 2022.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jessica Bellinger, Ph.D., Scientific Review Administrator, Center for Scientific of Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, Bethesda, MD 20892, 301–827–4446, *bellingerjd@csr.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group, Organization and Delivery of Health Services Study Section.

Date: June 23–24, 2022.

Time: 9:00 a.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Catherine Hadeler Maulsby, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–1266, *maulsbych@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Collaborative Applications: Decision Support for Alzheimer's Disease and Related Dementias (Collaborative R01).

Date: June 24, 2022.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Catherine Hadeler Maulsby, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 402–2671, *maulsbych@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Pathophysiology of Obesity and Metabolic Disease Study Section.

Date: June 28–29, 2022.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Raul Rojas, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6185, Bethesda, MD 20892, (301) 451–6319, *rojasr@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; AREA/REAP: Musculoskeletal, Oral, and Skin Sciences.

Date: June 28, 2022.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Carmen Bertoni, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 805B, Bethesda, MD 20892, (301) 867–5309, *bertonic2@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Basic Mechanisms of Diabetes and Metabolism Study Section.

Date: June 28–29, 2022.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Liliana Norma Berti-Mattera, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 6158, MSC 7890, Bethesda, MD 20892, (301) 827–7609, *liliana.berti-mattera@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Antiviral Drug Discovery and Mechanisms of Resistance.

Date: June 29–30, 2022.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Shinako Takada, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–402–9448, *shinako.takada@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Research on Community Level Interventions for Firearm and Related Violence, Injury and Mortality (CLIF–VP).

Date: June 29, 2022.

Time: 1:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Heidi B. Friedman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1012A, MSC 7770, Bethesda, MD 20892, (301) 379–5632, *hfriedman@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 25, 2022.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–11649 Filed 5–31–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of an Exclusive Patent License: The Development of an Anti-Mesothelin Chimeric Antigen Receptor (CAR) for the Treatment of Mesothelin-Expressing Human Cancers

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Cancer Institute, an institute of the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an Exclusive Patent License to practice the inventions embodied in the Patents and Patent Applications listed in the Supplementary Information section of this notice to Evotec International GmbH (Evotec), located in Hamburg, Germany.

DATES: Only written comments and/or applications for a license which are received by the National Cancer Institute's Technology Transfer Center on or before June 16, 2022 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, and comments relating to the contemplated an Exclusive Patent License should be directed to: David A. Lambertson, Ph.D., Technology Transfer Manager, NCI Technology Transfer Center, Telephone: (240) 276–6467; Email: *david.lambertson@nih.gov.*

SUPPLEMENTARY INFORMATION:

Intellectual Property

U.S. Provisional Patent Application 62/508,197 entitled ''Anti-Mesothelin Polypeptides and Proteins'' [HHS Ref. E–106–2017–0–US–01], PCT Patent Application PCT/US2018/033236 entitled ''Anti-Mesothelin Polypeptides and Proteins'' [HHS Ref. E–106–2017–0–PCT–02], U.S. Patent Application 16/631,971 entitled ''Anti-Mesothelin Polypeptides and Proteins'' [HHS Ref. E–106–2017–0–US–03], U.S. Provisional Patent Application 63/290,761 entitled ''Anti-Mesothelin Polypeptides and Proteins'' [HHS Ref. E–033–2021–0–US–01], and U.S. and foreign patent applications claiming priority to the aforementioned applications.

The patent rights in these inventions have been assigned and/or exclusively licensed to the government of the United States of America.

The license to be granted may be worldwide, and may be limited to the following field of use:

''The development, production and commercialization of a mono-, bi-, or multi-specific anti-MLSN (Mesothelin) chimeric antigen receptor (CAR)-based allogeneic immunotherapy using genetically engineered, iPSC-derived human NK cells where the CAR has at least:

(1) The complementary determining region (CDR) sequences of the (humanized) anti-MSLN antibody known as 15B6;

(2) A transmembrane domain; and

(3) At least one signaling domain,

for the treatment of MLSN-expressing solid tumors.''

Mesothelin is a cell surface protein that is expressed on a number of types of cancer cells, including mesothelioma, pancreatic cancer, ovarian cancer, and certain lung cancers. There are currently few effective therapies for patients with these types of cancers, with many patients experiencing disease relapse. Upon relapse, there are even fewer second-line therapeutic options, underscoring an unmet patient need. The development of an anti-mesothelin CAR-based therapy can potentially be used for the treatment of mesothelin-expressing cancers. As a result, the development of a new therapeutic option targeting mesothelin will benefit public health by providing an effective treatment for patients that might otherwise have no options.

This notice is made in accordance with 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive license will be royalty bearing, and the prospective exclusive license may be granted unless within fifteen (15) days from the date of this published notice, the National Cancer Institute receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

In response to this Notice, the public may file comments or objections. Comments and objections, other than those in the form of a license application, will not be treated confidentially, and may be made publicly available.

License applications submitted in response to this Notice will be presumed to contain business confidential information and any release of information in these license applications will be made only as required and upon a request under the Freedom of Information Act, 5 U.S.C. 552.

Dated: May 25, 2022.

Richard U. Rodriguez,

Associate Director, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2022–11666 Filed 5–31–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Statement of Organization, Functions, and Delegations of Authority

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Substance Abuse and Mental Health Services Administration has modified its structure. This new organizational structure was approved by the Deputy Secretary of Health and Human Services on April 27, 2022 and became effective on May 13, 2022.

FOR FURTHER INFORMATION CONTACT: Robert T. Atanda, Ph.D., Director, Division of Management Services, Office of Management, Technology, and Operations, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 12E49, 5600 Fishers Lane, Rockville, MD, 20857 Phone: 240–276–2826

Part M of the Substance Abuse and Mental Health Services Administration (SAMHSA) Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (DHHS) at 73, Number 147, pages 44274–44275, July 30, 2008, is amended to reflect the new functional statement for the Center for Substance Abuse Prevention. This notice identifies a new Office of Prevention Innovation (OPI). This change allows innovative prevention implementation. The changes are as follows:

Section M.20, Functions is amended as follows:

The functional statement for the Center for Substance Abuse Prevention is amended to name a new Office of Prevention Innovation. The functional statement for each office is as follows:

Office of Prevention Innovation

The Office of Prevention Innovation (OPI) will provide support across the Center to promote leading edge programming in the substance misuse prevention and mental health promotion fields. The focus of the OPI team is to drive innovative prevention programming by analyzing program data to uncover common barriers to program implementation, as well as innovative approaches, and quickly turn these into technical assistance to the field. Historically, program evaluations have focused on long-term, big picture evaluation questions. OPI seeks to use a quick-turnaround implementation science and technical assistance model

to improve programs over the lifetime of the grant.

The substance misuse landscape in the country is rapidly changing. Substance misuse patterns are changing constantly, as has been seen during the pandemic. New, high-risk substances are emerging, such as synthetic drugs like Fentanyl, psilocybin, new and more potent strains of cannabis. Substance availability policies and practices are rapidly evolving, such as home delivery of alcohol, cannabis legalization, and fake drugs being sold on social media platforms. In addition, the stresses and strains on the Nation's population, including health and climate-related emergencies and disasters and related economic and social upheavals. Together, these factors demand that CSAP modernize its approach to supporting the substance use prevention field, in a way that is data-driven, and more oriented toward rapid-response support to the States, Tribes and communities implementing substance misuse prevention and health promotion activities in the country. The OPI team gives CSAP and SAMSHA the ability to lead this effort.

To accomplish this, the OPI team will work closely with CSAP's two divisions which provide oversight to a portfolio of nearly 1000 State, Tribal and community public health grants, to conduct year-round program analysis, and oversee flexible, rapid-response technical assistance mechanisms to address challenges as they arise, and amplify emerging innovations and best practices.

Office of the Director (MP1)

(1) Provides leadership, coordination, and direction in the development and implementation of CSAP goals and priorities, and serves as the focal point for the Department's efforts on substance abuse and HIV/AIDS prevention; (2) plans, directs, and provides overall administration of the programs and activities of CSAP; (3) provides leadership in the identification of new and emerging issues, and the integration of primary prevention, early intervention, re-entry and relapse prevention, knowledge and information in the major CSAP programs; (4) manages special projects and external liaison activities; and (5) directs CSAP's overall human resource activities and monitors the conduct of equal employment opportunity activities for CSAP.

Office of Program Analysis and Coordination (MPA)

(1) Supports the Center's implementation of programs and policies by providing guidance in the administration, analysis, planning, and coordination of the Center's programs, consistent with agency priorities; (2) manages the Center's participation in the agency's policy, planning, budget formulation and execution, program development and clearance, and internal and external requests, including strategic planning, identification of program priorities, development of Healthy People 2010, and other agency-wide and departmental planning activities; (3) provides support for the Center Director; coordinates staff development activities, analyzes the impact of proposed legislation and rule-making; supports administrative functions, including human resource actions; conducts special studies; serves as liaison for special populations/initiatives including White House Executive Orders for specific minority populations; (4) manages CSAP's National Advisory Council activities; and (5) coordinates CSAP's evaluation program.

Division of Primary Prevention (MPJ)

The Division of Primary Prevention is responsible for carrying out the Center's agenda to increase capacity and improve accessibility of effective substance abuse prevention across States, American Indian/Alaska Native Tribes, and tribal organizations. The Division provides most program services through two regional teams. The Division (1) plans, develops and administers programs to implement comprehensive and effective State substance abuse prevention systems and other related health promotion systems; (2) promotes and establishes comprehensive, long-term State and tribal substance abuse prevention/intervention policies, programs, practices, and support activities to address substance abuse and related emerging issues; (3) administers the prevention set-aside of the Substance Abuse Prevention and Treatment (SAPT) Block Grant; (4) collaborates with other units in the application of SAMHSA's Strategic Prevention Framework with States and Tribes; (5) develops funding announcements, ensures coordination with grant management systems, and administers national discretionary grant programs, such as the Strategic Prevention Framework State Incentive grant (SPF SIG) program; (6) administers the Synar regulations governing youth access to tobacco products; (7) works across CSAP and SAMHSA to promote inter/intra-agency collaboration at the Federal, State and tribal levels; serves as the liaison for CSAP interactions with State agency and National Prevention Network officials on State issues; monitors State progress in achieving National Outcome Measures and plans for associated technical assistance; monitors compliance with Block Grant and other Federal requirements.

Division of Targeted Prevention (MPH)

The Division of Targeted Prevention is responsible for carrying out the Center's agenda to increase capacity and improve accessibility of effective substance abuse prevention services across communities. This includes management of all CSAP grants targeted to communities and non-profit organizations, such as Drug Free Communities, HIV/AIDS, methamphetamine, and conference grants. The Division is organized into three branches with responsibility to (1) plan, develop, and administer programs of regional and national significance to enhance comprehensive and effective community substance abuse prevention systems, including disaster relief programs; (2) promote and establish comprehensive substance abuse prevention/intervention policies, programs, practices, and support services to address substance abuse and emerging issues; (3) collaborate with other units in the application of SAMHSA's Strategic Prevention Framework in community prevention systems; (4) develop funding announcements, ensure coordination with grant management systems, and administer discretionary grant programs; (5) work across SAMHSA to promote interagency collaboration; (6) monitor grantee and contractor progress in achieving National Outcome Measures, and plan associated technical assistance; and (7) monitor compliance with all Federal requirements.

Division of Prevention Communications and Public Engagement (MPI)

The Division of Prevention Communications and Public Engagement provides leadership and guidance in the planning, development, and implementation of programs and prevention concepts across the Center and is responsible for carrying out the Center's health promotion and public education activities. The Division's responsibilities include (1) promotion and implementation of key prevention concepts across all programs and activities of the Center, including the Strategic Prevention Framework, project sustainability, and coordination/integration of community and State programs; (2) management of technical assistance contracts that support all of the Center's prevention programs; (3) coordination of CSAP's GPRA and

National Outcome Measure activities, including liaison with offices responsible for data collection; (4) analysis of data related to program operations and assistance to other CSAP components in employing data to improve program performance; (5) analysis, development, and integration of information, including evidence-based practices and NREPP programs, necessary to improve State and community prevention service delivery; (6) leadership within SAMHSA in the development, training and use of geographic information system (GIS) resources to improve policy development and program operations; (7) collaboration with Federal, State, and local governments to promote the adoption of evidence-based prevention programs and practices and develop innovative strategies to address emerging substance abuse issues; (8) initiation, development, and coordination of efforts to support workforce development for substance abuse prevention professionals; (9) leadership to the Center in the development of health promotion and education products, materials, messages, publications, and information technologies; (10) collaboration with other Federal and private sector prevention initiatives in developing and disseminating targeted prevention material, including the SAMHSA Office of Communications; (11) development and continual update of prevention material for use by external prevention partners.

Division of Workplace Programs (MPE)

(1) Establishes goals and objectives in the administration of a national program designed to promote substance abuse free workplaces; (2) provides leadership and oversight to assure that effective employee assistance programs are developed and evaluated to prevent substance abuse in the workplace; (3) develops, implements, and evaluates employee education/prevention programs, access to counseling, early intervention, and referral treatment/rehabilitation, and support services for employees following treatment/rehabilitation; (4) advises, coordinates, and certifies activities related to the implementation and administration of federal drug free workplace programs, convenes the Drug Testing Advisory Board, and conducts surveys on federal programs; (5) advises other SAMHSA components and HHS regarding workplace programmatic directions and actions and enters into collaborative arrangements with other federal agencies; (6) collaborates in the development and implementation of substance abuse prevention and early intervention strategies for public/private sector use at the State and community levels, and operates the Workplace Hotline Contract as a means for dissemination, outreach and technical assistance to businesses, States and communities; (7) provides technical assistance to facilitate national training and certification programs for substance abuse professionals and practitioners, provides staff expertise in training and credentialing standards for medical review officers (MROs) and the Department of Transportation mandated substance abuse professionals; (8) provides leadership within SAMHSA and the field in developing and disseminating knowledge in workplace violence related to substance abuse, including risk factors in the workplace and community and the role of the workplace as a substance abuse and violence prevention agent within the community and family; and (9) evaluates managed care and other treatment provider practices as they are applied in the workplace.

Delegation of Authority

All delegations and re-delegations of authority to officers and employees of SAMHSA which were in effect immediately prior to the effective date of this reorganization shall continue to be in effect pending further re-delegations, provided they are consistent with this reorganization.

This delegation of authority is effective immediately.

Dated: May 26, 2022.

Xavier Becerra,

Secretary, U.S. Department of Health and Human Services.

[FR Doc. 2022–11748 Filed 5–31–22; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0121]

Trusted Traveler Programs and U.S. APEC Business Travel Card

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-day notice and request for comments; revision of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than August 1, 2022) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0121 in the subject line and the agency name. Please use the following method to submit comments:

Email. Submit comments to: *CBP_PRA@cbp.dhs.gov.*

Due to COVID–19-related restrictions, CBP has temporarily suspended its ability to receive public comments by mail.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to

respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Trusted Traveler Programs and U.S. APEC Business Travel Card.

OMB Number: 1651–0121.

Form Number: 823S (SENTRI) and 823F (FAST).

Current Actions: Revision of an existing information collection.

Type of Review: Revision.

Affected Public: Individuals and Businesses.

Abstract: This collection of information is for CBP's Trusted Traveler Programs including the Secure Electronic Network for Travelers Rapid Inspection (SENTRI), which allows expedited entry at specified southwest land border ports of entry; the Free and Secure Trade program (FAST), which provides expedited border processing for known, low-risk commercial drivers; and Global Entry which allows pre-approved, low-risk, air travelers dedicated processing clearance upon arrival into the United States.

The purpose of all of these programs is to provide prescreened travelers expedited entry into the United States. The benefit to the traveler is less time spent in line waiting to be processed. These Trusted Traveler programs are provided for in 8 CFR 235.7 and 235.12.

This information collection also includes the U.S. APEC Business Travel Card (ABTC) Program, which is a voluntary program that allows U.S. citizens to use fast-track immigration lanes at airports in the 20 other Asia-Pacific Economic Cooperation (APEC) member countries. This program is mandated by the Asia-Pacific Economic Cooperation Business Travel Cards Act of 2011, Public Law 112–54 and provided for by 8 CFR 235.13.

These collections of information include the data collected on the applications and kiosks for these programs. Applicants may apply to participate in these programs by using the Trusted Traveler Program Systems website (TTP) at *https://ttp.cbp.dhs.gov/* or at Trusted Traveler Enrollment Centers.

After arriving at the Federal Inspection Services area of the airport, participants in Global Entry can undergo a self-serve inspection process using a Global Entry kiosk. During the self-service inspection, participants have their photograph and fingerprints taken, submit identifying information, and answer several questions about items they are bringing into the United States. When using the Global Entry kiosks, participants are required to declare all articles being brought into the United States pursuant to 19 CFR 148.11.

Proposed Changes:

CBP will be updating the Trusted Travel Programs to align with the U.S. Department of State's Passport Options: CBP will modify the Trusted Traveler Program application by adding a third gender marker, ''X'' for applicants identifying as non-binary, intersex, and/or gender non-conforming (in addition to the existing ''male and ''female'' gender markers). The ''X'' marker will be categorized as ''Unspecified or Another Gender Identity'', in the document sections of the electronic Trusted Traveler Programs application.

Type of Information Collection: SENTRI (823S).

Estimated Number of Respondents: 276,579.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 276,579.

Estimated Time per Response: 40 minutes (0.67 hours).

Estimated Total Annual Burden Hours: 185,308.

Type of Information Collection: FAST (823F).

Estimated Number of Respondents: 20,805..

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 20,805.

Estimated Time per Response: 40 minutes (0.67 hours).

Estimated Total Annual Burden Hours: 13,939.

Type of Information Collection: Global Entry.

Estimated Number of Respondents: 1,392,862.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 1,392,862.

Estimated Time per Response: 40 minutes (0.67 hours).

Estimated Total Annual Burden Hours: 933,217.

Type of Information Collection: ABTC.

Estimated Number of Respondents: 9,858.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 9,858.

Estimated Time per Response: 10 minutes (0.17 hours).

Estimated Total Annual Burden Hours: 1,676.

Type of Information Collection: Kiosks.

Estimated Number of Respondents: 3,161,438.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 3,161,438.

Estimated Time per Response: 1 minute (0.016 hours).

Estimated Total Annual Burden Hours: 50,583.

Dated: May 25, 2022.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2022–11664 Filed 5–31–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0018]

Ship's Stores Declaration

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; revision of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than [August 1, 2022) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0018 in the subject line and the agency name. Please use the following method to submit comments:

Email. Submit comments to: *CBP_PRA@cbp.dhs.gov.*

Due to COVID–19-related restrictions, CBP has temporarily suspended its ability to receive public comments by mail.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Ship's Stores Declaration.
OMB Number: 1651–0018.
Form Number: CBP Form 1303.
Current Actions: Revision of an existing information collection.
Type of Review: Revision.
Affected Public: Businesses.
Abstract: CBP Form 1303, Ship's Stores Declaration, is used by the carriers to declare articles to be retained on board the vessel, such as sea stores, ship's stores (*e.g.,* alcohol and tobacco products), controlled narcotic drugs or bunker fuel in a format that can be readily audited and checked by CBP. The form was developed as a single international standard ship's stores declaration form to replace the different forms used by various countries for the entrance and clearance of vessels. CBP Form 1303 collects information about the ship, the ports of arrival and departure, and the articles on the ship. This form is provided for by 19 CFR 4.7, 4.7a, 4.81, 4.85 and 4.87 and is accessible at: *https://www.cbp.gov/newsroom/publications/forms?title=1303&=Apply.*

Proposed Change

This form is anticipated to be submitted electronically as part of the maritime forms automation project through the Vessel Entrance and Clearance System (VECS), which will eliminate the need for any paper submission of any vessel entrance or clearance requirements under the above referenced statutes and regulations. VECS will still collect and maintain the same data but will automate the capture of data to reduce or eliminate redundancy with other data collected by CBP.

Type of Information Collection: CBP Form 1303.
Estimated Number of Respondents: 2,624.
Estimated Number of Annual Responses per Respondent: 72.
Estimated Number of Total Annual Responses: 188,928.
Estimated Time per Response: 15 minutes.
Estimated Total Annual Burden Hours: 26,000.

Dated: May 25, 2022.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2022–11665 Filed 5–31–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002; Internal Agency Docket No. FEMA–B–2238]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before August 30, 2022.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2238, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Colquitt County, Georgia and Incorporated Areas Project: 18–04–0005S Preliminary Date: February 19, 2021	
City of Moultrie	Municipal Annex, 200 1st Street Northeast, Moultrie, GA 31768.
City of Norman Park	City Hall, 154 East Broad Street, Norman Park, GA 31771.
Town of Ellenton	City Hall, 103 North Baker Street, Ellenton, GA 31747.
Unincorporated Areas of Colquitt County	Colquitt County Courthouse Annex, 101 East Central Avenue, First Floor, Room 109, Moultrie, GA 31768.
Cook County, Georgia and Incorporated Areas Project: 18–04–0005S Preliminary Date: February 19, 2021	
City of Adel	City Hall, 112 North Parrish Avenue, Adel, GA 31620.
City of Cecil	City Hall, 134 Roundtree Street, Cecil, GA 31627.
City of Lenox	City Hall, 15 East Colquitt Avenue, Lenox, GA 31637.
Town of Sparks	City Hall, 115 East Colquitt Street, Sparks, GA 31647.
Unincorporated Areas of Cook County	Cook County Courthouse, 212 North Hutchinson Avenue, Adel, GA 31620.
Lowndes County, Georgia and Incorporated Areas Project: 18–04–0005S Preliminary Date: February 19, 2021	
City of Hahira	City Hall, 102 South Church Street, Hahira, GA 31632.
City of Remerton	City Hall, 1757 Poplar Street, Remerton, GA 31601.
City of Valdosta	City Hall Annex, 300 North Lee Street, Valdosta, GA 31601.
Unincorporated Areas of Lowndes County	Lowndes County Judicial and Administrative Complex, 327 North Ashley Street, Valdosta, GA 31601.
Newton County, Georgia and Incorporated Areas Project: 21–04–0023S Preliminary Date: October 14, 2021	
Unincorporated Areas of Newton County	Newton County Development Services, 1113 Usher Street, Suite 201, Covington, GA 30014.

[FR Doc. 2022–11684 Filed 5–31–22; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002; Internal Agency Docket No. FEMA–B–2235]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before August 30, 2022.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2235, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Lincoln County, Minnesota and Incorporated Areas Project: 17–05–1531S Preliminary Date: September 30, 2021	
City of Arco	Community Center, 106 East Laurel Street, Arco, MN 56113.
City of Hendricks	City Hall, 207 South Division Street, Hendricks, MN 56136.
City of Ivanhoe	City Hall, 401 North Harold Street, Ivanhoe, MN 56142.
City of Lake Benton	City Hall, 106 South Center Street, Lake Benton, MN 56149.
City of Tyler	City Hall, 230 North Tyler Street, Tyler, MN 56178.
Unincorporated Areas of Lincoln County	Lincoln County Courthouse, 319 North Rebecca Street, Ivanhoe, MN 56142.
Watonwan County, Minnesota and Incorporated Areas Project: 17–05–1797S Preliminary Date: April 24, 2020 and October 29, 2021	
City of Madelia	City Hall, 116 West Main Street, Madelia, MN 56062.

Community	Community map repository address
City of Odin	Fire Hall, 111 1st Street North, Odin, MN 56160.
City of Saint James	City Hall, 124 Armstrong Boulevard South, Saint James, MN 56081.
Unincorporated Areas of Watonwan County	Watonwan County Resource Center, 108 8th Street South, Saint James, MN 56081.
Henrico County, Virginia (All Jurisdictions) Project: 16–03–2426S Preliminary Date: November 12, 2021	
≤Unincorporated Areas of Henrico County	Henrico County Administration Annex, Department of Public Works, 4305 East Parham Road, Henrico, VA 23228.
Taylor County, Wisconsin and Incorporated Areas Project: 18–05–0012S Preliminary Date: June 22, 2021	
City of Medford	City Hall, 639 South 2nd Street, Medford, WI 54451.
Unincorporated Areas of Taylor County	Taylor County Courthouse, 224 South 2nd Street, Medford, WI 54451.
Village of Gilman	Village Hall, 380 East Main Street, Gilman, WI 54433.
Village of Rib Lake	Village Hall, 655 Pearl Street, Rib Lake, WI 54470.
Village of Stetsonville	Village Hall, 105 North Gershwin Street, Stetsonville, WI 54480.

[FR Doc. 2022–11682 Filed 5–31–22; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities.

DATES: Each LOMR was finalized as in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *https://msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Arizona: Mohave (FEMA Docket No.: B–2209).	Unincorporated areas of Mohave County (21–09–1303P).	The Honorable Buster D. Johnson, Chairman, Mohave County Board of Supervisors, P.O. Box 7000, Kingman, AZ 86402.	Mohave County Development Services Department, 3250 East Kino Avenue, Kingman, AZ 86402.	Apr. 21, 2022	480058

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Colorado:					
Arapahoe (FEMA Docket No.: B–2214).	City of Aurora (21–08–0331P).	The Honorable Mike Coffman, Mayor, City of Aurora, 15151 East Alameda Parkway, Aurora, CO 80012.	Public Works Department, 15151 East Alameda Parkway, Aurora, CO 80012.	Apr. 29, 2022	080002
Arapahoe (FEMA Docket No.: B–2214).	Unincorporated areas of Arapahoe County (21–08–0331P).	The Honorable Nancy N. Sharpe, Chair, Arapahoe County Board of Commissioners, 5334 South Prince Street, Littleton, CO 80120.	Arapahoe County Public Works and Development Department, 6924 South Lima Street, Centennial, CO 80112.	Apr. 29, 2022	080011
Florida:					
Collier (FEMA Docket No.: B–2209).	City of Naples (21–04–4737P).	The Honorable Teresa Heitmann, Mayor, City of Naples, 735 8th Street South, Naples, FL 34102.	Building Department, 295 Riverside Circle, Naples, FL 34102.	Apr. 28, 2022	125130
Lee (FEMA Docket No.: B–2209).	City of Sanibel (21–04–4886P).	The Honorable Holly D. Smith, Mayor, City of Sanibel, 800 Dunlop Road, Sanibel, FL 33957.	Community Services Department, 800 Dunlop Road, Sanibel, FL 33957.	Apr. 22, 2022	120402
Leon (FEMA Docket No.:. B–2209)	City of Tallahassee (20–04–5259P).	The Honorable John E. Dailey, Mayor, City of Tallahassee, 300 South Adams Street, Tallahassee, FL 32301.	Grow Management Department, 435 North Macomb Street, Tallahassee, FL 32301.	Apr. 22, 2022	120144
Leon (FEMA Docket No.:. B–2209)	Unincorporated areas of Leon County (20–04–5259P).	Mr. Vincent S. Long, Leon County Administrator, 301 South Monroe Street, Tallahassee, FL 32301.	Leon County Emergency Management Department, 911 Easterwood Drive, Tallahassee, FL 32311.	Apr. 22, 2022	120143
Monroe (FEMA Docket No.:. B–2209)	City of Marathon (21–04–5079P).	The Honorable John Bartus, Mayor, City of Marathon, 9805 Overseas Highway, Marathon, FL 33050.	Planning Department, 9805 Overseas Highway, Marathon, FL 33050.	Apr. 25, 2022	120681
Monroe (FEMA Docket No.:. B–2209)	Unincorporated areas of Monroe County (21–04–5803P).	The Honorable David Rice, Mayor, Monroe County Board of Commissioners, 1100 Simonton Street, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	Apr. 21, 2022	125129
Orange (FEMA Docket No.:. B–2209)	City of Ocoee (21–04–4171P).	The Honorable Rusty Johnson, Mayor, City of Ocoee, 150 North Lakeshore Drive, Ocoee, FL 34761.	City Hall, 150 North Lakeshore Drive, Ocoee, FL 34761.	Apr. 20, 2022	120185
Polk (FEMA Docket No.:. B–2209)	Unincorporated areas of Polk County (21–04–1105P).	Mr. Bill Beasley, Polk County Manager, 330 West Church Street, Bartow, FL 33831.	Polk County Land Development Division, 330 West Church Street, Bartow, FL 33831.	Apr. 21, 2022	120261
Sarasota (FEMA Docket No.: B–2214).	City of Sarasota (21–04–3619P).	The Honorable Erik Arroyo, Mayor, City of Sarasota, 1565 1st Street, Room 101, Sarasota, FL 34236.	Development Services Department, 1565 1st Street, Sarasota, FL 34236.	Apr. 29, 2022	125150
Sarasota (FEMA Docket No.: B–2209).	Unincorporated areas of Sarasota County (21–04–4033P).	The Honorable Alan Maio, Chairman, Sarasota County Board of Commissioners, 1660 Ringling Boulevard, Sarasota, FL 34236.	Sarasota County Planning and Development Services Department, 1001 Sarasota Center Boulevard, Sarasota, FL 34240.	Apr. 20, 2022	125144
Sarasota (FEMA Docket No.: B–2209).	Unincorporated areas of Sarasota County (22–04–1074P).	The Honorable Alan Maio, Chairman, Sarasota County Board of Commissioners, 1660 Ringling Boulevard, Sarasota, FL 34236.	Sarasota County Planning and Development Services Department, 1001 Sarasota Center Boulevard, Sarasota, FL 34240.	Apr. 27, 2022	125144
Georgia:					
Bryan (FEMA Docket No.:. B–2214)	Unincorporated areas of Bryan County (21–04–4473P).	The Honorable Carter Infinger, Chairman, Bryan County Board of Commissioners, 51 North Courthouse Street, Pembroke, GA 31321.	Bryan County Department of Engineering and Inspections, 51 North Courthouse Street, Pembroke, GA 31321.	Apr. 29, 2022	130016
Effingham (FEMA Docket No.: B–2216).	Unincorporated areas of Effingham County (20–04–5821P).	The Honorable Wesley Corbitt, Chairman at Large, Effingham County Board of Commissioners, 804 South Laurel Street, Springfield, GA 31329.	Effingham County Development Services Department, 804 South Laurel Street, Springfield, GA 31329.	Apr. 28, 2022	130076
Maine: York (FEMA Docket No.: B–2216).	Town of York (21–01–1032P).	The Honorable Todd A. Frederick, Chairman, Town of York Board of Selectmen, 186 York Street, York, ME 03909.	Building Department, 186 York Street, York, ME 03909.	Apr. 28, 2022	230159
Maryland: Wicomico (FEMA Docket No.: B–2209).	Unincorporated areas of Wicomico County (21–03–1512P).	Mr. John D. Psota, Acting Executive, Wicomico County, P.O. Box 870, Salisbury, MD 21803.	Wicomico County Department of Planning and Zoning, 125 North Division Street, Room 201, Salisbury, MD 21801.	Apr. 29, 2022	240078
Montana:					
Missoula (FEMA Docket No.: B–2214).	City of Missoula (21–08–0878P).	The Honorable John Engen, Mayor, City of Missoula, 435 Ryman Street, Missoula, MT 59802.	City Hall, 435 Ryman Street, Missoula, MT 59802.	Apr. 27, 2022	300049
Missoula (FEMA Docket No.: B–2214).	Unincorporated areas of Missoula County (21–08–0878P).	The Honorable David Strohmaier, Chairman, Missoula County Board of Commissioners, 199 West Pine Street, Missoula, MT 59802.	Missoula County Community and Planning Services Department, 127 East Main Street, Missoula, MT 59802.	Apr. 27, 2022	300048
North Carolina:					

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Mecklenburg (FEMA Docket No.: B–2216).	Town of Davidson (21–04–5219P).	The Honorable Rusty Knox, Mayor, Town of Davidson, P.O. Box 579, Davidson, NC 20836.	Planning Department, 216 South Main Street, Davidson, NC 20836.	Apr. 27, 2022	370503
Mecklenburg (FEMA Docket No.: B–2216).	Unincorporated areas of Mecklenburg County (21–04–5219P).	Ms. Dena R Diorio, Mecklenburg County Manager, 600 East 4th Street, Charlotte, NC 28202.	Mecklenburg County Storm Water Services Division, 2145 Suttle Avenue, Charlotte, NC 28202.	Apr. 27, 2022	370158
North Dakota: Morton (FEMA Docket No.: B–2209).	City of Mandan (21–08–1142P).	The Honorable Tim Helbling, Mayor, City of Mandan, 205 2nd Avenue Northwest, Mandan, ND 58554.	Building Inspections Department, 205 2nd Avenue Northwest, Mandan, ND 58554.	Apr. 25, 2022	380072
Tennessee:					
Sumner (FEMA Docket No.: B–2214).	City of Gallatin (21–04–1323P).	The Honorable Paige Brown, Mayor, City of Gallatin, 132 West Main Street, Gallatin, TN 37066.	City Hall, 132 West Main Street, Gallatin, TN 37066.	Apr. 22, 2022	470185
Sumner (FEMA Docket No.: B–2214).	Unincorporated areas of Sumner County (21–04–1323P).	The Honorable Anthony Holt, Mayor, Sumner County, 355 North Belvedere Drive, Gallatin, TN 37066.	Sumner County Building Department, 355 North Belvedere Drive, Gallatin, TN 37066.	Apr. 22, 2022	470349
Texas:					
Tarrant (FEMA Docket No.:. B–2209)	City of Fort Worth (21–06–1704P).	The Honorable Mattie Parker, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Transportation and Public Works Department, Engineering Vault, 200 Texas Street, Fort Worth, TX 76102.	Apr. 22, 2022	480596
Williamson (FEMA Docket No.: B–2209).	City of Round Rock (21–06–1842P).	The Honorable Craig Morgan, Mayor, City of Round Rock, 221 East Main Street, Round Rock, TX 78664.	Department of Utilities and Environmental Services, 3400 Sunrise Road, Round Rock, TX 78665.	Apr. 25, 2022	481048
Williamson (FEMA Docket No.: B–2209).	Unincorporated areas of Williamson County (21–06–1842P).	The Honorable Bill Gravell, Jr., Williamson County Judge, 710 South Main Street, Suite 101, Georgetown, TX 78626.	Williamson County Engineering Department, 3151 Southeast Inner Loop, Georgetown, TX 78626.	Apr. 25, 2022	481079
Virginia: Mathews (FEMA Docket No.: B–2209).	Unincorporated areas of Mathews County (22–03–0021P).	Mr. Sanford B. Wanner, Interim Administrator, Mathews County, P.O. Box 839, Mathews, VA 23109.	Mathews County Building Department, 50 Brickbat Road, Mathews, VA 23109.	Apr. 29, 2022	510096

[FR Doc. 2022–11680 Filed 5–31–22; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities.

DATES: Each LOMR was finalized as in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *https://msc.fema.gov*.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65. The currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Alabama:					
St. Clair County (FEMA Docket No.: B–2136).	City of Margaret (20–04–4314P).	The Honorable Jeffery G. Wilson, Mayor, City of Margaret, P.O. Box 100, Margaret, AL 35953.	St. Clair County Flood Management Department, 165 5th Avenue, Suite 100, Ashville, AL 35953.	Aug. 20, 2021	010393
St. Clair County (FEMA Docket No.: B–2136).	Unincorporated areas of St. Clair County (20–04–4314P).	The Honorable Paul Manning, Chairman, St. Clair County Commission, 165 5th Avenue, Suite 100, Ashville, AL 35953.	St. Clair County Flood Management Department, 165 5th Avenue, Suite 100, Ashville, AL 35953.	Aug. 20, 2021	010290
Lee County (FEMA Docket No.: B–2203).	City of Opelika (21–04–1701P).	The Honorable Gary Fuller, Mayor, City of Opelika, P.O. Box 390, Opelika, AL 36803.	Planning Department, 700 Fox Trail Road, Opelika, AL 36803.	Mar. 29, 2022	010145
Arkansas:					
Benton (FEMA Docket No.: B–2188).	City of Bentonville (21–06–0748P).	The Honorable Stephanie Orman, Mayor, City of Bentonville, 117 West Central Avenue, Bentonville, AR 72712.	City Hall, 3200 Southwest Municipal Drive, Bentonville, AR 72712.	Mar. 28, 2022	050012
Benton (FEMA Docket No.: B–2188).	City of Centerton (21–06–0748P).	The Honorable Bill Edwards, Mayor, City of Centerton, P.O. Box 208, Centerton, AR 72719.	City Hall, 290 Main Street, Centerton, AR 72719.	Mar. 28, 2022	050399
Benton (FEMA Docket No.: B–2188).	Unincorporated areas of Benton County (21–06–0748P).	The Honorable Barry Moehring, Benton County Judge, 215 East Central Avenue, Bentonville, AR 72712.	Benton County Planning Department, 2113 West Walnut Street, Rogers, AR 72756.	Mar. 28, 2022	050419
Florida: Monroe (FEMA Docket No.: B–2188).	Unincorporated areas of Monroe County (21–04–5290P).	The Honorable Michelle Coldiron, Commissioner, Monroe County Board of Commissioners, 25 Ships Way, Big Pine Key, FL 33043.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	Mar. 28, 2022	125129
Maryland:					
Cecil (FEMA Docket No.: B–2203).	Town of Charlestown (21–03–1510P).	The Honorable Karl Fockler, President, Town of Charlestown Board of Commissioners, P.O. Box 154, Charlestown, MD 21914.	Town Hall, 241 Market Street, Charlestown, MD 21914.	Mar. 31, 2022	240021
Cecil (FEMA Docket No.: B–2203).	Unincorporated areas of Cecil County (21–03–1510P).	The Honorable Danielle Hornberger, Cecil County Executive, 200 Chesapeake Boulevard, Suite 2100, Elkton, MD 21921.	Cecil County Department of Land Use and Development Services, 200 Chesapeake Boulevard, Suite 1200, Elkton, MD 21921.	Mar. 31, 2022	240019
Mississippi: Harrison (FEMA Docket No.: B–2203).	City of Pass Christian (21–04–3028P).	The Honorable Jimmy Rafferty, Mayor, City of Pass Christian, 200 West Scenic Drive, Pass Christian, MS 39571.	City Hall, 200 West Scenic Drive, Pass Christian, MS 39571.	Apr. 4, 2022	285261
Montana: Stillwater (FEMA Docket No.: B–2188).	Unincorporated areas of Stillwater County (21–08–0555P).	The Honorable Mark Crago, Chairman, Stillwater County Board of Commissioners, P.O. Box 970, Columbus, MT 59019.	Stillwater County, South Annex, 17 North 4th Street, Columbus, MT 59019.	Mar. 25, 2022	300078
South Carolina: Orangeburg (FEMA Docket No.: B–2188).	Unincorporated areas of Orangeburg County (22–04–0230P).	The Honorable Johnnie Wright, Sr., Chairman, Orangeburg County Council, 1437 Amelia Street, Orangeburg, SC 29115.	Orangeburg County Community Development Department, 1437 Amelia Street, Orangeburg, SC 29115.	Mar. 30, 2022	450160
South Dakota:					
Minnehaha (FEMA Docket No.: B–2188).	City of Hartford (21–08–0753P).	The Honorable Jeremy Menning, Mayor, City of Hartford, 125 North Main Avenue, Hartford, SD 57033.	City Hall, 125 North Main Avenue, Hartford, SD 57033.	Mar. 23, 2022	460180

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Minnehaha (FEMA Docket No.: B–2188).	Unincorporated areas of Minnehaha County (21–08–0753P).	The Honorable Dean Karsky, Chairman, Minnehaha County Board of Commissioners, 415 North Dakota Avenue, Sioux Falls, SD 57104.	Minnehaha County Planning Department, 415 North Dakota Avenue, Sioux Falls, SD 57104.	Mar. 23, 2022	460057
Pennington (FEMA Docket No.: B–2203).	City of Rapid City (21–08–0301P).	The Honorable Steve Allender, Mayor, City of Rapid City, 300 6th Street, Rapid City, SD 57701.	Public Works Department—Engineering Services Division, 300 6th Street, Rapid City, SD 57701.	Apr. 4, 2022	465420
Texas:					
Bexar (FEMA Docket No.: B–2214).	City of Alamo Heights (21–06–1034P).	The Honorable Bobby Rosenthal, Mayor, City of Alamo Heights, 6116 Broadway Street, Alamo Heights, TX 78209.	Community Development Services Department, 6116 Broadway Street, Alamo Heights, TX 78209.	Apr. 4, 2022	480036
Dallas (FEMA Docket No.: B–2203).	City of Carrollton (21–06–1452P).	Ms. Erin Rinehart, Manager, City of Carrollton, 1945 East Jackson Road, Carrollton, TX 75006.	Engineering Department, 1945 East Jackson Road, Carrollton, TX 75006.	Mar. 28, 2022	480167
Dallas (FEMA Docket No.: B–2203).	City of Coppell (21–06–1452P).	The Honorable Wes Mays, Mayor, City of Coppell, P.O. Box 9478, Coppell, TX 75019.	Department of Public Works, 265 East Parkway Boulevard, Coppell, TX 75019.	Mar. 28, 2022	480170
Denton (FEMA Docket No.: B–2188).	City of Carrollton (21–06–1854P).	The Honorable Kevin Falconer, Mayor, City of Carrollton, P.O. Box 110535, Carrollton, TX 75006.	Engineering Department, 1945 East Jackson Road, Carrollton, TX 75006.	Mar. 28, 2022	480167
Denton (FEMA Docket No.: B–2188).	City of Lewisville (21–06–1854P).	The Honorable T. J. Gilmore, Mayor, City of Lewisville, P.O. Box 299002, Lewisville, TX 75029.	Engineering Department, 151 West Church Street, Lewisville, TX 75057.	Mar. 28, 2022	480195
Denton (FEMA Docket No.: B–2188).	Unincorporated areas of Denton County (21–06–1854P).	The Honorable Andy Eads, Denton County Judge, 110 West Hickory Street, 2nd Floor, Denton, TX 76201.	Denton County Public Works, Engineering Department, 1505 East McKinney Street, Suite 175, Denton, TX 76209.	Mar. 28, 2022	480774
Lubbock (FEMA Docket No.: B–2203).	City of Lubbock (21–06–0664P).	The Honorable Dan Pope, Mayor, City of Lubbock, P.O. Box 2000, Lubbock, TX 79457.	Engineering Department, 1314 Avenue K, 7th Floor, Lubbock, TX 79401.	Mar. 28, 2022	480452
Tarrant (FEMA Docket No.: B–2203).	City of Benbrook (21–06–0911P).	The Honorable Jerry Dittrich, Mayor, City of Benbrook, 911 Winscott Road, Benbrook, TX 76126.	City Hall, 911 Winscott Road, Benbrook, TX 76126.	Apr. 4, 2022	480586
Tarrant (FEMA Docket No.: B–2203).	City of Fort Worth (21–06–0911P).	The Honorable Mattie Parker, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Transportation and Public Works Department, Engineering Vault, 200 Texas Street, Fort Worth, TX 76102.	Apr. 4, 2022	480596
Utah:					
Salt Lake (FEMA Docket No.: B–2203).	City of Riverton (21–08–0943P).	The Honorable Trent Staggs, Mayor, City of Riverton, 12830 South Redwood Road, Riverton, UT 84065.	Public Works Department, 12526 South 4150 West, Riverton, UT 84096.	Mar. 28, 2022	490104
Salt Lake (FEMA Docket No.: B–2203).	City of South Jordan (21–08–0943P).	The Honorable Dawn R. Ramsey, Mayor, City of South Jordan, 1600 West Towne Center Drive, South Jordan, UT 84095.	Development Services Department, 1600 West Towne Center Drive, South Jordan, UT 84095.	Mar. 28, 2022	490107
West Virginia:					
Grant (FEMA Docket No.: B–2203).	City of Petersburg (21–03–0421P).	The Honorable Gary A. Michael, Mayor, City of Petersburg, 21 Mount View Street, Petersburg, WV 26847.	City Hall, 21 Mount View Street, Petersburg, WV 26847.	Mar. 23, 2022	540039
Grant (FEMA Docket No.: B–2203).	Unincorporated areas of Grant County (21–03–0421P).	The Honorable Scotty Miley, President, Grant County Commission, 5 Highland Avenue, Petersburg, WV 26847.	Grant County Courthouse, 5 Highland Avenue, Petersburg, WV 26847.	Mar. 23, 2022	540038

[FR Doc. 2022–11679 Filed 5–31–22; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002; Internal Agency Docket No. FEMA–B–2236]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before August 30, 2022.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2236, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Missoula County, Montana and Incorporated Areas Project: 20–08–0044S Preliminary Date: January 28, 2021 and November 15, 2021	
Unincorporated Areas of Missoula County	Missoula County Community and Planning Services Department, 127 East Main Street, Suite 2, Missoula, MT 59802.

[FR Doc. 2022–11683 Filed 5–31–22; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2008–0010]

Board of Visitors for the National Fire Academy

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Committee management; notice of open federal advisory committee meeting.

SUMMARY: The Board of Visitors for the National Fire Academy (Board) will meet in person and virtually on Monday, August 15, 2022. The meeting will be open to the public.

DATES: The meeting will take place on Monday, August 15, 2022, 8 a.m. to 5 p.m. Eastern Time. Please note that the meeting may close early if the Board has completed its business.

ADDRESSES: Members of the public who wish to participate in the virtual conference should contact Deborah Gartrell-Kemp as listed in the **FOR FURTHER INFORMATION CONTACT** section by close of business on August 10, 2022, to obtain the call-in number and access code for the August 15th in-person and virtual meeting. For more information on services for individuals with disabilities or to request special assistance, contact Deborah Gartrell-Kemp as soon as possible. The Board is committed to ensuring all participants have equal access regardless of disability status. If you require a reasonable accommodation due to a disability to fully participate, please contact Deborah Gartrell-Kemp as listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the Board as listed in the **SUPPLEMENTARY INFORMATION** section. Participants seeking to have their comments considered during the meeting should submit them in advance or during the public comment segment. Comments submitted up to 30 days after the meeting will be included in the public record and may be considered at the next meeting. Comments submitted in advance must be identified by Docket ID FEMA–2008–0010 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Electronic Delivery:* Email Deborah Gartrell-Kemp at *Deborah.GartrellKemp@fema.dhs.gov* no later than August 10, 2022, for consideration at the August 15, 2022 meeting.

Instructions: All submissions received must include the words ''Federal Emergency Management Agency'' and the Docket ID for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. You my wish to view the Privacy and Security Notice via a link on the homepage of *www.regulations.gov.*

Docket: For access to the docket and to read background documents or comments received by the National Fire Academy Board of Visitors, go to *http://www.regulations.gov,* click on ''Advanced Search,'' then enter ''FEMA–2008–0010'' in the ''By Docket ID'' box, then select ''FEMA'' under ''By Agency,'' and then click ''Search.''

FOR FURTHER INFORMATION CONTACT:

Alternate Designated Federal Officer: Stephen Dean, telephone (301) 447–1271, email *Stephen.Dean@fema.dhs.gov.*

Logistical Information: Deborah Gartrell-Kemp, telephone (301) 447–7230, email *Deborah.GartrellKemp@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Board will meet in person and virtually on Monday, August 15, 2022. The meeting will be open to the public. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. appendix.

Purpose of the Board

The purpose of the Board is to review annually the programs of the National Fire Academy (Academy) and advise the Administrator of the Federal Emergency Management Agency (FEMA), through the United States Fire Administrator, on the operation of the Academy and any improvements therein that the Board deems appropriate. In carrying out its responsibilities, the Board examines Academy programs to determine whether these programs further the basic missions that are approved by the Administrator of FEMA, examines the physical plant of the Academy to determine the adequacy of the Academy's facilities, and examines the funding levels for Academy programs. The Board submits a written annual report through the United States Fire Administrator to the Administrator of FEMA. The report provides detailed comments and recommendations regarding the operation of the Academy.

Agenda

On Monday, August 15, 2022, there will be four sessions, with deliberations and voting at the end of each session as necessary:

1. The Board will discuss United States Fire Administration Data, Research, Prevention and Response.
2. The Board will discuss deferred maintenance and capital improvements on the National Emergency Training Center campus and Fiscal Year 2023 and beyond Budget Request/Budget Planning.
3. The Board will deliberate and vote on recommendations on Academy program activities to include developments, deliveries, staffing, admissions and strategic plan.
4. There will also be an update on the Board of Visitors Subcommittee Groups for the Professional Development Initiative Update and the National Fire Incident Report System.

There will be a 10-minute comment period after each agenda item and each speaker will be given no more than 2 minutes to speak. Please note that the public comment period may end before the time indicated following the last call for comments. Contact Deborah Gartrell-Kemp to register as a speaker. Meeting materials will be posted by August 10, 2022, at *https://www.usfa.fema.gov/training/nfa/about/bov.html.*

Eriks J. Gabliks,

Superintendent, National Fire Academy, United States Fire Administration, Federal Emergency Management Agency.

[FR Doc. 2022–11753 Filed 5–31–22; 8:45 am]

BILLING CODE 9111–74–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002; Internal Agency Docket No. FEMA–B–2239]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and

where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Colorado:						
Arapahoe	City of Centennial (21-08-0915P).	The Honorable Stephanie Piko, Mayor, City of Centennial, 13113 East Arapahoe Road, Centennial, CO 80112.	Southeast Metro Stormwater Authority, 7437 South Fairplay Street, Centennial, CO 80112.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 2, 2022	080315
Arapahoe	City of Centennial (22-08-0055P).	The Honorable Stephanie Piko, Mayor, City of Centennial, 13113 East Arapahoe Road, Centennial, CO 80112.	Southeast Metro Stormwater Authority, 7437 South Fairplay Street, Centennial, CO 80112.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 2, 2022	080315
Arapahoe	Unincorporated areas of Arapahoe County (21-08-0915P).	The Honorable Nancy Jackson, Chair, Arapahoe County Board of Commissioners, 5334 South Prince Street, Littleton, CO 80120.	Arapahoe County Public Works and Development Department, 6924 South Lima Street, Centennial, CO 80112.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 2, 2022	080011
Douglas	Town of Castle Rock (21-08-0797P).	The Honorable Jason Gray, Mayor, Town of Castle Rock, 100 North Wilcox Street, Castle Rock, CO 80104.	Stormwater Department, 175 Kellogg Court, Castle Rock, CO 80109.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 26, 2022	080050
Douglas	Town of Parker (21-08-0915P).	The Honorable Jeff Toborg, Mayor, Town of Parker, 20120 East Main Street, Parker, CO 80138.	Public Works and Engineering Department, 20120 East Main Street, Parker, CO 80138.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 2, 2022	080310

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Douglas	Unincorporated areas of Douglas County (21-08-0545P).	The Honorable Lora A. Thomas, Chair, Douglas County Board of Commissioners, 100 3rd Street, Castle Rock, CO 80104.	Douglas County Public Works Department, Engineering Division, 100 3rd Street, Castle Rock, CO 80104.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 2, 2022	080049
Florida:						
Orange	City of Orlando (20-04-1937P).	The Honorable Buddy W. Dyer, Mayor, City of Orlando, 400 South Orange Avenue, Orlando, FL 32801.	Public Works Department, 400 South Orange Avenue, 8th Floor, Orlando, FL 32801.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 29, 2022	120186
Orange	Unincorporated areas of Orange County (20-04-1937P).	The Honorable Jerry L. Demings, Mayor, Orange County, 201 South Rosalind Avenue, 5th Floor, Orlando, FL 32801.	Orange County Public Works Department, Stormwater Management Division, 4200 South John Young Parkway, Orlando, FL 32839.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 29, 2022	120179
Osceola	City of St. Cloud (21-04-5676P).	Mr. William Sturgeon, City of St. Cloud Manager, 1300 9th Street, St. Cloud, FL 34769.	Building Department, 1300 9th Street, St. Cloud, FL 34769.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 19, 2022	120191
Osceola	Unincorporated areas of Osceola County (21-04-5676P).	Mr. Don Fisher, Osceola County Manager, 1 Courthouse Square, Suite 4700, Kissimmee, FL 34741.	Osceola County Public Works Department, 1 Courthouse Square, Suite 3100, Kissimmee, FL 34741.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 19, 2022	120189
Pinellas	City of Madeira Beach (22-04-1911P).	The Honorable John Hendricks, Mayor, City of Madeira Beach, 300 Municipal Drive, Madeira Beach, FL 33708.	Community Development Department, 300 Municipal Drive, Madeira Beach, FL 33708.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 18, 2022	125127
Sarasota	Unincorporated areas of Sarasota County (21-04-5591P).	The Honorable Alan Maio, Chairman, Sarasota County Board of Commissioners, 1660 Ringling Boulevard, Sarasota, FL 34236.	Sarasota County Planning and Development Services Department, 1001 Sarasota Center Boulevard, Sarasota, FL 34240.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 1, 2022	125144
Georgia: Columbia.	Unincorporated areas of Columbia County (22-04-0098P).	The Honorable Douglas R. Duncan, Jr., Chairman, Columbia County Board of Commissioners, P.O. Box 498, Evans, GA 30809.	Columbia County Engineering Services Department, 630 Ronald Reagan Drive, Building A, Evans, GA 30809.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 18, 2022	130059
Maryland: Montgomery.	Unincorporated areas of Montgomery County (21-03-1260P).	The Honorable Marc Elrich, Montgomery County Executive, 101 Monroe Street, 2nd Floor, Rockville, MD 20850.	Montgomery County Permitting Services Department, 2425 Reedie Drive, 7th Floor, Wheaton, MD 20902.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 23, 2022	240049
Pennsylvania: Centre.	Township of Ferguson (22-03-0002P).	Ms. Centrice Martin, Interim Manager, Township of Ferguson, 3147 Research Drive, State College, PA 16801.	Planning and Zoning Department, 3147 Research Drive, State College, PA 16801.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 2, 2022	420260
Tennessee: Hamblen.	City of Morristown (21-04-1266P).	The Honorable Gary Chesney, Mayor, City of Morristown, 100 West 1st North Street, Morristown, TN 37814.	Geographic Information Systems (GIS) Department, 100 West 1st North Street, Morristown, TN 37814.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 10, 2022	470070
Texas:						
Caldwell	City of Lockhart (21-06-2405P).	The Honorable Lew White, Mayor, City of Lockhart, P.O. Box 239, Lockhart, TX 78644.	City Hall, 308 West San Antonio Street, Lockhart, TX 78644.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 12, 2022	480095
Collin	City of Plano (21-06-3103P).	The Honorable John B. Muns, Mayor, City of Plano, 1520 K Avenue, Plano, TX 75074.	City Hall, 1520 K Avenue, Plano, TX 75074.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 15, 2022	480140
Fort Bend	Unincorporated areas of Fort Bend County (21-06-1165P).	The Honorable K.P. George, Fort Bend County Judge, 401 Jackson Street, Richmond, TX 77469.	Fort Bend County Engineering Department, 301 Jackson Street, 4th Floor, Richmond, TX 77469.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 10, 2022	480228
Harris	City of Houston (21-06-0193P).	The Honorable Sylvester Turner, Mayor, City of Houston, P.O. Box 1562, Houston, TX 77251.	Floodplain Management Department, 1002 Washington Avenue, Houston, TX 77251.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 8, 2022	480296

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Harris	Unincorporated areas of Harris County (21-06-0193P).	The Honorable Lina Hidalgo, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	Harris County Permit Office, 10555 Northwest Freeway, Suite 120, Houston, TX 77092.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 8, 2022	480287
Kerr	Unincorporated areas of Kerr County (21-06-3101P).	The Honorable Rob Kelly, Kerr County Judge, 700 East Main Street, Kerrville, TX 78028.	Kerr County Engineering Department, 3766 State Highway 27, Kerrville, TX 78028.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 5, 2022	480419
Smith	City of Tyler (21-06-2507P).	The Honorable Don Warren, Mayor, City of Tyler, P.O. Box 2039, Tyler, TX 75710.	Development Department, 423 West Ferguson Street, Tyler, TX 75702.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 31, 2022	480571
Tarrant	City of Fort Worth (21-06-1993P).	The Honorable Mattie Parker, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Department of Transportation and Public Works, Engineering Vault and Map Repository, 200 Texas Street, Fort Worth, TX 76102.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 29, 2022	480596
Tarrant	City of Fort Worth (21-06-2476P).	The Honorable Mattie Parker, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Department of Transportation and Public Works, Engineering Vault and Map Repository, 200 Texas Street, Fort Worth, TX 76102.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 25, 2022	480596

[FR Doc. 2022–11681 Filed 5–31–22; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Public Listening Sessions on Advancing SBOM Technology, Processes, and Practices

AGENCY: Cybersecurity and Infrastructure Security Agency, DHS.

ACTION: Announcement of public listening sessions.

SUMMARY: The Cybersecurity and Infrastructure Security Agency will facilitate a series of public listening sessions to build on existing community-led work around Software Bill of Materials (''SBOM'') on specific SBOM topics.

DATES: Two listening sessions will be held for each open topic specified in Section II of the **SUPPLEMENTARY INFORMATION** caption as follows:

1. *Topic 1, Session 1:* July 12, 2022 from 9:30 a.m. to 11 a.m., Eastern Daylight Time.
2. *Topic 1, Session 2:* July 20, 2022 from 3:00 p.m. to 4:30 p.m., Eastern Daylight Time.
3. *Topic 2, Session 1:* July 12, 2022 from 3:00 p.m. to 4:30 p.m., Eastern Daylight Time.
4. *Topic 2 Session 2:* July 14, 2022 from 9:30 a.m. to 11 a.m., Eastern Daylight Time.
5. *Topic 3, Session 1:* July 13, 2022 from 3:00 p.m. to 4:30 p.m., Eastern Daylight Time.
6. *Topic 3, Session 2:* July 21, 2022 from 9:30 a.m. to 11 a.m., Eastern Daylight Time.
7. *Topic 4, Session 1:* July 13, 2022 from 9:30 a.m. to 11 a.m., Eastern Daylight Time.
8. *Topic 4, Session 2:* July 14, 2022 from 3:00 p.m. to 4:30 p.m., Eastern Daylight Time.

ADDRESSES: The listening sessions will be held virtually, with connection information and dial-in information available at *https://www.cisa.gov/SBOM.*

FOR FURTHER INFORMATION CONTACT: Justin Murphy, Phone: (202) 961–4350, email: *justin.murphy@cisa.dhs.gov.*

SUPPLEMENTARY INFORMATION: A Software Bill of Materials (''SBOM'') has been identified by the cybersecurity community as a key aspect of modern cybersecurity, including software security and supply chain security. E.O. 14028 declares that ''the trust we place in our digital infrastructure should be proportional to how trustworthy and transparent that infrastructure is, and to the consequences we will incur if that trust is misplaced.'' [1] SBOMs play a key role in providing this transparency.

E.O. 14028 defines SBOM as ''a formal record containing the details and supply chain relationships of various components used in building software.'' [2] The E.O. further notes that ''[s]oftware developers and vendors often create products by assembling existing open source and commercial software components. The SBOM enumerates these components in a product.'' [3] Transparency from SBOMs aids multiple parties across the software lifecycle, including software developers, purchasers, and operators.[4] Recognizing the importance of SBOMs in transparency and security, and that SBOM evolution and refinement should come from the community to maximize efficacy, the Cybersecurity and Infrastructure Security Agency (CISA) is facilitating listening sessions around SBOM, which are intended to advance the software and security communities' understanding of SBOM creation, use, and implementation across the broader technology ecosystem.

I. SBOM Background

The idea of a software bill of materials is not novel.[5] It has been discussed and explored in the software industry for many years, building on innovation from industrial and supply chain work.[6] Academics identified the potential value of a ''software bill of materials'' as far back as 1995,[7] and tracking use of

[1] E.O. 14028, Improving the Nation's Cybersecurity, 1, 86 FR 26633 (May 17, 2021).

[2] *Id.* at 10(j), 86 FR 26633 at 26646 (May 17, 2021).

[3] Ibid.

[4] Ibid.

[5] A brief summary of the history of a software bill of materials can be found in Carmody, S., Coravos, A., Fahs, G. et al. Building resilient medical technology supply chains with a software bill of materials. npj Digit. Med. 4, 34 (2021). *https://doi.org/10.1038/s41746-021-00403-w.*

[6] See ''Toyota Supply Chain Management: A Strategic Approach to Toyota's Renowned System'' by Ananth V. Iyer, Sridhar Seshadri, and Roy Vasher—a work about Edwards Deming's Supply Chain Management *https://books.google.com/books/about/Toyota_Supply_Chain_Management_A_Strateg.html?id=JY5wqdelrg8C.*

[7] Leblang D.B., Levine P.H., Software configuration management: Why is it needed and what should it do? In: Estublier J. (eds) Software Configuration Management Lecture Notes in Computer Science, vol. 1005, Springer, Berlin, Heidelberg (1995).

third-party code has been identified as a longstanding software best practice.[8]

Still, SBOM generation and sharing across the software supply chain was not seen as a commonly accepted practice in modern software. In 2018, the National Telecommunication and Information Administration (NTIA) convened the first ''multistakeholder process'' to ''promot[e] software component transparency.'' [9] Over the subsequent three years, this stakeholder community developed guidance to help foster the idea of SBOM, including high level overviews, initial advice on implementation, and technical resources.[10] When the NTIA-initiated multistakeholder process concluded, NTIA noted that ''what was an obscure idea became a key part of the global agenda around securing software supply chains.'' [11]

However, CISA believes that the concept of SBOM and its implementation need further refinement. Work to help scale and operationalize SBOM implementation should continue to come from a broad-based community effort, rather than be dictated by any specific entity. To support such a community effort to advance SBOM technologies, processes, and practices, CISA will facilitate a series of listening sessions.

II. Topics for CISA Listening Sessions

The list below represents open topics in the field of SBOM and related cybersecurity topics on which CISA intends to facilitate a series of listening sessions. This is not an exhaustive set of open topics identified by the community at large, but represents a set of open topics identified as being priorities by the community. Solutions related to these topics that reflect the diverse needs of the software community will help advance forward progress towards greater software transparency and a more secure ecosystem.

Topic 1: Cloud and online applications—Much existing discussion around SBOM, particularly around SBOM use cases, has focused on on-premise software. Cloud and Software-as-a-Service (SaaS)-based software comprises a large and growing segment of the software ecosystem. Potential sub-topics may include: How should the community think about SBOM in the context of online applications and modern infrastructure? How can the community integrate SBOM work into emerging cloud-native opportunities?

Topic 2: Sharing and Exchanging SBOMs—Moving SBOMs and related metadata across the software supply chain will require understanding how to enable discovery and access. Potential sub-topics may include: How can suppliers and consumers of SBOMs share this data at scale? What can the community do to promote interoperability of potential solutions?

Topic 3: Tools and Implementation—SBOM implementation will be driven by a range of accessible and constructive tools and enabling applications, both open source and commercial in nature. Potential sub-topics may include: How can the community promote the SBOM tooling ecosystem? What is needed to drive and test interoperability and harmonization?

Topic 4: On-ramps and Adoption—Broader SBOM adoption may require enabling resources to promote awareness and lower the costs and complexities of adoption. Potential sub-topics may include: What can the community do to make it easier and cheaper to generate and use SBOM data? How can the community promote this concept?

III. Process for CISA-Facilitated SBOM Community Collaboration

For each topic, CISA will facilitate interested community members in two open and transparent listening sessions. CISA will act as a facilitator and participants will drive the outcomes, including any specific issues of focus or next steps. CISA will not be seeking any group consensus advice and/or input from the listening sessions. If participants wish to schedule regular meetings or build communication channels, CISA will assist, to the extent possible, in facilitating effective and constructive collaboration. CISA will not request specific outputs from meeting participants, nor is it currently CISA's intent to use information shared during listening sessions to directly address or inform any Federal policy decision. The participants may identify any further resources the global software and security community could use for each identified topic.

Information shared during listening sessions may be made publicly available. For this reason, please do not include non-public or confidential information in your responses to listening session topics, such as sensitive personal information or proprietary information.

Additional information regarding the listening sessions will be posted at *https://cisa.gov/SBOM.*

This notice is issued under the authority of 6 U.S.C. 652(c)(10)–(11), 659(c)(4), (9), (12).

Eric Goldstein,

Executive Assistant Director for Cybersecurity, Cybersecurity and Infrastructure Security Agency, Department of Homeland Security.

[FR Doc. 2022–11733 Filed 5–31–22; 8:45 am]

BILLING CODE 9110–9P–P

[8] The Software Assurance Forum for Excellence in Code (SAFECode), an industry consortium, has released a report on third party components that cites a range of standards. *Managing Security Risks Inherent in the Use of Third-party Components,* SAFECode (May 2017), *available at https://www.safecode.org/wp-content/uploads/2017/05/SAFECode_TPC_Whitepaper.pdf.*

[9] National Telecommunications and Information Administration (NTIA), Notice of Open Meeting, 83 FR. 26434 (June 7, 2018).

[10] *Ntia.gov/SBOM.*

[11] NTIA, *Marking the Conclusion of NTIA's SBOM Process* (Feb. 9, 2022), *https://www.ntia.doc.gov/blog/2022/marking-conclusion-ntia-s-sbom-process.*

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6331–N–03]

Request for Information Relating to the Implementation of the Build America, Buy America Act

AGENCY: Office of the Secretary, U.S. Department of Housing and Urban Development (HUD).

ACTION: Notice; request for information.

SUMMARY: This Request for Information (RFI) seeks public input on the implementation of the Build America, Buy America Act (''BABA'' or ''the Act'') as it applies to HUD's Federal Financial Assistance. In this RFI, HUD is seeking input on several topics relating to the potential information collection burden on recipients, including existing mechanisms for demonstrating compliance with the Act's domestic content procurement preference (''Buy America Preference,'' or ''BAP''), potential costs of compliance for recipients and contractors, and the potential impact on projects funded by HUD Federal Financial Assistance.

DATES: *Comment Due Date:* July 1, 2022.

ADDRESSES: Interested persons are invited to provide responses to this RFI. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.* To receive consideration as public comments, comments must be submitted through one of two methods, specified below. All submissions must refer to the above docket number and title.

1. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly

encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

2. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500.

No Facsimile Comments. Facsimile (FAX) comments will not be accepted.

Public Inspection of Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8:00 a.m. and 5:00 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the submissions must be scheduled by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339 (this is a toll-free number). Copies of all submissions are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joseph Carlile, Senior Advisor, Office of the Secretary, Department of Housing and Urban Development, 451 Seventh Street SW, Room 10226, Washington, DC 20410–5000, at (202) 402–7082 (this is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339. Questions about this document also be sent to *BuildAmericaBuyAmerica@hud.gov.*

SUPPLEMENTARY INFORMATION:

I. Build America, Buy America

The Build America, Buy America Act (the Act) was enacted on November 15, 2021, as part of the Infrastructure Investment and Jobs Act (IIJA). Public Law 117–58. The Act establishes a domestic content procurement preference, the BAP, for Federal infrastructure programs. Section 70914(a) of the Act establishes that no later than 180 days after the date of enactment, HUD must ensure that none of the funds made available by the Department through a Federal financial assistance program that provides funding for infrastructure projects may be obligated unless it has taken steps to ensure that all of the iron, steel, manufactured products, and construction materials used in a project are produced in the United States. In Section 70912, the Act further defines a project to include ''the construction, alteration, maintenance, or repair of infrastructure in the United States'' and includes within the definition of infrastructure those items traditionally included along with buildings and real property.

II. HUD's Progress in Implementation of the Act

A. Initial Report

Since the enactment of the Act, HUD has worked diligently to implement the BAP. Consistent with the requirements of Section 70913 of the Act, HUD has produced a report that identifies and evaluates all of HUD's Federal Financial Assistance programs with potentially eligible uses of funds that include infrastructure as defined by the Act to determine which programs would be in compliance with the BAP and which would be considered inconsistent with Section 70914 of the Act and thus ''deficient'' as defined by Section 70913(c) of the Act. The report was submitted to Congress and the Office of Management and Budget (OMB) and published in the **Federal Register** within 60 days after the date of enactment of the Act, on January 19, 2022 (87 FR 2894). Specifically, HUD published the required report in a notice entitled ''Identification of Federal Financial Assistance Infrastructure Programs Subject to the Build America, Buy America Provisions of the Infrastructure Investment and Jobs Act'' in compliance with Section 70913. In the report, HUD erred on the side of over-inclusiveness in accordance with Office of Management and Budget (OMB) guidance,[1] finding that none of HUD's discretionary funding programs reviewed to date fully meet the BAP requirements outlined in Section 70914 of the Act and are considered ''deficient'' under the definition in Section 70913(c). Since issuing the report, HUD has held regular meetings with Departmental offices and consulted administrative and economic data to plan to implement the Act.

B. OMB Initial Implementation Guidance

On April 18, 2022, OMB issued guidance to heads of Executive Departments and Agencies on the application of a BAP in Federal Financial Assistance programs for infrastructure.[2] This guidance laid out the current interpretation of the Act and key terminology, how to apply the BAP to Federal Financial Assistance programs for infrastructure, and how agencies should be constructing a transparent waiver process.

The guidance defined ''infrastructure'' to include public infrastructure projects such as the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. However, infrastructure should be interpreted broadly, and agencies should assess whether a project will serve a public function. ''Federal Financial Assistance'' is funds that are appropriated or otherwise made available and used for infrastructure by a ''non-Federal'' entity, which includes States, local governments, territories, Tribes, Tribally Designated Housing Entities, and other Tribal entities, institutions of higher education, and nonprofit organizations, but does not include ''for-profit organizations.''

The guidance also clarifies the extent to which disaster, emergency response, or mitigation expenditures are exempt from the Act's BAP. Pre- and post-disaster expenditures that are ''made in anticipation of or response to an event or events that qualify as an 'emergency' or 'major disaster' within the meaning of the Stafford Act'' are not included within the BAP. However, ''[a]wards made to support the construction or improvement of infrastructure to mitigate the damage that may be caused by a non-imminent future emergency or disaster'' are included within the Act's BAP.

[1] See OMB Memorandum M–22–08, Identification of Federal Financial Assistance Infrastructure Programs Subject to the Build America, Buy America Provisions of the Infrastructure Investment and Jobs Act, *www.whitehouse.gov/wp-content/uploads/2021/12/M-22-08.pdf.*

[2] See OMB Memorandum M–22–11, Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure, *www.whitehouse.gov/wp-content/uploads/2022/04/M-22-11.pdf.*

Under the guidance, agencies should consider if an existing domestic content requirement meets the standards in the Act, as the BAP applies to a Federal Financial Assistance program for infrastructure only to the extent that an existing preference does not apply. As a result, policies and provisions that already meet or exceed the Act's standards should be preserved, while existing requirements that do not meet the Act's standards must be brought into compliance with the BAP.

The guidance also clarified that the BAP ''only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project,'' and does not apply if an agency has determined no funds in the project will be used for infrastructure. The BAP ''does not apply to tools, equipment, and supplies . . . brought to the construction site and removed at or before'' completion, nor does it apply to equipment and furnishings that are not an ''integral part of or permanently affixed to the structure.'' Furthermore, items should only be classified as (1) iron or steel, (2) a manufactured product, or (3) a construction material, and agencies should apply the iron and steel test to items that are predominantly iron or steel.

The guidance emphasized that Federal agencies are responsible for processing and approving all waivers, including requests from recipients for their own projects and on behalf of subrecipients. Waivers should generally be targeted to specific products and projects where feasible. Agencies must submit to OMB for coordination when a waiver is a general applicability waiver but should notify OMB before posting a proposed waiver for comment. The agency is responsible for evaluating the proposed waiver to determine its consistency with the Act, and should attempt to maximize the use of goods, products, and materials produced in the United States to the greatest extent possible. Agencies must also develop standard criteria for determining whether to grant a waiver in each circumstance.

The guidance also provided five examples of potential general applicability public interest waivers: (1) De minimis, (2) small grants, (3) minor components, (4) adjustment period, and (5) international trade obligations. These categories are not exclusive, and other public interest waivers may be appropriate. Before a public interest waiver is granted, agencies must assess if a significant portion of any cost advantage of a foreign-sourced product is the result of dumped or injuriously subsidized materials and will integrate any findings from the assessment into the waiver.

The guidance provided a list of information that should be included within each waiver, including the recipient's name and identifier, the funding amount, total cost of infrastructure expenditures, a certification that the Federal official or recipient made a good faith effort to solicit bids for domestic products that fall within the BAP, and a statement justifying the waiver.

OMB also provided initial, nonbinding guidance on the definition of ''all manufacturing processes'' for construction materials. OMB's guidance clarified the distinction between manufactured product and construction materials, stating that if two of the materials identified by the Act are combined with a third material through a manufacturing process, the product should be treated as manufactured products. For construction materials, agencies should consider ''all manufacturing processes'' to include at least the ''final manufacturing process and the immediately preceding manufacturing stage for the construction material. OMB is seeking additional feedback on this guidance.

Finally, OMB provided a sample award term that would ensure the use of American iron, steel, manufactured products, and construction materials for infrastructure projects complies with the Act's BAP. This sample award term incorporates key definitions and outlines the necessary steps to ensure compliance with the Act. The sample award term includes additional information about the waiver process and could be altered to reflect agency specific procedures.

C. HUD's Public Interest Waivers of the Act's BAP Until the Completion of a Paperwork Reduction Act Package and Tribal Consultation Process

On April 29, 2022 (87 FR 26219), HUD proposed a general applicability waiver of the BAP to HUD's Federal Financial Assistance awards to provide the Department with sufficient time to comply with the requirements of the Paperwork Reduction Act (PRA). HUD outlined the need to impose additional information collection requirements on recipients of HUD Federal Financial Assistance to ensure full compliance with the BAP. HUD stated that recipients of Federal Financial Assistance from HUD are unfamiliar with the BAP and additional information collection requirements, as HUD's programs have not previously been subject to a similar Buy American preference. As a result, HUD found that the proposed general applicability waiver of the BAP until HUD had the opportunity to fully review public comments on how to effectively reduce the burden on the public arising from information collection necessary to implement the Act would be in the public interest.

In addition, on April 29, 2022 (87 FR 26221), HUD proposed a general applicability waiver of the BAP to HUD's Federal Financial Assistance awards for Tribes, Tribally Designated Housing Entities (TDHEs), and other Tribal Entities to provide the Department with sufficient time to comply with HUD's Tribal consultation process. HUD's Tribal Government-to-Government Consultation Policy [3] was adopted in compliance with Executive Order 13175, ''Consultation with Indian Tribal Governments,'' and outlines the internal procedures and principles HUD must follow when communicating and coordinating on HUD programs and activities that affect Native American Tribes. Given that the BAP is new to HUD's Federal Financial Assistance directed to Tribes, TDHEs, and other Tribal Entities and the potential impact of the BAP on Tribal recipients, HUD found a general applicability waiver was in the public interest to ensure HUD has sufficient time to complete the Tribal consultation process in recognition of Tribe's right to self-government and inform a tailored implementation for Tribal recipients.

More information about HUD's proposed waivers is available here: *www.hud.gov/program_offices/general_counsel/BABA.*

III. Request for Information

HUD is requesting input from interested parties on the potential documentation and information collection necessary to estimate the information collection burden and assist HUD in the development of the PRA package. As discussed above and in HUD's prior notices regarding the implementation of the Act, because the BAP is new to HUD's programs and Federal Financial Assistance, HUD currently does not have sufficient data about the compliance and monitoring burden on recipients required to implement the BAP. As a result, input is necessary to create a meaningful estimate of the information collection burden in compliance with the PRA.

1. What HUD Federal Financial Assistance is used to fund infrastructure

[3] *www.hud.gov/program_offices/public_indian_housing/ih/regs/govtogov_tcp.* See also 81 FR 40893.

as defined under the Build America, Buy America Act? Specifically, HUD is seeking input from recipients on what forms of HUD's Federal Financial Assistance are used to fund infrastructure projects in those programs identified in HUD's report to Congress and OMB on January 19, 2022 (87 FR 2894) or in any other program through which HUD's Federal Financial Assistance may be used to fund infrastructure projects.

2. How can HUD document what projects serve a ''public function,'' thus qualifying as infrastructure under OMB's guidance and falling within the scope of the Act? When determining if a program has infrastructure expenditures, OMB guidance indicates that Federal agencies should interpret the term ''infrastructure'' broadly and consider the definition provided as illustrative and not exhaustive. Agencies are advised to consider whether the project will serve a public function, including whether the project is publicly owned and operated, privately operated on behalf of the public, or is a place of public accommodation, as opposed to a project that is privately owned and not open to the public. Projects with the former qualities have greater indicia of infrastructure, while projects with the latter quality have fewer. How should HUD consider infrastructure projects more broadly? How can HUD determine if the ultimate recipient of the funding is a covered non-Federal entity?

3. Are the entities utilizing Federal Financial Assistance to fund infrastructure doing so independently or in partnership with other entities? If used in partnership with other entities, how often are these private entities or other individuals that would not be covered by the definition of non-federal entities under 2 CFR 200.1?

4. What activities are undertaken by recipients of HUD Federal Financial Assistance that fall within the Act's BAP? To the extent that these infrastructure projects are disaster-related, can the projects be clearly defined as undertaken in response to either (1) non-imminent future emergency or disaster mitigation/preparedness or (2) disaster or emergency response/imminent threats? How often would projects be designed to address both long term and imminent threats? How often would projects be designed to address current recovery needs along with future long term mitigation needs? What portions of infrastructure projects involve the use of iron, steel, manufactured products, or construction materials? How do recipients currently differentiate between infrastructure spending and non-infrastructure spending, such as administrative costs? What types of mitigation activities are conducted utilizing HUD Federal Financial Assistance that are not related to an imminent threat of a future emergency or disaster? How, if at all, will activities be limited such as funding fewer projects?

5. How do recipients currently determine sourcing for materials? Are there existing mechanisms to locate American made iron, steel, manufactured products, or construction materials? Furthermore, how do recipients currently track contractor sourcing? How often are materials recycled from other products such that the origin of such materials may be unknown?

6. Are recipients currently subjected to Buy American requirements from other Federal, state, local, or Tribal entities? If yes, are there any existing de minimus thresholds exceptions in place and what are those exceptions? If yes, how have recipients ensured compliance with these preferences? What steps have Federal, state, local, or Tribal entities taken to ensure compliance? What type of contractual language has been utilized to ensure compliance? If contractual language has been utilized to ensure compliance with a Buy American requirement, when was it first added? Is the suggested language in Appendix I of OMB's ''Memorandum for Heads of Executive Departments and Agencies'' [4] issued April 18, 2022, consistent with other Buy American language in award terms? Are there ways to improve this suggested award language for HUD's Federal Financial Assistance programs? What is the burden and impact, either based in prior experience or as an estimate based on OMB's suggested language, associated with inserting Buy American language into contracts for infrastructure projects?

7. Are there any plans in the iron, steel, manufactured products, or construction materials industries to provide documentation regarding materials' compliance with BABA? Are there existing forms of documentation that would demonstrate BABA compliance? How, if at all, will BABA compliance impact energy efficiency efforts pursuant to Executive Order 14008?

8. What are contractor's administrative costs associated with complying with BABA? What forms of maintenance and guarantee costs will be necessary to confirm compliance? Will there be any construction timeline delays associated with BABA compliance? Is there a need for standard contractual provisions to deal with potential delays arising from BABA compliance? If there is a need for a product specific waiver, when would contractors know about the need?

9. What, if any, are the specific concerns, either from recipients or contractors, about a potential waiver process? Considering agency requirements associated with waiver processing, what would be the ideal and realistic timeline for waiver processing that would minimize impact on affected projects? What documentation is currently available, either from contractors or recipients, to demonstrate the need for a waiver in line with the requirements in section 70914 of the Act?

10. Where applicable, how will BABA requirements affect relocation plans, transfer procedures, and/or reasonable accommodation or modifications procedures for existing occupants? What if any changes are required for your agency's Administrative Plan or Admissions and Continued Occupancy Plan? Are there any other potential impacts on current residents of projects supported by HUD Federal Financial Assistance?

11. What situations would require expedited or general waivers? How can HUD develop its waiver criteria in a way that identifies these expedited or general waivers? Are there situations where the cost of the materials would always meet the standards for waivers established under Section 70914 of the Act, whether a cost, public interest, or nonavailability waiver?

12. How, if at all, would the Act's BAP affect contractor's willingness to accept infrastructure contracts subject to BABA's requirements? How would contractors need to build in additional costs when bidding for infrastructure contracts?

Marcia L. Fudge,

Secretary.

[FR Doc. 2022–11729 Filed 5–31–22; 8:45 am]

BILLING CODE 4210–67–P

[4] *www.whitehouse.gov/wp-content/uploads/2022/04/M-22-11.pdf.*

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–NWRS–2022–N023; FF09R81000; OMB Control Number 1018–New]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; U.S. Fish and Wildlife Service Agreements With Friends Organizations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing a new information collection in use without an Office of Management and Budget (OMB) control number.

DATES: Interested persons are invited to submit comments on or before July 1, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference ''1018-Friends'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. 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: In accordance with the Paperwork Reduction Act (PRA, 44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR 1320, all information collections require approval under the PRA. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

On November 9, 2020, we published in the **Federal Register** (85 FR 71354) a notice of our intent to request that OMB approve this information collection. In that notice, we solicited comments for 60 days, ending on January 8, 2021. We received 59 comments in response to the questions posed in the **Federal Register** notice from the following:

Name	Position	Organization	Date received
Christensen, Alan	Past President	Friends of Tualatin River NWR	1/4/21
Benton, Angela	Board Chair	Friends of Haystack NWR	1/8/21
LaBrake, Aryn	Executive Director	Friends of Valle del Oro NWR	1/8/21
VanHeel, Carol	Treasurer and Membership Chair	Friends of Sherburne NWR	1/8/21
Trainor, Cece	Board Member	Friends of Eastern Neck NWR	1/8/21
Craig, Cecilia	Treasurer	San Francisco Bay Wildlife Society/Friends of San Francisco Bay NWR Complex.	1/8/21
Hart, Cheryl	Board Member	Friends of Tualatin River NWR	1/8/21
Crumley, Chloe	Board Member	Friends of Balcones NWR	1/8/21
Stephens, Christena	Director	Friends of High Plains Refuge Complex	1/7/21
Puskar, Dan	President and CEO	Public Lands Alliance	1/8/21
Price, Daniel	Not Provided	Friends of Little Pend Oreille NWR	1/8/21
Bell, Dave	Vice President	Friends of Balcones NWR	1/8/21
Raskin, David	President	Friends of Alaska NWR	1/8/21
Anderson, Debbie	Vice President	Friends of Hakalau Forest NWR	12/29/20
Andersen, Ellen	President	Friends of the National Conservation Training Center.	1/5/21
Draper, Harold	President	Friends of Loess Bluffs NWR	1/7/21
Lockridge, Jack	President	Friends of Bosque Del Apache NWR	1/8/21
Johnson, James	Not Provided	Friends of Neal Smith NWR	12/20/20
Larson, Jan and Rocky	Private Citizens		1/7/21
Mayo, Jan	Volunteer	Friends of Hakalau Forest NWR	12/24/20
James, Janet	President	Friends of Mid-Columbia River NWR	1/7/21
Friday, J.B	President	Friends of Hakalau Forest NWR	12/27/20
Public, Jean	Private Citizen		11/9/20
Keatinge, Jennifer	Board of Directors	Friends of Hart Mountain National Antelope Refuge	1/9/21
Edwards, Jim	President	Sandhill Prairies Refuge Association	1/2/21
Patterson, Joan Brouwer, Caroline	Not Provided	Coalition of Refuge Friends and Advocates	1/6/21
	Not Provided	National Wildlife Refuge Association	
Van Aken, Joann	Executive Director	International Wildlife Refuge Alliance	1/7/21
Van Aken, Joann (2nd Comment)	Executive Director	International Wildlife Refuge Alliance	1/8/21
d'Alessio, Jon	Treasurer	Friends of Midway Atoll NWR	1/7/21
Cadoret, Katelyn	Not Provided	Friends of Mashpee NWR	1/7/21
Bowman, Kathy	Private Citizen		1/5/21
Rhodes, Kathy	Chair—Board of Directors	Friends And Volunteers Of Refuges—Florida Keys	1/8/21
Cheroutes, Kip	Board Member	Friends of the Front Range Wildlife Refuges	1/8/21
Gould, Laurel	Treasurer	Friends of Great Swamp NWR	1/8/21
Culp, Jr., Lloyd	President	Friends of Bon Secour NWR	1/8/21
Springer, Marie (original and followup).	Private Citizen	John Jay College of Criminal Justice, City University of New York.	12/23/20 1/5/21
Cole, Mark	President	Friends of Leadville Fish Hatchery	1/8/21
Nelson, Morton	Treasurer	Friends of Loess Bluffs NWR (Original and Duplicate of 11/11/2020 comment).	11/11/20

Name	Position	Organization	Date received
Krueger, Myrna	President	Friends of Sherburne NWR	1/8/21
Gehlhausen, Nancy	Private Citizen		12/25/20
Feger, Naomi	Board of Directors	Friends of San Pablo Bay NWR	1/8/21
Kupchak, Patty	Private Citizen		12/18/20
Goodwin, Paula	President	Friends of Assabet River NWR	1/8/21
Hall, Peg	President	Friends of Lower Suwannee & Cedar Key NWRs	1/6/21
Millan, Phyllis	Board Member	Friends of Tualatin River NWR	1/8/21
Petzel, Robert	President	Minnesota Valley Refuge Friends	1/8/21
Crouch, Sally	Board Secretary	Muscatatuck Wildlife Society	1/7/21
Slagle, Sharon	Secretary	Friends of the Wildlife Corridor	11/18/20
Kenyon, Simon	President	Friends of Eastern Neck NWR	1/7/21
Kaufman, Stephanie	Not Provided	Friends of Patuxent Research Refuge	1/8/21
Byers, Steven	Chair	Friends of Hackmatack NWR	1/7/21
Chesney, Steven	Volunteer	Friends of Sherburne NWR	1/8/21
Hatleberg, Steven	Board Representative	Friends of the National Conservation Training Center.	1/3/21
Hix, Sue	Volunteer	Friends of Sherburne NWR	1/7/21
Wilder, Sue	Treasurer	Friends of Louisiana Wildlife Refuges	1/7/21
Carlsten, Susan	President	Friends of Neosho National Fish Hatchery	11/19/20
Considine, Tom	Board Member	Friends of John Heinz NWR	1/8/21
Stoeller, Willem	Treasurer	Friends of Tualatin River NWR	12/17/20
Binnewies, William	Past President	Shoreline Education for Awareness	1/8/21

Below is a summary of the comments received in response to the questions indicated, and the agency response to those comments:

Whether or not the collection of information is necessary, including whether or not the information will have practical utility; whether there are any questions you felt were unnecessary.

Summary of comments: Respondents raised concerns that there was substantial overreach as far as what was being requested. Commenters felt that Friends are not subject to internal agency policy and direct administration and oversight by the Service. Specifically, many respondents mentioned that the Service's requests for Friends staff resumes was unnecessary and in conflict with Service policy not to become involved in Friends group administration and decision-making processes.

Agency Response: Based on the comments, we removed Friends staff resumes from the list of information we will collect, and substantially revised financial reporting requirements.

''*The accuracy of our estimate of the burden for this collection of information*''

Summary of comments: Overall, respondents said that the request as presented was vague, especially the proposed methodology by which the information would be collected. Furthermore, respondents expressed an overwhelming concern that this information collection as presented would be extremely burdensome and would hobble many smaller Friends groups, especially those without paid staff. Others stated that burden estimates were inaccurate, and that completion and submission of requested materials would take longer than the estimates projected.

Agency Response: The agency response was to overhaul the draft versions of the forms to significantly reduce the burden and simplify the reporting requirements, methodology, and instruments. In addition, the annual report, which will be a simple Microsoft form (or other electronic format to be substituted in the future, if need be), will be completable by either Service staff or a Friends group, and that decision will be made at the local level. This allows for the partnership to make the decision at the local level as to who should complete the form and requires strong communication within the partnership. Quarterly reviews will consist of Service staff verifying that board meetings include presentation of profit and loss sheets and updates on member and staff changes, if any, which should already be happening.

''*Ways to enhance the quality, utility, and clarity of the information to be collected*''

Summary of comments: Many responses focused on the frustration felt by the Friends groups due to the lack of clarity and specificity of what we were asking for, and the timeline with which it was being requested. Most respondents pointed out that the Internal Revenue Service (IRS) already requests much if not all the same documentation the Service might require, and that reporting should not be duplicative, excessive, or follow a different tax year than what the organization would be reporting to the IRS. Furthermore, many suggested that the Service institute a tiered system of requirements based on the size (*i.e.,* annual budget) of the nonprofit required to do the reporting, as the majority of Friends groups are extremely small with an annual budget of $50,000 or less.

Agency Response: We acknowledge the difficulty of the responding to the information collection clearance before reviewing the policy on which it was based, because both activities were taking place concurrently. The Service was able receive comments on the draft policy, and addressed many of those concerns in the final policy. Based on comments from both the **Federal Register** notice and the policy review, we re-designed the reporting system to address these concerns.

''*Ways to minimize the burden of the collection of information on respondents*''

Summary of comments: Many respondents made it clear that since they already submit much of the information to the IRS, the Service should simply go online and download that information ourselves. Others suggested that we create a system by which Friends groups could report electronically to the fullest extent possible via a secure portal and/or provide a simple checklist. There was concern that it would be costly to implement a reporting system and a general sense that there was no value added to the Service collecting this data.

Agency Response: The Service created a simple and free to use Microsoft Forms reporting system and will use another free, electronic system if Microsoft Forms becomes unavailable in the future. While we do recognize that this information is all public and

already reported to the IRS, we do feel that there is a value to collecting this data within the Service and being able to aggregate the data to show the benefit provided by Friends groups to the agency on a national scale.

In addition to publication of the **Federal Register** notice, we held public meetings in early 2021 to communicate to key stakeholders about the Information Collection Clearance process (*i.e.,* our desire to hear from them, expected timelines, etc.) and provided time for questions from attendees.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The Service enters into agreements and partnerships with nonprofit Friends groups to facilitate and formalize collaboration between the parties in support of mutual goals and objectives as authorized by:

- The Fish and Wildlife Act of 1956 (16 U.S.C. 742a–742j);
- The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–ee), as amended;
- The Refuge Recreation Act of 1962 (16 U.S.C. 460k *et seq.*), as amended;
- The Anadromous Fish Conservation Act (16 U.S.C. 757a–757g), as amended;
- The Fish and Wildlife Coordination Act of 1934 (16 U.S.C. 661–667e), as amended;
- The National Wildlife Refuge System Volunteer and Community Partnership Enhancement Act of 1998 (16 U.S.C. 742f), as amended; and
- The National Fish Hatchery System Volunteer Act of 2006 (16 U.S.C. 760aa), as amended.

The Service utilizes a standardized agreement which describes the substantial involvement of both parties in mutually agreed-upon activities and ensures that both parties have a mutual understanding of their respective roles, responsibilities, rights, expectations, and requirements within the partnership. The agreement, pre-approved by the Department of the Interior (DOI) Office of the Solicitor, provides the suggested language common to most Service Friends partnerships. The content is based on DOI and Service policies, but the Friends and Service sites/programs may thoughtfully add and delete certain language to meet their varying partnership roles and responsibilities wherever Department and Service policies do not dictate otherwise. We also use a supplemental partnership agreement for use of Service property, which provides additional terms and responsibilities beyond the general terms of the partnership agreement and is required only for those Friends groups that use Service land, facilities, or equipment.

The partnership agreement and supplemental agreement are effective for 5 years, with four annual modification options during the 5-year period of performance. Each time the agreement is up for its 5-year renewal, the Refuge or Fish Hatchery Project Leader and the Friends President or Board will meet to review, modify, and sign the agreement as described above. To become effective, the Regional Director (or designee) must review, approve, and sign a new agreement every 5 years.

In addition to the partnership agreement and supplemental agreement, and subsequent renewals of the agreements, the Service collects the following information in conjunction with the administration of the Friends Program:

- Basic program information documentation, to include documents such as IRS determination letters recognizing an organization as tax exempt, submission of IRS Form 990-series forms, bylaws, articles of incorporation, etc.;
- Internal financial control documentation for the organization;
- Recordkeeping requirements documenting accountability for donations and expenditures;
- Assurance documentation that donations, revenues, and expenditures benefit the applicable refuge or hatchery;
- Annual performance reporting (donations, revenues, and expenditures) and number of memberships (if applicable); and
- Additional information that may be included as part of quarterly, annual, and in-depth program reviews.
- Information related to fundraising agreements for activities described in 212 FW 8.

Over the life of this clearance, the Service plans to develop a digital platform and process to collect information directly from Friends groups. Until that occurs, Friends groups will submit information through form and non-form responses.

The Service uses the information collected to establish efficient and effective partnerships and working relationships with nonprofit Friends organizations. The agreements provide a method for the Service to legally accept donations of funds and other contributions by people and organizations through partnerships with nonprofit (and non-Federal) Friends organizations.

Title of Collection: U.S. Fish and Wildlife Service Agreements with Friends Organizations.

OMB Control Number: 1018–New.

Form Number: None.

Type of Review: Existing collection in use without an OMB control number.

Respondents/Affected Public: Private sector (nonprofit organizations).

Total Estimated Number of Annual Respondents: 1,040.

Total Estimated Number of Annual Responses: 1,640.

Estimated Completion Time per Response: Estimated completion times vary from 30 minutes to 800 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 22,100.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion for agreements and associated documentation requirements; quarterly and annually for performance reviews.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2022–11727 Filed 5–31–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–NWRS–2022–0063; FXRS12610900000–223–FF09R24000; OMB Control Number 1018–0162]

Agency Information Collection Activities; Non-Federal Oil and Gas Operations on National Wildlife Refuge System Lands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing to revise an existing collection of information.

DATES: Interested persons are invited to submit comments on or before August 1, 2022.

ADDRESSES: Send your comments on the information collection request (ICR) by one of the following methods (please reference ''1018–0162'' in the subject line of your comments):

- *Internet (preferred): http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–HQ–NWRS–2022–0063.
- *Email: Info_Coll@fws.gov.*
- *U.S. mail:* Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. 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: In accordance with the Paperwork Reduction Act (PRA) and its implementing regulations at 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed information collection request (ICR) that is described below. We are especially interested in public comments addressing the following issues: (1) Is the collection necessary to the proper functions of the Service; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Service enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Service minimize the burden of this collection on the respondents, including through the use 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 the Office of Management and Budget (OMB) to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The authority of the Service to regulate non-Federal oil and gas operations on National Wildlife Refuge System (NWRS) lands is broadly derived from the Property Clause of the United States Constitution (Art. IV, Sec. 3), in carrying out the statutory mandates of the Secretary of the Interior, as delegated to the Service, to manage Federal lands and resources under the National Wildlife Refuge System Administration Act (NWRSAA), as amended by the National Wildlife Refuge System Improvement Act (NWRSIA; 16 U.S.C. 668dd *et seq.*), and to specifically manage species within the NWRS under the provisions of numerous statutes, the most notable of which are the Migratory Bird Treaty Act (MBTA; 16 U.S.C. 715 *et seq.*), the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*), and the Fish and Wildlife Act of 1956 (FWA; 15 U.S.C. 742f).

The Service's regulations at 50 CFR, part 29, subpart D provide for the continued exercise of non-Federal oil and gas rights while avoiding or minimizing unnecessary impacts to national wildlife refuge resources and uses. Other land management agencies have regulations that address oil and gas development, including the Department of the Interior's National Park Service and Bureau of Land Management, and the U.S. Department of Agriculture's Forest Service. These agencies all require the submission of information similar to the information requested by the Service.

The collection of information is necessary for the Service to properly balance the exercise of non-Federal oil and gas rights within national wildlife refuge boundaries with the Service's responsibility to protect wildlife and habitat, water quality and quantity, wildlife-dependent recreational opportunities, and the health and safety of employees and visitors on NWRS lands.

The information collected under 50 CFR, part 29, subpart D identifies the owner and operator (the owner and operator can be the same) and details how the operator may access and develop oil and gas resources. It also identifies the steps the operator intends to take to minimize any adverse impacts of operations on refuge resources and uses. No information is submitted unless the operator wishes to conduct oil and gas operations.

We use the information collected to: (1) Evaluate proposed operations; (2) ensure that all necessary mitigation measures are employed to protect national wildlife refuge resources and values; and (3) ensure compliance with all applicable laws and regulations, including the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its regulations (40 CFR parts 1500–1508), and the NWRSAA, as amended by the NWRSIA, and to specifically manage species within the NWRS under the provisions of numerous statutes, the most notable of which are the MBTA,

the ESA, the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*), and the FWA.

Proposed Revisions

Automation of Application Form via ePermits

With this submission, we are proposing to automate FWS Form 3–2469 in the Service's ePermits system, an automated permit application system that allows the agency to move towards a streamlined permitting process to reduce public burden. Public burden reduction is a priority for the Service; the Assistant Secretary for Fish, Wildlife, and Parks; and senior leadership at the Department of the Interior. The intent of ePermits is to fully automate the permitting process to improve the customer experience and to reduce time burden on respondents. This system enhances the user experience by allowing users to enter data from any device that has internet access, including personal computers (PCs), tablets, and smartphones. It also provides the permit applicant with a link to pay associated permit application fees via the *Pay.gov* system.

Financial Assurances Costs

With this submission, we will seek OMB approval of the costs associated with the financial assurances requirements as they are required per regulations contained in 50 CFR 29.103(b) and 50 CFR 29.150. These costs were inadvertently overlooked with previous submissions for this collection of information, so at this time we are bringing this requirement into compliance with the PRA as an annual non-hour burden cost. The estimated annual non-hour cost burden associated with the required financial assurances is captured below under ''Total Estimated Annual Non-Hour Burden Cost.''

Proposed Changes to Application Form (FWS Form 3–2469)

We propose several changes to the existing FWS Form 3–2469 to improve the user collection experience and our internal processing requirements:

(1) Under the ''Type of Permit'' on page 1, we are adding these categories:

a. ''New''—Used by operators applying for a new permit to operate where no existing Form 3–2469 permit exists;

b. ''Renewal''—Used by operators with a currently approved permit to renew the operation without any substantial changes;

c. ''Amendment''—Used by an operator with an existing Form 3–2469 approved permit to amend their operations; and,

d. ''Extension''—Used by an operator with an existing Form 3–2469 approved permit to request an extension to one of its conditions (*e.g.,* extend the shut-in status of a well).

(2) Under the ''Production Operations'' on page 1, we are adding these sub-categories:

a. ''Maintenance''—Used for maintenance actions (*e.g.,* need to bring in a workover rig);

b. ''Plugging''—Used with plugging and abandoning of a well; and

c. ''Reclamation''—Used with all activities remove contaminated soils, equipment, pipe, etc., and restore the site to its original contours and vegetation.

(3) Under the ''Contact Information'' in Part 1 (on page 2), we propose to add two new questions:

a. ''Tax Identification Number''; and

b. ''Do you have operations on other refuges? If so, provide the names of those refuges.''

Title of Collection: Non-Federal Oil and Gas Operations on National Wildlife Refuge System Lands, 50 CFR 29, Subpart D.

OMB Control Number: 1018–0162.

Form Number: FWS Form 3–2469.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Businesses that conduct oil and gas exploration on national wildlife refuges.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Non-hour Burden Cost: $1,100,000 (22 annual responses x $50,000 each).

Activity/requirement	Estimated number of annual responses	Completion time per response (Hours)	Estimated total annual burden hours
Application for Temporary Access and Operations Permit (§ 29.71) (FWS Form 3–2469)	17	17	289
Preexisting Operations (§ 29.61)	20	50	1,000
Accessing Oil and Gas Rights from Non-Federal Surface Location (§ 29.80)	2	1	2
Pre-application Meeting for Operations Permit (§ 29.91)	22	2	44
Operations Permit Application (§§ 29.94–29.97)	22	140	3,080
Financial Assurance (§§ 29.103(b), 29.150)	22	1	22
Identification of Wells and Related Facilities (§ 29.119(b))	22	2	44
Reporting (§ 29.121):			
Third-Party Monitor Report (§ 29.121(b))	150	17	2,550
Notification—Injuries/Mortality to Fish and Wildlife and Threatened/Endangered Plants (§ 29.121(c))	10	1	10
Notification—Accidents involving Serious Injuries/Death and Fires/Spills (§ 29.121(d))	10	1	10
Written Report—Accidents Involving Serious Injuries/Deaths and Fires/Spills (§ 29.121(d))	10	16	160
Report—Verify Compliance with Permits (§ 29.121(e))	120	4	480
Notification—Chemical Disclosure of Hydraulic Fracturing Fluids uploaded to FracFocus (§ 29.121(f))	2	1	2
Permit Modifications (§ 29.160(a))	5	16	80
Change of Operator § 29.170:			
Transferring Operator Notification (§ 29.170)	10	8	80
Acquiring Operator's Requirements for Wells Not Under a Service Permit (§ 29.171(a))	9	40	360
Acquiring Operator's Acceptance of an Existing Permit (§ 29.171(b))	1	8	8
Extension to Well Plugging (§ 29.181(a)):			
Application for Permit	5	140	700
Modification	2	16	32
Public Information (§ 29.210):			
Affidavit in Support of Claim of Confidentiality (§ 29.210(c) and (d))	1	1	1
Confidential Information (§ 29.210(e) and (f))	1	1	1
Maintenance of Confidential Information (§ 29.210(h))	1	1	1

Activity/requirement	Estimated number of annual responses	Completion time per response (Hours)	Estimated total annual burden hours
Generic Chemical Name Disclosure (§ 29.210(i))	1	1	1
Totals	465		8,957

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2022–11726 Filed 5–31–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–033978; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before May 21, 2022, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by June 16, 2022.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on <property or proposed district name, (County) State>.'' If you have no access to email you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sherry A. Frear, Chief, National Register of Historic Places/National Historic Landmarks Program, 1849 C Street NW, MS 7228, Washington, DC 20240, *sherry_frear@nps.gov,* 202–913–3763.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before May 21, 2022. Pursuant to Section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State or Tribal Historic Preservation Officers:

ALABAMA

Walker County

Bankhead, William Brockman, House, 800 7th St. West, Jasper, SG100007850

CALIFORNIA

San Francisco County

St. Francis Wood Historic District, Bounded by Portola Dr., San Pablo and Santa Paula Aves., San Jacinto Way, San Andreas Way, Junipero Serra and Monterey Blvds., San Francisco, SG100007846

GEORGIA

Fayette County

Gay, Reuben, House, 116 Weldon Rd., Fayetteville vicinity, SG100007866

Muscogee County

1238 Professional Building, 1238 2nd Ave., Columbus, SG100007851

OHIO

Summit County

Hudson Historic District (Boundary Increase II), Roslyn Ave., Elm, Aurora, Baldwin, Chapel, Church, Division, Hudson, North Main, North Oviatt, Owen, Brown, and West. Prospect Sts., Hudson, BC100007849

OKLAHOMA

Oklahoma County

Oklahoma City PWA Police Headquarters, 200 North Shartel Ave., Oklahoma City, SG100007855

Ottawa County

Nine Tribes Tower, 205 B St. NE, Miami, SG100007856

Washington County

Carr-Bartles Mill Site, Address Restricted, Bartlesville vicinity, SG100007857

OREGON

Multnomah County

Phoenix Pharmacy, 6615 SE Foster Rd., Portland, SG100007861

PENNSYLVANIA

Allegheny County

Peoples Bank Building, The 301 5th Ave., McKeesport, SG100007865

Philadelphia County

Germantown Fireproof Storage Warehouse, 231–253 Church Ln., Philadelphia, SG100007864

TEXAS

Travis County

Clement's Market—The Sport Bar (East Austin MRA), 1200 East 6th St., Austin, MP100007848

WYOMING

Platte County

Chugwater Soda Fountain, 314 1st St., Chugwater, SG100007867

Additional documentation has been received for the following resources:

OKLAHOMA

Carter County

Ardmore Historic Commercial District (Additional Documentation), Main St. from Santa Fe RR tracks to B St., North Washington from Main St. to 2nd Ave. NE, Caddo St. from Main St. to north side of 2nd Ave. NE, Ardmore, AD83002080

Okfuskee County

Okfuskee County Courthouse (Additional Documentation) (County Courthouses of Oklahoma TR), 209 North 3rd St., Okemah, AD84003377

Okemah Armory (Additional Documentation), 405 North 6th St., Okemah, AD98000734

Nomination submitted by Federal Preservation Officer:

The State Historic Preservation Officer reviewed the following nomination and responded to the Federal Preservation Officer within 45 days of receipt of the nomination and

supports listing the property in the National Register of Historic Places.

CONNECTICUT

Hartford County

Newington VA Hospital Historic District (United States Third Generation Veterans Hospitals, 1946–1958 MPS), 555 Willard Ave., Newington, MP100007860

Authority: Section 60.13 of 36 CFR part 60.

Dated: May 25, 2022.

Sherry A. Frear,

Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2022–11751 Filed 5–31–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–PWR–PERL–33429, PPPWVALRS0/PPMPSPD1Z.YM0000]

Establishment of a New Parking Fee Area at Pearl Harbor National Memorial

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: This notice is to comply with section 804 of the Federal Lands Recreation Enhancement Act of 2004. The act requires agencies to give the public advance notice (6 months) of the establishment of a new recreation fee area.

DATES: We will begin collecting fees on December 1, 2022.

FOR FURTHER INFORMATION CONTACT: Tom Leatherman, Superintendent, 1 Arizona Memorial Place, Honolulu, HI 9681. 808–490–8078 or via email at *tom_leatherman@nps.gov.*

SUPPLEMENTARY INFORMATION: Pearl Harbor National Memorial plans to collect a parking fee of $7/day ($8/day if through *rec.gov*) beginning in 6 months. Revenue will be used to cover the cost of collections at the park, address the park's deferred maintenance backlog, and provide enhanced visitor services.

These fees were determined by cost comparison of other sites on Oahu and at other National Park Sites. In accordance with NPS public involvement guidelines, the park engaged numerous individuals, organizations, and local, state, and Federal government representatives while planning for the implementation of this fee.

Justin Unger,

Associate Director, Business Services.

[FR Doc. 2022–11393 Filed 5–31–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[DOI–2022–0005; PPWONRADD7/PPMRSNR1Y.NM0000]

Privacy Act of 1974; System of Records

AGENCY: National Park Service, Interior.

ACTION: Notice of a new system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, the Department of the Interior (DOI) is issuing a public notice of its intent to create the National Park Service (NPS) Privacy Act system of records, INTERIOR/NPS–25, Research Permit and Reporting System (RPRS). This system is a service-wide, internet-based system which supports the application, permitting, and reporting processes associated with the NPS Scientific Research and Collecting Permit. The newly established system will be included in DOI's inventory of record systems.

DATES: This new system will be effective upon publication. New routine uses will be effective July 1, 2022. Submit comments on or before July 1, 2022.

ADDRESSES: You may send comments identified by docket number [DOI–2022–0005] by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for sending comments.
- *Email: DOI_Privacy@ios.doi.gov.* Include docket number [DOI–2022–0005] in the subject line of the message.
- *U.S. mail or hand-delivery:* Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW, Room 7112, Washington, DC 20240.

Instructions: All submissions received must include the agency name and docket number [DOI–2022–0005]. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Felix Uribe, Associate Privacy Officer, National Park Service, 12201 Sunrise Valley Drive, Reston, VA 20192, *nps_privacy@nps.gov* or 202–354–6925.

SUPPLEMENTARY INFORMATION:

I. Background

The NPS Office of Natural Resource Information Systems is establishing the INTERIOR/NPS–25, Research Permit and Reporting System (RPRS), system of records. The purpose of the system is to provide a service-wide, internet-based system that supports the application, permitting, and reporting processes associated with the NPS Scientific Research and Collecting Permit. RPRS is a single data system that is served through a central internet website and is hosted within the NPS Integrated Resource Management Application, which provides resource information to parks, partners, and the public. The website enables (1) members of the public to review synopses of the objectives and findings of scientific studies conducted in parks and the types of scientific activities park managers are most interested in attracting; (2) potential investigators to apply and review applications requirements and field work restrictions before applying for permission to conduct a study within a specific unit or units of the NPS; and (3) investigators to provide the required annual Investigator's Annual Report. Information in this system may be shared with individuals who conduct scientific research and collecting activities within the National Park System units and members of the public that are interested in learning about scientific research within the park units. To the extent permitted by law, information may be shared with Federal, state, local, and tribal agencies, and organizations as authorized and compatible with the purpose of this system, or when proper and necessary, consistent with the routine uses set forth in this system of records notice.

II. Privacy Act

The Privacy Act of 1974, as amended, embodies fair information practice principles in a statutory framework governing the means by which Federal agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to records about individuals that are maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying

particular assigned to the individual. The Privacy Act defines an individual as a United States citizen or lawful permanent resident. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DOI by complying with DOI Privacy Act regulations at 43 CFR part 2, subpart K, and following the procedures outlined in the Records Access, Contesting Record, and Notification Procedures sections of this notice.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the existence and character of each system of records that the agency maintains, and the routine uses of each system. The INTERIOR/NPS–25, Research Permit and Reporting System (RPRS), system of records notice is published in its entirety below. In accordance with 5 U.S.C. 552a(r), DOI has provided a report of this system of records to the Office of Management and Budget and to Congress.

III. Public Participation

You should be aware your entire comment including your personally identifiable information, such as your address, phone number, email address, or any other personal information in your comment, may be made publicly available at any time. While you may request to withhold your personally identifiable information from public review, we cannot guarantee we will be able to do so.

SYSTEM NAME AND NUMBER:

INTERIOR/NPS–25, Research Permit and Reporting System (RPRS).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Natural Resource Stewardship and Science, Office of Natural Resource Information Systems, National Park Service, 1201 Oakridge Drive, Fort Collins, CO 80525.

SYSTEM MANAGER(S):

System Manager, Natural Resource Stewardship and Science, Office of Natural Resources Information Systems, National Park Service, 1849 C Street NW, Room 2649, Washington, DC 20240.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

54 U.S.C. 100101, National Park Service Organic Act; 54 U.S.C., Rules and Regulations of National Parks, Reservations, and Monuments; Section 100705—54 U.S.C. 100701–100707, National Parks Omnibus Management Act.

PURPOSE(S) OF THE SYSTEM:

The purpose of the RPRS system is to support the application, permitting, and reporting processes associated with the NPS Scientific Research and Collecting Permit. The system enables members of the public to review synopses of the objectives and findings of permitted scientific studies conducted previously in parks, and search and review the types of scientific activities park managers are most interested in attracting; potential investigators to apply for permission to conduct natural or social science studies within a specific unit of the NPS System and to review permit application requirements and field work restrictions before applying for permission to conduct a study; and investigators granted permission to conduct studies within parks to more easily provide the Investigator's Annual Report.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system include:

(1) Persons who have submitted information in conjunction with applying for a

permit to conduct scientific research and collecting permits within units of the National Park System.

(2) Principal Investigators. The applicant who is a recipient of an NPS Scientific Research and Collecting Permit is considered the Principal Investigator for the permitted study.

(3) Persons identified as Co-investigators by the applicant within the RPRS application, by the permittee in the RPRS Investigator's Annual Report, or in the NPS Scientific Research and Collecting Permit by the park which issues the permit.

(4) NPS staff and contractors conducting scientific research within units of the National Park System.

(5) NPS staff, including Park Research Coordinators who administer park accounts within the RPRS; Superintendents and Curators of parks with RPRS accounts; and park staff responsible for recommending the approval of permit requests.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of the records in the system include:

(1) Park Profile Records. The purpose of these records is to provide information to facilitate interactions between persons applying for or holding an NPS Scientific Research and Collecting Permit and park staff. Park research contact information consists of names of NPS staff or contractors who administer scientific research within park units, and the titles and names of the associated Park Superintendent, Park Personnel Recommending Permit Approvals, Park Personnel Approving Permits, Park Curator name and email address, and Park Research Coordinator contact information including name, business address, business fax number, business phone number, and business email address.

(2) Investigator Profile Records. Information in the records include Investigator name, business phone, alternate phone, business fax, business address, business email address, professional affiliation, and username, password and other information to create an investigator account and authenticate users' access to their records within RPRS.

(3) Application Records. This information is provided by the applicant and is required for a park to review and process the application for a Scientific Research and Collecting Permit. Information includes proposed collections, proposed disposition of collections, including name and business contact information of non-NPS repositories when an applicant proposes to have collections loaned to a non-NPS repository; name, business phone and business email of co-investigators; and other information about the proposed activity for the park to review the application. Additionally, Investigator Profile contact information is entered into the applicant's first application and automatically ported from the profile contact information into the on-line application form when the same applicant subsequently submits new applications. This data consists of business phone number, alternate business or personal phone number, business fax number, business address, and business email address.

(4) Scientific Research and Collecting Permit Records. These records contain profile and contact information on investigators and co-investigators that include name, business phone, business email address, and business institution; Investigator's Annual Report Records that include investigators' and co-investigators' name, business email address, business phone, and business address; and information, such as educational background, qualifications or other information provided by investigators during the application process or in correspondence with park staff.

(5) Field Visit Records. These records contain name of persons conducting a field visit on the permitted scientific research activities within the park, business phone number, vehicle description including license plate

number if a vehicle is used to access the park, location of field visit, length of field visit, and temporary place of residence during a field visit to the park.

RECORD SOURCE CATEGORIES:

Information in the RPRS comes primarily from members of the public applying for a Scientific Research and Collecting Permit, permittees submitting required Investigator's Annual Reports, investigator profile records, and park profile records created by the park staff.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DOI as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including Offices of the U.S. Attorneys, or other Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

(1) DOI or any component of DOI;

(2) Any other Federal agency appearing before the Office of Hearings and Appeals;

(3) Any DOI employee or former employee acting in his or her official capacity;

(4) Any DOI employee or former employee acting in his or her individual capacity when DOI or DOJ has agreed to represent that employee or pay for private representation of the employee; or

(5) The United States Government or any agency thereof, when DOJ determines that DOI is likely to be affected by the proceeding.

B. To a congressional office when requesting information on behalf of, and at the request of, the individual who is the subject of the record.

C. To the Executive Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf, or for a purpose compatible with the reason for which the records are collected or maintained.

D. To any criminal, civil, or regulatory law enforcement authority (whether Federal, state, territorial, local, tribal or foreign) when a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature, and the disclosure is compatible with the purpose for which the records were compiled.

E. To an official of another Federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files or to enable that agency to respond to an inquiry by the individual to whom the record pertains.

F. To Federal, state, territorial, local, tribal, or foreign agencies that have requested information relevant or necessary to the hiring, firing or retention of an employee or contractor, or the issuance of a security clearance, license, contract, grant or other benefit, when the disclosure is compatible with the purpose for which the records were compiled.

G. To representatives of the National Archives and Records Administration (NARA) to conduct records management inspections under the authority of 44 U.S.C. 2904 and 2906.

H. To state, territorial and local governments and tribal organizations to provide information needed in response to court order and/or discovery purposes related to litigation, when the disclosure is compatible with the purpose for which the records were compiled.

I. To an expert, consultant, grantee, or contractor (including employees of the contractor) of DOI that performs services requiring access to these records on DOI's behalf to carry out the purposes of the system.

J. To appropriate agencies, entities, and persons when:

(1) DOI suspects or has confirmed that there has been a breach of the system of records;

(2) DOI has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DOI (including its information systems, programs, and operations), the Federal Government, or national security; and

(3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DOI's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

K. To another Federal agency or Federal entity, when DOI determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in:

(1) Responding to a suspected or confirmed breach; or

(2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

L. To the Office of Management and Budget (OMB) during the coordination and clearance process in connection with legislative affairs as mandated by OMB Circular A–19.

M. To the Department of the Treasury to recover debts owed to the United States.

N. To the news media and the public, with the approval of the Public Affairs Officer in consultation with counsel and the Senior Agency Official for Privacy, where there exists a legitimate public interest in the disclosure of the information, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

O. To members of the public to provide park contact information to facilitate communication with persons interested in conducting scientific research activities and to provide access to published Investigator's Annual Reports for the purpose of learning about scientific research in NPS units.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

RPRS records reside on servers located in secure server rooms and are accessed only by authorized personnel pursuant to Departmental privacy policies and procedures. A quarterly copy of the RPRS data backup is stored in a permanent repository. Paper copies of RPRS records may be contained in the NPS Washington, regional, field and park offices and stored in file cabinets. NPS park offices may access, retrieve, and store a copy of the RPRS data within the individual park.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Information from the RPRS is retrievable by names of Investigators who are Applicant/Permit holders, co-investigators; business contact information of the individual (*i.e.,* email address, phone number); application number or title; permit number, study title, subject or type of study, study number; and Investigator's Annual Report permit number or study title and investigator's name.

NPS staff and contractors who are on the NPS network may query RPRS application, permit and Investigator's Annual Report data, and park profile data. The public access is limited to park profile data and Investigator's Annual Report data. In addition, members of the public who have

entered a park profile into the system may review their own profile data.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records in this system are retained in accordance with the NPS Records Schedule for Resource Management and Lands (Item 1), which has been approved by NARA (Job No. N1–79–08–1) for records documenting the acquisition, planning, management, and protection of lands and natural and cultural resources under the stewardship of NPS. The disposition of the RPRS data set has a permanent retention.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to records in the RPRS system is limited to authorized personnel who have a need to access the records in the performance of their official duties, and each user's access is restricted to only the functions and data necessary to perform that person's job responsibilities. System administrators and authorized users are trained and required to follow established internal security protocols and must complete all security, privacy, and records management training and sign the DOI Rules of Behavior.

The records contained in this system are safeguarded in accordance with 43 CFR 2.226 and other applicable security and privacy rules and policies. During normal hours of operation, paper records are maintained in locked file cabinets under the control of authorized personnel. Computer servers on which RPRS electronic records are stored are in a secured DOI controlled facility with physical, technical, and administrative levels of security to prevent unauthorized access to the DOI network and information assets. The electronic data are protected through techniques of user identification, passwords, database permissions and software controls. These security measures include establishing different access levels for different types of users. Backup tapes are encrypted and stored in a locked and controlled room in a secure, off-site location.

Computerized records systems follow the National Institute of Standards and Technology privacy and security standards as developed to comply with the Privacy Act of 1974, as amended, 5 U.S.C. 552a; Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.;* Federal Information Security Modernization Act of 2014, 44 U.S.C. 3551 *et seq.;* and the Federal Information Processing Standards 199: Standards for Security Categorization of Federal Information and Information Systems. Security controls include user identification, passwords, database permissions, encryption, firewalls, audit logs, and network system security monitoring, and software controls.

Investigator's Annual Report submissions are checked in and reviewed to prevent disclosure of content that may impact park resources and operations. Access to NPS specific permissions in the RPRS are limited to authorized NPS users. NPS security features restricted access to that data which is identified as not suitable for public access to NPS employees and authorized NPS contractors.

NPS staff are provided permission to view all RPRS data except for unpublished Investigator's Annual Reports. Park account data is limited to that data which relates to a single unit of the National Park System (*i.e.,* park profile information, applications submitted to the unit, permits issued by the unit, Investigator's Annual Reports related to permits issued by the unit, unit specific administrative data). Access to park accounts is limited to persons designated by the Park Superintendent. Administrative accounts provide permissions to administrate park account data as appropriate for the administrator's role of providing permissions to authorized individuals, and access to query or process the service-wide data. RPRS provides a help desk to disseminate information on security and privacy policies applicable to RPRS. NPS staffs are required to take an annual training session on privacy and records management and an annual training session on security. A Privacy Impact Assessment was conducted to ensure that Privacy Act requirements are met and appropriate privacy controls were implemented to safeguard the personally identifiable information contained in the system.

RECORD ACCESS PROCEDURES:

An individual requesting records on himself or herself should send a signed, written inquiry to the applicable System Manager identified above. The request must include the specific bureau or office that maintains the record to facilitate location of the applicable records. The request envelope and letter should both be clearly marked ''PRIVACY ACT REQUEST FOR ACCESS.'' A request for access must meet the requirements of 43 CFR 2.238.

CONTESTING RECORD PROCEDURES:

An individual requesting corrections or the removal of material from his or her records should send a signed, written request to the applicable System Manager as identified above. The request must include the specific bureau or office that maintains the record to facilitate location of the applicable records. A request for corrections or removal must meet the requirements of 43 CFR 2.246.

NOTIFICATION PROCEDURES:

An individual requesting notification of the existence of records on himself or herself should send a signed, written inquiry to the applicable System Manager as identified above. The request must include the specific bureau or office that maintains the record to facilitate location of the applicable records. The request envelope and letter should both be clearly marked ''PRIVACY ACT INQUIRY.'' A request for notification must meet the requirements of 43 CFR 2.235.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

Teri Barnett,

Departmental Privacy Officer, Department of the Interior.

[FR Doc. 2022–11394 Filed 5–31–22; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–564 and 731–TA–1338–1340 (Review)]

Steel Concrete Reinforcing Bar From Japan, Taiwan, and Turkey; Institution of Five-Year Reviews

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the countervailing duty order on steel concrete reinforcing bar (''rebar'') from Turkey and revocation of the antidumping duty orders on rebar from Japan, Taiwan, and Turkey would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted June 1, 2022. To be assured of consideration, the deadline for responses is July 1, 2022. Comments

on the adequacy of responses may be filed with the Commission by August 15, 2022.

FOR FURTHER INFORMATION CONTACT: Stamen Borisson (202–205–3125), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On July 14, 2017, the Department of Commerce (''Commerce'') issued a countervailing duty order on imports of rebar from Turkey (82 FR 32531) and antidumping duty orders on imports of rebar from Japan and Turkey (82 FR 32532). On October 2, 2017, Commerce issued an antidumping duty order on imports of rebar from Taiwan (82 FR 45809). The Commission is conducting reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Countries* in these reviews are Japan, Taiwan, and Turkey.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, the Commission defined a single *Domestic Like Product* as consisting of rebar that is coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the *Domestic Industry* as all U.S. producers of rebar.

(5) The *Order Dates* are the dates that the orders under review became effective. In these reviews, the *Order Dates* are July 14, 2017 with respect to the orders on imports of rebar from Japan and Turkey and October 2, 2017 with respect to the order on imports of rebar from Taiwan.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding 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, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is July 1, 2022. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should

conduct expedited or full reviews. The deadline for filing such comments is August 15, 2022. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at 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.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 22–5–531, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information to be Provided in Response to This Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in § 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date.*

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2021, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country,* provide the following information on your firm's(s') operations on that product during

calendar year 2021 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2021 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* since the *Order Date,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: May 25, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–11628 Filed 5–31–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–552 and 731–TA–1308 (Review)]

Certain New Pneumatic Off-the-Road Tires From India; Notice of Commission Determination To Conduct Full Five-Year Reviews

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to the Tariff Act of 1930 to determine whether revocation of the antidumping and countervailing duty orders on new pneumatic off-the-road tires from India would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date.

DATES: May 9, 2022.

FOR FURTHER INFORMATION CONTACT: Ahdia Bavari (202–205–3191), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

SUPPLEMENTARY INFORMATION: On May 9, 2022, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)). The Commission found that both the domestic and respondent interested party group responses to its notice of institution (87 FR 5505, February 1, 2022) were adequate. A record of the Commissioners' votes will be available from the Office of the Secretary and at the Commission's website.

Authority: These reviews is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: May 25, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–11642 Filed 5–31–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–461 (Fifth Review)]

Gray Portland Cement and Cement Clinker From Japan; Institution of a Five-Year Review

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty order on gray portland cement and cement clinker from Japan would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted June 1, 2022. To be assured of consideration, the deadline for responses is July 1, 2022. Comments on the adequacy of responses may be filed with the Commission by August 15, 2022.

FOR FURTHER INFORMATION CONTACT: Nitin Joshi (202–708–1669), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On May 10, 1991, the Department of Commerce (''Commerce'') issued an antidumping duty order on imports of gray portland cement and cement clinker from Japan (56 FR 21658). Commerce issued a continuation of the antidumping duty order on gray portland cement and cement clinker from Japan following Commerce's and the Commission's first five-year reviews, effective November 15, 2000 (65 FR 68979), second five-year reviews, effective June 16, 2006 (71 FR 34892), third five-year reviews, effective December 16, 2011 (76 FR 78240), and fourth five-year reviews, effective July 17, 2017 (82 FR 32682). The Commission is now conducting a fifth review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by Commerce.

(2) The *Subject Country* in this review is Japan.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination, its full first five-year review determination, and its expedited second, third, and fourth five-year review determinations, the Commission defined a single *Domestic Like Product* consisting of gray portland cement and cement clinker coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the *Domestic Industry* as producers of gray portland cement and cement clinker, including ''grinding only'' operations. The Commission also concluded in its original determination, its full first five-year review determination, and its expedited second, third, and fourth five-year review determinations that appropriate circumstances existed for a regional industry analysis. In the original investigation, the Commission considered whether the Southern California region, as proposed by the petitioners, or a larger region, the State of California, was the appropriate region. In its original determination, the Commission determined that both regions satisfied the market isolation criteria but found the more appropriate region for its analysis was Southern California; one Commissioner found the regional industry to consist of producers in the State of California. In its full first five-year review determination, the Commission found that there had been integration of the Northern and Southern regions of California and defined the appropriate region as the State of California. The Commission also determined that the record in its expedited second, third, and fourth five-year reviews supported a finding of a regional industry corresponding to the region of the State of California. For purposes of this notice, you should report information separately on each of the following *Domestic Industries:* (1) Producers of gray portland cement and cement clinker, including ''grinding only'' operations, located in the State of California and (2) producers of gray portland cement and cement clinker, including ''grinding only'' operations, located in the United States as a whole. Additionally, this notice uses the term *Domestic Market Area* to describe the area served by each *Domestic Industry.* Consequently, for purposes of this notice there are two *Domestic Market Areas:* (1) The State of California and (2) the United States.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying

investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding 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, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is July 1, 2022. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is August 15, 2022. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at 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.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 22–5–530, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

Information to be Provided in Response to This Notice of Institution: Please provide the requested information separately for each *Domestic Industry,* as previously defined in this notice, and, as applicable, its corresponding *Domestic Market Area.* As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandi*se, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of

the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2015.

(7) A list of 3–5 leading purchasers in each *Domestic Market Area* for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product in each *Domestic Market Area* during calendar year 2021, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2021 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports into each *Domestic Market Area* and, if known, an estimate of the percentage of total U.S. imports into each *Domestic Market Area* of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments into each *Domestic Market Area* of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers into each *Domestic Market Area* of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2021 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in each *Domestic Market Area* or in the market for the *Subject Merchandise* in the *Subject Country* after 2015, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: May 25, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–11627 Filed 5–31–22; 8:45 am]

BILLING CODE 7020–02–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Appraisals

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and request for comment.

SUMMARY: The National Credit Union Administration (NCUA), as part of a continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the following extension of a currently approved collection, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments should be received on or before August 1, 2022 to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments on the information collection to Dawn Wolfgang, National Credit Union Administration, 1775 Duke Street, Suite 6032, Alexandria, Virginia 22314; email at *PRAComments@NCUA.gov.* Given the limited in-house staff because of the COVID–19 pandemic, email comments are preferred.

FOR FURTHER INFORMATION CONTACT: Address requests for additional information to Dawn Wolfgang at the address above or telephone 703–548–2279.

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0125.

Title: Appraisals, 12 CFR 722.

Type of Review: Extension of a currently approved collection.

Abstract: Title XI of the Financial Institutions, Reform, Recovery and Enforcement Act of 1989 (FIRREA) was enacted to protect federal financial and public policy interests in real estate related transactions. To achieve this purpose, the statute directed the National Credit Union Administration (NCUA), as one of the federal financial institutions regulatory agencies, to adopt standards for the performance of real estate appraisals in connection with federally related transactions. The FIRREA requires that appraisals be maintained in writing and meet certain minimum standards. The NCUA regulation Part 722 carries out the statutory requirements. The information collection activity requires a credit union to obtain a written appraisal on federally related transactions or maintain written support of the estimated market value for certain other transactions not required to have an appraisal. These information collections are attributable to the regulation and are a direct consequence of the legislative intent and statutory requirements.

Federally insured credit unions (FICU) use the information in determining whether and upon what terms to enter into a federally related transaction, such as making a loan secured by real estate. In addition, NCUA uses this information in its examinations of FICUs to ensure that extensions of credit by the FICU that are collateralized by real estate are undertaken in accordance with appropriate safety and soundness principles. The use of their information by credit unions and NCUA helps ensure that FICUs are not exposed to risk of loss from inadequate appraisals or written estimates of market value.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated No. of Respondents: 3,365.

Estimated No. of Responses per Respondent: 618.

Estimated Total Annual Responses: 2,079,707.

Estimated Burden Hours per Response: 0.083.

Estimated Total Annual Burden Hours: 173,309.

Reason for Change: An increase of 36,211 burden hours is the result of an adjustments. The number of FICUs have decreased since the previous submission, but the number of real estate loans have increased, thus an increase in the number of responses per respondent.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit comments concerning: (a) Whether the collection of information is necessary for the proper execution of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of the information on the respondents, including the use of automated collection techniques or other forms of information technology.

By Melane Conyers-Ausbrooks, Secretary of the Board, the National Credit Union Administration, on May 25, 2022.

Dated: May 26, 2022.

Dawn D. Wolfgang,

NCUA PRA Clearance Officer.

[FR Doc. 2022–11702 Filed 5–31–22; 8:45 am]

BILLING CODE 7535–01–P

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

Submission for Review: Financial Disclosure Form (SF–714)

AGENCY: Office of the Director of National Intelligence.

ACTION: 30-Day notice of request for extension of the SF–714.

The Personnel Security Group, Special Security Directorate, National Counterintelligence and Security Center, Office of the Director of National Intelligence (ODNI) offers notification of the request for extension to an existing information collection request (ICR) SF–714. This request is for an extension of the expiration date of the current SF–714 for an additional three years. As required by the Paperwork Reduction Act of 1995, as amended by the Clinger-Cohen Act, ODNI solicited comments for this collection during a 60 day **Federal Register** posting. No public comments were received during the 60 day posting. However, comments were received from ODNI internal review that, while non-substantive to the contents of the form, led to minor corrections in the Privacy Act Statement. Comments in regard to this request for extension can be sent to the Office of Management and Budget, who is particularly interested in comments that:

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 submissions of responses.

DATES: Comments are encouraged and will be accepted until July 1, 2022. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to OMB.

SUPPLEMENTARY INFORMATION: In December 2011, the ODNI accepted responsibility from the Information Security Oversight Office (ISOO) to manage the continuation in existence of Standard Form 714: Financial Disclosure Report, in accordance with the responsibilities assigned to the Director of National Intelligence (DNI) as Security Executive Agent for all departments and agencies of the U.S. Government. Pursuant to the responsibilities assigned to the Director of National Intelligence as the Security Executive Agent under Executive Order 13467, Executive Order 12968, and Section 803 of the National Security Act (50 U.S.C. 3162a), the SF–714 collects information that is used to assist in making determinations regarding access to specifically designated types of classified information. The information will be used to help make personnel security determinations, including whether to grant a security clearance; to allow access to classified information, sensitive areas, and equipment; or to permit assignment to sensitive national security positions. The data may later be used as part of a review process to evaluate continued eligibility for access to classified information or as evidence in legal proceedings.

The renewal notice was posted in the **Federal Register** for 60 days, from November 30, 2021 to January 31, 2022 for public comment. No public comments were received during that period.

Analysis

Agency: Personnel Security Group, Special Security Directorate, the National Counterintelligence and Security Center, Office of the Director of National Intelligence.

Title: Financial Disclosure Report.

OMB Number: 3095–0058.

Agency Form Number: SF–714.

Frequency: Annually.

Affected Public: Individuals or Households.

Number of Respondents: 86,000.

Estimated Time per Respondent: 120 minutes.

Total Burden Hours: 172,000 annually.

Office of the Director of National Intelligence.

Dated: May 27, 2022.

Gregory Koch,

Director, Information Management Office.

[FR Doc. 2022–11845 Filed 5–31–22; 8:45 am]

BILLING CODE 9500–01–P–P

NUCLEAR REGULATORY COMMISSION

[NRC–2021–0149]

Information Collection: Operators' Licenses

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''Operators' Licenses.''

DATES: Submit comments by July 1, 2022. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301 415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2021–0149 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0149.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession Nos. ML21222A098 and ML21222A099. The supporting statement is available in ADAMS under Accession No. ML22074A231.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, ''10 CFR part 55, Operators' Licenses.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on February 1, 2022, 87 FR 5519.

1. *The title of the information collection:* ''10 CFR part 55, Operators' Licenses.''
2. *OMB approval number:* 3150–0018.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* Not applicable.
5. *How often the collection is required or requested:* As necessary for the NRC to meet its responsibilities to determine the eligibility for applicants and operators.
6. *Who will be required or asked to respond:* Holders of, and applicants for, facility (*i.e.,* nuclear power and non-power research and test reactor) operating licenses and individual operator licensees.
7. *The estimated number of annual responses:* 437 (345 reporting responses + 92 recordkeepers).
8. *The estimated number of annual respondents:* 92.
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 170,928 hours (149,619 hours reporting + 21,309 hours recordkeeping).
10. *Abstract:* Part 55 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Operators' Licenses,'' specifies information and data to be provided by applicants and facility licensees so that the NRC may make determinations concerning the licensing and requalification of operators for nuclear reactors, as necessary to promote public health and safety. The reporting and recordkeeping requirements contained in 10 CFR part 55 are mandatory for the affected facility licensees and applicants. In addition, the information collection includes two online forms for requesting exemptions from requirements for Part 55 Exemption Request and Part 55 Research and Test Reactor Exemption Request related to the COVID–19 Public Health Emergency (PHE). The information collected by the online form is the minimum needed by NRC to make a determination on the acceptability of the licensee's request for an exemption.

Dated: May 25, 2022.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2022–11674 Filed 5–31–22; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2021–0150]

Information Collection: NRC Form 396, ''Certification of Medical Examination by Facility Licensee''

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, NRC Form 396, ''Certification of Medical Examination by Facility Licensee.''

DATES: Submit comments by July 1, 2022. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2021–0150 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0150.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML21214A180. The supporting statement is available in ADAMS under Accession No. ML22075A123.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, NRC Form 396, ''Certification of Medical Examination by Facility Licensee.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on February 1, 2022, 87 FR 5520.

1. *The title of the information collection:* NRC Form 396, ''Certification of Medical Examination by Facility Licensee.''

2. *OMB approval number:* 3150–0024.

3. *Type of submission:* Extension.

4. *The form number, if applicable:* NRC Form 396.

5. *How often the collection is required or requested:* Upon application for an initial or upgrade license; every 6 years for the renewal of an operator or senior operator license, and notices of disability that occur during licensed tenure.

6. *Who will be required or asked to respond:* Facility licensees who are tasked with certifying the medical fitness or operator licensee.

7. *The estimated number of annual responses:* 1,650.

8. *The estimated number of annual respondents:* 128.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 2063 hours (1650 Reporting hours plus 413 Recordkeeping hours).

10. *Abstract:* NRC Form 396 is used to transmit information to the NRC regarding the medical condition of applicants for initial operator licenses or renewal of operator licenses and for the maintenance of medical records for all licensed operators. The information is used to determine whether the physical condition and general health of applicants for operator licensees is such that the applicant would not be expected to cause operational errors and endanger public health and safety.

Dated: May 25, 2022.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2022–11672 Filed 5–31–22; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0001]

Sunshine Act Meetings

TIME AND DATE: Week of May 30, 2022. The schedule for Commission meetings is subject to change on short notice. The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

PLACE: The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

STATUS: Public.

Members of the public may request to receive the information in these notices electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at *Wendy.Moore@nrc.gov* or *Betty.Thweatt@nrc.gov.*

MATTERS TO BE CONSIDERED:

Week of May 30, 2022

Friday, June 3, 2022

9:55 a.m. Affirmation Session (Tentative)

(a) Florida Power & Light Company (Turkey Point Nuclear Generating Units 3 and 4), Follow-Up Order to CLI–22–2 (Tentative)

(b) Constellation Energy Generation, LLC (f/k/a Exelon Generation Co., LLC) (Peach Bottom Atomic Power Station Units 2 and 3), Follow-Up Order to CLI–22–4 (Tentative)

(Contact: Wesley Held: 301–287–3591)

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/.*

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at *Wesley.Held@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: May 27, 2022.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2022–11843 Filed 5–27–22; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2021–0151]

Information Collection: NRC Form 398, ''Personal Qualification Statement—Licensee''

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, NRC Form 398, ''Personal Qualification Statement—Licensee.''

DATES: Submit comments by July 1, 2022. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer,

U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2021–0151 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0151.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML21214A220. The supporting statement is available in ADAMS under Accession No. ML22075A101.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, NRC Form 398, ''Personal Qualification Statement—Licensee.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on February 1, 2022, 87 FR 5522.

1. *The title of the information collection:* NRC Form 398, ''Personal Qualification Statement—Licensee''.
2. *OMB approval number:* 3150–0090.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* NRC Form 398.
5. *How often the collection is required or requested:* Upon application for an initial or upgrade operator license and every 6 years for the renewal of operator or senior operator licenses.
6. *Who will be required or asked to respond:* Facility licensees who are tasked with certifying that the applicants and renewal operators are qualified to be licensed as reactor operators and senior reactor operators.
7. *The estimated number of annual responses:* 1,018.
8. *The estimated number of annual respondents:* 1,018.
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 5,252.
10. *Abstract:* NRC Form 398 is used to transmit detailed information required to be submitted to the NRC by a facility licensee on each applicant applying for new and upgraded licenses or license renewals to operate the controls at a nuclear reactor facility. This information is used to determine that each applicant or renewal operator seeking a license or renewal of a license is qualified to be issued a license and that the licensed operator would not be expected to cause operational errors and endanger public health and safety.

Dated: May 25, 2022.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2022–11673 Filed 5–31–22; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Virtual Public Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice.

According to the provisions of section 10 of the Federal Advisory Committee Act notice is hereby given that a virtual meeting of the Federal Prevailing Rate Advisory Committee will be held on Thursday, June 16, 2022. There will be no in-person gathering for this meeting.

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal prevailing rate employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public. Reports for calendar years 2008 to 2019 are posted at *http://www.opm.gov/fprac.* Previous reports are also available, upon written request to the Committee.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee at Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 7H31, 1900 E Street NW, Washington, DC 20415, (202) 606–2858.

DATES: The virtual meeting will be held on June 16, 2022, beginning at 10:00 a.m. (EST).

ADDRESSES: The meeting will convene virtually.

FOR FURTHER INFORMATION CONTACT: Ana Paunoiu, 202–606–2858, or email *pay-leave-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: This meeting is open to the public, with an audio option for listening. This notice sets forth the agenda for the meeting and the participation guidelines.

Meeting Agenda. The tentative agenda for this meeting includes the following Federal Wage System items:

- The definition of Monroe County, PA
- The definition of San Joaquin County, CA
- The definition of the Salinas-Monterey, CA, wage area
- The definition of the Puerto Rico wage area

Public Participation: The June 16, 2022, meeting of the Federal Prevailing Rate Advisory Committee is open to the public through advance registration. Public participation is available for the meeting. All individuals who plan to attend the virtual public meeting to listen must register by sending an email to *pay-leave-policy@opm.gov* with the subject line ''June 16 FPRAC Meeting'' no later than Tuesday, June 14, 2022.

The following information must be provided when registering:

- Name.
- Agency and duty station.
- Email address.
- Your topic of interest.

Members of the press, in addition to registering for this event, must also RSVP to *media@opm.gov* by June 14, 2022.

A confirmation email will be sent upon receipt of the registration. Audio teleconference information for participation will be sent to registrants the morning of the virtual meeting.

Office of Personnel Management.

Stephen Hickman,

Federal Register Liaison.

[FR Doc. 2022–11671 Filed 5–31–22; 8:45 am]

BILLING CODE P

POSTAL REGULATORY COMMISSION

[Docket No. CP2021–59]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 3, 2022.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s):* CP2021–59; *Filing Title:* USPS Notice of Amendment to Priority Mail & First-Class Package Service Contract 186, Filed Under Seal; *Filing Acceptance Date:* May 25, 2022; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* June 3, 2022.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2022–11739 Filed 5–31–22; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2022–66; Order No. 6184]

Inbound Parcel Post (at UPU Rates)

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is recognizing a recent Postal Service filing of a change in rates not of general applicability to be effective July 1, 2022. This document informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 2, 2022.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

On May 23, 2022, the Postal Service filed notice announcing its intention to change prices not of general applicability for Inbound Parcel Post (at Universal Postal Union (UPU) Rates) effective July 1, 2022.[1]

II. Contents of Filing

With the Notice, the Postal Service filed: A redacted copy of the UPU International Bureau (IB) Circular 49 that contains the new provisional prices,[2] a copy of the certification required under 39 CFR 3035.105(c)(2), redacted Postal Service data used to justify any bonus payments, a redacted copy of Governors' Decision No. 19–1, and a redacted copy of UPU IB Circular 92, which contains information for a prior period to support the Postal Service's contentions about cost coverage. Notice at 2–3; *see id.* Attachments 2–6. The Postal Service also filed redacted Excel versions of financial workpapers. Notice at 3.

Additionally, the Postal Service filed an unredacted copy of Governors' Decision No. 19–1, an unredacted copy of the new prices, and related financial information under seal. *See id.* at 2. The Postal Service also filed an application for non-public treatment of materials filed under seal. Notice, Attachment 1.

The Postal Service states that it has provided supporting documentation as required by Order No. 2102 and Order No. 2310.[3] In addition, the Postal Service states that it provided citations and copies of relevant UPU IB Circulars and updates to inflation-linked adjustments. Notice at 7.

III. Commission Action

The Commission establishes Docket No. CP2022–66 for consideration of matters raised by the Notice.

The Commission invites comments on whether the Postal Service's filing is consistent with 39 U.S.C. 3632–3633, and 39 CFR part 3035. Comments are due no later than June 2, 2022. The public portions of the filing can be accessed via the Commission's website (*http://www.prc.gov*).

The Commission appoints Kenneth R. Moeller to serve as Public Representative in this docket.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2022–66 for consideration of the matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, Kenneth R. Moeller is appointed to serve as an officer of the Commission to represent the interests of the general public in this proceeding (Public Representative).

3. Comments are due no later than June 2, 2022.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2022–11708 Filed 5–31–22; 8:45 am]

BILLING CODE 7710–FW–P

[1] Notice of the United States Postal Service of Filing Changes in Rates Not of General Applicability for Inbound Parcel Post (at UPU Rates), and Application for Non-Public Treatment, May 23, 2022, at 1 (Notice).

[2] The Postal Service explains that the prices are provisional because it expects the Postal Operations Council (POC) to issue revised rates in a re-issued circular during June of 2022. Notice at 3–4. The Postal Service does not anticipate the revised rates to differ from the rates submitted with the Notice. *Id.* at 4.

[3] Notice at 4–5. *See* Docket No. CP2014–52, Order Accepting Price Changes for Inbound Air Parcel Post (at UPU Rates), June 26, 2014, at 6 (Order No. 2102); Docket No. CP2015–24, Order Accepting Changes in Rates for Inbound Parcel Post (at UPU Rates), December 29, 2014, at 4 (Order No. 2310).

RAILROAD RETIREMENT BOARD

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., June 8, 2022.

PLACE: Members of the public wishing to attend the meeting must submit a written request at least 24 hours prior to the meeting to receive dial-in information. All requests must be sent to *SecretarytotheBoard@rrb.gov.*

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

1. SCOTUS Update
2. Disposition of Current Matters with Two Concurring Votes
3. FY 22 Hiring Progress
4. Legislative Report from Office of Legislative Affairs

CONTACT PERSON FOR MORE INFORMATION: Stephanie Hillyard, Secretary to the Board, (312) 751–4920.

Authority: 5 U.S.C. 552b.

Dated: May 26, 2022.

Stephanie Hillyard,

Secretary to the Board.

[FR Doc. 2022–11793 Filed 5–27–22; 11:15 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–217, OMB Control No. 3235–0241]

Proposed Collection; Comment Request; Extension: Rule 206(4)–2

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 206(4)–2 (17 CFR 275.206(4)–2) under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*) governs the custody of funds or securities of clients by Commission-registered investment advisers. Rule 206(4)–2 requires each registered investment adviser that has custody of client funds or securities to maintain those client funds or securities with a broker-dealer, bank or other ''qualified custodian.'' [1] The rule requires the adviser to promptly notify clients as to the place and manner of custody, after opening an account for the client and following any changes.[2] If an adviser sends account statements to its clients, it must insert a legend in the notice and in subsequent account statements sent to those clients urging them to compare the account statements from the custodian with those from the adviser.[3] The adviser also must have a reasonable basis, after due inquiry, for believing that the qualified custodian maintaining client funds and securities sends account statements directly to the advisory clients at least quarterly, identifying the amount of funds and of each security in the account at the end of the period and setting forth all transactions in the account during that period.[4] The client

[1] Rule 206(4)–2(a)(1).

[2] Rule 206(4)–2(a)(2).

[3] Rule 206(4)–2(a)(2).

[4] Rule 206(4)–2(a)(3).

funds and securities of which an adviser has custody must undergo an annual surprise examination by an independent public accountant to verify client assets pursuant to a written agreement with the accountant that specifies certain duties.[5] Unless client assets are maintained by an independent custodian (*i.e.,* a custodian that is not the adviser itself or a related person), the adviser also is required to obtain or receive a written report of the internal controls relating to the custody of those assets from an independent public accountant that is registered with and subject to regular inspection by the Public Company Accounting Oversight Board (''PCAOB'').[6]

The rule exempts advisers from the rule with respect to clients that are registered investment companies. Advisers to limited partnerships, limited liability companies and other pooled investment vehicles are excepted from the account statement delivery and deemed to comply with the annual surprise examination requirement if the limited partnerships, limited liability companies or pooled investment vehicles are subject to annual audit by an independent public accountant registered with, and subject to regular inspection by the PCAOB, and the audited financial statements are distributed to investors in the pools.[7] The rule also provides an exception to the surprise examination requirement for advisers that have custody solely because they have authority to deduct advisory fees from client accounts,[8] and advisers that have custody solely because a related person holds the adviser's client assets (or has any authority to obtain possession of them) and the related person is operationally independent of the adviser.[9]

Advisory clients use this information to confirm proper handling of their accounts. The Commission's staff uses the information obtained through this collection in its enforcement, regulatory and examination programs. Without the information collected under the rule, the Commission would be less efficient and effective in its programs and clients would not have information valuable for monitoring an adviser's handling of their accounts.

The respondents to this information collection are investment advisers registered with the Commission and have custody of clients' funds or securities. We estimate that 8,057 advisers would be subject to the information collection burden under rule 206(4)–2. The number of responses under rule 206(4)–2 will vary considerably depending on the number of clients for which an adviser has custody of funds or securities, and the number of investors in pooled investment vehicles that the adviser manages. It is estimated that the average number of responses annually for each respondent would be 6,830, and an average time of 0.00524 hour per response. The annual aggregate burden for all respondents to the requirements of rule 206(4)–2 is estimated to be 288,202 hours.

The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication by August 1, 2022.

Please direct your written comments to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: May 25, 2022

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–11663 Filed 5–31–22; 8:45 am]

BILLING CODE 8011–01–P

[5] Rule 206(4)–2(a)(4).

[6] Rule 206(4)–2(a)(6).

[7] Rule 206(4)–2(b)(4).

[8] Rule 206(4)–2(b)(3).

[9] Rule 206(4)–2 (b)(6).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94980; File No. SR–ICC–2022–003]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the ICC Governance Playbook

May 25, 2022.

I. Introduction

On April 4, 2022, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4,[2] a proposed rule change to revise the ICC Governance Playbook.[3] The proposed rule change was published for comment in the **Federal Register** on April 12, 2022.[4] The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

A. Background

The ICC Governance Playbook consolidates governance arrangements set forth in ICC's Rules, operating agreement, and other ICC policies and procedures. The Governance Playbook contains information regarding the governance structure at ICC, including the Board, committees, and management.

B. Changes to the Governance Playbook

The proposal would make clarifications and updates regarding the roles and responsibilities of the ICC Legal Department and internal committees involved in the governance process.[5] Specifically, the proposal would amend Section I of the Governance Playbook, which describes the purpose of the document, to state that the ICC Legal Department will review and amend the Governance Playbook as needed when there are circumstances that may impact the governance procedures of ICC, such as

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Capitalized terms used but not defined herein have the meanings specified in the Rules and Governance Playbook.

[4] Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the ICC Governance Playbook; Exchange Act Release No. 34–94616 (Apr. 6, 2022), 87 FR 21687 (Apr. 12, 2022) (SR–ICC–2022–003) (''Notice'').

[5] The description that follows is substantially excerpted from the Notice, 87 FR at 21687–21688.

regulatory changes or changes in ICC's structure or practices.

The proposal would also amend Section III.H, which contains information on disclosures that ICC is required to make to regulators, Clearing Participants, and the public. ICC maintains a public Disclosure Framework that describes its material rules, policies, and procedures regarding its legal, governance, risk management, and operating framework. The proposal would add additional details on the process of updating this Disclosure Framework. Specifically, the proposed rule changes would amend this section to state that the Legal Department would determine when changes to the Disclosure Framework are necessary and that it will update the document every two years or more frequently as necessary. Additionally, the proposal would revise Section III.H to include regulations applicable to Disclosure Framework updates, a related change to spell out an abbreviated term for consistency, and to define what constitutes a material change that would require a Disclosure Framework update. Finally, the proposal would revise this section to incorporate procedures for reporting Disclosure Framework changes pursuant to applicable regulations.

The proposal would also amend Section IV of the Governance Playbook, which discusses various committees. Specifically, the proposal would update the description of the membership composition of the Steering Committee by including amended titles and positions in order to be consistent with the membership composition set out in the Steering Committee's charter, and removing outdated information regarding the Steering Committee's membership from the Governance Playbook. The Steering Committee continues to review, approve and oversee the implementation of CDS product launches and initiatives.

Additionally, the proposal would add a section discussing the CDS Service Review committee, including its description, membership composition, meeting frequency, and relevant documents. According to ICC, this is not a new committee. Its purpose is to discuss and review the status of active ICC initiatives to report on the delivery process and technology delivery-related activities (*e.g.,* development, testing), and its proposed addition to the Governance Playbook is for transparency and completeness in order to ensure that the Governance Playbook includes all groups relevant to ICC's governance process.[6]

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the 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 Act and the rules and regulations thereunder applicable to such organization.[7] For the reasons discussed below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[8] and Rules 17Ad-22(e)(2)(i) and Rule 17Ad–22(e)(23)(v).[9]

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICC be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions.[10] Based on its review of the record, and for the reasons discussed below, the Commission believes the proposed changes to the Governance Playbook are consistent with the promotion of the prompt and accurate clearance and settlement of transactions at ICC.

As noted above, the proposed rule change would make clarifications and updates regarding the roles and responsibilities of the ICC Legal Department and internal committees involved in its governance processes. Specifically, the proposal would amend Section I of the Governance Playbook, which describes the purpose of the document, to state that ICC's Legal Department will review and amend the Governance Playbook as needed when there are circumstances that may impact the governance procedures of ICC, such as regulatory changes or changes in ICC's structure or practices. Further, as noted above, the proposed changes would amend Section III.H to include additional details on the process of updating the public Disclosure Framework and cite related regulatory requirements for doing so.

The Commission believes that the changes to sections I and III.H would enhance the effectiveness of ICC's governance documents by ensuring that users of the Governance Playbook are aware of who is responsible for reviewing and amending the Governance Playbook and the circumstances necessitating such amendments. Likewise, the Commission believes that by including additional details on the process of updating the Disclosure Framework along with citations to related regulatory requirements for doing so, the proposed rule change would enhance the ability of users of the Governance Playbook to carry out their duties. The Commission believes that this in turn will provide clear governance arrangements that support ICC's compliance with relevant regulations and procedures, thereby helping ICC maintain effective risk management processes to promote the prompt and accurate clearance of settlement and securities transactions and derivative agreements, contracts and transactions cleared by ICC.

Additionally, as noted above, the proposal would update the membership composition of the Steering Committee by including amended titles and new positions and removing outdated information regarding the Steering Committee's membership composition from the Governance Playbook. The Commission believes that these updates help the Board, as well as ICC's management, employees, and members, to be updated on the roles and responsibilities of ICC officers, committees and subcommittees. As noted above, the proposal would also incorporate into the Governance Playbook information (its description, membership composition, meeting frequency, and relevant documents) about a current committee, the CDS Service Review committee. The Commission believes that by including information about an existing governing committee in the Governance Playbook, the proposal would support ICC's ability to carry out duties related to active ICC initiatives. Taken together, the Commission believes that these changes to committee information could support ICC's ability to manage product launches and other active initiatives and therefore facilitate ICC's ability to provide clearing services that are supported by clear risk management processes that promote the prompt and accurate clearance of settlement and securities transactions and derivative agreements, contracts and transactions cleared by ICC.

For the reasons stated above, the Commission therefore believes that the

[6] *See* Notice 87 FR at 21688.

[7] 15 U.S.C. 78s(b)(2)(C).

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 17 CFR 240.17Ad–22(e)(2)(i) and 17 CFR 240.17Ad–22(e)(23)(v).

[10] 15 U.S.C. 78q–1(b)(3)(F).

proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.[11]

B. Consistency With Rule 17Ad–22(e)(2)(i)

Rules 17Ad–22(e)(2)(i) requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to, as applicable, provide for governance arrangements that are clear and transparent.[12] As described above, the proposed changes more clearly set out the responsibilities of the Legal Department and include updates with respect to relevant internal individuals and committees involved in the governance process. The Commission believes that by clearly describing the responsibilities of the Legal Department, committees, subcommittees, and their participants as noted above, these proposed changes provide for clear and transparent governance arrangements to those serving on those committees and utilizing the Governance Playbook. For the reasons stated above, the Commission believes the proposed rule changes are consistent with Rules 17Ad–22(e)(2)(i).[13]

C. Consistency With Rule 17Ad–22(e)(23)(v) Under the Act

Rule 17Ad–22(e)(23)(v) under the Act require each covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for an update of the public disclosure every two years, or more frequently following changes to the covered clearing agency's system or the environment in which it operates to the extent necessary, to ensure statements previously provided remain accurate in all material respects.[14]

As noted above, the proposed changes assign responsibility, reference applicable regulations, and include additional information and procedures regarding maintaining and updating the Disclosure Framework in accordance with relevant regulations. Specifically, the proposed changes would update the process by which the ICC Legal Department will update the public Disclosure Framework every two years or more frequently following material changes to ICC's systems or environment in which it operates, including updates for major decisions of the Board with a broad market impact. The Commission believes that these aspects of the Governance Playbook provide further clarity regarding ICC's policies and procedures for making a comprehensive public disclosure that is updated every two years or more frequently following material changes.

For these reasons, the Commission believes that the proposed rule change is consistent with Rule 17Ad–22(e)(23)(v) under the Act.[15]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act[16] and Rules 17Ad–22(e)(2)(i) and 17Ad–22(e)(23)(v) thereunder.[17]

It is therefore ordered pursuant to Section 19(b)(2) of the Act[18] that the proposed rule change (SR–ICC–2022–003), be, and hereby is, approved.[19]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–11678 Filed 5–31–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–504, OMB Control No. 3235–0561]

Proposed Collection; Comment Request; Extension: Rule 12d3–1

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 12d3–1 (17 CFR 270.12d3–1) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (''Investment Company Act'') permits a fund to invest up to five percent of its assets in securities of an issuer deriving more than fifteen percent of its gross revenues from securities-related businesses (subject to certain limitations), notwithstanding the general prohibition in Section 12(d)(3) of the Investment Company Act of a registered investment company (''fund'') and companies controlled by the fund purchasing securities issued by a registered investment adviser, broker, dealer, or underwriter (''securities-related businesses'').

A fund may, however, rely on an exemption in rule 12d3–1 to acquire securities issued by its subadvisers in circumstances in which the subadviser would have little ability to take advantage of the fund, because it is not in a position to direct the fund's securities purchases. This exemption in rule 12d3–1 is available if: (i) The subadviser is not, and is not an affiliated person of, an investment adviser that provides advice with respect to the portion of the fund that is acquiring the securities; and (ii) the advisory contracts of the subadviser, and any subadviser that is advising the purchasing portion of the fund, prohibit them from consulting with each other concerning securities transactions of the fund, and limit their responsibility in providing advice to providing advice with respect to discrete portions of the fund's portfolio.[1]

Rule 12d3–1 requires funds to amend their subadvisory contracts before they can rely on rule 12d3–1's exemption to ensure that the subadviser that engages in the transaction does not influence the fund's investment decision to engage in the transaction.

Based on an analysis of fund filings, Commission staff estimates that approximately 285 funds enter into such new subadvisory agreements each year, and that it will require approximately 3 attorney hours to draft and execute additional clauses in new subadvisory contracts in order for funds and subadvisers to be able to rely on the exemptions in rule 12d3–1. Because these additional clauses are identical to the clauses that a fund would need to insert in their subadvisory contracts to rely on rules 10f–3 (17 CFR 270.10f–3), 17a–10 (17 CFR 270.17a–10), and 17e–1 (17 CFR 270.17e–1), and because we believe that funds that use one such rule generally use all of these rules, we apportion this 3 hour time burden equally to all four rules. Therefore, we estimate that the burden allocated to rule 12d3–1 for this contract change

[11] 15 U.S.C. 78q–1(b)(3)(F).

[12] 17 CFR 240.17Ad–22(e)(2)(i).

[13] *Id.*

[14] 17 CFR 240.17Ad–22(e)(23)(v).

[15] 17 CFR 240.17Ad–22(e)(23)(v).

[16] 15 U.S.C. 78q–1(b)(3)(F).

[17] 17 CFR 240.17Ad–22(e)(2)(i) and (e)(23)(v).

[18] 15 U.S.C. 78s(b)(2).

[19] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[20] 17 CFR 200.30–3(a)(12).

[1] *See* 17 CFR 270.270.12d3–1(c)(3).

would be 0.75 hours. Assuming that all 285 funds that enter into new subadvisory contracts each year make the modification to their contract required by the rule, we estimate that the rule's contract modification requirement will result in 214 burden hours annually.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication by August 1, 2022.

Please direct your written comments to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, C/O John Pezzullo, 100 F Street NE, Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: May 25, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–11662 Filed 5–31–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94983; File No. SR–ICC–2022–004]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the ICC Recovery Plan and the ICC Wind-Down Plan

May 25, 2022.

I. Introduction

On April 1, 2022, CE Clear Credit LCC (''ICC'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the ICC Recovery Plan and the ICC Wind-Down Plan (collectively, the ''Plans''). The proposed rule change was published for comment in the **Federal Register** on April 14, 2022.[3] The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

A. Background

As a ''covered clearing agency,''[4] ICC is required to, among other things, ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency, which . . . includes plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.''[5] The Commission has previously clarified that it believes that such recovery and wind-down plans are ''rules'' within the meaning of Exchange Act Section 19(b) and Rule 19b–4 thereunder because such plans would constitute changes to a stated policy, practice, or interpretation of a covered clearing agency.[6] Accordingly, a covered clearing agency, such as ICC, is required to file its plans for recovery and orderly wind-down with the Commission.[7] Recovery and Wind-Down Plans have been in place at ICC for a number of years and approved by the Commission on May 10, 2021 for the first time since becoming a ''covered clearing agency'' under the definition in Rule 17Ad–22(a)(5).[8]

B. Recovery Plan

The proposed rule change would make general updates to ensure that the information in the Recovery Plan is current and relates to changes that impacted ICC in the past year.[9] The Recovery Plan would be updated to specify that the information provided is current as of December 31, 2021, unless otherwise stated.

The proposed rule change would make the following updates related to ICC's ownership and operations:

- In Section II.A, add one additional entity to the list of companies owned by ICC's parent.
- In Section IV.A, adds iTraxx Index Swaptions as an example of the Index Swaptions products for which ICC provides clearing services.
- In Section IV.D, updates numbers for ICC's revenues, volumes, and expenses and includes those for Index Swaptions.
- In Section VI.A, updates locations of facilities and personnel headcount and functions.
- In Section X, updates the projected recovery and wind-down costs and regulatory capital.
- In Section XI, updates ICC's and ICE Group's financial statements.
- In Section XIII, updates the percentages held by financial services providers of clearing participant cash and collateral.

The proposed rule change would also revise Section IV.C.1 to reflect (i) the change of the Board size from eleven to nine managers, consistent with the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the ICC Recovery Plan and the ICC Wind-Down Plan, Exchange Act Release No. 94650 (Apr. 8, 2022); 87 FR 22276 (Apr. 14, 2022) (File No. SR–ICC–2022–004) (''Notice'').

[4] The term ''covered clearing agency'' is defined in Rule 17Ad–22(a)(5), 17 CFR 240.17Ad–22(a)(5). ICC became subject to the requirements in Rule 17Ad–22(e) with the amendment to the definition of the term ''covered clearing agency.'' *See* Definition of ''Covered Clearing Agency,'' Exchange Act Release No. 88616 (Apr. 9, 2020), 85 FR 28853 (May 14, 2020) (File No. S7–23–16).

[5] 17 CFR 240.17Ad–22(e)(3)(ii).

[6] Standards for Covered Clearing Agencies, Exchange Act Release No. 78961 (Sep. 28, 2016), 81 FR 70786, 70809 (Oct. 13, 2016) (File No. S7–03–14).

[7] ICC became a ''covered clearing agency'' following a change in the definition of the term in Rule 17Ad–22(a)(5). The previous definition of ''covered clearing agency'' in Rule 17Ad–22(a)(5) stated that ''covered clearing agency'' means a designated clearing agency or a clearing agency involved in activities with a more complex risk profile for which the Commodity Futures Trading Commission is not the Supervisory Agency as defined in Section 803(8) of the Payment, Clearing and Settlement Supervision Act of 2010 (12 U.S.C. 5461 *et seq.*). Under this definition, ICC was not a covered clearing agency. Under the revised definition, ''covered clearing agency'' means a registered clearing agency that provides the services of a central counterparty or central securities depository. Under the revised definition, ICC is a covered clearing agency. *See* Definition of ''Covered Clearing Agency'', Exchange Act Release No. 88616 (Apr. 9, 2020), 85 FR 28853, 28854–55 (May 14, 2020) (File No. S7–23–16).

[8] Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the ICC Recovery Plan and the ICC Wind-Down Plan, Exchange Act Release No. 91806 (May 10, 2021), 86 FR 26561 (May 14, 2021) (File No. SR–ICC–2021–005).

[9] The descriptions of the Recovery and Wind-Down Plans are substantially excerpted from the Notice. Moreover, capitalized terms not otherwise defined herein have the meanings assigned to them in ICC Rules (''Rules'') or the Plans.

adoption of the Sixth Amended and Restated Operating Agreement of ICC in 2021, (ii) the reduction of the number of independent and non-independent managers by one, (iii) the revision of manager titles, and (iv) the removal of two specific managers.

The proposed rule change would also change Section IV.C.3 to update the description of the responsibilities and membership composition of the Participant Review Committee (''PRC'') and Credit Review Subcommittee of the PRC (''CRS''), which are internal committees that assist in fulfilling counterparty review responsibilities, consistent with changes to their charters in 2021. The proposed rule change would also make corresponding changes in Section VI.B.1 to describe the advisory role of the CRS in making recommendations to the PRC and the required role of the PRC in approving FSPs.

The proposed rule change would also amend Section IV.E.4 to state that ICC monitors the FSPs daily, intraday, and monthly, consistent with the processes described in the ICC Counterparty Monitoring Procedures.

ICC would revise Section VII.B to remove discussion of a metric no longer used to measure ICC's performance, and to update the date of a referenced policy.

Under the proposed rule change, Section VII.C would specify that ICC will make required disclosures pursuant to applicable regulations once the Recovery Plan is initiated, and would include updated regulatory contacts. In Section VIII.B.2, the proposed changes would add minor language clarifications in describing the purpose of its Liquidity Risk Management Framework. In Section VIII.B.3, the proposed changes would make updates regarding the insurance coverage maintained at the ICE Group level, which may be used as a recovery tool in a non-clearing participant default scenario.

Under the proposed rule change, Section VIII.B.3 would reflect updated balance sheet information that demonstrates the ability of ICC's parent to make cash infusions to ICC as a recovery tool. Relatedly, the proposed rule change would amend the procedures for seeking such additional capital, including the individual within the ICE Group with whom such discussions would begin. The proposed changes would also identify the role of this individual within the ICE Group and update the description of the composition of certain ICE Group boards. Additionally, the proposed rule change would include updated financial information relevant to the efficacy of several other recovery tools that may be utilized in a non-clearing participant default scenario.

ICC also proposed minor edits for clarity and consistency. Specifically, Section IX would be amended to clarify that the Recovery Plan is made available to regulators in accordance with relevant regulations, and to incorporate a reference to the ICC Default Management Procedures for details on ICC's default management testing. Section XIV would include an updated index of exhibits referring to the current versions of policies and procedures, consistent with updated footnote references. Finally, the proposed rule change would make minor typographical fixes in the Recovery Plan as well as conforming changes in in the Wind-Down Plan, including updates to entity names, and grammatical and formatting changes.

C. Wind-Down Plan

The proposed rule changes to the Wind-Down Plan are, in large part, substantially similar to the proposed changes to the Recovery Plan, including general updates, clarifying edits, and amendments to make the information in the Wind-Down Plan current and reflect changes that have impacted ICC in the past year, including changes to the composition of the Board.

Similar to the Recovery Plan, the document would be amended throughout to specify that the information provided is current as of December 31, 2021, unless otherwise stated. Under the proposed rule change, The Wind-Down Plan would also reflect the addition of one entity to the list of companies owned by ICC's parent, as well as updates to facilities and personnel information, the financial resources available to support wind-down, and the percentages of cash and collateral held by FSPs in Appendix C.

Further, as with the Recovery Plan, the proposed changes to the Wind-Down Plan would update the description of the composition of the Board to reflect changes from 2021, including changes to the Board size from eleven to nine managers and revisions to manager titles. The proposed changes also describe procedures for seeking certain required consultations or approvals identified in the Wind-Down Plan, including the individual within the ICE Group with whom such discussions would begin. The proposed changes would identify the role of this individual within the ICE Group and include information on the composition of a relevant ICE Group board. The proposed changes would also specify that ICC will make required disclosures pursuant to applicable regulations once the decision to wind-down is made, and update ICC's regulatory contacts.

Finally, Section X would be amended to note that the Wind-Down Plan is made available to regulators in accordance with relevant regulations and to state broadly that the testing of the Wind-Down Plan considers various options. In Section XII, the proposed rule change would update the index of exhibits to reflect the current versions of policies and procedures.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the 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 Act and the rules and regulations thereunder applicable to such organization.[10] For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act [11] and Rule 17Ad–22(e)(2)(v),[12] and (e)(3)(ii).[13]

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICC be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, as well as to assure the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible, and, in general, to protect investors and the public interest.[14]

As noted above, the proposed rule changes relate mainly to updating the Recovery and Wind-Down Plans with current information about ICC's facilities, finances, operations, and Board. The Commission believes that by providing updated numbers for ICC's revenues, volumes, and expenses, including projected recovery and wind-down costs and regulatory capital, the proposed changes will enhance ICC's ability to monitor its finances and compare its regulatory capital to its estimated recovery and wind-down costs. This in turn will help ensure ICC has the financial resources to promptly and accurately clear and settle

[10] 15 U.S.C. 78s(b)(2)(C).

[11] 15 U.S.C. 78q–1(b)(3)(F).

[12] 17 CFR 240.17Ad–22(e)(2) (v).

[13] 17 CFR 240.17Ad–22(e)(3)(ii).

[14] 15 U.S.C. 78q–1(b)(3)(F).

transactions during recovery and, if necessary, conduct an orderly wind-down.

Further, the Commission believes that adding iTraxx Index Swaptions to the list of Index Swaptions products for which ICC provides clearing services, adding the additional entity to the list of ICC parent-owned companies, and providing an updated exhibit index will generally support those utilizing the Plans by providing users of the Plans a current overview of ICC's full operations, including all of its businesses and cleared products.

As noted above, the proposed rule change would also update description of the Board size and its composition as well as the responsibilities and membership composition of the PRC and CRS. The Commission believes that these proposed changes would strengthen the Plans by ensuring that they delineate responsible individuals and their duties, which will support efficient operation of ICC, including during recovery or wind-down by ensuring they reflect the Sixth Amended and Restated Operating Agreement of ICC and amended committee charters.

The proposed rule changes would also state that ICC monitors the FSPs daily, intraday, and monthly, consistent with the processes described in the ICC Counterparty Monitoring Procedures and update a metric used to measure ICC's performance. The Commission believes that these changes would enhance ICC's ability to manage its financial resources by ensuring they reflect current ICC's Counterparty Monitoring Procedures, which in turn will enable ICC to promptly and accurately clear and settle securities transactions.

The Commission believes that the proposed changes to specify that ICC will make required disclosures pursuant to applicable regulations once the Plans are initiated, update regulatory contacts, and to state that the Plans are made available to regulators in accordance with relevant regulations enhance ICC's procedures for keeping regulatory authorities informed thereby promoting the protection of investors and the public interest.

As noted above, the proposed rule change would also amend the procedures for seeking additional capital from ICC's parent by including the current individual within the ICE Group with whom such discussions would begin. The proposed changes would also include procedures for seeking certain required consultations or approvals identified in the Wind-Down Plan, including the individual within the ICE Group with whom such discussions would begin. The proposed changes would identify the role of this individual within the ICE Group. The Commission believes that these proposed changes would strengthen the plans by ensuring those utilizing them have all of the information necessary to carryout recovery or an orderly wind-down, which in turn would ensure ICC can promptly and accurately clear and settle trades and safeguard of securities and funds which are in its custody or control at these times.

For the reasons stated above, the Commission believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.[15]

B. Consistency With Rules 17Ad–22(e)(2)(v)

Rules 17Ad–22(e)(2)(v) requires that ICC establish, implement, maintain, and enforce written policies and procedures reasonably designed to, as applicable, provide for governance arrangements that specify clear and direct lines of responsibility.[16]

The Commission believes that the proposed rule changes help contribute to establishing, implementing, maintaining, and enforcing written policies and procedures reasonably designed to provide for governance arrangements that specify lines of control and responsibility because they update the number of board members, board composition, titles, and roles of committees.

The Commission also believes that the proposed changes provide clear and direct lines of authority because they identify the individual within the ICE Group with whom discussions for seeking additional capital in recovery from ICC's parent would begin as well as the procedures for seeking certain required consultations or approvals identified in the Wind-Down Plan, including the individual within the ICE Group with whom such discussions would begin. Further, the Commission believes that proposed changes to certain titles of managers and the removal of former managers promotes governance arrangements that specify lines of control and responsibility by including current information about individuals and their roles.

Therefore, the Commission finds that the proposed rule change is consistent with Rule 17Ad–22(e)(2)(v).[17]

D. Consistency With Rule 17Ad–22(e)(3)(ii)

Rule 17Ad–22(e)(3)(ii) requires ICC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by ICC, which includes plans for the recovery and orderly wind-down of ICC necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.[18]

The Commission believes that the proposed changes described above that would add current financial, personnel, and board information support ICC's maintenance of plans for the recovery and orderly wind-down of ICC with updated accurate information. For instance, the Commission believes that current financial information provides relevant information to those using the Plans to understand the resources available for recovery or an orderly wind-down. Further, the Commission believes that current information about the Board, updated procedures for seeking additional capital from the ICE Group, and updated procedures for seeking required consultations or approvals in a wind-down scenario support the utilization of the recovery and wind-down plans with accurate references to personnel and procedures.

Therefore, the Commission finds that the proposed rule change is consistent with Rule 17Ad–22(e)(3)(ii).[19]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act[20] and Rules 17Ad–22(e)(2)(v) and (e)(3)(ii) thereunder.[21]

It is therefore ordered pursuant to Section 19(b)(2) of the Act[22] that the proposed rule change (SR–ICC–2022–004) be, and hereby is, approved.[23]

[15] 15 U.S.C. 78q–1(b)(3)(F).

[16] 17 CFR 240.17Ad–22(e)(2)(v).

[17] 17 CFR 240.17Ad–22(e)(2)(v).

[18] 17 CFR 240.17Ad–22(e)(3)(ii).

[19] 17 CFR 240.17Ad–22(e)(3)(ii).

[20] 15 U.S.C. 78q–1(b)(3)(F).

[21] 17 CFR 240.17Ad–22(e)(2)(v) and (e)(3)(ii).

[22] 15 U.S.C. 78s(b)(2).

[23] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[24] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–11677 Filed 5–31–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94984; File No. 4–698]

Joint Industry Plan; Notice of Filing of Amendment to the National Market System Plan Governing the Consolidated Audit Trail

May 25, 2022.

I. Introduction

On May 13, 2022, the Operating Committee for Consolidated Audit Trail, LLC (''CAT LLC''), on behalf of the following parties to the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan''): [1] BOX Exchange LLC; Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., Investors Exchange LLC, Long-Term Stock Exchange, Inc., MEMX, LLC, Miami International Securities Exchange LLC, MIAX Emerald, LLC, MIAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, Nasdaq PHLX LLC, 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,'' ''self-regulatory organizations,'' or ''SROs'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 (''Exchange Act''),[2] and Rule 608 thereunder,[3] a proposed amendment to the CAT NMS Plan to implement a revised funding model (''Executed Share Model'') for the consolidated audit trail (''CAT'') and to establish a fee schedule for Participant CAT fees in accordance with the Executed Share Model.[4]

[1] The CAT NMS Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Exchange Act and the rules and regulations thereunder. *See* Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016).

[2] 15 U.S.C 78k–1(a)(3).

[3] 17 CFR 242.608.

[4] *See* Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission, dated May 13, 2022 (''Transmittal Letter'').

Exhibit A, attached hereto, contains proposed revisions to Articles I and XI of the CAT NMS Plan as well as proposed Appendix B to the Plan containing the fee schedule setting forth the CAT fees to be paid by the Participants. In addition, the Operating Committee provided an example of how the Executed Share Model would operate for illustrative purposes only, as attached hereto as *Exhibit B.* The example is provided in two charts that, according to the Participants, set forth illustrative CAT fees for each Participant, Industry Member that is the clearing member for the seller in the transaction, and Industry Member that is the clearing member for the buyer in the transaction. The Commission is publishing this notice to solicit comments from interested persons on the amendment.[5]

II. Description of the Plan

Set forth in this Section II is the statement of the purpose and summary of the amendment, along with information required by Rule 608(a) under the Exchange Act,[6] substantially as prepared and submitted by the Participants to the Commission.[7]

A. Description of the Amendments to the CAT NMS Plan

The Operating Committee proposes to replace the funding model set forth in Article XI of the CAT NMS Plan (the ''Original Funding Model'') with the Executed Share Model. The Original Funding Model involves a bifurcated approach, where costs associated with building and operating the CAT would be borne by (1) Industry Members (other than alternative trading systems (''ATSs'') that execute transactions in Eligible Securities (''Execution Venue ATSs'')) through fixed tiered fees based on message traffic for Eligible Securities, and (2) Participants and Industry Members that are Execution Venue ATSs for Eligible Securities through fixed tiered fees based on market share. The Operating Committee proposes to amend the CAT NMS Plan to adopt the Executed Share Model. The Executed Share Model would impose fees on CAT Reporters based on the executed equivalent share volume of transactions in Eligible Securities rather than based on market share and message traffic. The Operating Committee also proposes to adopt a fee schedule to establish the CAT fees applicable to Participants based on the Executed Share Model. The Participants separately intend to file rule filings under Section 19(b) to establish the CAT fees applicable to Industry Members based on the Executed Share Model set forth in the CAT NMS Plan.

1. Description of the Executed Share Model

The Operating Committee proposes to amend the CAT NMS Plan to describe the Executed Share Model. Under the Executed Share Model, the Operating Committee would establish a fee structure in which the fees charged to Participants and Industry Members are based on the executed equivalent share volume of transactions in Eligible Securities using CAT Data.[8]

For each transaction in Eligible Securities based on CAT Data, the Industry Member that is the clearing member for the seller in the transaction (''Clearing Broker for the Seller'' or ''CBS''), the Industry Member that is the clearing member for the buyer in the transaction (''Clearing Broker for the Buyer'' or ''CBB''), and the applicable Participant for the transaction each would pay a fee calculated by multiplying the number of executed equivalent shares in the transaction and the applicable Fee Rate (as defined below) and dividing the product by three. The applicable Participant for the transaction would be the national securities exchange on which the transaction was executed, or FINRA for each transaction executed otherwise than on an exchange. Accordingly, for each transaction, the Clearing Broker for the Buyer would pay one-third of the fee obligation, the Clearing Broker for the Seller would pay one-third of the fee obligation, and the relevant Participant for the transaction would pay the remaining one-third of the fee obligation.

Both Participants and Industry Members would be required to pay CAT fees with regard to CAT costs not previously paid by the Participants (''Prospective CAT Costs''). These are the ongoing budgeted costs for the CAT after the CAT fees become operative. The Fee Rate for the CAT fees related to Prospective CAT Costs would be calculated by dividing the budgeted CAT costs for the relevant period (as determined by the Operating Committee) by the projected total executed equivalent share volume of all

[5] 17 CFR 242.608.

[6] *See* 17 CFR 242.608(a).

[7] *See* Transmittal Letter, *supra* note 4. Unless otherwise defined herein, capitalized terms used herein are defined as set forth in the CAT NMS Plan.

[8] The use of CAT Data in the Executed Share Model is discussed in more detail in Section A.5.k below.

transactions in Eligible Securities for the relevant period based on CAT Data. The Fee Rate for these CAT fees would be the same for the calculation of fees for Participants, CBBs and CBSs.

Industry Members also would be required to pay CAT fees with regard to certain CAT costs previously paid by the Participants (''Past CAT Costs'').[9] To date, Participants have paid for all costs of the CAT incurred. Accordingly, Participants would not be required to pay a CAT fee related to Past CAT Costs. However, Participants would remain responsible for one-third of Past CAT Costs, and would remain responsible for 100% of certain other CAT costs incurred in the past (as discussed in more detail below) which are excluded from Past CAT Costs. The Fee Rate for the CAT fees related to Past CAT Costs would be calculated by dividing the Past CAT Costs for the relevant period (as determined by the Operating Committee) by the projected total executed equivalent share volume of all transactions in Eligible Securities for the relevant period based on CAT Data.

2. Participant CAT Fees

The proposed fee schedule in *Exhibit B* [sic] [10] to the CAT NMS Plan, entitled Consolidated Audit Trail Funding Fees for Participants, would establish the CAT fees to be paid by Participants. These CAT fees are designed to operate in accordance with the Executed Share Model as described in proposed Article XI of the CAT NMS Plan. Accordingly, for each transaction in Eligible Securities based on CAT Data, the applicable Participant for the transaction would pay a fee calculated by multiplying the number of executed equivalent shares in the transaction and the applicable Fee Rate and dividing the product by three. The applicable Participant for the transaction would be the national securities exchange on which the transaction was executed, or FINRA for each transaction executed otherwise than on an exchange. The proposed fee schedule provides additional detail as to how the Participant fees would be calculated.

Because the Participants have paid all CAT costs to date, the Participants would not make any additional payments to the CAT with regard to CAT costs incurred in the past. The Participants would only pay CAT fees on a going forward basis with regard to new CAT costs. Accordingly, the proposed fee schedule describes these forward-looking CAT fees for Participants.[11]

a. Calculation of Fee Rate

The Operating Committee would set the Fee Rate used in determining the CAT fees at the beginning of each year. The Fee Rate would be calculated by dividing the CAT costs budgeted for the upcoming year by the projected total executed equivalent share volume of all transactions in Eligible Securities for the year. The Operating Committee may, but is not required to, adjust the Fee Rate once during the year to seek to more closely coordinate the CAT fees with any adjustments to the budgeted or actual CAT costs or to volume projections during the year. The Operating Committee may only adjust the Fee Rate once during the year to avoid changing the Fee Rate too frequently for CAT Reporters.

Once the Operating Committee has established a Fee Rate, it will remain in effect until the Operating Committee adjusts the Fee Rate during the year or adopts a new Fee Rate for the next year. The proposal does not contemplate that any Fee Rate would automatically terminate. This approach would avoid periods in which no CAT fees are collected, as such a cessation in the collection of CAT fees would adversely affect the ability of the CAT to fund its operations and, therefore, would have a significant negative effect on the CAT's ability to fulfill its regulatory purpose. This approach also recognizes the practical timing issues of ensuring that the Operating Committee has the appropriate CAT budget and CAT Data to calculate the CAT fees.

Once any Fee Rate has been established by a majority vote of the Operating Committee in accordance with the Executed Share Model set forth in the CAT NMS Plan, each Participant would be required to pay the applicable CAT fee calculated in accordance with the proposed fee schedule in the CAT NMS Plan. The Operating Committee does not plan to submit an amendment to the CAT NMS Plan each time that the Fee Rate is established or adjusted.[12]

The Operating Committee would announce the Fee Rate at the beginning of the year, and any adjustment to the Fee Rate during the year via a CAT alert.[13] In addition, the Operating Committee would provide the Fee Rate and any adjustments, as well as the budget and projection information, on a dedicated web page on the CAT NMS Plan website to make it readily accessible to CAT Reporters.

i. Budgeted CAT Costs

The calculation of the Fee Rate requires the determination of the budgeted CAT costs for the upcoming year. The budgeted CAT costs for the upcoming year would be the costs set forth in the annual operating budget for the Company [14] required pursuant to Section 11.1(a) of the CAT NMS Plan. Section 11.1(a) states that ''[o]n an annual basis the Operating Committee shall approve an operating budget for the Company. The budget shall include the projected costs of the Company, including the costs of developing and operating the CAT for the upcoming year, and the sources of all revenue to cover such costs, as well as the funding of any reserve that the Operating Committee reasonably deems appropriate for prudent operation of the Company.'' Using budgeted CAT costs, rather than CAT costs already incurred, allows the Company to collect fees prior to when bills become payable.

The CAT costs budgeted for the year would be comprised of all fees, costs and expenses estimated to be incurred by or for the Company in connection with the development, implementation and operation of the CAT during the year. These CAT costs would include, but not be limited to, Plan Processor costs, insurance costs, third-party support costs and an operational reserve. Plan Processor costs would consist of the Plan Processor's ongoing costs, including development costs. This amount would be based upon the fees due to the Plan Processor pursuant to the Company's agreement with the Plan Processor. Insurance costs would include cyber insurance and director liability insurance. Third-party support costs would include legal fees, consulting fees, vendor fees and audit fees. In addition, the Operating Committee aims to accumulate the necessary funds to establish an operating reserve for the Company through the CAT fees charged to CAT Reporters. As set forth in Section 11.1(a) of the CAT NMS Plan, the Operating Committee may include in the budget

[9] Past CAT Costs are discussed in more detail in Section A.3.b below.

[10] The Commission notes that Appendix B contains the proposed Consolidated Audit Trail Funding Fees for Participants. Exhibit B sets forth an illustrative example of CAT fees calculated under the Executed Share Model.

[11] In contrast, as discussed in more detail below, the Participants would propose to implement CAT fees for Industry Members to reimburse the Participants for certain Past CAT Costs as well as to pay for a share of ongoing CAT costs.

[12] In contrast, the Participants will file a fee filing pursuant to Section 19(b) and Rule 19b–4 thereunder with regard to Fee Rate changes applicable to Industry Members.

[13] Participants do not intend to file a new separate amendment to the CAT NMS Plan for Participants each time a new Fee Rate is approved by the Operating Committee.

[14] As defined in the CAT NMS Plan, the Company is the Consolidated Audit Trail, LLC.

''funding of any reserve that the Operating Committee reasonably deems appropriate for prudent operation of the Company.'' [15] As required by Section 11.1(c) of the CAT NMS Plan, any surpluses collected will be treated as an operational reserve to offset future fees and will not be distributed to the Participants as profits.[16]

To address potential changes related to the CAT during the year, the Operating Committee may adjust the budgeted CAT costs for the year as it reasonably deems appropriate for the prudent operation of the Company. For example, the Operating Committee may determine that an adjustment to the budget is necessary if actual costs during the year are more or less than the budget, or if unanticipated expenditures are necessary. To the extent that the Operating Committee adjusts the budgeted CAT costs during the year and determines to adjust the Fee Rate, the adjusted budgeted CAT costs would be used in calculating the new Fee Rate for the remaining months of the year.

The Operating Committee has determined to publicly provide the annual operating budget for the Company as well as any updates to the budget that occur during the year. This publicly available budget information describes in detail the budget for the Company. For example, among other things, the budget provides specific budgeted technology costs (including cloud hosting services, operating fees, Customer and Account Information System (''CAIS'') operating fees and change request fees) and general and administrative costs (including legal, consulting, insurance, professional and administration, and public relations). The Company provides such budget information on a dedicated web page on the CAT NMS Plan website to make it readily accessible for CAT Reporters and others.[17]

ii. Projected Total Executed Equivalent Share Volume

The calculation of the Fee Rate also requires the determination of the projected total executed equivalent share volume of transactions in Eligible Securities for the year. Each year, the Operating Committee would determine this projection based on the total executed equivalent share volume of transactions in Eligible Securities from the prior six months.[18] The projection for the year would be calculated by doubling the total executed equivalent share volume from the prior six months. The Operating Committee determined that the use of the data from the prior six months provides an appropriate balance between using data from a period that is sufficiently long to avoid short term fluctuations while providing data close in time to the upcoming year. During the year, the Operating Committee will monitor actual total executed equivalent share volume on a regular basis to determine whether the projected volume is deviating from the actual volume.

To address potential deviations of the projections from actual transactions during the year, the projected total executed equivalent share volume for transactions in Eligible Securities may be adjusted as the Operating Committee reasonably deems appropriate for the prudent operation of the Company. Any adjusted projection would be based on the total executed equivalent share volume of transactions in Eligible Securities from the six months prior to the date of the determination of the new projection.[19] To the extent that the Operating Committee adjusts this projection during the year and determines to adjust the Fee Rate, the adjusted projection would be used in calculating the new Fee Rate for the remaining months of the year.

The Operating Committee will publicly provide the projected total executed equivalent share volume for transactions in Eligible Securities as well as any adjustment to the projections that occurs during the year. The Company would include such projection information on a dedicated web page on the CAT NMS Plan website to make it readily accessible for CAT Reporters and others.

b. Transactions in Eligible Securities

Under the Executed Share Model, a CAT fee would be imposed with regard to each transaction in Eligible Securities as reported in CAT Data. As set forth in Section 1.1 of the CAT NMS Plan, ''Eligible Securities'' are defined to include all NMS Securities and all OTC Equity Securities. Section 1.1 of the CAT NMS Plan, in turn, defines an ''NMS Security'' as ''any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in Listed Options.'' In addition, Section 1.1 of the CAT NMS Plan defines an ''OTC Equity Security'' as ''any equity security, other than an NMS Security, subject to prompt last sale reporting rules of a registered national securities association and reported to one of such association's equity trade reporting facilities.'' A CAT fee would be imposed with regard to each transaction in Eligible Securities regardless of whether the trade is executed on an exchange or otherwise than on an exchange.

The Executed Share Model uses the concept of executed equivalent shares as the transactions subject to a CAT fee involve NMS Stocks, Listed Options and OTC Equity Securities, each of which have different trading characteristics.

NMS Stocks. Under the Executed Share Model, each executed share for a transaction in NMS Stocks will be counted as one executed equivalent share.

Listed Options. Recognizing that Listed Options trade in contracts rather than shares, each executed contract for a transaction in Listed Options will be counted using the contract multiplier applicable to the specific Listed Option in the relevant transaction. Typically, a Listed Option contract represents 100 shares; however, it may also represent another designated number of shares.

OTC Equity Securities. Similarly, in recognition of the different trading characteristics of OTC Equity Securities as compared to NMS Stocks, the Executed Share Model would discount the share volume of OTC Equity Securities when calculating the CAT fees. Many OTC Equity Securities are priced at less than one dollar—and a significant number are priced at less than one penny—per share and low-priced shares tend to trade in larger quantities. Accordingly, a disproportionately large number of shares are involved in transactions involving OTC Equity Securities versus NMS Stocks.[20] Because the Executed

[15] Although the Operating Committee may determine at its discretion that a different level of reserves is appropriate in the future, the Operating Committee proposes to include in the budget for purposes of determining CAT fees an operational reserve comprised of three months of ongoing CAT costs, such as Plan Processor costs, third party support costs and insurance costs.

[16] CAT NMS Plan Approval Order at 84792.

[17] The CAT budget, as of April 6, 2022, is currently available on the CAT website at *https://www.catnmsplan.com/cat-financial-and-operating-budget*.

[18] For example, although the six month look back will depend on the circumstances of the filing, one example of such a six month look back would be the use of CAT Data from July through December 2022 for a fee filing in January 2023.

[19] For example, although the six month look back will depend on the circumstances of the filing, one example of such a six month look back for a July 2023 filing of an adjusted Fee Rate would be the use of CAT Data from the prior January through June.

[20] For example, based on data from 2021, (1) the average price per executed share of OTC Equity Securities was $0.072 and the average price per executed share for NMS Stocks was $49.51; and (2) the average trade size for OTC Equity Securities was 63,474 and the average trade size for NMS Stocks was 166 shares. Trades in OTC Equity Securities

Share Model would calculate CAT fees based on executed share volume, CAT Reporters trading OTC Equity Securities would likely be subject to higher fees than their market activity may warrant. To address this potential concern, the Executed Share Model would count each executed share for a transaction in OTC Equity Securities as 0.01 executed equivalent shares.

The discount to 1% was selected based on a reasoned analysis of a variety of different metrics for comparing the markets for OTC Equity Securities and NMS Stocks, rather than a simple calculation. For example, using 2021 data, the Operating Committee calculated the following metrics: (1) The ratio of total notional dollar value traded for OTC Equity Securities to OTC Equity Securities and NMS Stocks was 0.051%; (2) the ratio of total trades in OTC Equity Securities to total trades in OTC Equity Securities and NMS Stocks was 0.90%; and (3) the ratio of average share price per trade of OTC Equities to average share price per trade for OTC Equity Securities and NMS Stocks was 0.065%. In recognition of the fact that these calculations involve averages and for ease of application, the Operating Committee determined to round these metrics to 1%.

c. Monthly Fees

Participants would be required to pay monthly fees in accordance with the proposed fee schedule. A Participant's fee for each month would be calculated based on the Participant's transactions in Eligible Securities from the prior month. The CAT fees for each Participant will be calculated by the Plan Processor using the transaction data for such Participant as set forth in the CAT Data. Specifically, each Participant would pay a fee for each month, where the fee would be calculated by multiplying the Participant's transactions in Eligible Securities from the prior month by the Fee Rate determined by the Operating Committee for that period and dividing the product by three. The Operating Committee proposes to require the commencement of the payment of the Participant CAT fees in the first month after the conclusion of the period covered by the Financial Accountability Milestones,[21] subject to SEC approval of this Plan amendment and the CAT fees becoming effective for both Participants and Industry Members.

d. Collection of Fees

Pursuant to Section 11.4 of the CAT NMS Plan, the Operating Committee proposes to establish a system for the collection of CAT fees from Participants and Industry Members. As set forth in Section 11.4 of the CAT NMS Plan, each Participant would be required to pay its CAT fees authorized under the CAT NMS Plan as required by Section 3.7(b) of the CAT NMS Plan.[22] Section 3.7(b) of the CAT NMS Plan provides the following:

Each Participant shall pay all fees or other amounts required to be paid under this Agreement within thirty (30) days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated) (the ''Payment Date''). The Participant shall pay interest on the outstanding balance from the Payment Date until such fee or amount is paid at a per annum rate equal to the lesser of: (i) The Prime Rate plus 300 basis points; or (ii) the maximum rate permitted by applicable law. If any such remaining outstanding balance is not paid within thirty (30) days after the Payment Date, the Participants shall file an amendment to this Agreement requesting the termination of the participation in the Company of such Participant, and its right to any Company Interest, with the SEC. Such amendment shall be effective only when it is approved by the SEC in accordance with SEC Rule 608 or otherwise becomes effective pursuant to SEC Rule 608.

3. Implementation of Industry Member CAT Fees

Both Participants and Industry Members would be obligated to pay CAT fees under the Executed Share Model as described in proposed Article XI of the CAT NMS Plan. The Operating Committee has voted to charge CBBs and CBSs fees related to CAT costs in accordance with the Executed Share Model as described in proposed Article XI of the CAT NMS Plan. To implement CAT fees applicable to Industry Members, Section 11.1(b) of the CAT NMS Plan requires that the Participants ''file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves, and such fees shall be labeled as 'Consolidated Audit Trail Funding Fees.' '' Accordingly, each Participant would submit a fee filing pursuant to Section 19(b) of the Exchange Act to propose to add a section entitled ''Consolidated Audit Trail Funding Fees'' to its fee schedule, and to describe the CAT fees applicable to Industry Members in that section, including the applicable Fee Rate. To implement any new Fee Rates or adjustments thereto for Industry Members during the year, each Participant would submit a fee filing under Section 19(b) of the Exchange Act. Participants plan to submit fee filings for two categories of Industry Member CAT fees: CAT fees related to Prospective CAT Costs and CAT fees related to Past CAT Costs.[23] Although the proposed Industry Member CAT fees will be described in detail in the Participant fee filings pursuant to Section 19(b) of the Exchange Act, the following summarizes these fees.

a. Industry Member Prospective CAT Fees

Under the Executed Share Model, CBBs and CBSs would be required to pay CAT fees related to Prospective CAT Costs. These are the ongoing budgeted costs for the CAT after the implementation of the CAT fees. For each transaction in Eligible Securities, the CBB would pay one-third of the fee obligation, the CBS would pay one-third of the fee obligation, and the relevant Participant for the transaction would pay the remaining one-third of the fee obligation. To implement the CAT fees applicable to CBBs and CBSs related to Prospective CAT Costs, the Participants would file fee filings under Section 19(b) of the Exchange Act. The fee filings would require each CBB and each CBS to pay a fee for each transaction they clear in Eligible Securities from the prior month, where the fee for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate approved by the Operating Committee of the CAT NMS Plan for the relevant time period. CBBs and CBSs would be required to pay CAT fees related to Prospective CAT Costs calculated using the same Fee Rate, including any adjustments to the Fee Rate, that is applicable to the Participant CAT fees as described above. In addition, like with the calculation of the Participant CAT fee, the CAT fees for

accounted for 77% of the number of all equity shares traded, but only 0.51% of the notional value of all equity shares traded.

[21] *See* Securities Exchange Act Rel. No. 88890 (May 15, 2020), 85 FR 31322 (May 22, 2020) (''Financial Accountability Milestone Release'').

[22] Participants would be responsible for a fee each month in which they are a CAT Reporter. If a Participant ceases to the meet the definition of a CAT Reporter during a month, the Participant will still be responsible for CAT fees associated with its transactions during that month.

[23] The Participants anticipate providing advance notice of Fee Rate changes prior to implementing such changes in the Fee Rate. Such notice would provide additional transparency regarding the Fee Rate and would assist in planning to implement a new Fee Rate.

each CBB and CBS would be calculated by the Plan Processor using the transaction data for such Industry Members as set forth in the CAT Data.

b. Industry Member CAT Fees for Past CAT Costs

The Operating Committee also has determined to collect CAT fees from Industry Members to recover certain Past CAT Costs. The Industry Member CAT fees for Past CAT Costs would be calculated in accordance with the Executed Share Model as set forth in proposed Article XI of the CAT NMS Plan. The Fee Rate for the CAT fees related to Past CAT Costs would be calculated by dividing the Past CAT Costs for the relevant period (as determined by the Operating Committee) by the projected total executed equivalent share volume of all transactions in Eligible Securities for the relevant period based on CAT Data. To implement the CAT fees related to Past CAT Costs applicable to CBBs and CBSs, the Participants would file a fee filing or fee filings under Section 19(b) of the Exchange Act. The fee filing(s) would require each CBB and each CBS to pay a fee for each transaction in Eligible Securities from the prior month, where the fee for each transaction would be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate approved by the Operating Committee of the CAT NMS Plan. CBBs and CBSs would be responsible for any CAT fee related to Past CAT Costs in addition to any CAT fee related to Prospective CAT Costs.

i. Participant Responsibility for Past CAT Costs

Because the Participants have paid all CAT costs to date, the Participants would not make any additional payments to the CAT with regard to CAT costs incurred prior to the effectiveness of the CAT fees via CAT fees; only Industry Members would be required to pay CAT fees related to such costs. Proposed Section 11.3(a)(iv) would clarify the Participant's responsibility with regard to CAT costs incurred prior to the effectiveness of the CAT fees by stating that ''[n]otwithstanding anything to contrary, Participants will not be required to a pay a CAT fee related to CAT costs previously paid by the Participants in a manner determined by the Operating Committee ('Past CAT Costs').'' However, Participants would remain responsible for the one-third of Past CAT Costs allocated to Participants under the Executed Share Model, as well as 100% of certain other past CAT Costs (as discussed in more detail below).

The CAT fees related to included Past CAT Costs would recoup two-thirds of the included Past CAT Costs; the Participants have paid for and would not be reimbursed for the remaining one-third of the included Past CAT Costs. The CAT fees related to included Past CAT Costs paid by the Industry Members would be used to reimburse the Participants for the two-thirds of included Past CAT Costs allocated to Industry Members. The CAT fees for the included Past CAT Costs collected from Industry Members will be allocated to Participants for repayment of the outstanding loan notes of the Participants to the Company on a pro rata basis; such fees would not be allocated to Participants based on the executed equivalent share volume of transactions in Eligible Securities.

ii. Past CAT Costs

The Fee Rate for CAT fees related to Past CAT Costs would be calculated based on actual past costs incurred by the CAT (except for certain costs that the Operating Committee has determined to exclude from the calculation), rather than budgeted costs. The CAT fees related to Past CAT Costs would be designed to collect from Industry Members certain costs paid by the Participants prior to the effectiveness of the CAT fees pursuant to the Executed Share Model.

The Past CAT Costs would include a portion of certain costs incurred prior to January 1, 2022 as well as costs incurred after January 1, 2022 but prior to the effectiveness of the CAT fees pursuant to the Executed Share Model. With regard to costs incurred prior to January 1, 2022, the Participants would remain responsible for 100% of $48,874,937 of Excluded Costs and certain costs related to the conclusion of the relationship with the Initial Plan Processor. The Excluded Costs are all CAT costs incurred from November 15, 2017 through November 15, 2018 due to the delay in the start of reporting to the CAT. With these costs excluded, the CAT costs prior to January 1, 2022 are $337,688,610. Under the Executed Share Model, Industry Members would be responsible for two-thirds of these CAT costs. Specifically, one-third of these costs ($112,562,870) would be paid by CBBs, and one-third ($112,562,870) would be paid by CBSs, for a total of $225,125,740. The remaining one-third ($112,562,870) has previously been paid by the Participants, and the Participants would remain responsible for that third of the costs. These costs are set forth in detail in the audited financial statements for the Company and its predecessor CAT NMS, LLC, which are available on the CAT website.

CBBs and CBSs similarly would pay CAT fees related to CAT costs incurred after January 1, 2022 but prior to the implementation of the CAT fees pursuant to the Executed Share Model. Budgeted CAT costs for 2022 are currently available on the CAT website; actual CAT costs for 2022 will be available in audited financial statements for the Company after year end.

iii. Fee Calculation and Obligation

The CAT fees related to Past CAT Costs would be calculated based on current transactions, not transactions that occurred in the past when the costs were incurred, and collected from current Industry Members, not Industry Members active in the past when the costs were incurred. For example, if the CAT fee were in place for June 2022, each CBB and CBS with transactions in Eligible Securities in May 2022 would pay a CAT fee related to Past CAT Costs calculated by multiplying the executed equivalent share volume of the transactions they cleared in May 2022 by the applicable Fee Rate (calculated based on Past CAT Costs and current projected total equivalent share volume) and by one-third.

The Operating Committee believes that it is appropriate to collect fees from current Industry Members based on current activity because current market participants are the beneficiaries of the regulatory value provided by the CAT to the securities markets.[24] In addition, the approach recognizes the practical difficulties of imposing fees retroactively on Industry Members' market activity from the past, sometimes years in the past. For example, the practical difficulties may include the following: (1) Some Industry Members may no longer be in business; (2) it may be difficult to accurately establish the transactions for the past years; and (3) retroactive fees could not have been taken into consideration by market participants when they decided to enter into the transactions in the past.

4. Example of Application of the Executed Share Model

The Operating Committee has prepared an example of how the Executed Share Model would operate for illustrative purposes only. Specifically, the Operating Committee has prepared an example of CAT fees

[24] The SEC has emphasized that the CAT provides a benefit to all market participants. *See generally* Securities Exchange Act Rel. No. 67457 (Jul. 18, 2012), 77 FR 45722 (Aug. 1, 2012) (''Rule 613 Adopting Release'').

calculated under the Executed Share Model based on the projected annual CAT costs for 2022 and actual total executed equivalent share volume of transactions in Eligible Securities in 2021. Set forth in *Exhibit B* to this letter is a chart setting forth illustrative CAT fees for each Participant, CBS and CBB for this period. Note *Exhibit B* only provides an illustrative example of how the Executed Share Model would operate; the calculation of actual fees will differ from this example in various ways. For example, the Participants have paid or will have paid some or all of these costs up to the time of any SEC approval of the Executed Share Model, and, as a result, Participants would not be obligated to pay CAT fees related to 2022 CAT costs to the extent the Participants have already paid such costs. In addition, the illustrative example calculates the fee rate using the total executed equivalent share transactions in Eligible Securities for 2021, rather than the projected volume for 2022 based on the previous six months. Furthermore, the CAT Reporters' monthly CAT fee is not based on the CAT Reporters' transactions from the prior month; instead, it is calculated by using each CAT Reporter's transactions in 2021 and dividing the result by twelve.

5. Advantages of the Executed Share Model

The Executed Share Model provides a variety of advantages as discussed in more detail below. The Executed Share Model is similar to existing funding approaches employed by the SEC and the Participants. The Executed Share Model is also straightforward to understand and to administer; it provides for predictable fees for CAT Reporters; and it provides equal or equivalent treatment of different trading venues and products. By recognizing the importance of each of the three primary participants in a transaction, the Executed Share Model requires equitable contributions to the cost of the CAT by both Participants and Industry Members.

a. Comparable to Existing Fee Precedent

The Executed Share Model would operate in a manner similar to other funding models employed by the SEC and the Participants, including the SEC's Section 31 fees, FINRA's trading activity fee (''FINRA TAF'') and the options regulatory fee (''ORF'') utilized by options exchanges. The SEC previously has determined that the Participants' sales value fees related to Section 31, the FINRA TAF and the ORF are consistent with the Exchange Act.

i. Section 31 Fees

Pursuant to Section 31 of the Exchange Act, a national securities exchange must pay the Commission a fee based on the aggregate dollar amount of sales of securities transacted on the exchange, and a national securities association must pay the Commission a fee based on the aggregate dollar amount of sales of securities transacted by or through any member of the association otherwise than on a national securities exchange (collectively, ''covered sales''). The SEC calculates the amount of Section 31 fees due from each exchange or FINRA by multiplying the aggregate dollar amount of its covered sales by the fee rate set by the Commission in a procedure set forth in Section 31(j) of the Exchange Act. These fees are designed to recover the costs related to the government's supervision and regulation of the securities markets and securities professionals. Section 31 requires the SEC to make annual and, in some cases, mid-year adjustments to the fee rate. These adjustments are necessary to make the SEC's total collection of transaction fees in a given year as close as possible to the amount of the regular appropriation to the Commission by Congress for that fiscal year.

To recover the costs of their Section 31 fee obligations, each of the national securities exchanges and FINRA have adopted, and the SEC has approved, rules assessing a regulatory transaction fee on their members, the amount of which is set in accordance with Section 31.[25] Broker-dealers, in turn, often impose fees on their customers that provide the funds to pay the fees owed to the exchanges and FINRA.

Like the well-known, longstanding and accepted Section 31-related fee model, the Executed Share Model would use a predetermined fee rate for the calculation of the fees, seek to recover designated regulatory costs (as CAT provides a solely regulatory function), and allow for the adjustment of the fee rate during the year to seek to match regulatory costs with fees collected. The Executed Share Model, however, would impose fees based on executed equivalent share volume rather than the sales values of certain transactions. Despite the different calculation metric, the Executed Share Model is similar to a model well known, long accepted and justified under the Exchange Act the purpose of which is also to cover costs associated with the regulation of securities markets and securities professionals.

[25] *See, e.g.,* Section 3 of Schedule A of FINRA's By-Laws.

ii. FINRA Trading Activity Fee

The transaction-based fees charged under the Executed Share Model also would be similar to FINRA's transaction-based trading activity fee,[26] which was modeled on the Commission's Section 31 fee.[27] Although the FINRA TAF is designed to cover a subset of the costs of FINRA services (*e.g.,* costs to FINRA of the supervision and regulation of members, including performing examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities) rather than all of FINRA's costs like the CAT, the transaction-based calculation of the FINRA TAF and the proposed CAT fees are similar. With the FINRA TAF, FINRA members on the sell-side of a transaction are required to pay a per share fee for each sale of covered securities, which includes exchange registered securities, equity securities traded otherwise than on an exchange, security futures, TRACE-Eligible Securities and municipal securities, subject to certain exceptions. In approving the FINRA TAF, the SEC stated that the implementation of the FINRA TAF ''is consistent with section 15A(b)(5) of the Act, in that the proposal is reasonably designed to recover NASD costs related to regulation and oversight of its members.'' [28] The SEC further stated that ''[t]he Commission recognizes the difficulties inherent in restructuring the NASD's regulatory fees, and believes that the NASD has done so in a manner that is fair and reasonable.'' [29] The CAT fees calculated under the Executed Share Model would be similar to the FINRA TAF in that they would be transaction-based fees intended to provide funding for regulatory costs.

iii. Options Regulatory Fee

The fees charged under the Executed Share Model also would be similar to the ORF charged by the options exchanges.[30] The ORF is a per contract fee charged by an options exchange for certain options transactions to options members of the relevant exchange. The ORF is collected indirectly from exchange members through their clearing firms by the Options Clearing Corporation on behalf of the Exchange. Revenue generated from the ORF is

[26] Section 1 of Schedule A of FINRA's By-Laws.

[27] *See* Securities Exchange Act Rel. No. 46416 (Aug. 23, 2002), 67 FR 55901 (Aug. 30, 2002).

[28] Securities Exchange Act Rel. No. 47946 (May 30, 2003), 68 FR 34021, 34023 (June 6, 2003) (''TAF Release'').

[29] *Id.*

[30] *See, e.g.,* Cboe Fee Schedule, MIAX Fee Schedule, and NYSE Arca Fee Schedule.

designed to recover a material portion of an options exchange's regulatory costs related to the supervision and regulation of its members' options business, including performing routine surveillance, investigations, examinations and financial monitoring as well as policy, rulemaking, interpretive, and enforcement activities. Exchange members generally pass-through the ORF to their customers in the same manner that firms pass-through to their customers the fees charged by self-regulatory organizations (''SROs'') to help the SROs meet their obligations under Section 31 of the Exchange Act.[31] The CAT fees calculated under the Executed Share Model would be similar to the ORF in that they would be transaction-based fees intended to provide funding for regulatory costs.

b. Fee Metric: Transaction Volume

The Operating Committee proposes to use the executed equivalent share volume of transactions in Eligible Securities as the means for allocating CAT costs among Participants and Industry Members. The use of executed equivalent share volume would replace the use of message traffic for allocating costs among Industry Members and the use of market share for allocating costs among Participants as set forth in the Original Funding Model. The use of executed equivalent share volume is a reasonable and equitable method for allocating costs for a variety of reasons, and the Operating Committee believes it improves upon the use of message traffic.

The proposed use of CAT-reported message traffic as set forth in the Original Funding Model raised a variety of issues for allocating CAT costs. First, based on a subsequent study of cost drivers for the CAT, it was determined that message traffic may be a factor in the CAT costs, but it is not the primary factor. CAT costs are dominated by technology costs, and the predominant technology costs are data processing (*e.g.,* linker) and storage costs.[32] The data processing and storage costs are related to the level of message traffic, but such costs also relate to other factors. The data processing and storage costs also are directly related to the complexity of the reporting requirements for the market activity. For example, in light of the complexity of market activity, the CAT's order reporting and linkage scenarios document is over 600 pages in length, addressing more than 170 scenarios. The processing and storage of such a large number of complex reporting scenarios requires very complex algorithms, which, in turn, lead to significant data processing and storage costs. The data processing and storage costs also are driven by the stringent performance, timelines and operational requirements for processing CAT Data. For example, the CAT NMS Plan requires that CAT order events be processed within established timeframes to ensure data can be made available to Participants' regulatory staff and the SEC in a timely manner. Accordingly, a CAT Reporter's message traffic may be a factor, but not a primary factor, in terms of the costs of the CAT.

Second, in general, Industry Member revenue, including revenue derived from fees Industry Members charge their clients, is often driven by transactions. Because message traffic is separate from whether or not a transaction occurs, fees based on message traffic may not correlate with common revenue or fee models. As a result, CAT fees based on message traffic could impose an outsized adverse financial impact on certain Industry Members.

Third, imposing CAT fees on each CAT Reporter based on its message traffic may have an adverse effect on competition, liquidity or other aspects of market structure, and may increase model complexity. For example, the number of messages for any given order, whether or not ultimately executed, could vary depending on how a given order is processed, leading to a lack of predictability on the applicable cost to process any given order or executions for broker-dealers or non-broker-dealer customers.[33] As one example, discussed in the context of the previously proposed funding models, market makers in Eligible Securities may have very high levels of message traffic due to their quoting obligations. Such high levels of message traffic may lead to outsized fees for market makers in comparison to their transaction activity, thereby placing an excessive financial burden on market makers. This, in turn, may lead to a decrease in the number of market makers, resulting in a decrease in liquidity and a reduction in market quality. To address this effect on market makers, the Operating Committee proposed to discount the fees that market makers would need to pay. However, such a discount adds complexity to the message traffic approach, as the model must determine when a discount is necessary and how much the discount should be.

The use of executed equivalent share volume to allocate CAT costs addresses each of these concerns. As discussed in more detail below, the fees are not divorced from transactions, the traditional source of revenue for Industry Members; fees based on executed equivalent share volume would not adversely impact certain market participants to the detriment of the markets, and the model is simple to understand and implement. Moreover, in addition to these benefits, the executed equivalent share volume is related to, but not precisely linked to, the CAT Reporter's burden on the CAT. In light of the many inter-related cost drivers of the CAT (*e.g.,* storage, message traffic, processing), determining the precise cost burden imposed by each individual CAT Reporter on the CAT is not feasible. Accordingly, the Operating Committee has determined that trading activity provides a reasonable proxy for cost burden on the CAT, and therefore is an appropriate metric for allocating CAT costs among CAT Reporters. This conclusion is consistent with the SEC's prior recognition of the use of transaction volume in setting regulatory fees. For example, in approving the FINRA TAF, the SEC recognized that transaction volume was closely enough connected to FINRA's regulatory responsibilities to satisfy the statutory standard in the Exchange Act.[34]

c. One-Third/One-Third/One-Third Allocation Between CBS, CBB and Participant

Under the Executed Share Model, the CBS, the CBB and the relevant Participant each pay one-third of the fee obligation for each transaction. The proposed allocation recognizes the three primary roles in each transaction: The buyer, the seller and the market regulator, and assigns an equal one-third share of the fee per transaction to each of these three roles. The Exchange Act itself recognizes the importance of these three roles in a transaction by imposing registration and other regulatory obligations on the broker-dealers and regulator involved in a transaction.[35] This allocation is similar to the approach taken with the FINRA TAF, ORF and Section 31 fees, and recognizes the role of the market regulator and the

[31] *See, e.g.,* Securities Exchange Act Rel. No. 58817 (Oct. 20, 2008), 73 FR 63744, 63745 (Oct. 27, 2008).

[32] For a detailed discussion of cost drivers of the CAT, *see* CAT LLC Webinar, CAT Costs (Sept. 21, 2021), *https://www.catnmsplan.com/events/cat-costs-september-21-2021.*

[33] The predictability of fees is discussed further below in Section A.3.f.

[34] TAF Release at 34024.

[35] *See* Sections 6, 15 and 15A of the Exchange Act.

buyer in the transaction as well as the seller.

The proposed allocation of one-third of the CAT costs to the Participants also addresses feedback expressed by some commenters on prior fee filings about the amount allocated to Participants versus Industry Members.[36] In the prior fee proposals, Execution Venues, which included Participants and certain ATSs, would have paid 25% of the CAT costs. As a result, Participants would have paid 25% or less of the CAT costs, and commenters questioned whether the Participant allocation was too small. Under the Executed Share Model, CBBs, as a group, would be responsible for paying for one-third of the CAT costs; CBSs, as a group, would be responsible for paying one-third of the CAT costs; and Participants, as a group, would be responsible for paying one-third of the CAT costs. The proposed one-third allocation to Participants with the Executed Share Model substantially increases the Participant allocation and substantially reduces the Industry Member allocation from prior proposals.[37]

d. Clearing Firms

The Executed Share Model would impose the proposed CAT fees on the clearing members for transactions in Eligible Securities. The Operating Committee determined to charge clearing members (that is, the CBBs and CBSs), rather than all Industry Members, as it is a process that is currently used in other contexts. For example, the ORF is collected indirectly from exchange members through their clearing firms by the Options Clearing Corporation on behalf of the exchanges. Although charging clearing firms reduces administrative issues, the Operating Committee recognizes that imposing this obligation solely on clearing members may impose an excessive financial burden on such firms. Accordingly, CBBs and CBSs may, but are not required to, pass-through the CAT fees to their clients, who may, in turn, pass the fees to their clients until they are imposed ultimately on the account that executed the transaction. This process would operate in a manner similar to the manner in which Industry Members pass-through other fees imposed to cover regulatory costs to their customers, for example, the fees charged by SROs to help the SROs meet their obligation under Section 31 of the Exchange Act or the ORF charged by the options exchanges.

e. Straightforward Approach

Another advantage of the Executed Share Model is that the approach is simple, straightforward and easy to understand. Using the predetermined Fee Rate, Participants, CBBs and CBSs would calculate their fees by multiplying the number of executed equivalent shares in their transactions in Eligible Securities by the Fee Rate and one-third. Both values necessary for the calculation are readily available. The Fee Rates (including initial and adjusted Fee Rates) would be announced by the Operating Committee, and Participants, CBBs and CBSs have easy access to their transaction data. Moreover, the two adjustments—one for Listed Options and one for OTC Equity Securities—are similarly straightforward calculations. The Executed Share Model does not include other complexities, such as tiered fees, minimum or maximum fees, excluded types of Eligible Securities or excluded transactions in Eligible Securities.

f. Predictable Fees

The Executed Share Model also provides CAT Reporters with predictable CAT fees. Because the Fee Rate is established in advance, Participants, CBBs and CBSs can calculate the CAT fee that applies to each transaction when it occurs. Accordingly, CAT Reporters with a CAT fee obligation are able to easily estimate and validate their applicable fees based on their own trading data. In addition, to the extent any CAT fees are passed on to customers, such customers also can calculate the applicable CAT fee for each transaction.

The predictability of CAT fees under the Executed Share Model addresses feedback raised by commenters regarding the lack of fee predictability present in prior fee filings.[38] For example, with potential message traffic models,[39] CAT Reporters would not know the actual per message rate until after the end of the relevant reporting period for which they were assessed the fee and also could not determine in advance the number of messages that may be associated with a given order or the total number of messages, thereby making it difficult for a CAT Reporter to predict a CAT fee related to its market activity. In addition, this lack of predictability related to message-based fees also could complicate efforts by Industry Members to estimate, explain and directly pass message-based fees back to customers, particularly if no trade has occurred.

g. Administrative Ease

The Executed Share Model also would allow for ease of billing and other administrative functions.[40] As discussed above, the Executed Share Model relies upon a basic calculation using a predetermined Fee Rate, thereby making the fee determination a straightforward process. In addition, the CAT fees will be collected in a manner similar to the collection process that Industry Members are already accustomed, thereby further reducing the administrative burden on the industry.

h. Equal Treatment of Trading Venues

The Executed Share Model also has the benefit of treating transactions in Eligible Securities equally regardless of the trading venue. The Fee Rate would be the same regardless of whether a trade was executed on an exchange or in the OTC market, or how the trade ultimately occurred more generally (*e.g.,* in a manner that generated more message traffic). As a result, it would not favor or unfairly burden any one type of trading venue or method.

i. Equitable Treatment of Different Eligible Securities

The Executed Share Model also recognizes and addresses the different trading characteristics of different types of securities. Recognizing that Listed Options trade in contracts rather than shares, the Executed Share Model would count executed equivalent share volume differently for Listed Options. Specifically, each executed contract for a transaction in Listed Options would be counted based on the multiplier applicable to the specific Listed Option contract in the relevant transaction (*e.g.,* 100 executed equivalent shares or such other applicable equivalency). Similarly, in recognition of the different trading characteristics of OTC Equity Securities as compared to NMS Stocks, the Executed Share Model would discount the share volume of OTC Equity Securities when calculating the

[36] *See* Securities Exchange Act Rel. No. 92451 (July 20, 2021), 86 FR 40114, 40123–26 (July 26, 2021) (''Proceedings Order'').

[37] Not only does the Executed Share Model increase the contribution of Participants as a group in comparison to prior proposed models, but it also changes the contributions of each Participant, depending upon the types and amount of securities traded on each market or over-the-counter. For example, as described in *Exhibit B,* FINRA's contribution likely would increase under the Executed Share Model in comparison to prior models given FINRA's responsibility for securities traded in the over-the-counter market.

[38] *See* Proceedings Order at 40122.

[39] Potential message traffic models, including the 2018 Fee Proposal and 2021 Fee Proposals, and the message traffic only model are discussed below.

[40] Section 11.2(d) of the CAT NMS Plan.

CAT fees. Specifically, each executed share for a transaction in OTC Equity Securities would be counted as 0.01 executed equivalent shares. As a result, the Executed Share Model would not favor or unfairly burden any one type of product or product type.

j. Contributions by Both Industry Members and Participants

The Executed Share Model would require both Participants and Industry Members to contribute to the funding of the CAT by paying a CAT fee. To date, the Participants have paid the full cost of the creation, implementation and maintenance of the CAT since 2012, pending Commission approval of a fee program. The continued funding of the CAT solely by the Participants was and is not contemplated by the CAT NMS Plan, nor is it a financially sustainable approach. As noted by the SEC, the CAT ''substantially enhance[s] the ability of the SROs and the Commission to oversee today's securities markets,'' [41] thereby benefiting all market participants. The Executed Share Model would require both Participants and Industry Members to contribute to the cost of the CAT, as contemplated by Rule 613 and the CAT NMS Plan.

Rule 613(a)(1)(vii)(D) specifically contemplates Industry Members contributing to the payment of CAT costs. Specifically, this provision requires the CAT NMS Plan to address ''[h]ow the plan sponsors propose to fund the creation, implementation, and maintenance of the consolidated audit trail, including the proposed allocation of such estimated costs among the plan sponsors, and between the plan sponsors and members of the plan sponsors.'' In approving Rule 613, the SEC noted that ''although the plan sponsors likely would initially incur the costs to establish and fund the central repository directly, they may seek to recover some or all of these costs from their members.'' [42]

In addition, as approved by the SEC, the CAT NMS Plan specifically contemplates CAT fees to be paid by both Industry Members and Participants. Section 11.1(b) of the CAT NMS Plan states that ''the Operating Committee shall have discretion to establish funding for the Company, including: (i) Establishing fees that the Participants shall pay; and (ii) establishing fees for Industry Members that shall be implemented by the Participants.'' [43] The Commission stated in approving the CAT NMS Plan the following:

> The Commission believes that the proposed funding model reflects a reasonable exercise of the Participants' funding authority to recover the Participants' costs related to the CAT. The CAT is a regulatory facility jointly owned by the Participants and, as noted above, the Exchange Act specifically permits the Participants to charge members fees to fund their self-regulatory obligations. The Commission further believes that the proposed funding model is designed to impose fees reasonably related to the Participants' self-regulatory obligations because the fees would be directly associated with the costs of establishing and maintaining the CAT, and not unrelated SRO services.[44]

Likewise, the Commission stated that ''the Participants are permitted to recoup their regulatory costs under the Exchange Act through the collection of fees from their members, as long as such fees are reasonable, equitably allocated and not unfairly discriminatory, and otherwise are consistent with Exchange Act standards,'' [45] and noted that ''Rule 613(a)(1)(vii)(D) requires the Participants to discuss in the CAT NMS Plan how they propose to fund the creation, implementation and maintenance of the CAT, including the proposed allocation of estimated costs among the Participants, and *between the Participants and Industry Members.*'' [46]

In its amendments to the CAT NMS Plan regarding financial accountability, the SEC reaffirmed the ability for the Participants to charge Industry Members a CAT fee. Specifically, the SEC noted that the amendments were not intended to change the basic funding structure for the CAT, which may include fees established by the Operating Committee, and implemented by the Participants, to recover from Industry Members the costs and expenses incurred by the Participants in connection with the development and implementation of the CAT.[47]

k. Use of CAT Data

CAT Data would be used to calculate the CAT fees under the Executed Share Model. CAT Data would be used to identify each transaction in Eligible Securities for which a CAT fee would be collected. Specifically, CAT fees will be charged with regard to trades reported to CAT by FINRA via the Alternative Trading Facility (''ADF''), Over-the-Counter Reporting Facility (''ORF'') and the Trade Reporting Facilities (''TRF'') and by the exchanges. In addition, the same transaction data in the CAT Data would be used in the calculation of the projected total executed equivalent share volume for the Fee Rate. Furthermore, the transaction data in the CAT Data provides the identity of the relevant clearing broker for each trade. This data would be used to identify the CBB and CBS for each trade for purposes of the CAT fees. Using CAT Data for the CAT fee calculations provides administrative efficiency, as the data will be accessible via the CAT. In addition, the transaction data would be the same transaction data used by the Participants in calculating their fee obligations with regard to Section 31 of the Exchange Act.

l. Six Month Look Back

The calculation of the Fee Rate also requires the determination of the projected total executed equivalent share volume of transactions in Eligible Securities for the year. The Operating Committee proposes to determine this projection based on the total executed equivalent share volume of transactions in Eligible Securities from the prior six months. The Operating Committee determined that the use of the data from the prior six months provides an appropriate balance between using data from a period that is sufficiently long to avoid short term fluctuations while providing data close in time to the calculation of the Fee Rate. Moreover, given that the Executed Share Model contemplates setting the Fee Rate at the beginning of the year, and allows for an adjustment of the Fee Rate during the year, the projections may be based on different sets of six months, thereby ensuring that the projections are not always based on certain months of the year that may exhibit different trading patterns from other times of the year.

m. Cost Discipline Mechanisms

The reasonableness of the Executed Share Model and the fees calculated under the Executed Share Model are supported by key cost discipline mechanisms for the CAT—a cost-based funding structure, cost transparency, cost management efforts and oversight. Together, these mechanisms help ensure the ongoing reasonableness of the CAT's costs and the level of fees assessed to support those costs.

First, the CAT NMS Plan requires that the Company operate on a ''break-even'' basis, with fees imposed to cover costs and an appropriate reserve. Any surpluses would be treated as an operational reserve to offset future fees and would not be distributed to the

[41] Rule 613 Adopting Release at 45726.

[42] *Id.* at 45795.

[43] *See also* Sections 11.1(c), 11.2(c), and 11.3(a) and (b) of the CAT NMS Plan.

[44] CAT NMS Plan Approval Order at 84794.

[45] *Id.* at 84795.

[46] *Id.* at 84797 (emphasis added).

[47] Financial Accountability Milestone Release at 31329.

Participants as profits.[48] To ensure that the Participants' operation of the CAT will not contribute to the funding of their other operations, Section 11.1(c) of the CAT NMS Plan specifically states that ''[a]ny surplus of the Company's revenues over its expenses shall be treated as an operational reserve to offset future fees.'' In addition, as set forth in Article VIII of the CAT NMS Plan, the Company ''intends to operate in a manner such that it qualifies as a 'business league' within the meaning of Section 501(c)(6) of the [Internal Revenue] Code.'' To qualify as a business league, an organization must ''not [be] organized for profit and no part of the net earnings of [the organization can] inure[ ] to the benefit of any private shareholder or individual.'' [49] As the SEC stated when approving the CAT NMS Plan, ''the Commission believes that the Company's application for Section 501(c)(6) business league status addresses issues raised by commenters about the Plan's proposed allocation of profit and loss by mitigating concerns that the Company's earnings could be used to benefit individual Participants.'' [50] The Internal Revenue Service has determined that the Company is exempt from federal income tax under Section 501(c)(6) of the Internal Revenue Code.

Second, the CAT's commitment to reasonable funding in support of its regulatory obligations is further reinforced by the transparency it has committed to provide on an ongoing basis regarding its financial performance. The Company currently makes detailed financial information about the CAT publicly available. Section 9.2(a) of the CAT NMS Plan requires the Operating Committee to maintain a system of accounting established and administered in accordance with GAAP and requires ''all financial statements or information that may be supplied to the Participants shall be prepared in accordance with GAAP (except that unaudited statements shall be subject to year-end adjustments and need not include footnotes).'' Section 9.2(a) of the CAT NMS Plan also requires the Company to prepare and provide to each Participant ''as soon as practicable after the end of each Fiscal Year, a balance sheet, income statement, statement of cash flows and statement of changes in equity for, or as of the end of, such year, audited by an independent public accounting firm.'' The CAT NMS Plan requires that this audited balance sheet, income statement, statement of cash flows and statement of changes in equity be made publicly available. Among other things, these financial statements provide operating expenses, including technology, legal, consulting, insurance, professional and administration and public relations costs. The Company also maintains a dedicated web page on the CAT NMS Plan website that consolidates its annual financial statements in a public and readily accessible place.[51]

In addition, the Company publicly provides the annual operating budget for the Company as well as periodically provides updates to the budget that occur during the year. The Company includes such budget information on a dedicated web page on the CAT NMS Plan website to make it readily accessible, like the CAT financial statements.

The Operating Committee also has held webinars providing additional detail about CAT costs and about potential alternative funding models for the CAT.[52] In addition, the Operating Committee plans to offer additional webinars on cost and funding for the industry as appropriate going forward. Collectively, these reports and other efforts provide extensive and comprehensive information regarding the CAT's operations with respect to its budgets, revenues, costs, and financial reserves, among other information.

Third, the Operating Committee regularly engages in and oversees efforts to reduce CAT costs responsibly while appropriately funding its regulatory obligations. The Operating Committee's efforts to manage its expenses responsibly include oversight of the CAT's annual budget, including technology and other expenditures and initiatives. This oversight is informed by key CAT working groups, such as the Technology Working Group, Regulatory Working Group and Interpretive Working Group, each of which brings varied expertise to issues of responsible cost management. In particular, the Operating Committee currently utilizes a Cost Management Working Group to analyze opportunities to manage CAT costs responsibly. In addition, the Plan Processor regularly reviews options to lower compute and storage needs and works with CAT technology providers to provide services in a cost-effective manner. These collective efforts have led to a variety of technological changes to reduce costs.

Fourth, the CAT's funding and operations are subject to the oversight of the Commission. The CAT is extensively supervised by the Commission, including regular and continuous attendance at Operating Committee, Subcommittee and working group meetings. In addition, CAT fees as well as cost management efforts that require an amendment of the CAT NMS Plan are subject to review by the Commission's Division of Trading and Markets, as well as public comment.

6. Alternative Models Considered

The Operating Committee has determined to propose the Executed Share Model to fund the CAT for the reasons discussed above. In reaching this conclusion, the Operating Committee considered the advantages and disadvantages of a variety of possible alternative funding and cost allocation models for the CAT in detail. After analyzing the various alternatives and considering comments on the previously proposed models, the Operating Committee determined that, although various funding models may be reasonable and appropriate, the Executed Share Model provides a variety of advantages in comparison to the alternatives, and satisfies the requirements of the Exchange Act, including providing for an equitable allocation of reasonable fees among CAT Reporters, not being designed to permit unfair discrimination among CAT Reporters and not imposing any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

a. 2018 Fee Proposal

The Operating Committee previously filed a fee proposal in line with the CAT NMS Plan—the 2018 Fee Proposal.[53] Under that model, the Operating Committee, among other things, proposed a 75%–25% allocation of CAT costs between Execution Venues (which included Participants and Execution Venue ATSs) and Industry Members (other than Execution Venue ATSs), and required Execution Venues to pay fees based on market share, and Industry

[48] CAT NMS Plan Approval Order at 84792.

[49] 26 U.S.C. 501(c)(6).

[50] CAT NMS Plan Approval Order at 84793.

[51] *See* CAT Audited Financial Statements, *https://www.catnmsplan.com/audited-financial-statements.*

[52] *See, e.g.,* CAT LLC Webinar CAT Costs (Sept. 21, 2021), *https://www.catnmsplan.com/events/cat-costs-september-21-2021;* CAT LLC Webinar, CAT Funding (Sept. 22, 2021), *https://www.catnmsplan.com/events/cat-funding-september-22-2021;* and CAT LLC Webinar, CAT Funding (Apr. 6, 2022).

[53] For a description of the 2018 Fee Proposal, *see* Securities Exchange Act Rel. No. 82451 (Jan. 5, 2018), 83 FR 1399 (Jan. 11, 2018) (''2018 Fee Proposal Release''). The Participants later withdrew this proposed amendment. Securities Exchange Act Rel. No. 82892 (Mar. 16, 2018), 83 FR 12633 (Mar. 22, 2018).

Members (other than Execution Venue ATSs) to pay fees based on CAT message traffic.[54]

Each Industry Member (other than Execution Venue ATSs) would be placed into one of seven tiers of fixed fees, based on CAT message traffic in Eligible Securities. Options Market Maker and equity market maker quotes would be discounted when calculating message traffic.

The Operating Committee determined to allocate 67% of Execution Venue costs recovered to Equity Execution Venues and 33% to Options Execution Venues. Each Equity Execution Venue would be placed in one of four tiers of fixed fees based on market share, and each Options Execution Venue would be placed in one of two tiers of fixed fees based on market share. Equity Execution Venue market share would be determined by calculating each Equity Execution Venue's proportion of the total volume of NMS Stock and OTC Equity shares reported by all Equity Execution Venues during the relevant time period. For purposes of calculating market share, the OTC Equity Securities market share of Execution Venue ATSs trading OTC Equity Securities as well as the market share of the FINRA OTC reporting facility would be discounted. Similarly, market share for Options Execution Venues would be determined by calculating each Options Execution Venue's proportion of the total volume of Listed Options contracts reported by all Options Execution Venues during the relevant time period.

The 2018 Fee Proposal was a very complex model with many interrelated parts, including allocation percentages, discounts for certain market behavior, and multiple tiered fees, and the complexity raised concerns from the Commission regarding its use as the CAT funding model. In addition, in response to the proposal, the industry provided a number of other comments related to the proposal, including comments regarding the proposed allocation of CAT costs between Participants and Industry Members, and the ability of certain market segments to afford the proposed CAT fee.[55]

b. 2021 Fee Proposal

In response to the comments on the 2018 Fee Proposal, the Operating Committee determined to revise various aspects of the proposed model, thereby developing the 2021 Fee Proposal.[56] The 2021 Fee Proposal would have continued to require many of the same elements as the 2018 model, including the bifurcated funding approach, and the use of market share and message traffic for allocating costs, as required by the current CAT NMS Plan. The 2021 Fee Proposal, however, proposed to revise the model in certain ways, including (1) dividing the CAT costs between Participants and Industry Members, rather than between Execution Venues and Industry Members (other than Execution Venue ATSs); (2) eliminating the use of tiers in calculating CAT fees for Participants and Industry Members; (3) adopting certain minimum and maximum CAT fees for Industry Members and Participants; (4) revising the allocation between Equity Execution Venues and Options to be 60%–40%; and (5) excluding, rather than discounting, market share in OTC Equity Shares from the calculation of market share for FINRA.

Although the revisions of the 2021 Fee Proposal addressed certain comments on the prior 2018 Fee Proposal, commenters continued to raise issues regarding the proposal. For example, commenters provided feedback regarding the 75%–25% cost allocation between Industry Members and Participants, the 60%–40% cost allocation between Equity Participants and Options Participants, the use of market share and message traffic for allocating costs among Participants and Industry Members, respectively, and the proposed minimum and maximum fees. Noting these and other issues, the SEC determined to institute proceedings to determine whether to disapprove the 2021 Fee Proposal or to approve the proposal with any changes or subject to any conditions the SEC deemed necessary or appropriate after considering public comment.[57] Ultimately, the Operating Committee determined to withdraw the 2021 Fee Proposal.[58]

c. Revenue Funding Model

The Operating Committee also considered a model in which all CAT Reporters, including both Industry Members and Participants, would pay fees based solely on revenue. The concept underlying this proposal is that CAT costs would be borne by CAT Reporters based on their ability to pay. Under this model, Industry Member revenue would be calculated based on revenue reported in FOCUS reports, and Participant revenue would be calculated based on revenue information in Form 1 amendments and other publicly reported figures.

The Operating Committee did not select this model for various reasons. Under this approach, Participants as a group would only pay approximately 4% of the total CAT costs. Given their role as SROs and their use of the CAT, the Operating Committee did not believe that such a small allocation of the CAT costs to the Participants was appropriate. Using revenue also raised a variety of practical issues. For example, questions were raised as to what revenue was appropriate to include in the calculation of revenue for Industry Members. The gross revenue set forth on FOCUS reports was proposed, as it was similar to an existing FINRA regulatory fee.[59] However, questions were raised as to whether revenue unrelated to NMS Securities or OTC Equity Securities, or otherwise unrelated to the CAT, should be included for calculation of the CAT fee. Eliminating revenue unrelated to CAT-related activity would have been difficult or impossible. In addition, the lack of a uniform approach to calculating revenue for the Participants could raise inequities in the collection of a CAT fee.

To address the issues regarding the 96%–4% allocation and the calculation of the Participant revenue in the straight revenue model described above, the Operating Committee considered an alternative version of the revenue model in which the CAT costs would be allocated between Industry Members and Participants based on a set percentage (*e.g.,* 75%–25%) and the Industry Member allocation would be allocated among Industry Members

[54] In developing the 2018 Fee Proposal, the Operating Committee considered many variations of different aspects of that model. For example, the Operating Committee evaluated different cost allocations between Industry Members (other than Execution Venue ATSs) and Execution Venues, including 80%–20%, 75%–25%, 70%–30% and 65%–35% allocations, and different cost allocations between Equity and Options Execution Venues. The Operating Committee also considered different discounts for equities and options market makers, different numbers of tiers of Industry Members and Execution Venues, different fee levels for each tier, and other aspects of the model.

[55] For a discussion of comments made regarding the Original Funding Model and the 2018 Fee Proposal, *see generally* 2018 Fee Proposal Release.

[56] Securities Exchange Act Rel. No. 91555 (Apr. 14, 2021), 86 FR 21050 (Apr. 21, 2021).

[57] Securities Exchange Act Rel. No. 92451 (July 20, 2021), 86 FR 40114 (July 26, 2021). *See also* Securities Exchange Act Rel. No. 93227 (Oct. 1, 2021), 86 FR 55900 (Oct. 7, 2021).

[58] Letter to Vanessa Countryman, Secretary, SEC from Mike Simon, Chair, CAT NMS Plan Operating Committee re: File Number 4–698—Withdrawal of Amendment to the National Market System Plan Governing the Consolidated Audit Trail (Dec. 8, 2021).

[59] *See* paragraphs (c) and (d) of Section 1 of Schedule A of FINRA's By-Laws regarding FINRA's annual Gross Income Assessment.

based on revenue and the Participant allocation would be allocated among Participants based on market share. However, this alternative revenue model failed to address the issues regarding the appropriate revenue calculations for Industry Members.

d. Message Traffic Only Model

The Operating Committee considered a funding model in which CAT costs were allocated across all CAT Reporters—both Industry Members and Participants—based on message traffic in the CAT. Specifically, the Operating Committee considered eliminating the concepts of a Participant allocation and an Industry Member allocation entirely, and treating Participants and Industry Members the same under the model. The use of message traffic, however, raised issues regarding the predictability of fees. It also introduced complexity to the model, as discounts were necessary for certain types of activity to avoid fees that may adversely impact market making activity and other market activity.

e. Alternative Allocation for Executed Share Model

The Operating Committee also discussed an alternative funding model that would calculate fees in a manner similar to the Executed Share Model, but would allocate the fee to one Industry Member, the CBS, rather than allocating one-third of the fees each to the CBS, the CBB and the applicable Participant. This allocation would more closely parallel the existing Section 31 fee allocation structure that is already in place. This alternative allocation for the Executed Share Model would eliminate complexity from the fee process, including the process of allocating fees among Industry Members and Participants that are likely to be passed through to the ultimate investors, and would provide for a more transparent funding process for investors. Instead of using this approach, the Operating Committee determined to allocate costs among the main participants in a transaction and allow those participants to determine whether and how to recover the costs.

f. Sales Value Model

The Operating Committee also considered a funding model in which fees would be calculated based on transaction sales values, similar to the method used in the Section 31/sales value fee programs. Under this model, the per sales value fee rate would be calculated by dividing the annual CAT budget by the projected annual total industry transaction sales values. The fee would be calculated by multiplying the sales value fee rate by a given trade's sales value. The CBB, the CBS and the relevant Participant would each be assessed one-third of the fee, or, in the alternative, the CBS would be assessed two-thirds of the fee and the relevant Participants would be assessed one-third of the fee. The same rate would apply to all transactions equally, regardless of the type of product in the trade (*i.e.,* NMS Stocks, Listed Options or OTC Equity Securities). Based on an analysis of 2021 data, the Operating Committee observed that the sales value model could potentially impose a disproportionate share of the CAT costs on Participants and Industry Members trading NMS Stocks versus Listed Options. In comparison, also based on an analysis of 2021 data, the Operating Committee observed that the Executed Share Model would impose an equitable allocation of fees among Participants and Industry Members trading NMS Stocks and Listed Options, as well as OTC Equity Securities.

g. Other Models

The Operating Committee also considered other possible funding models. For example, the Participants considered allocating the CAT costs equally among each of the Participants, and then permitting each Participant to charge its own members as it deems appropriate. The Operating Committee determined that such an approach raised a variety of issues, including the likely inconsistency of the ensuing charges, potential for lack of transparency, and the impracticality of multiple SROs submitting invoices for CAT charges. The Operating Committee also discussed the advantages and disadvantages of various alternative models during the development of the CAT NMS Plan, such as a cost allocation based on a strict pro-rata distribution, regardless of the type or size of the CAT Reporters.[60] The Operating Committee believes that the Executed Share Model provides advantages over each of these previously considered models and provides an equitable allocation of reasonable fees among CAT Reporters.

7. Proposed Amendments to CAT NMS Plan for the Executed Share Model

To implement the Executed Share Model and to impose the associated CAT fees on the Participants, the Operating Committee proposes to the amend CAT NMS Plan. The following discusses the proposed amendments to the CAT NMS Plan, including the addition of a Participant CAT fee schedule, entitled ''Consolidated Audit Trail Funding Fees,'' to *Exhibit B* [sic] of the CAT NMS Plan.

a. Definition of Execution Venue

Section 1.1 of the CAT NMS Plan defines the term ''Execution Venue'' to mean ''a Participant or an alternative trading system ('ATS') (as defined in Rule 300 of Regulation ATS) that operates pursuant to Rule 301 of Regulation ATS (excluding any such ATS that does not execute orders).'' Currently, the term ''Execution Venue'' is used in Section 11.2 and 11.3 of the CAT NMS Plan to describe how CAT costs would be allocated among CAT Reporters under the Original Funding Model. The Original Funding Model would have imposed fees based on market share to CAT Reporters that are Execution Venues, including ATSs, and fees based on message traffic for Industry Members' non-ATS activities. In contrast, the Executed Share Model would impose fees based on the executed equivalent shares of transactions in Eligible Securities for three categories of CAT Reporters: Participants, CBBs and CBSs. Accordingly, as the concept for an ''Execution Venue'' would not be relevant for the Executed Share Model, the Operating Committee proposes to delete this term and its definition from Section 1.1 of the CAT NMS Plan.

b. Use of Executed Equivalent Shares for CAT Fees

The Original Funding Model set forth in the CAT NMS Plan requires Participants and Execution Venue ATSs to pay CAT fees based on market share and Industry Members (other than Execution Venue ATSs) to pay CAT fees based on message traffic. The CAT NMS Plan also describes how the market share based fee would be calculated for Participants and other Execution Venue ATSs and how the message traffic-based fee would be calculated for Industry Members (other than Execution Venue ATSs). The Operating Committee proposes to amend the CAT NMS Plan to require each of the Participants, CBBs and CBSs to pay a CAT fee based on the number of executed equivalent shares in a transaction in Eligible Securities, rather than based on market share and message traffic. Accordingly, the Operating Committee proposes to amend Section 11.2(b) and (c) and Section 11.3(a) and (b) of the CAT NMS Plan to reflect the proposed use of the number of executed equivalent shares in

[60] For a discussion of alternatives considered in the drafting of the CAT NMS Plan, *see* Appendix C of the CAT NMS Plan at C–88–C–89.

transactions in Eligible Securities in calculating CAT Fees.

Section 11.2(b) of the CAT NMS Plan states that ''In establishing the funding of the Company, the Operating Committee shall seek . . . (b) to establish an allocation of the Company's related costs among Participants and Industry Members that is consistent with the Exchange Act, taking into account the timeline for implementation of the CAT and distinctions in the securities trading operations of Participants and Industry Members and their relative impact upon Company resources and operations.'' The Operating Committee proposes to delete the requirement to take into account ''distinctions in the securities trading operations of Participants and Industry Members and their relative impact upon Company resources and operations.'' This requirement related to using message traffic and market share in the calculation of CAT fees, as message traffic and market share were metrics related to the impact of a CAT Reporter on the Company's resources and operations. With the proposed move to the use of the executed equivalent shares metric instead of message traffic and market share, the requirement is no longer relevant.

Section 11.2(c) of the CAT NMS Plan states that ''[i]n establishing the funding of the Company, the Operating Committee shall seek . . . (c) to establish a tiered fee structure in which the fees charged to: (i) CAT Reporters that are Execution Venues, including ATSs, are based upon the level of market share; (ii) Industry Members' non-ATS activities are based upon message traffic.'' The Operating Committee proposes to delete subparagraphs (i) and (ii) and replace these subparagraphs with the requirement that the fee structure in which the fees charged to ''Participants and Industry Members are based upon the executed equivalent share volume of transactions in Eligible Securities.'' [61]

Section 11.3(a) of the CAT NMS Plan provides additional detail regarding the market share based fees to be paid by Participants and Execution Venue ATSs under the Original Funding Model. Specifically, Section 11.3(a) of the CAT NMS Plan states:

(a) The Operating Committee will establish fixed fees to be payable by Execution Venues as provided in this Section 11.3(a):

(i) Each Execution Venue that: (A) Executes transactions; or (B) in the case of a national securities association, has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange, in NMS Stocks or OTC Equity Securities will pay a fixed fee depending on the market share of that Execution Venue in NMS Stocks and OTC Equity Securities, with the Operating Committee establishing at least two and no more than five tiers of fixed fees, based on an Execution Venue's NMS Stocks and OTC Equity Securities market share. For these purposes, market share for Execution Venues that execute transactions will be calculated by share volume, and market share for a national securities association that has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange in NMS Stocks or OTC Equity Securities will be calculated based on share volume of trades reported, provided, however, that the share volume reported to such national securities association by an Execution Venue shall not be included in the calculation of such national security association's market share.

(ii) Each Execution Venue that executes transactions in Listed Options will pay a fixed fee depending on the Listed Options market share of that Execution Venue, with the Operating Committee establishing at least two and no more than five tiers of fixed fees, based on an Execution Venue's Listed Options market share. For these purposes, market share will be calculated by contract volume.

The Operating Committee proposes to delete Section 11.3(a) of the CAT NMS Plan and replace this paragraph with a description of the fees to be paid by each Participant under the Executed Share Model. Specifically, proposed Section 11.3(a)(i) of the CAT NMS Plan would state that ''[e]ach Participant that is a national securities exchange will be required to pay a fee for each transaction in Eligible Securities executed on the exchange based on CAT Data. Each Participant that is a national securities association will be required to pay a fee for each transaction in Eligible Securities executed otherwise than on an exchange based on CAT Data.'' Proposed Section 11.3(a)(ii) of the CAT NMS Plan would state that ''[t]he fee for each transaction in Eligible Securities will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the applicable fee rate for the relevant period.''

The Operating Committee proposes to add proposed Section 11.3(a)(iii), which would require Participants ''to pay a CAT fee with regard to CAT costs not previously paid by the Participants (''Prospective CAT Costs'').'' Proposed Section 11.3(a)(iii) would describe how the Fee Rate would be calculated for these CAT fees. Specifically, proposed Section 11.3(a)(iii) would state that ''[t]he Fee Rate for the CAT fees related to Prospective CAT Costs will be calculated by dividing the budgeted CAT costs for the relevant period (as determined by the Operating Committee) by the projected total executed equivalent share volume of all transactions in Eligible Securities for the relevant period based on CAT Data.'' The Operating Committee would utilize budgeted costs in calculating the proposed forward-looking fees.

The Operating Committee also proposes to add Section 11.3(a)(iv) to describe Participants' obligations under the funding model with regard to CAT costs previously paid by Participants. Specifically, proposed Section 11.3(a)(iv) would state that ''[n]otwithstanding anything to contrary, Participants will not be required to a pay a CAT fee related to CAT costs previously paid by the Participants in a manner determined by the Operating Committee ('Past CAT Costs').'' Accordingly, under those circumstances, Industry Members would be required to pay two-thirds of such Past CAT Costs in accordance with the Executed Share Model. The Participants would remain responsible for the other one-third of the Past CAT Costs, but such one-third of the Past CAT Costs has already been paid in a manner determined by the Operating Committee; that one-third of Past CAT Costs would not be paid pursuant to the Executed Share Model. The two-thirds of the Past CAT Costs to be collected from Industry Members would be allocated to the Participants for repayment of the outstanding loan notes of the Participants to the Company on a pro rata basis.

Section 11.3(b) of the CAT NMS Plan provides additional detail regarding the message traffic-based CAT fees to be paid by Industry Members (other than Execution Venue ATSs). Specifically, Section 11.3(b) of the CAT NMS Plan states:

The Operating Committee will establish fixed fees to be payable by Industry Members, based on the message traffic generated by such Industry Member, with the Operating Committee establishing at least five and no more than nine tiers of fixed fees, based on message traffic. For the avoidance of doubt, the fixed fees payable by Industry Members pursuant

[61] As discussed in the next section, the Operating Committee also proposes to delete the reference to a ''tiered'' fee structure.

to this paragraph shall, in addition to any other applicable message traffic, include message traffic generated by: (i) An ATS that does not execute orders that is sponsored by such Industry Member; and (ii) routing orders to and from any ATS sponsored by such Industry Member.

The Operating Committee proposes to delete Section 11.3(b) of the CAT NMS Plan and replace this paragraph with a description of the fees to be paid by CBBs and CBSs under the Executed Share Model as follows:

The Operating Committee will establish fees to be payable by Industry Members as follows:

(i) Each Industry Member that is the clearing firm for the buyer in a transaction in Eligible Securities (''Clearing Broker for the Buyer'' or ''CBB'') will be required to pay a fee for each such transaction in Eligible Securities based on CAT Data. The CBB's fee for each transaction Eligible Securities will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate.

(ii) Each Industry Member that is the clearing firm for the seller in a transaction in Eligible Securities (''Clearing Broker for the Seller'' or ''CBS'') will be required to pay a fee for each transaction in Eligible Securities based on CAT Data. The CBS's fee for each transaction in Eligible Securities will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and the Fee Rate.

The Operating Committee proposes to add proposed Section 11.3(b)(iii) to the CAT NMS Plan to further describe the fee obligations of CBBs and CBSs with regard to Past CAT Costs. Specifically, proposed Section 11.3(b)(iii) would state that ''CBBs and CBSs will be required to pay CAT fees related to Past CAT Costs. The Fee Rate for the CAT fees related to Past CAT Costs will be calculated by dividing the Past CAT Costs for the relevant period (as determined by the Operating Committee) by the projected total executed equivalent share volume of all transactions in Eligible Securities for the relevant period based on CAT Data.'' As discussed in detail above, the Operating Committee would utilize actual CAT costs in calculating these CAT fees.

The Operating Committee also proposes to add proposed Section 11.3(b)(iv) to the CAT NMS Plan to further describe the fee obligations of CBBs and CBSs with regard to Prospective CAT Costs. Specifically, proposed Section 11.3(b)(iv) would state that ''CBBs and CBSs will be required to pay CAT fees related to Prospective CAT Costs. The Fee Rate for the CAT fees related to Prospective CAT Costs will be the same as set forth in paragraph (a)(iv) above.'' Accordingly, the Participants, CBBs and CBSs would pay the same Fee Rate for CAT fees related to Prospective CAT Costs.

c. Elimination of Tiered Fees

The Operating Committee proposes to eliminate the use of tiered fees for the Executed Share Model. Instead, under the Executed Share Model, each Participant, CBB or CBS would pay a fee based solely on its transactions in Eligible Securities. The Operating Committee therefore proposes to amend Sections 11.1(d), 11.2(c), 11.3(a) and 11.3(b) of the CAT NMS Plan to eliminate tiered fees and related concepts.

By removing the concept of fee tiering for both Industry Members and Participants, the Executed Share Model addresses various comments regarding the use of tiering.[62] Utilizing a tiered fee structure, by its nature, would create certain inequities among the CAT fees paid by CAT Reporters. For example, two CAT Reporters with comparable executed equivalent share volume may pay notably different fees if one falls in a higher tier and the other falls within a lower tier. Correspondingly, a tiered fee structure generally reduces fees for CAT Reporters with higher executed share volume in one tier, while increasing fees for Industry Members with lower executed share volume in the same tier, as compared to a non-tiered fee. Furthermore, CAT Reporters in lower tiers potentially pay more than they would without the use of tiers. While tiering appropriately exists in various other self-regulatory fee programs, in response to feedback on the 2018 and 2021 Fee Proposals, the Operating Committee is proposing to eliminate the tiering concept, rendering past comments about a tiered model moot.

By charging each Participant, CBB and CBS a CAT fee directly based on its own executed equivalent share volume, rather than charging a tiered fee, the Executed Share Model would result in a CAT fee being tied more directly to the CAT Reporter's executed share volume. In contrast, with a tiered fee, CAT Reporters with different levels of executed equivalent share volume that are placed in the same tier would all pay the same CAT fee, thereby limiting the correlation between a CAT Reporter's activity and its CAT fee.

The proposed non-tiering approach is simpler and more objective to administer than the tiering approach. With a tiering approach, the number of tiers for Participants, CBBs and CBSs, the boundaries for each tier and the fees assigned to each tier must be established. In the absence of clear groupings of CAT Reporters, selecting the number of, boundaries for, and the fees associated with each tier would be subject to some level of subjectivity. Furthermore, the establishment of tiers would need to be continually reassessed based on changes in the executed equivalent share volume of transactions in Eligible Securities, thereby requiring regular subjective assessments. Accordingly, the removal of tiering from the funding model eliminates a variety of subjective analyses and judgments from the model and simplifies the determination of CAT fees.

Section 11.1(d) of the CAT NMS Plan states that ''[c]onsistent with this Article XI, the Operating Committee shall adopt policies, procedures, and practices regarding the budget and budgeting process, assignment of tiers, resolution of disputes, billing and collection of fees, and other related matters.'' With the elimination of tiered fees, the reference to the ''assignment of tiers'' would no longer be relevant for the Executed Share Model. Therefore, the Operating Committee proposes to delete the reference to ''assignment of tiers'' from Section 11.1(d).

Section 11.1(d) of the CAT NMS Plan also states that:

For the avoidance of doubt, as part of its regular review of fees for the CAT, the Operating Committee shall have the right to change the tier assigned to any particular Person in accordance with fee schedules previously filed with the Commission that are reasonable, equitable and not unfairly discriminatory and subject to public notice and comment, pursuant to this Article XI. Any such changes will be effective upon reasonable notice to such Person.

As noted above, unlike the Original Funding Model, the Executed Share Model would not utilize tiered fees. Accordingly, these two sentences would not be applicable to the Executed Share Model. Therefore, the Operating Committee proposes to delete these two sentences from Section 11.1(d) of the CAT NMS Plan.

The Operating Committee proposes to delete the reference to ''tiered'' fees from Section 11.2(c) of the CAT NMS Plan. Section 11.2(c) of the CAT NMS Plan states that ''[i]n establishing the

[62] For a discussion of comments on prior fee models, *see, e.g.,* Securities Exchange Act Rel. No. 80167 (June 30, 2017), 82 FR 31656, 31664 (July 7, 2017).

funding of the Company, the Operating Committee shall seek: . . . (c) to establish a tiered fee structure . . .'' The Participants propose to delete the word ''tiered'' from this provision as the CAT fees would not be tiered under the Executed Share Model.

The Operating Committee also proposes to delete paragraph (iii) of Section 11.2(c) of the CAT NMS Plan. Paragraph (iii) of Section 11.2(c) of the CAT NMS Plan states that the Operating Committee shall seek to establish a tiered fee structure in which fees charged to:

> The CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) be generally comparable (where for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venues and/or Industry Members).

Under the Original Funding Model, the comparability provision was an important factor in determining the tiers for Industry Members and Execution Venues. In determining the tiers, the Operating Committee sought to establish comparable fees among the CAT Reporters with the most Reportable Events.[63] Under the Executed Share Model, however, the comparability provision is no longer necessary, as a tiered fee structure would not be used for Industry Members or Participants.

As discussed above, the Operating Committee proposes to replace the language in Sections 11.3(a) and (b) of the CAT NMS Plan with language implementing the Executed Share Model. These proposed changes would remove the references to tiers in Sections 11.3(a)(i) and (ii) and 11.3(b) of the CAT NMS Plan, along with the other proposed changes. Specifically, Section 11.3(a)(i) of the CAT NMS Plan states that the Operating Committee, when establishing fees for Execution Venues for NMS Stocks and OTC Equity Securities, will establish ''at least two and no more than five tiers of fixed fees, based on an Execution Venue's NMS Stocks and OTC Equity Securities market share.'' Similarly, Section 11.3(a)(ii) of the CAT NMS Plan states that the Operating Committee, when establishing fees for Execution Venues that execute transactions in Listed Options, will establish ''at least two and no more than five tiers of fixed fees, based on an Execution Venue's Listed Options market share.'' Section 11.3(b) of the CAT NMS Plan states that the Operating Committee, when establishing fees to be payable by Industry Members, will establish ''at least five and no more than nine tiers of fixed fees, based on message traffic.'' The Operating Committee proposes to delete each of these references to tiers from the CAT NMS Plan.

d. No Fixed Fees

As discussed above, the Operating Committee proposes to replace the language in Sections 11.3(a) and (b) of the CAT NMS Plan with language implementing the Executed Share Model. These proposed changes also would remove the references to ''fixed fees'' in Sections 11.3(a), 11.3(a)(i) and 11.3(a)(ii) and replaced them with references to ''fees.'' Under the Executed Share Model, the CAT fees to be paid by Participants, CBBs and CBSs will vary in accordance with their executed equivalent share volume of transactions in Eligible Securities, although the Fee Rate will be fixed for a relevant period. Therefore, the concept of a fixed fee—that is, a fee that does not vary depending on circumstances—is not relevant under the Executed Share Model.

e. Proposed CAT Fee Schedule for Participants

To implement the Participant CAT fees, the Operating Committee proposes to add a fee schedule, entitled ''Consolidated Audit Trail Funding Fees,'' to *Exhibit B* [sic] of the CAT NMS Plan. Proposed paragraph (a) of the fee schedule would describe the CAT fee to be paid by the Participants under the Executed Share Model. Specifically, paragraph (a)(1) of the fee schedule would state that ''[e]ach Participant that is a national securities exchange shall pay a fee for each transaction in Eligible Securities executed on the exchange based on CAT Data, where the fee for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate.'' Paragraph (a)(2) of the fee schedule would state that ''[e]ach Participant that is a national securities association shall pay a fee for each transaction in Eligible Securities executed otherwise than on exchange based on CAT Data, where the fee for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate.''

Proposed paragraph (b) of the fee schedule would describe how and when the Operating Committee would set the Fee Rate. Proposed paragraph (b)(1) of the fee schedule would state that ''[t]he Operating Committee will calculate the Fee Rate at the beginning of each year by dividing the budgeted CAT costs for the year by the projected total executed equivalent share volume of all transactions in Eligible Securities for the year. After setting the Fee Rate at the beginning of the year, the Fee Rate may be adjusted once during the year, if necessary, due to changes in the budgeted or actual costs or projected or actual total executed equivalent share volume during the year.''

Proposed paragraph (b)(2) of the fee schedule would describe the method for counting executed equivalent shares in a transaction in Eligible Securities. Specifically, proposed paragraph (b)(2)(i) would state that ''each executed share for a transaction in NMS Stocks will be counted as one executed equivalent share.'' Proposed paragraph (b)(2)(ii) of the fee schedule would state that ''each executed contract for a transaction in Listed Options will be counted based on the multiplier applicable to the specific Listed Option (*i.e.,* 100 executed equivalent shares or such other applicable multiplier).'' Proposed paragraph (b)(2)(iii) of the fee schedule would state that ''each executed share for a transaction in OTC Equity Securities shall be counted as 0.01 executed equivalent share.''

Proposed paragraph (b)(3) of the fee schedule would describe the budgeted CAT costs and adjustments to the budgeted CAT costs to be used in calculating the Fee Rate. Proposed paragraph (b)(3) of the fee schedule would state that ''[t]he budgeted CAT costs for the year shall be comprised of all fees, costs and expenses budgeted to be incurred by or for the Company in connection with the development, implementation and operation of the CAT as set forth in the annual operating budget approved by the Operating Committee pursuant to Section 11.1(a) of the CAT NMS Plan, or as adjusted during the year by the Operating Committee.''

Proposed paragraph (b)(4) of the fee schedule would describe the projected total executed equivalent share volume of transactions in Eligible Securities to be used in calculating the Fee Rate as well as any adjustments to such projections. Proposed paragraph (b)(4) of the fee schedule would state that ''[t]he Operating Committee shall determine the projected total executed equivalent share volume of all transactions in Eligible Securities for each relevant period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior six months.''

Proposed paragraph (c) of the fee schedule would describe the payment of

[63] *See, e.g.,* Securities Exchange Act Rel. No. 82451 (Jan. 5, 2018), 83 FR 1399, 1406–07 (Jan. 11, 2018).

the CAT fees by Participants. Proposed paragraph (c) would state that ''[e]ach Participant shall pay the CAT fee set forth in paragraph (a) to Consolidated Audit Trail, LLC in the manner prescribed by Consolidated Audit Trail, LLC on a monthly basis based on the Participant's transactions in the prior month.''

8. Satisfaction of Exchange Act and CAT NMS Plan Requirements

The Executed Share Model offers a variety of benefits and satisfies the funding principles and other requirements of the CAT NMS Plan, as proposed to be revised herein, as well as the applicable requirements of the Exchange Act.

a. Funding Principle: Section 11.2(a) of the CAT NMS Plan

The Executed Share Model satisfies the funding principles set forth in Section 11.2(a) of the CAT NMS Plan, as proposed to be modified herein. Section 11.2(a) requires the Operating Committee, in establishing the funding of the Company, to seek ''to create transparent, predictable revenue streams for the Company that are aligned with the anticipated costs to build, operate and administer the CAT and the other costs of the Company.''

First, by adopting a CAT-specific fee tied directly to CAT costs, the Operating Committee would be fully transparent regarding the costs of the CAT and how those costs would be allocated among CAT Reporters. The CAT fees would be designed solely to cover CAT costs, and no other regulatory costs. In contrast, charging a general regulatory fee, which might otherwise be used to cover CAT costs as well as other regulatory costs, would be less transparent than the selected approach of charging a fee designated to cover CAT-related costs only. Such a general regulatory fee could cover a variety of regulatory costs without differentiating those costs related to the CAT.

Second, the Executed Share Model would provide a predictable revenue stream for the Company. The Executed Share Model is designed to collect the annual CAT costs each year, thereby providing for a predictable revenue stream. In addition, to address the possibility of some variability in the collected CAT fees, an unexpected increase in costs or variations from the budgeted costs or projected executed equivalent share volume of transactions in Eligible Securities, the CAT costs covered by the Executed Share Model would include an operational reserve. The operational reserve could be used in the event that the total CAT fees collected differ from the actual CAT costs. Moreover, the Executed Share Model includes a method for adjusting the calculation of the Fee Rate during the year if there are changes in the projected total volume of transactions in Eligible Securities or the CAT costs.

Third, as discussed above, the Executed Share Model provides for a revenue stream for the Company that is aligned with the anticipated costs to build, operate and administer the CAT and the other costs of the Company. The total CAT fees to be collected from CAT Reporters are designed to cover the CAT costs. Any surpluses collected would be treated as an operational reserve to offset future fees and would not be distributed to the Participants as profits.[64]

b. Funding Principle: Section 11.2(b) of the CAT NMS Plan

The Executed Share Model satisfies the funding principle set forth in Section 11.2(b) of the CAT NMS Plan, as proposed to be amended herein, which would require the Operating Committee to seek ''to establish an allocation of the Company's related costs among Participants and Industry Members that is consistent with the Exchange Act, taking into account the timeline for implementation of the CAT.'' As described in more detail below, the Executed Share Model establishes an allocation of Company's related costs among Participants and Industry Members that is consistent with the Exchange Act. In addition, as described in more detail below, the Executed Share Model provides for an equitable allocation of reasonable dues, is not unfairly discriminatory and does not impose a burden on competition that is not necessary or appropriate in furtherance of the Exchange Act. In addition, the Executed Share Model takes into account the timeline for implementation of the CAT. The CAT fees are designed to cover the CAT costs for each relevant period.

c. Funding Principle: Section 11.2(c) of the CAT NMS Plan

The Executed Share Model satisfies the funding principle set forth in Section 11.2(c) of the CAT NMS Plan, as proposed to be modified herein. Section 11.2(c), as proposed to be modified herein, requires the Operating Committee to seek ''to establish a fee structure in which the fees charged to Participants and Industry Members are based upon the executed equivalent share volume of transactions in Eligible Securities.'' The Executed Share Model requires Participants and Industry Members to pay a fee based upon the executed equivalent share volume of transactions in Eligible Securities.

d. Funding Principle: Section 11.2(d) of the CAT NMS Plan

The Executed Share Model satisfies the funding principle set forth in Section 11.2(d) of the CAT NMS Plan, which requires the Operating Committee to seek ''to provide for ease of billing and other administrative functions.'' The Executed Share Model satisfies this principle in several ways. The Executed Share Model is modeled after the existing Section 31-related fee programs, with which the Participants and Industry Members have a longstanding familiarity. The Executed Share Model relies upon a basic calculation using a predetermined Fee Rate along with an Industry Member or Participant's own information regarding its executed equivalent share volume, thereby making the fee determination a straightforward process.

Furthermore, the Executed Share Model provides CAT Reporters with predictable CAT fees. Because the Fee Rate is established in advance for a relevant time period, Participants, CBBs and CBSs know the CAT fee that applies to each transaction when it occurs. Accordingly, Participants, CBBs and CBSs are able to easily estimate and validate their applicable fees based on their own trading data. In addition, to the extent any CAT fees are passed on to customers, the customers, too, can calculate the applicable CAT fee for each transaction.

e. Funding Principle: Section 11.2(e) of the CAT NMS Plan

The Executed Share Model satisfies the funding principle set forth in Section 11.2(e) of the CAT NMS Plan, which requires the Operating Committee to seek ''to avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality.'' The Executed Share Model would operate in a manner similar to the funding models employed by the SEC and the Participants related to Section 31 of the Exchange Act, the FINRA TAF and the ORF. These fees are long-standing, and have been approved by the Commission as satisfying the requirements under the Exchange Act, including not imposing a burden on the competition that is not necessary or appropriate under the Exchange Act. In addition, the Executed Share Model avoids potentially burdensome fees for market makers or other market participants based on message traffic. Furthermore, the

[64] CAT NMS Plan Approval Order at 84792.

Executed Share Model addresses the specific trading characteristics of Listed Options and OTC Equity Securities to avoid adverse effects of the trading of those instruments. For example, the Executed Share Model also includes the discounting of transactions involving OTC Equity Shares which, given the volume of shares typically involved in such securities transactions, otherwise may result in disproportionate fees to market participants transaction these securities.

The Executed Share Model also would not unfairly burden FINRA or any of the exchanges. The Executed Share Model is designed to be neutral as to the manner of execution and place of execution. The CAT fees would be the same regardless of whether the transaction is executed on an exchange or in the over-the-counter market. All Participants are SROs that have the same regulatory responsibilities under the Exchange Act. Their usage of CAT Data will be for the same regulatory purposes. By treating each Participant the same, the CAT fees would not become a competitive issue by and among the Participants.

The Executed Share Model also would not unfairly burden CBBs and CBSs. The Operating Committee determined to charge CBBs and CBSs, rather than Industry Members buyers and sellers more generally, because such a fee collection model is currently used and well-known in the securities markets. For example, SRO members regularly rely on their clearing firms to assist with the payment of SRO fees. As a result, the CAT fees could be paid by Industry Members without requiring significant and potentially costly changes. In addition, this approach would limit the number of Industry Members charged a CAT fee to a few hundred, rather than a few thousand, thereby limiting the costs for collecting the fees. Moreover, the CBBs and CBSs would be permitted, but not required, to pass their CAT fees through to their customers, who, in turn, could pass their CAT fees to their customers, until the fee is imposed on the ultimate participant in the transaction. With such a pass through, the CBBs and CBSs would not ultimately incur the cost of all CAT fees related to the transactions that they clear.

f. Funding Principle: Section 11.2(f) of the CAT NMS Plan

The Executed Share Model satisfies the funding principle set forth in Section 11.2(f) of the CAT NMS Plan, which requires the Operating Committee to seek ''to build financial stability to support the Company as a going concern.'' The Operating Committee believes that the Executed Share Model is structured to collect sufficient funds to pay for the cost of the CAT going forward. In addition, the Executed Share Model would collect an operational reserve for the CAT. This operational reserve is intended to address potential shortfalls in collected CAT fees versus actual CAT costs. Moreover, the Executed Share Model includes a method for adjusting the calculation of the Fee Rate during the year if there are changes in the projected total volume of transactions in Eligible Securities or the CAT costs.

g. Section 11.1(c) of the CAT NMS Plan

The Executed Share Model would satisfy the requirements in Section 11.1(c) of the CAT NMS Plan. Section 11.1(c) of the CAT NMS Plan states that ''[t]o fund the development and implementation of the CAT, the Company shall time the imposition and collection of all fees on Participants and Industry Members in a manner reasonably related to the timing when the Company expects to incur such development and implementation costs.'' The CAT fees are designed to cover the CAT costs for a relevant period. As such, on a going forward basis, they are designed to be imposed close in time to when costs are incurred.

Section 11.1(c) of the CAT NMS Plan also requires that ''[a]ny surplus of the Company's resources over its expenses shall be treated as an operational reserve to offset future fees.'' The Company would operate on a ''break-even'' basis, with fees imposed to cover costs and an appropriate reserve. Any surpluses would not be distributed to the Participants as profits.[65] In addition, as set forth in Article VIII of the CAT NMS Plan, the Company ''intends to operate in a manner such that it qualifies as a 'business league' within the meaning of Section 501(c)(6) of the [Internal Revenue] Code.'' To qualify as a business league, an organization must ''not [be] organized for profit and no part of the net earnings of [the organization can] inure[ ] to the benefit of any private shareholder or individual.'' [66] As the SEC stated when approving the CAT NMS Plan, ''the Commission believes that the Company's application for Section 501(c)(6) business league status addresses issues raised by commenters about the Plan's proposed allocation of profit and loss by mitigating concerns that the Company's earnings could be used to benefit individual Participants.'' [67] The Internal Revenue Service has determined that the Company is exempt from federal income tax under Section 501(c)(6) of the Internal Revenue Code.

h. Equitable Allocation of Reasonable Fees

The proposed CAT fees provide for the ''equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities necessary or appropriate in furtherance of the purposes of this chapter,'' [68] as required by the Exchange Act. The Operating Committee believes that the CAT fees equitably allocate CAT costs between and among Participants and Industry Members, as discussed in detailed above. For the reasons discussed above, the Operating Committee believes that the allocation of one-third of the CAT costs each to Participants, CBBs and CBSs in the Executed Share Model as well as the use of the total equivalent share volume of transactions in Eligible Securities for allocating costs provide for an equitable allocation of CAT costs among CAT Reporters.

The Operating Committee also believes that the Executed Share Model would provide for reasonable fees. The transaction-based fees contemplated by the Executed Share Model are a reasonable fee structure. The SROs have a long history of charging transaction-based fees, as transactions are the intended economic goal of the securities markets. In addition to the transaction-based regulatory fees discussed above (*e.g.,* the SROs' Section 31-related fees, the FINRA TAF and the ORF), the SROs charge a variety of other types of transaction fees to fund their operations.[69] Indeed, each of the SROs collect transaction-based fees from their members.[70] In each case, the transaction-based fees charged by SROs have been subject to the fee filing process and found to satisfy the requirements of the Exchange Act. Not only is the type of fee reasonable, but the level of the fee is reasonable as well. Although the exact Fee Rate to be paid for any particular period will be determined at a later date, the illustrative example provides a per-transaction Fee Rate that is not

[65] *Id.*

[66] 26 U.S.C. 501(c)(6).

[67] CAT NMS Plan Approval Order at 84793.

[68] Sections 6(b)(4) and 15A(b)(5) of the Exchange Act.

[69] The SEC has noted that SRO transaction fees account for a significant portion of SRO revenue. Securities Exchange Act Rel. No. 50700 (Nov. 18, 2004); 69 FR 71256, 71271 (Dec. 8, 2004).

[70] *See, e.g.,* NYSE Price List; Nasdaq Price List.

excessive in comparison to existing transaction fee rates.

i. No Unfair Discrimination

The Executed Share Model is ''not designed to permit unfair discrimination between customers, issuers, brokers, or dealers,'' [71] as required by the Exchange Act. In addition, the Executed Share Model does not unfairly discriminate between Industry Members and Participants, among Industry Members or among Participants. Both Participants and Industry Members would contribute to the cost of the CAT; Participants alone would no longer be required to shoulder the burden without the contribution of Industry Members. In addition, both Participants and Industry Members would pay a fee based on the total equivalent share volume of their transactions in Eligible Securities; the type of metric would not vary based on whether the CAT Reporter is an Industry Member or Participant.

Furthermore, the Fee Rate would be the same regardless of the type of venue a trade was executed on, or how the trade ultimately occurred more generally (*e.g.,* in a manner that generated more message traffic). In addition, the Executed Share Model recognizes the different trading characteristics of Listed Options and OTC Equity Securities as compared to NMS Stocks. The Executed Share Model recognizes that Listed Option trade in contracts rather than shares, and, therefore, counts the executed equivalent shares for Listed Options accordingly. Similarly, in recognition of the different trading characteristics of OTC Equity Securities as compared to NMS Stocks, the Executed Share Model would discount the share volume of OTC Equity Securities when calculating the CAT fees. Furthermore, although the fee would be charged to the CBB and the CBS, the CBB and CBS may pass through the fee to their clients. Therefore, CBBs and CBSs would not need to bear all the CAT costs for Industry Members. As a result, the Executed Share Model would not favor or unfairly burden any one type of trading venue, product or product type.

With the elimination of tiers, fees for Industry Members and Participants are directly related to their executed equivalent share volume of their transactions. With tiers, the relationship between a CAT Reporter's share volume and the CAT fee would not have been as direct.

[71] Sections 6(b)(5) and 15A(b)(6) of the Exchange Act.

j. No Burden on Competition

The Executed Share Model does ''not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter,'' [72] as required by the Exchange Act. Moreover, the Operating Committee believes that the proposed fee schedule fairly and equitably allocates costs among CAT Reporters. The Executed Share Model would operate in a manner similar to the funding model employed by the SEC and the Participants related to Section 31 of the Exchange Act as well as the FINRA TAF [73] and the ORF rules, and these long-standing fees to cover regulatory costs have been approved by the Commission as satisfying the requirements under the Exchange Act, including not imposing a burden on the competition that is not necessary or appropriate under the Exchange Act. Furthermore, the Executed Share Model does not impose a burden on competition for reasons set forth above in Section A.8.e above.

B. Governing or Constituent Documents

Not applicable.

C. Implementation of Amendment

The Participants are filing this proposed amendment pursuant to Rule 608(b)(1) of Regulation NMS under the Exchange Act.[74]

D. Development and Implementation Phases

The Participants expect to implement the proposed Participant CAT fees upon approval by the SEC, provided, however, that the Participant CAT fees would not be collected unless the Industry Member CAT fees for the same time period are effective at that time.

E. Analysis of Impact on Competition

The Operating Committee does not believe that the proposed amendment would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Operating Committee notes that the proposed amendment implements provisions of the CAT NMS Plan approved by the Commission, subject to proposed revisions to the CAT NMS Plan described above, and is designed to assist the Participants in meeting their regulatory obligations pursuant to the Plan. Because all Participants are subject to the Executed Share Model set forth in the proposed amendment, this is not a competitive filing that raises competition issues between and among the Participants. Furthermore, for the reasons discussed above, including in Sections A.8.e and A.8.j above, the Operating Committee does not believe that the Executed Share Model would result in any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act.

F. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

Not applicable.

G. Approval by Plan Sponsors in Accordance With Plan

Section 12.3 of the CAT NMS Plan states that, subject to certain exceptions, the CAT NMS Plan may be amended from time to time only by a written amendment, authorized by the affirmative vote of not less than two-thirds of all of the Participants, that has been approved by the SEC pursuant to Rule 608 of Regulation NMS under the Exchange Act or has otherwise become effective under Rule 608 of Regulation NMS under the Exchange Act. In addition, Section 4.3(a)(vi) of the Plan requires the Operating Committee, by Majority Vote, to authorize action to determine the appropriate funding-related policies, procedures and practices-consistent with Article XI. The Operating Committee has satisfied both of these requirements. In addition, the Executed Share Model was discussed and voted on during a general session of the Operating Committee.

H. Description of Operation of Facility Contemplated by the Proposed Amendment

Not applicable.

I. Terms and Conditions of Access

Not applicable.

J. Method of Determination and Imposition, and Amount of, Fees and Charges

Section A of this letter describes in detail how the Participants developed the Executed Share Model for the CAT.

K. Method and Frequency of Processor Evaluation

Not applicable.

[72] Sections 6(b)(8) and 15A(b)(9) of the Exchange Act.

[73] Although the FINRA TAF is designed to cover a subset of the costs of FINRA services (*e.g.,* costs to FINRA of the supervision and regulation of members, including performing examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities) rather than all of FINRA's costs like the CAT, the transaction-based calculation of the FINRA TAF and the proposed CAT fees are similar.

[74] 17 CFR 242.608(b)(1).

L. Dispute Resolution

Section 11.5 of the CAT NMS Plan addresses the resolution of disputes regarding CAT fees charged to Participants and Industry Members. Specifically, Section 11.5 of the CAT NMS Plan states that

> [d]isputes with respect to fees the Company charges Participants pursuant to Article XI of the CAT NMS Plan shall be determined by the Operating Committee or a Subcommittee designated by the Operating Committee. Decisions by the Operating Committee or such designated Subcommittee on such matters shall be binding on Participants, without prejudice to the rights of any Participant to seek redress from the SEC pursuant to Rule 608 of Regulation NMS under the Exchange Act or in any other appropriate forum.

In addition, the Participants adopted rules to establish the procedures for resolving potential disputes related to CAT fees charged to Industry Members.[75]

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the amendment 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 4–698 on the subject line.

Paper Comments

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number 4–698. 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 plan amendment that are filed with the Commission, and all written communications relating to the amendment between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the Participants' offices. 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 4–698 and should be submitted on or before June 22, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[76]

J. Matthew DeLesDernier,

Assistant Secretary.

Exhibit A

Additions *italicized;* deletions [bracketed]

* * * * *

Article I

Definitions

* * * * *

[''Execution Venue'' means a Participant or an alternative trading system (''ATS'') (as defined in Rule 300 of Regulation ATS) that operates pursuant to Rule 301 of Regulation ATS (excluding any such ATS that does not execute orders).]

* * * * *

Article XI

Funding of the Company

Section 11.1. Funding Authority.

(a) On an annual basis the Operating Committee shall approve an operating budget for the Company. The budget shall include the projected costs of the Company, including the costs of developing and operating the CAT for the upcoming year, and the sources of all revenues to cover such costs, as well as the funding of any reserve that the Operating Committee reasonably deems appropriate for prudent operation of the Company.

(b) Subject to Section 11.2, the Operating Committee shall have discretion to establish funding for the Company, including: (i) Establishing fees that the Participants shall pay; and (ii) establishing fees for Industry Members that shall be implemented by Participants. The Participants shall file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves, and such fees shall be labeled as ''Consolidated Audit Trail Funding Fees.''

(c) To fund the development and implementation of the CAT, the Company shall time the imposition and collection of all fees on Participants and Industry Members in a manner reasonably related to the timing when the Company expects to incur such development and implementation costs. In determining fees on Participants and Industry Members the Operating Committee shall take into account fees, costs and expenses (including legal and consulting fees and expenses) incurred by the Participants on behalf of the Company prior to the Effective Date in connection with the creation and implementation of the CAT, and such fees, costs and expenses shall be fairly and reasonably shared among the Participants and Industry Members. Any surplus of the Company's revenues over its expenses shall be treated as an operational reserve to offset future fees.

(d) Consistent with this Article XI, the Operating Committee shall adopt policies, procedures, and practices regarding the budget and budgeting process, [assignment of tiers,] resolution of disputes, billing and collection of fees, and other related matters. [For the avoidance of doubt, as part of its regular review of fees for the CAT, the Operating Committee shall have the right to change the tier assigned to any particular Person in accordance with fee schedules previously filed with the Commission that are reasonable, equitable and not unfairly discriminatory and subject to public notice and comment, pursuant to this Article XI. Any such changes will be effective upon reasonable notice to such Person.]

Section 11.2. Funding Principles. In establishing the funding of the Company, the Operating Committee shall seek:

(a) To create transparent, predictable revenue streams for the Company that are aligned with the anticipated costs to build, operate and administer the CAT and the other costs of the Company;

(b) to establish an allocation of the Company's related costs among Participants and Industry Members that is consistent with the Exchange Act, taking into account the timeline for implementation of the CAT [and distinctions in the securities trading operations of Participants and Industry Members and their relative impact upon Company resources and operations];

[75] *See* Securities Exchange Act Rel. No. 81500 (Aug. 30, 2017), 82 FR 42143 (Sept. 6, 2017).

[76] 17 CFR 200.30–3(a)(85).

(c) to establish a [tiered] fee structure in which the fees charged to [: (i)] *Participants and* [CAT Reporters that are Execution Venues, including ATSs, are based upon the level of market share; (ii)] Industry Members[' non-ATS activities] are based upon *the executed equivalent share volume of transactions in Eligible Securities* [message traffic; and (iii) the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venues and/or Industry Members)].

(d) to provide for ease of billing and other administrative functions;

(e) to avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality; and

(f) to build financial stability to support the Company as a going concern.

Section 11.3. Recovery.

(a) The Operating Committee will establish [fixed] fees to be payable by *Participants* [Execution Venues] as *follows* [provided in this Section 11.3(a)]:

(i) *Each Participant that is a national securities exchange will be required to pay a fee for each transaction in Eligible Securities executed on the exchange based on CAT Data. Each Participant that is a national securities association will be required to pay a fee for each transaction in Eligible Securities executed otherwise than on an exchange based on CAT Data.*

(ii) The fee for each transaction in Eligible Securities will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the applicable fee rate for the relevant period (''Fee Rate'').

(iii) Participants will be required to pay a CAT fee with regard to CAT costs not previously paid by the Participants (''Prospective CAT Costs''). The Fee Rate for the CAT fees related to Prospective CAT Costs will be calculated by dividing the budgeted CAT costs for the relevant period (as determined by the Operating Committee) by the projected total executed equivalent share volume of all transactions in Eligible Securities for the relevant period based on CAT Data.

(iv) Notwithstanding anything to contrary, Participants will not be required to a pay a CAT fee related to CAT costs previously paid by the Participants in a manner determined by the Operating Committee (''Past CAT Costs'').

[(i) Each Execution Venue that: (A) Executes transactions; or (B) in the case of a national securities association, has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange, in NMS Stocks or OTC Equity Securities will pay a fixed fee depending on the market share of that Execution Venue in NMS Stocks and OTC Equity Securities, with the Operating Committee establishing at least two and no more than five tiers of fixed fees, based on an Execution Venue's NMS Stocks and OTC Equity Securities market share. For these purposes, market share for Execution Venues that execute transactions will be calculated by share volume, and market share for a national securities association that has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange in NMS Stocks or OTC Equity Securities will be calculated based on share volume of trades reported, provided, however, that the share volume reported to such national securities association by an Execution Venue shall not be included in the calculation of such national security association's market share.]

[(ii) Each Execution Venue that executes transactions in Listed Options will pay a fixed fee depending on the Listed Options market share of that Execution Venue, with the Operating Committee establishing at least two and no more than five tiers of fixed fees, based on an Execution Venue's Listed Options market share. For these purposes, market share will be calculated by contract volume.]

(b) The Operating Committee will establish [fixed] fees to be payable by Industry Members *as follows:*

(i) Each Industry Member that is the clearing firm for the buyer in a transaction in Eligible Securities (''Clearing Broker for the Buyer'' or ''CBB'') will be required to pay a fee for each such transaction in Eligible Securities based on CAT Data. The CBB's fee for each transaction in Eligible Securities will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate.

(ii) Each Industry Member that is the clearing firm for the seller in a transaction in Eligible Securities (''Clearing Broker for the Seller'' or ''CBS'') will be required to pay a fee for each transaction in Eligible Securities based on CAT Data. The CBS's fee for each transaction in Eligible Securities will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate. [, based on the message traffic generated by such Industry Member, with the Operating Committee establishing at least five and no more than nine tiers of fixed fees, based on message traffic. For the avoidance of doubt, the fixed fees payable by Industry Members pursuant to this paragraph shall, in addition to any other applicable message traffic, include message traffic generated by: (i) an ATS that does not execute orders that is sponsored by such Industry Member; and (ii) routing orders to and from any ATS sponsored by such Industry Member.]

(iii) CBBs and CBSs will be required to pay CAT fees related to Past CAT Costs. The Fee Rate for the CAT fees related to Past CAT Costs will be calculated by dividing the Past CAT Costs for the relevant period (as determined by the Operating Committee) by the projected total executed equivalent share volume of all transactions in Eligible Securities for the relevant period based on CAT Data.

(iv) CBBs and CBSs will be required to pay CAT fees related to Prospective CAT Costs. The Fee Rate for the CAT fees related to Prospective CAT Costs will be the same as set forth in paragraph (a)(iv) above.

(c) The Operating Committee may establish any other fees ancillary to the operation of the CAT that it reasonably determines appropriate, including fees: (i) for the late or inaccurate reporting of information to the CAT; (ii) for correcting submitted information; and (iii) based on access and use of the CAT for regulatory and oversight purposes (and not including any reporting obligations).

(d) The Company shall make publicly available a schedule of effective fees and charges adopted pursuant to this Agreement as in effect from time to time. The Operating Committee shall review such fee schedule on at least an annual basis and shall make any changes to such fee schedule that it deems appropriate. The Operating Committee is authorized to review such fee schedule on a more regular basis, but shall not make any changes on more than a semiannual basis unless, pursuant to a Supermajority Vote, the Operating Committee concludes that such change is necessary for the adequate funding of the Company.

* * * * *

Appendix B

Fee Schedule

Consolidated Audit Trail Funding Fees for Participants

(a) CAT Fee

(1) Each Participant that is a national securities exchange shall pay a fee for each transaction in Eligible Securities executed on the exchange based on CAT Data, where the fee for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate.

(2) Each Participant that is a national securities association shall pay a fee for each transaction in Eligible Securities executed otherwise than on exchange based on CAT Data, where the fee for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate.

(b) Fee Rate

(1) The Operating Committee will calculate the Fee Rate at the beginning of each year by dividing the budgeted CAT costs for the year by the projected total executed equivalent share volume of all transactions in Eligible Securities for the year. After setting the Fee Rate at the beginning of each year, the Fee Rate may be adjusted once during the year, if necessary, due to changes in the budgeted or actual costs or projected or actual total executed equivalent share volume during the year.

(2) For purposes of calculating the fees, executed equivalent shares in a transaction in Eligible Securities will be counted as follows:

(i) each executed share for a transaction in NMS Stocks will be counted as one executed equivalent share;

(ii) each executed contract for a transaction in Listed Options will be counted based on the multiplier applicable to the specific Listed Option (i.e., 100 executed equivalent shares or such other applicable multiplier); and

(iii) each executed share for a transaction in OTC Equity Securities shall be counted as 0.01 executed equivalent share.

(3) Budgeted CAT Costs. The budgeted CAT costs for the year shall be comprised of all fees, costs and expenses budgeted to be incurred by or for the Company in connection with the development, implementation and operation of the CAT as set forth in the annual operating budget approved by the Operating Committee pursuant to Section 11.1(a) of the CAT NMS Plan, or as adjusted during the year by the Operating Committee.

(4) Projected Total Executed Equivalent Share Volume of Transactions in Eligible Securities. The Operating Committee shall determine the projected total executed equivalent share volume of all transactions in Eligible Securities for each relevant period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior six months.

(c) Fee Payments/Collection. Each Participant shall pay the CAT fee set forth in paragraph (a) to Consolidated Audit Trail, LLC in the manner prescribed by Consolidated Audit Trail, LLC on a monthly basis based on the Participant's transactions in the prior month.

* * * * *

Exhibit B

The following sets forth an illustrative example of calculated under the Executed Share Model based on the budgeted annual CAT Costs for 2022 and the actual total executed equivalent share volume of transactions in Eligible Securities in 2021. Note *Exhibit B* only provides an illustrative example of how the Executed Share Model would operate; the calculation of actual fees will differ from this example in various ways. For example, the Participants have paid or will have paid some or all of these costs up to the time of any SEC approval of the Executed Share Model, and, as a result, Participants would not be obligated to pay CAT fees related to 2022 CAT costs to the extent the Participants have already paid such costs. In addition, the illustrative example calculates the fee rate using the total executed equivalent share transactions in Eligible Securities for 2021, rather than the projected volume for 2022 based on the previous six months. Furthermore, the CAT Reporters' monthly CAT fee is not based on the CAT Reporters' transactions from the prior month; instead, it is calculated by using each CAT Reporter's transactions in 2021 and dividing the result by twelve.

CAT Fee Example for Illustrative Purposes Only

Budgeted CAT Costs for 2022: $165,841,447.00.

Total Executed Equivalent Share Volume of Transactions in Eligible Securities for 2021: 3,963,697,612,395.

Fee Rate: $0.0000418401 per executed equivalent share.

PARTICIPANT CAT FEES

Participant	Executed equivalent share volume of transactions in eligible securities for 2021	Annual CAT fee [77]	Monthly CAT fee
1	46,400,250,500	$647,130.15	$53,927.51
2	204,330,644,337	2,849,737.21	237,478.10
3	40,241,451,971	561,235.26	46,769.61
4	37,837,901,411	527,713.68	43,976.14
5	239,781,829,838	3,344,164.09	278,680.34
6	149,570,501,700	2,086,014.19	173,834.52
7	36,318,789,800	506,527.09	42,210.59
8	1,361,484,729,008	18,988,212.50	1,582,351.04
9	64,139,149,375	894,529.16	74,544.10
10	51,910,120,400	723,974.63	60,331.22
11	55,784,034,310	778,002.92	64,833.58
12	38,683,005,800	539,500.09	44,958.34
13	531,025,057,170	7,406,044.60	617,170.38
14	30,117,744,430	420,043.00	35,003.58
15	135,340,379,281	1,887,551.01	157,295.92
16	62,342,194,800	869,467.59	72,455.63
17	39,349,215,400	548,791.51	45,732.63
18	14,998,526,300	209,179.87	17,431.66

PARTICIPANT CAT FEES—Continued

Participant	Executed equivalent share volume of transactions in eligible securities for 2021	Annual CAT fee [77]	Monthly CAT fee
19	277,173,161,059	3,865,649.59	322,137.47
20	345,397,838,631	4,817,158.37	401,429.86
21	90,011,105,331	1,255,357.45	104,613.12
22	30,979,556,597	432,062.43	36,005.20
23	5,507,340,998	76,809.21	6,400.77
24	5,581,710	77.85	6.49
25	74,967,502,238	1,045,548.90	87,129.08

INDUSTRY MEMBER CAT FEES [78]

CBBs & CBSs	Executed equivalent share volume of transactions in eligible securities for 2021	Annual CAT fee	Monthly CAT fee
1	859,841,671,740	$11,991,949.69	$999,329.14
2	778,256,091,356	10,854,100.47	904,508.37
3	740,559,440,045	10,328,356.76	860,696.40
4	536,740,052,223	7,485,749.89	623,812.49
5	467,988,393,675	6,526,891.47	543,907.62
6	380,556,173,472	5,307,500.95	442,291.75
7	350,408,314,337	4,887,037.94	407,253.16
8	316,955,750,074	4,420,485.23	368,373.77
9	312,687,014,481	4,360,950.47	363,412.54
10	291,608,017,108	4,066,968.12	338,914.01
11	285,766,444,467	3,985,497.49	332,124.79
12	257,779,680,900	3,595,174.63	299,597.89
13	220,269,528,700	3,072,031.97	256,002.66
14	145,075,274,359	2,023,320.63	168,610.05
15	141,826,246,034	1,978,007.42	164,833.95
16	139,111,829,825	1,940,150.28	161,679.19
17	126,903,666,123	1,769,886.75	147,490.56
18	117,993,448,569	1,645,618.66	137,134.89
19	109,530,158,500	1,527,583.73	127,298.64
20	108,170,149,680	1,508,616.10	125,718.01
21	94,948,734,900	1,324,221.06	110,351.76
22	80,808,074,508	1,127,005.58	93,917.13
23	77,877,312,671	1,086,131.14	90,510.93
24	71,627,190,900	998,962.60	83,246.88
25	65,979,744,166	920,199.38	76,683.28
26	62,476,795,435	871,344.82	72,612.07
27	59,962,856,615	836,283.68	69,690.31
28	53,277,619,100	743,046.71	61,920.56
29	48,251,539,722	672,949.52	56,079.13
30	43,794,466,264	610,788.07	50,899.01
31	40,818,110,970	569,277.75	47,439.81
32	39,413,060,847	549,681.95	45,806.83
33	25,642,997,831	357,635.07	29,802.92
34	24,274,017,616	338,542.32	28,211.86
35	24,265,127,300	338,418.33	28,201.53
36	23,768,492,482	331,491.92	27,624.33
37	20,802,708,100	290,129.03	24,177.42
38	20,019,521,644	279,206.17	23,267.18
39	18,035,978,054	251,542.29	20,961.86
40	16,828,270,736	234,698.76	19,558.23
41	16,627,104,316	231,893.16	19,324.43
42	16,270,456,203	226,919.09	18,909.92
43	15,560,896,419	217,023.08	18,085.26
44	15,340,132,696	213,944.15	17,828.68
45	14,357,387,825	200,238.11	16,686.51
46	13,794,427,204	192,386.67	16,032.22

[77] Under the Executed Share Model, Participants, CBBs and CBSs will pay a monthly fee based on actual executed equivalent share volume for the prior calendar month. The annual CAT fee is provided here for informational purposes only.

INDUSTRY MEMBER CAT FEES [78]—Continued

CBBs & CBSs	Executed equivalent share volume of transactions in eligible securities for 2021	Annual CAT fee	Monthly CAT fee
47	10,844,249,411	151,241.44	12,603.45
48	10,345,612,840	144,287.11	12,023.93
49	10,047,142,100	140,124.43	11,677.04
50	9,676,729,440	134,958.40	11,246.53
51	9,525,189,150	132,844.91	11,070.41
52	9,497,695,858	132,461.47	11,038.46
53	9,141,959,858	127,500.13	10,625.01
54	9,111,887,600	127,080.72	10,590.06
55	8,246,296,500	115,008.58	9,584.05
56	7,409,804,367	103,342.28	8,611.86
57	5,943,333,522	82,889.86	6,907.49
58	5,537,962,838	77,236.28	6,436.36
59	4,969,306,436	69,305.40	5,775.45
60	4,858,930,658	67,766.02	5,647.17
61	4,724,287,600	65,888.20	5,490.68
62	4,688,574,389	65,390.12	5,449.18
63	4,619,665,921	64,429.07	5,369.09
64	4,586,579,797	63,967.63	5,330.64
65	4,552,355,173	63,490.31	5,290.86
66	4,530,370,991	63,183.70	5,265.31
67	4,432,887,822	61,824.14	5,152.01
68	4,188,226,789	58,411.92	4,867.66
69	4,095,928,162	57,124.66	4,760.39
70	3,615,599,600	50,425.67	4,202.14
71	3,411,736,434	47,582.45	3,965.20
72	3,411,224,100	47,575.30	3,964.61
73	3,290,953,800	45,897.93	3,824.83
74	3,199,333,714	44,620.13	3,718.34
75	2,924,604,582	40,788.57	3,399.05
76	2,888,374,000	40,283.27	3,356.94
77	2,839,512,902	39,601.82	3,300.15
78	2,659,506,700	37,091.33	3,090.94
79	2,537,489,086	35,389.59	2,949.13
80	2,459,185,612	34,297.51	2,858.13
81	2,395,884,300	33,414.67	2,784.56
82	2,336,005,686	32,579.56	2,714.96
83	2,328,536,077	32,475.38	2,706.28
84	2,006,993,344	27,990.92	2,332.58
85	1,991,341,100	27,772.63	2,314.39
86	1,926,691,600	26,870.98	2,239.25
87	1,818,491,446	25,361.95	2,113.50
88	1,807,513,774	25,208.84	2,100.74
89	1,798,384,897	25,081.53	2,090.13
90	1,499,870,900	20,918.24	1,743.19
91	1,407,921,581	19,635.85	1,636.32
92	1,343,940,690	18,743.53	1,561.96
93	1,292,476,485	18,025.78	1,502.15
94	1,263,050,400	17,615.38	1,467.95
95	1,259,148,848	17,560.97	1,463.41
96	1,239,077,200	17,281.03	1,440.09
97	1,229,508,300	17,147.58	1,428.96
98	1,192,809,266	16,635.75	1,386.31
99	1,161,692,310	16,201.77	1,350.15
100	1,103,718,859	15,393.23	1,282.77
101	1,036,854,477	14,460.69	1,205.06
102	903,767,212	12,604.57	1,050.38
103	764,853,800	10,667.18	888.93
104	749,409,514	10,451.79	870.98
105	736,464,500	10,271.25	855.94
106	579,536,030	8,082.61	673.55
107	574,150,273	8,007.50	667.29
108	554,402,371	7,732.08	644.34
109	528,767,825	7,374.56	614.55
110	475,219,998	6,627.75	552.31
111	439,220,400	6,125.67	510.47
112	403,544,995	5,628.12	469.01
113	389,096,923	5,426.62	452.22
114	352,562,888	4,917.09	409.76

INDUSTRY MEMBER CAT FEES [78]—Continued

CBBs & CBSs	Executed equivalent share volume of transactions in eligible securities for 2021	Annual CAT fee	Monthly CAT fee
115	324,569,237	4,526.67	377.22
116	287,942,268	4,015.84	334.65
117	279,648,356	3,900.17	325.01
118	268,773,558	3,748.50	312.38
119	242,088,969	3,376.34	281.36
120	240,735,871	3,357.47	279.79
121	227,696,800	3,175.62	264.63
122	223,889,862	3,122.52	260.21
123	219,207,411	3,057.22	254.77
124	215,960,600	3,011.94	250.99
125	208,506,846	2,907.98	242.33
126	177,727,500	2,478.71	206.56
127	175,224,523	2,443.80	203.65
128	156,286,900	2,179.69	181.64
129	150,735,418	2,102.26	175.19
130	148,742,902	2,074.47	172.87
131	119,952,427	1,672.94	139.41
132	118,614,304	1,654.28	137.86
133	95,597,569	1,333.27	111.11
134	85,976,961	1,199.09	99.92
135	81,558,800	1,137.48	94.79
136	73,755,556	1,028.65	85.72
137	73,265,165	1,021.81	85.15
138	70,050,100	976.97	81.41
139	57,611,957	803.50	66.96
140	50,604,392	705.76	58.81
141	42,751,230	596.24	49.69
142	41,893,367	584.27	48.69
143	36,371,376	507.26	42.27
144	34,981,349	487.87	40.66
145	34,223,462	477.30	39.78
146	32,885,122	458.64	38.22
147	32,396,791	451.83	37.65
148	28,510,532	397.63	33.14
149	23,936,450	333.83	27.82
150	23,569,357	328.71	27.39
151	20,131,196	280.76	23.40
152	19,520,773	272.25	22.69
153	14,373,735	200.47	16.71
154	14,322,926	199.76	16.65
155	12,213,708	170.34	14.20
156	6,548,894	91.34	7.61
157	6,017,900	83.93	6.99
158	3,678,840	51.31	4.28
159	3,035,249	42.33	3.53
160	2,036,500	28.40	2.37
161	1,670,000	23.29	1.94
162	1,498,709	20.90	1.74
163	1,106,266	15.43	1.29
164	1,085,833	15.14	1.26
165	656,400	9.15	0.76
166	456,577	6.37	0.53
167	355,000	4.95	0.41
168	205,844	2.87	0.24
169	189,206	2.64	0.22
170	100,000	1.39	0.12
171	78,367	1.09	0.09
172	50,000	0.70	0.06
173	49,658	0.69	0.06
174	19,500	0.27	0.02
175	10,000	0.14	0.01
176	4,200	0.06	0.00
177	2,200	0.03	0.00
178	1,379	0.02	0.00
179	300	0.00	0.00
180	225	0.00	0.00
181	125	0.00	0.00
182	18	0.00	0.00

INDUSTRY MEMBER CAT FEES [78]—Continued

CBBs & CBSs	Executed equivalent share volume of transactions in eligible securities for 2021	Annual CAT fee	Monthly CAT fee
183	3	0.00	0.00

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94982; File No. SR–CboeBZX–2022–031]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To List and Trade Shares of the ARK 21Shares Bitcoin ETF Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

May 25, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 13, 2022, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to list and trade shares of the ARK 21Shares Bitcoin ETF (the ''Trust''),[3] under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the Shares under BZX Rule 14.11(e)(4),[4] which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.[5] [6] 21Shares US LLC is the sponsor of the Trust (the ''Sponsor''). The Shares will be registered with the Commission by means of the Trust's registration statement on Form S–1 (the ''Registration Statement'').[7] As further discussed below, the Commission has historically approved or disapproved exchange filings to list and trade series of Trust Issued Receipts, including spot-based Commodity-Based Trust Shares, on the basis of whether the listing exchange has in place a comprehensive surveillance sharing agreement with a regulated market of significant size related to the underlying commodity to be held.[8] Prior orders from the Commission have pointed out that in every prior approval order for Commodity-Based Trust Shares, there has been a derivatives market that represents the regulated market of significant size, generally a Commodity Futures Trading Commission (the ''CFTC'') regulated futures market.[9]

[78] The Operating Committee recognizes that an Industry Member's knowledge of its own fees in the illustrative example would be helpful in analyzing the Executed Share Model. Accordingly, if a CBB or CBS is interested in learning which anonymized CBB or CBS in the illustrative example represents its volume and fees, the CBB or CBS may contact the FINRA CAT Helpdesk by email at *help@finracat.com*. Industry Members other than CBBs and CBSs will not be charged a fee under the Executed Share Model; however, CBBs and CBSs may choose to pass-through CAT fees to such Industry Members. Therefore, if an Industry Member other than a CBB or CBS is interested in learning its associated volume in the illustrative example and potential fee (assuming the CBB or CBS passes the fee through), the Industry Member may also contact the FINRA Helpdesk by email at *help@finracat.com*. Accordingly, subject to verification of the identity of the requesting party as an authorized representative of the relevant Industry Member, the Helpdesk will provide the authorized representative of the CBB or CBS with the number of the applicable anonymized CBB or CBS in *Exhibit B*. or the authorized representative of the Industry Member other than the CBB or CBS with its associated volume and potential pass-through fee from the illustrative example.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Trust was formed as a Delaware statutory trust on June 22, 2021 and is operated as a grantor trust for U.S. federal tax purposes. The Trust has no fixed termination date.

[4] The Commission approved BZX Rule 14.11(e)(4) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018).

[5] All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange.

[6] The Exchange notes that a different proposal to list and trade shares of the Trust was disapproved by the Commission on March 31, 2022. *See* Exchange Act Release No. 94571 (March 31, 2022), 87 FR 20014 (April 6, 2022).

[7] *See* draft Registration Statement on Form S–1, dated June 28, 2021 submitted to the Commission by the Sponsor on behalf of the Trust. The descriptions of the Trust, the Shares, and the Index (as defined below) contained herein are based, in part, on information in the Registration Statement. The Registration Statement is not yet effective and the Shares will not trade on the Exchange until such time that the Registration Statement is effective.

[8] *See* Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018). This proposal was subsequently disapproved by the Commission. *See* Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018) (the ''Winklevoss Order'').

[9] *See* streetTRACKS Gold Shares, Exchange Act Release No. 50603 (Oct. 28, 2004), 69 FR 64614, 64618–19 (Nov. 5, 2004) (SR–NYSE–2004–22) (the ''First Gold Approval Order''); iShares COMEX Gold Trust, Exchange Act Release No. 51058 (Jan. 19, 2005), 70 FR 3749, 3751, 3754–55 (Jan. 26, 2005) (SR–Amex–2004–38); iShares Silver Trust, Exchange Act Release No. 53521 (Mar. 20, 2006), 71 FR 14967, 14968, 14973–74 (Mar. 24, 2006) (SR–Amex–2005–072); ETFS Gold Trust, Exchange Act Release No. 59895 (May 8, 2009), 74 FR 22993, 22994–95, 22998, 23000 (May 15, 2009) (SR–NYSEArca–2009–40); ETFS Silver Trust, Exchange Act Release No. 59781 (Apr. 17, 2009), 74 FR 18771,

18772, 18775–77 (Apr. 24, 2009) (SR–NYSEArca–2009–28); ETFS Palladium Trust, Exchange Act Release No. 61220 (Dec. 22, 2009), 74 FR 68895, 68896 (Dec. 29, 2009) (SR–NYSEArca–2009–94) (notice of proposed rule change included NYSE Arca's representation that ''[t]he most significant palladium futures exchanges are the NYMEX and the Tokyo Commodity Exchange,'' that ''NYMEX is the largest exchange in the world for trading precious metals futures and options,'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which NYMEX is a member, Exchange Act Release No. 60971 (Nov. 9, 2009), 74 FR 59283, 59285–86, 59291 (Nov. 17, 2009)); ETFS Platinum Trust, Exchange Act Release No. 61219 (Dec. 22, 2009), 74 FR 68886, 68887–88 (Dec. 29, 2009) (SR–NYSEArca–2009–95) (notice of proposed rule change included NYSE Arca's representation that ''[t]he most significant platinum futures exchanges are the NYMEX and the Tokyo Commodity Exchange,'' that ''NYMEX is the largest exchange in the world for trading precious metals futures and options,'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which NYMEX is a member, Exchange Act Release No. 60970 (Nov. 9, 2009), 74 FR 59319, 59321, 59327 (Nov. 17, 2009)); Sprott Physical Gold Trust, Exchange Act Release No. 61496 (Feb. 4, 2010), 75 FR 6758, 6760 (Feb. 10, 2010) (SR–NYSEArca–2009–113) (notice of proposed rule change included NYSE Arca's representation that the COMEX is one of the ''major world gold markets,'' that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' and that NYMEX, of which COMEX is a division, is a member of the Intermarket Surveillance Group, Exchange Act Release No. 61236 (Dec. 23, 2009), 75 FR 170, 171, 174 (Jan. 4, 2010)); Sprott Physical Silver Trust, Exchange Act Release No. 63043 (Oct. 5, 2010), 75 FR 62615, 62616, 62619, 62621 (Oct. 12, 2010) (SR–NYSEArca–2010–84); ETFS Precious Metals Basket Trust, Exchange Act Release No. 62692 (Aug. 11, 2010), 75 FR 50789, 50790 (Aug. 17, 2010) (SR–NYSEArca–2010–56) (notice of proposed rule change included NYSE Arca's representation that ''the most significant gold, silver, platinum and palladium futures exchanges are the COMEX and the TOCOM'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 62402 (Jun. 29, 2010), 75 FR 39292, 39295, 39298 (July 8, 2010)); ETFS White Metals Basket Trust, Exchange Act Release No. 62875 (Sept. 9, 2010), 75 FR 56156, 56158 (Sept. 15, 2010) (SR–NYSEArca–2010–71) (notice of proposed rule change included NYSE Arca's representation that ''the most significant silver, platinum and palladium futures exchanges are the COMEX and the TOCOM'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 62620 (July 30, 2010), 75 FR 47655, 47657, 47660 (Aug. 6, 2010)); ETFS Asian Gold Trust, Exchange Act Release No. 63464 (Dec. 8, 2010), 75 FR 77926, 77928 (Dec. 14, 2010) (SR–NYSEArca–2010–95) (notice of proposed rule change included NYSE Arca's representation that ''the most significant gold futures exchanges are the COMEX and the Tokyo Commodity Exchange,'' that ''COMEX is the largest exchange in the world for trading precious metals futures and options,'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 63267 (Nov. 8, 2010), 75 FR 69494, 69496, 69500–01 (Nov. 12, 2010)); Sprott Physical Platinum and Palladium Trust, Exchange Act Release No. 68430 (Dec. 13, 2012), 77 FR 75239, 75240–41 (Dec. 19, 2012) (SR–NYSEArca–2012–111) (notice of proposed rule change included NYSE Arca's representation that ''[f]utures on platinum and palladium are traded on two major exchanges: The New York Mercantile Exchange . . . and Tokyo Commodities Exchange'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 68101 (Oct. 24, 2012), 77 FR 65732, 65733, 65739 (Oct. 30, 2012)); APMEX Physical—1 oz. Gold Redeemable Trust, Exchange Act Release No. 66930 (May 7, 2012), 77 FR 27817, 27818 (May 11, 2012) (SR–NYSEArca– 2012–18) (notice of proposed rule change included NYSE Arca's representation that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, and that gold futures are traded on COMEX and the Tokyo Commodity Exchange, with a cross-reference to the proposed rule change to list and trade shares of the ETFS Gold Trust, in which NYSE Arca represented that COMEX is one of the ''major world gold markets,'' Exchange Act Release No. 66627 (Mar. 20, 2012), 77 FR 17539, 17542–43, 17547 (Mar. 26, 2012)); JPM XF Physical Copper Trust, Exchange Act Release No. 68440 (Dec. 14, 2012), 77 FR 75468, 75469–70, 75472, 75485–86 (Dec. 20, 2012) (SR–NYSEArca–2012–28); iShares Copper Trust, Exchange Act Release No. 68973 (Feb. 22, 2013), 78 FR 13726, 13727, 13729–30, 13739–40 (Feb. 28, 2013) (SR–NYSEArca–2012–66); First Trust Gold Trust, Exchange Act Release No. 70195 (Aug. 14, 2013), 78 FR 51239, 51240 (Aug. 20, 2013) (SR–NYSEArca–2013–61) (notice of proposed rule change included NYSE Arca's representation that FINRA, on behalf of the exchange, may obtain trading information regarding gold futures and options on gold futures from members of the Intermarket Surveillance Group, including COMEX, or from markets ''with which [NYSE Arca] has in place a comprehensive surveillance sharing agreement,'' and that gold futures are traded on COMEX and the Tokyo Commodity Exchange, with a cross-reference to the proposed rule change to list and trade shares of the ETFS Gold Trust, in which NYSE Arca represented that COMEX is one of the ''major world gold markets,'' Exchange Act Release No. 69847 (June 25, 2013), 78 FR 39399, 39400, 39405 (July 1, 2013)); Merk Gold Trust, Exchange Act Release No. 71378 (Jan. 23, 2014), 79 FR 4786, 4786–87 (Jan. 29, 2014) (SR–NYSEArca–2013–137) (notice of proposed rule change included NYSE Arca's representation that ''COMEX is the largest gold futures and options exchange'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' including with respect to transactions occurring on COMEX pursuant to CME and NYMEX's membership, or from exchanges ''with which [NYSE Arca] has in place a comprehensive surveillance sharing agreement,'' Exchange Act Release No. 71038 (Dec. 11, 2013), 78 FR 76367, 76369, 76374 (Dec. 17, 2013)); Long Dollar Gold Trust, Exchange Act Release No. 79518 (Dec. 9, 2016), 81 FR 90876, 90881, 90886, 90888 (Dec. 15, 2016) (SR–NYSEArca–2016–84).

Further to this point, the Commission's prior orders have noted that the spot commodities and currency markets for which it has previously approved spot ETPs are generally unregulated and that the Commission relied on the underlying futures market as the regulated market of significant size that formed the basis for approving the series of Currency and Commodity-Based Trust Shares, including gold, silver, platinum, palladium, copper, and other commodities and currencies. The Commission specifically noted in the Winklevoss Order that the First Gold Approval Order ''was based on an assumption that the currency market and the spot gold market were largely unregulated.'' [10]

As such, the regulated market of significant size test does not require that the spot bitcoin market be regulated in order for the Commission to approve this proposal, and precedent makes clear that an underlying market for a spot commodity or currency being a regulated market would actually be an exception to the norm. These largely unregulated currency and commodity markets do not provide the same protections as the markets that are subject to the Commission's oversight, but the Commission has consistently looked to surveillance sharing agreements with the underlying futures market in order to determine whether such products were consistent with the Act. With this in mind, the CME Bitcoin Futures market is the proper market to consider in determining whether there is a related regulated market of significant size.

Further to this point, the Exchange notes that the Commission has recently approved proposals related to the listing and trading of funds that would primarily hold CME Bitcoin Futures that are registered under the Securities Act of 1933 instead of the Investment Company Act of 1940, as amended (the ''1940 Act''). [11] In the Teucrium Approval, the Commission found the CME Bitcoin Futures market to be a regulated market of significant size as it relates to CME Bitcoin Futures, an odd tautological truth that is also inconsistent with prior disapproval orders for ETPs that would hold actual bitcoin instead of derivatives contracts (''Spot Bitcoin ETPs'') that use the exact same pricing methodology as the CME Bitcoin Futures. As further discussed below, both the Exchange and the Sponsor believe that this proposal and the included analysis are sufficient to establish that the CME Bitcoin Futures market represents a regulated market of significant size as it relates both to the CME Bitcoin Futures market and to the spot bitcoin market and that this proposal should be approved.

Background

Bitcoin is a digital asset based on the decentralized, open source protocol of the peer-to-peer computer network launched in 2009 that governs the creation, movement, and ownership of bitcoin and hosts the public ledger, or ''blockchain,'' on which all bitcoin

[10] *See* Winklevoss Order at 37592.

[11] *See* Exchange Act Release No. 94620 (April 6, 2022), 87 FR 21676 (April 12, 2022) (the ''Teucrium Approval'') and 94853 (May 5, 2022) (collectively, with the Teucrium Approval, the ''Bitcoin Futures Approvals'').

transactions are recorded (the ''Bitcoin Network'' or ''Bitcoin''). The decentralized nature of the Bitcoin Network allows parties to transact directly with one another based on cryptographic proof instead of relying on a trusted third party. The protocol also lays out the rate of issuance of new bitcoin within the Bitcoin Network, a rate that is reduced by half approximately every four years with an eventual hard cap of 21 million. It's generally understood that the combination of these two features—a systemic hard cap of 21 million bitcoin and the ability to transact trustlessly with anyone connected to the Bitcoin Network—gives bitcoin its value.[12] The first rule filing proposing to list an exchange-traded product to provide exposure to bitcoin in the U.S. was submitted by the Exchange on June 30, 2016.[13] At that time, blockchain technology, and digital assets that utilized it, were relatively new to the broader public. The market cap of all bitcoin in existence at that time was approximately $10 billion. No registered offering of digital asset securities or shares in an investment vehicle with exposure to bitcoin or any other cryptocurrency had yet been conducted, and the regulated infrastructure for conducting a digital asset securities offering had not begun to develop.[14] Similarly, regulated U.S. bitcoin futures contracts did not exist. The CFTC had determined that bitcoin is a commodity,[15] but had not engaged in significant enforcement actions in the space. The New York Department of Financial Services (''NYDFS'') adopted its final BitLicense regulatory framework in 2015, but had only approved four entities to engage in activities relating to virtual currencies (whether through granting a BitLicense or a limited-purpose trust charter) as of June 30, 2016.[16] While the first over-the-counter bitcoin fund launched in 2013, public trading was limited and the fund had only $60 million in assets.[17] There were very few, if any, traditional financial institutions engaged in the space, whether through investment or providing services to digital asset companies. In January 2018, the Staff of the Commission noted in a letter to the Investment Company Institute and SIFMA that it was not aware, at that time, of a single custodian providing fund custodial services for digital assets.[18] Fast forward to today and the digital assets financial ecosystem, including bitcoin, has progressed significantly. The development of a regulated market for digital asset securities has significantly evolved, with market participants having conducted registered public offerings of both digital asset securities [19] and shares in investment vehicles holding bitcoin futures.[20] Additionally, licensed and regulated service providers have emerged to provide fund custodial services for digital assets, among other services. For example, in May 2021, the Staff of the Commission released a statement permitting open-end mutual funds to invest in cash-settled bitcoin futures; in December 2020, the Commission adopted a conditional no-action position permitting certain special purpose broker-dealers to custody digital asset securities under Rule 15c3–3 under the Exchange Act (the ''Custody Statement''); [21] in September 2020, the Staff of the Commission released a no-action letter permitting certain broker-dealers to operate a non-custodial Alternative Trading System (''ATS'') for digital asset securities, subject to specified conditions; [22] in October 2019, the Staff of the Commission granted temporary relief from the clearing agency registration requirement to an entity seeking to establish a securities clearance and settlement system based on distributed ledger technology,[23] and multiple transfer agents who provide services for digital asset securities registered with the Commission.[24]

Outside the Commission's purview, the regulatory landscape has changed significantly since 2016, and cryptocurrency markets have grown and evolved as well. The market for bitcoin is approximately 100 times larger, having at one point reached a market cap of over $1 trillion.[25] According to the CME Bitcoin Futures Report, from March 28, 2022 through April 22, 2022, CFTC regulated bitcoin futures represented approximately $1.3 billion in notional trading volume on Chicago Mercantile Exchange (''CME'') (''Bitcoin Futures'') on a daily basis and notional volume was never below $670 million.[26] Open interest was over $2 billion for the entirety of the period and at one point was over $3 billion. The CFTC has exercised its regulatory jurisdiction in bringing a number of enforcement actions related to bitcoin and against trading platforms that offer

[12] For additional information about bitcoin and the Bitcoin Network, *see https://bitcoin.org/en/getting-started*; *https://www.fidelitydigitalassets.com/articles/addressing-bitcoin-criticisms*; and *https://www.vaneck.com/education/investment-ideas/investing-in-bitcoin-and-digital-assets/*.

[13] *See* Winklevoss Order.

[14] Digital assets that are securities under U.S. law are referred to throughout this proposal as ''digital asset securities.'' All other digital assets, including bitcoin, are referred to interchangeably as ''cryptocurrencies'' or ''virtual currencies.'' The term ''digital assets'' refers to all digital assets, including both digital asset securities and cryptocurrencies, together.

[15] *See* ''In the Matter of Coinflip, Inc.'' (''Coinflip'') (CFTC Docket 15–29 (September 17, 2015)) (order instituting proceedings pursuant to Sections 6(c) and 6(d) of the CEA, making findings and imposing remedial sanctions), in which the CFTC stated: ''Section 1a(9) of the CEA defines 'commodity' to include, among other things, 'all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in.' 7 U.S.C. 1a(9). The definition of a 'commodity' is broad. *See, e.g., Board of Trade of City of Chicago* v. *SEC,* 677 F. 2d 1137, 1142 (7th Cir. 1982). Bitcoin and other virtual currencies are encompassed in the definition and properly defined as commodities.''

[16] A list of virtual currency businesses that are entities regulated by the NYDFS is available on the NYDFS website. *See https://www.dfs.ny.gov/apps_and_licensing/virtual_currency_businesses/regulated_entities.*

[17] Data as of March 31, 2016 according to publicly available filings. *See* Bitcoin Investment Trust Form S–1, dated May 27, 2016, available: *https://www.sec.gov/Archives/edgar/data/1588489/000095012316017801/filename1.htm.*

[18] *See* letter from Dalia Blass, Director, Division of Investment Management, U.S. Securities and Exchange Commission to Paul Schott Stevens, President & CEO, Investment Company Institute and Timothy W. Cameron, Asset Management Group—Head, Securities Industry and Financial Markets Association (January 18, 2018), *available at https://www.sec.gov/divisions/investment/noaction/2018/cryptocurrency-011818.htm.*

[19] *See* Prospectus supplement filed pursuant to Rule 424(b)(1) for INX Tokens (Registration No. 333–233363), *available at: https://www.sec.gov/Archives/edgar/data/1725882/000121390020023202/ea125858-424b1_inxlimited.htm.*

[20] *See* Prospectus filed by Stone Ridge Trust VI on behalf of NYDIG Bitcoin Strategy Fund Registration, *available at: https://www.sec.gov/Archives/edgar/data/1764894/000119312519309942/d693146d497.htm.*

[21] *See* Securities Exchange Act Release No. 90788, 86 FR 11627 (February 26, 2021) (File Number S7–25–20) (Custody of Digital Asset Securities by Special Purpose Broker-Dealers).

[22] *See* letter from Elizabeth Baird, Deputy Director, Division of Trading and Markets, U.S. Securities and Exchange Commission to Kris Dailey, Vice President, Risk Oversight & Operational Regulation, Financial Industry Regulatory Authority (September 25, 2020), *available at: https://www.sec.gov/divisions/marketreg/mr-noaction/2020/finra-ats-role-in-settlement-of-digital-asset-security-trades-09252020.pdf.*

[23] *See* letter from Jeffrey S. Mooney, Associate Director, Division of Trading and Markets, U.S. Securities and Exchange Commission to Charles G. Cascarilla & Daniel M. Burstein, Paxos Trust Company, LLC (October 28, 2019), *available at: https://www.sec.gov/divisions/marketreg/mr-noaction/2019/paxos-trust-company-102819-17a.pdf.*

[24] *See, e.g.,* Form TA–1/A filed by Tokensoft Transfer Agent LLC (CIK: 0001794142) on January 8, 2021, *available at: https://www.sec.gov/Archives/edgar/data/1794142/000179414219000001/xslFTA1X01/primary_doc.xml.*

[25] As of December 1, 2021, the total market cap of all bitcoin in circulation was approximately $1.08 trillion.

[26] Data sourced from the CME Bitcoin Futures Report: 19 Nov, 2021, *available at: https://www.cmegroup.com/ftp/bitcoinfutures/Bitcoin_Futures_Liquidity_Report.pdf.*

cryptocurrency trading.[27] The U.S. Office of the Comptroller of the Currency (the ''OCC'') has made clear that federally-chartered banks are able to provide custody services for cryptocurrencies and other digital assets.[28] The OCC recently granted conditional approval of two charter conversions by state-chartered trust companies to national banks, both of which provide cryptocurrency custody services.[29] NYDFS has granted no fewer than twenty-five BitLicenses, including to established public payment companies like PayPal Holdings, Inc. and Square, Inc., and limited purpose trust charters to entities providing cryptocurrency custody services, including the Trust's Custodian. The U.S. Treasury Financial Crimes Enforcement Network (''FinCEN'') has released extensive guidance regarding the applicability of the Bank Secrecy Act (''BSA'') and implementing regulations to virtual currency businesses,[30] and has proposed rules imposing requirements on entities subject to the BSA that are specific to the technological context of virtual currencies.[31] In addition, the Treasury's Office of Foreign Assets Control (''OFAC'') has brought enforcement actions over apparent violations of the sanctions laws in connection with the provision of wallet management services for digital assets.[32]

In addition to the regulatory developments laid out above, more traditional financial market participants have embraced and continue to embrace cryptocurrency: Large insurance companies,[33] asset managers,[34] university endowments,[35] pension funds,[36] and even historically bitcoin skeptical fund managers [37] are allocating to bitcoin. The largest over-the-counter bitcoin fund previously filed a Form 10 registration statement, which the Staff of the Commission reviewed and which took effect automatically, and is now a reporting company.[38] Established companies like Tesla, Inc.,[39] MicroStrategy Incorporated,[40] and Square, Inc.,[41] among others, have recently announced substantial investments in bitcoin in amounts as large as $1.5 billion (Tesla) and $425 million (MicroStrategy). The foregoing examples demonstrate that bitcoin has gained mainstream usage and recognition.

Despite these developments, access for U.S. retail investors to gain exposure to bitcoin via a transparent and U.S. regulated, U.S. exchange-traded vehicle remains limited. Instead current options include: (i) Over-the-counter bitcoin funds (''OTC Bitcoin Funds'') with high management fees and potentially volatile premiums and discounts; [42] (ii) facing the technical risk, complexity and generally high fees associated with buying spot bitcoin; (iii) purchasing shares of operating companies that they believe will provide proxy exposure to bitcoin with limited disclosure about the associated risks; [43] or (iv) purchasing

[27] The CFTC's annual report for Fiscal Year 2020 (which ended on September 30, 2020) noted that the CFTC ''continued to aggressively prosecute misconduct involving digital assets that fit within the CEA's definition of commodity'' and ''brought a record setting seven cases involving digital assets.'' *See* CFTC FY2020 Division of Enforcement Annual Report, *available at: https://www.cftc.gov/media/5321/DOE_FY2020_AnnualReport_120120/download.* Additionally, the CFTC filed on October 1, 2020, a civil enforcement action against the owner/operators of the BitMEX trading platform, which was one of the largest bitcoin derivative exchanges. *See* CFTC Release No. 8270–20 (October 1, 2020) *available at: https://www.cftc.gov/PressRoom/PressReleases/8270-20.*

[28] *See* OCC News Release 2021–2 (January 4, 2021) *available at: https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-2.html.*

[29] *See* OCC News Release 2021–6 (January 13, 2021) *available at: https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-6.html* and OCC News Release 2021–19 (February 5, 2021) *available at: https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-19.html.*

[30] *See* FinCEN Guidance FIN–2019–G001 (May 9, 2019) (Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual Currencies) *available at: https://www.fincen.gov/sites/default/files/2019-05/FinCEN%20Guidance%20CVC%20FINAL%20508.pdf.*

[31] *See* U.S. Department of the Treasury Press Release: ''The Financial Crimes Enforcement Network Proposes Rule Aimed at Closing Anti-Money Laundering Regulatory Gaps for Certain Convertible Virtual Currency and Digital Asset Transactions'' (December 18, 2020), *available at: https://home.treasury.gov/news/press-releases/sm1216.*

[32] *See* U.S. Department of the Treasury Enforcement Release: ''OFAC Enters Into $98,830 Settlement with BitGo, Inc. for Apparent Violations of Multiple Sanctions Programs Related to Digital Currency Transactions'' (December 30, 2020) *available at: https://home.treasury.gov/system/files/126/20201230_bitgo.pdf.*

[33] On December 10, 2020, Massachusetts Mutual Life Insurance Company (MassMutual) announced that it had purchased $100 million in bitcoin for its general investment account. *See* MassMutual Press Release ''Institutional Bitcoin provider NYDIG announces minority stake purchase by MassMutual'' (December 10, 2020) *available at: https://www.massmutual.com/about-us/news-and-press-releases/press-releases/2020/12/institutional-bitcoin-provider-nydig-announces-minority-stake-purchase-by-massmutual.*

[34] *See e.g.,* ''BlackRock's Rick Rieder says the world's largest asset manager has 'started to dabble' in bitcoin'' (February 17, 2021) *available at: https://www.cnbc.com/2021/02/17/blackrock-has-started-to-dabble-in-bitcoin-says-rick-rieder.html* and ''Guggenheim's Scott Minerd Says Bitcoin Should Be Worth $400,000'' (December 16, 2020) *available at: https://www.bloomberg.com/news/articles/2020-12-16/guggenheim-s-scott-minerd-says-bitcoin-should-be-worth-400-000.*

[35] *See e.g.,* ''Harvard and Yale Endowments Among Those Reportedly Buying Crypto'' (January 25, 2021) *available at: https://www.bloomberg.com/news/articles/2021-01-26/harvard-and-yale-endowments-among-those-reportedly-buying-crypto.*

[36] *See e.g.,* ''Virginia Police Department Reveals Why its Pension Fund is Betting on Bitcoin'' (February 14, 2019) *available at: https://finance.yahoo.com/news/virginia-police-department-reveals-why-194558505.html.*

[37] *See e.g.,* ''Bridgewater: Our Thoughts on Bitcoin'' (January 28, 2021) *available at: https://www.bridgewater.com/research-and-insights/our-thoughts-on-bitcoin* and ''Paul Tudor Jones says he likes bitcoin even more now, rally still in the 'first inning' '' (October 22, 2020) *available at: https://www.cnbc.com/2020/10/22/-paul-tudor-jones-says-he-likes-bitcoin-even-more-now-rally-still-in-the-first-inning.html.*

[38] *See* Letter from Division of Corporation Finance, Office of Real Estate & Construction to Barry E. Silbert, Chief Executive Officer, Grayscale Bitcoin Trust (January 31, 2020) *https://www.sec.gov/Archives/edgar/data/1588489/000000000020000953/filename1.pdf.*

[39] *See* Form 10–K submitted by Tesla, Inc. for the fiscal year ended December 31, 2020 at 23: *https://www.sec.gov/ix?doc=/Archives/edgar/data/1318605/000156459021004599/tsla-10k_20201231.htm.*

[40] *See* Form 10–Q submitted by MicroStrategy Incorporated for the quarterly period ended September 30, 2020 at 8: *https://www.sec.gov/ix?doc=/Archives/edgar/data/1050446/000156459020047995/mstr-10q_20200930.htm.*

[41] *See* Form 10–Q submitted by Square, Inc. for the quarterly period ended September 30, 2020 at 51: *https://www.sec.gov/ix?doc=/Archives/edgar/data/1512673/000151267320000012/sq-20200930.htm.*

[42] The largest OTC Bitcoin Fund has an AUM of $23 billion. The premium and discount for OTC Bitcoin Funds is known to move rapidly. For example, over the period of 12/21/20 to 1/21/20, the premium for the largest OTC Bitcoin Fund went from 40.18% to 2.79%. While the price of bitcoin appreciated significantly during this period and NAV per share increased by 41.25%, the price per share increased by only 3.58%. This means that investors are buying shares of a fund that experiences significant volatility in its premium and discount outside of the fluctuations in price of the underlying asset. Even operating within the normal premium and discount range, it's possible for an investor to buy shares of an OTC Bitcoin Fund only to have those shares quickly lose 10% or more in dollar value excluding any movement of the price of bitcoin. That is to say—the price of bitcoin could have stayed exactly the same from market close on one day to market open the next, yet the value of the shares held by the investor decreased only because of the fluctuation of the premium. As more investment vehicles, including mutual funds and ETFs, seek to gain exposure to bitcoin, the easiest option for a buy and hold strategy for such vehicles is often an OTC Bitcoin Fund, meaning that even investors that do not directly buy OTC Bitcoin Funds can be disadvantaged by extreme premiums (or discounts) and premium volatility.

[43] Recently a number of operating companies engaged in unrelated businesses—such as Tesla (a car manufacturer) and MicroStrategy (an enterprise software company)—have announced investments as large as $5.3 billion in bitcoin. Without access to bitcoin exchange-traded products, retail investors seeking investment exposure to bitcoin may end up purchasing shares in these companies in order to gain the exposure to bitcoin that they seek. In fact, mainstream financial news networks have written a number of articles providing investors with guidance for obtaining bitcoin exposure through publicly traded companies (such as MicroStrategy, Tesla, and bitcoin mining companies, among others) instead of dealing with the complications

Continued

Bitcoin Futures ETFs, as defined below, which represent a sub-optimal structure for long-term investors that will cost them significant amounts of money every year compared to Spot Bitcoin ETPs, as further discussed below. Meanwhile, investors in many other countries, including Canada and Brazil, are able to use more traditional exchange listed and traded products (including exchange-traded funds holding physical bitcoin) to gain exposure to bitcoin, disadvantaging U.S. investors and leaving them with more risky means of getting bitcoin exposure.[44] Additionally, investors in other countries, specifically Canada, generally pay lower fees than U.S. retail investors that invest in OTC Bitcoin Funds due to the fee pressure that results from increased competition among available bitcoin investment options. Without an approved and regulated Spot Bitcoin ETP in the U.S. as a viable alternative, U.S. investors could seek to purchase shares of non-U.S. bitcoin vehicles in order to get access to bitcoin exposure. Given the separate regulatory regime and the potential difficulties associated with any international litigation, such an arrangement would create more risk exposure for U.S. investors than they would otherwise have with a U.S. exchange listed ETP. Further to this point, the lack of a U.S.-listed Spot Bitcoin ETP is not preventing U.S. funds from gaining exposure to bitcoin—several U.S. exchange-traded funds are using Canadian bitcoin ETPs to gain exposure to spot bitcoin. In addition to the benefits to U.S. investors articulated throughout this proposal, approving this proposal (and others like it) would provide U.S. exchange-traded funds and mutual funds with a U.S.-listed and regulated product to provide such access rather than relying on either flawed products or products listed and primarily regulated in other countries.

Bitcoin Futures ETFs

The Exchange and Sponsor applaud the Commission for allowing the launch of ETFs registered under the 1940 Act and the recent Bitcoin Futures Approvals that provide exposure to bitcoin primarily through CME Bitcoin Futures (''Bitcoin Futures ETFs''). Allowing such products to list and trade is a productive first step in providing U.S. investors and traders with transparent, exchange-listed tools for expressing a view on bitcoin. The Bitcoin Futures Approvals, however, have created a logical inconsistency in the application of the standard the Commission applies when considering bitcoin ETP proposals.

As discussed further below, the standard applicable to bitcoin ETPs is whether the listing exchange has in place a comprehensive surveillance sharing agreement with a regulated market of significant size in the underlying asset. Previous disapproval orders have made clear that a market that constitutes a regulated market of significant size is generally a futures and/or options market based on the underlying reference asset rather than the spot commodity markets, which are often unregulated.[45] Leaving aside the analysis of that standard until later in this proposal,[46] the Exchange believes that the following rationale the Commission applied to a Bitcoin Futures ETF should result in the Commission approving this and other Spot Bitcoin ETP proposals:

> The CME ''comprehensively surveils futures market conditions and price movements on a real-time and ongoing basis in order to detect and prevent price distortions, including price distortions caused by manipulative efforts.'' Thus the CME's surveillance can reasonably be relied upon to capture the effects on the CME bitcoin futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME bitcoin futures contracts, whether that attempt is made by directly trading on the CME bitcoin futures market or indirectly by trading outside of the CME bitcoin futures market. As such, when the CME shares its surveillance information with Arca, the information would assist in detecting and deterring fraudulent or manipulative misconduct related to the non-cash assets held by the proposed ETP.[47]

CME Bitcoin Futures pricing is based on pricing from spot bitcoin markets. The statement from the Teucrium Approval that ''CME's surveillance can reasonably be relied upon to capture the effects on the CME bitcoin futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME bitcoin futures contracts . . . indirectly by trading outside of the CME bitcoin futures market,'' makes clear that the Commission believes that CME's surveillance can capture the effects of trading on the relevant spot markets on the pricing of CME Bitcoin Futures. The Exchange agrees with the Commission on this point and notes that the pricing mechanism applicable to the Shares is similar to that of the CME Bitcoin Futures. As further discussed below, this view is also consistent with the Advisor's research.

Further to this point, a Bitcoin Futures ETF is potentially more susceptible to potential manipulation than a Spot Bitcoin ETP that offers only in-kind creation and redemption because settlement of CME Bitcoin Futures (and thus the value of the underlying holdings of a Bitcoin Futures ETF) occurs at a single price derived from spot bitcoin pricing, while shares of a Spot Bitcoin ETP would represent interest in bitcoin directly and authorized participants for a Spot Bitcoin ETP (as proposed herein) would be able to source bitcoin from any exchange and create or redeem with the applicable trust regardless of the price of the underlying index. It is not logically possible to conclude that the CME Bitcoin Futures market represents

associated with buying spot bitcoin in the absence of a bitcoin ETP. *See e.g.,* ''7 public companies with exposure to bitcoin'' (February 8, 2021) available at: *https://finance.yahoo.com/news/7-public-companies-with-exposure-to-bitcoin-154201525.html;* and ''Want to get in the crypto trade without holding bitcoin yourself? Here are some investing ideas'' (February 19, 2021) available at: *https://www.cnbc.com/2021/02/19/ways-to-invest-in-bitcoin-without-holding-the-cryptocurrency-yourself-.html.* Such operating companies, however, are imperfect bitcoin proxies and provide investors with partial bitcoin exposure paired with a host of additional risks associated with whichever operating company they decide to purchase. Additionally, the disclosures provided by such operating companies with respect to risks relating to their bitcoin holdings are generally substantially smaller than the registration statement of a bitcoin ETP, including the Registration Statement, typically amounting to a few sentences of narrative description and a handful of risk factors. In other words, investors seeking bitcoin exposure through publicly traded companies are gaining only partial exposure to bitcoin and are not fully benefitting from the risk disclosures and associated investor protections that come from the securities registration process.

[44] The Exchange notes that securities regulators in a number of other countries have either approved or otherwise allowed the listing and trading of bitcoin ETPs.

[45] *See* Winklevoss Order at 37593, specifically footnote 202, which includes the language from numerous approval orders for which the underlying futures markets formed the basis for approving series of ETPs that hold physical metals, including gold, silver, palladium, platinum, and precious metals more broadly; and 37600, specifically where the Commission provides that ''when the spot market is unregulated—the requirement of preventing fraudulent and manipulative acts may possibly be satisfied by showing that the ETP listing market has entered into a surveillance-sharing agreement with a regulated market of significant size in derivatives related to the underlying asset.'' As noted above, the Exchange believes that these citations are particularly helpful in making clear that the spot market for a spot commodity ETP need not be ''regulated'' in order for a spot commodity ETP to be approved by the Commission, and in fact that it's been the common historical practice of the Commission to rely on such derivatives markets as the regulated market of significant size because such spot commodities markets are largely unregulated.

[46] As further outlined below, both the Exchange and the Sponsor believe that the CME Bitcoin Futures market represents a regulated market of significant size and that this proposal and others like it should be approved on this basis.

[47] *See* Teucrium Approval at 21679.

a significant market for a futures-based product, but also conclude that the CME Bitcoin Futures market does not represent a significant market for a spot-based product.

In addition to potentially being more susceptible to manipulation than a Spot Bitcoin ETP, the structure of Bitcoin Futures ETFs provides negative outcomes for buy and hold investors as compared to a Spot Bitcoin ETP.[48] Specifically, the cost of rolling CME Bitcoin Futures contracts (which has reached as high as 17% annually [49] excluding a fund's management fees and borrowing costs, if any) will cause the Bitcoin Futures ETFs to lag the performance of bitcoin itself and, at over a billion dollars in assets under management, would cost U.S. investors significant amounts of money on an annual basis compared to Spot Bitcoin ETPs. Such rolling costs would not be required for Spot Bitcoin ETPs that hold bitcoin. Further, Bitcoin Futures ETFs could potentially hit CME position limits, which would force a Bitcoin Futures ETF to invest in non-futures assets for bitcoin exposure and cause potential investor confusion and lack of certainty about what such Bitcoin Futures ETFs are actually holding to try to get exposure to bitcoin, not to mention completely changing the risk profile associated with such an ETF. While Bitcoin Futures ETFs represent a useful trading tool, they are clearly a sub-optimal structure for U.S. investors that are looking for long-term exposure to bitcoin that will, based on the calculations above, unnecessarily cost U.S. investors significant amounts of money every year compared to Spot Bitcoin ETPs and the Exchange believes that any proposal to list and trade a Spot Bitcoin ETP should be reviewed by the Commission with this important investor protection context in mind.

To the extent the Commission may view differential treatment of Bitcoin Futures ETFs and Spot Bitcoin ETPs as warranted based on the Commission's concerns about the custody of physical Bitcoin that a Spot Bitcoin ETP would hold (compared to cash-settled futures contracts),[50] the Sponsor believes this concern is mitigated to a significant degree by the custodial arrangements that the Trust has contracted with Coinbase Trust Company, LLC (the ''Custodian'') to provide. In the Custody Statement, the Commission stated that the fourth step that a broker-dealer could take to shield traditional securities customers and others from the risks and consequences of digital asset security fraud, theft, or loss is to establish, maintain, and enforce reasonably designed written policies, procedures, and controls for safekeeping and demonstrating the broker-dealer has exclusive possession or control over digital asset securities that are consistent with industry best practices to protect against the theft, loss, and unauthorized and accidental use of the private keys necessary to access and transfer the digital asset securities the broker-dealer holds in custody. While bitcoin is not a security and the Custodian is not a broker-dealer, the Sponsor believes that similar considerations apply to the Custodian's holding of the Trust's bitcoin. After diligent investigation, the Sponsor believes that the Custodian's policies, procedures, and controls for safekeeping, exclusively possessing, and controlling the Trust's bitcoin holdings are consistent with industry best practices to protect against the theft, loss, and unauthorized and accidental use of the private keys. As a trust company chartered by the New York Department of Financial Services, the Sponsor notes that the Custodian is subject to extensive regulation and has among longest track records in the industry of providing custodial services for digital asset private keys. The Custodian has represented to the Trust that it has never suffered a loss of bitcoin belonging to customers. Under the circumstances, therefore, to the extent the Commission believes that its concerns about the risks of spot bitcoin custody justifies differential treatment of a Bitcoin Futures ETF versus a Spot Bitcoin ETP, the Sponsor believes that the fact that the Custodian employs the same types of policies, procedures, and safeguards in handling spot bitcoin that the Commission has stated that broker-dealers should implement with respect to digital asset securities would appear to weaken the justification for treating a Bitcoin Futures ETF compared to a Spot Bitcoin ETP differently due to spot bitcoin custody concerns.

Based on the foregoing, the Exchange and Sponsor believe that any objective review of the proposals to list Spot Bitcoin ETPs compared to the Bitcoin Futures ETFs and the Bitcoin Futures Approvals would lead to the conclusion that Spot Bitcoin ETPs should be available to U.S. investors and, as such, this proposal and other comparable proposals to list and trade Spot Bitcoin ETPs should be approved by the Commission. Stated simply, U.S. investors will continue to lose significant amounts of money from holding Bitcoin Futures ETFs as compared to Spot Bitcoin ETPs, losses which could be prevented by the Commission approving Spot Bitcoin ETPs. Additionally, any concerns related to preventing fraudulent and manipulative acts and practices related to Spot Bitcoin ETPs would apply equally to the spot markets underlying the futures contracts held by a Bitcoin Futures ETF. While the 1940 Act does offer certain investor protections, those protections do not relate to mitigating potential manipulation of the holdings of an ETF in a way that warrants distinction between Bitcoin Futures ETFs and Spot Bitcoin ETPs. To be clear, both the Exchange and Sponsor believe that the CME Bitcoin Futures market is a regulated market of significant size and that such manipulation concerns are mitigated, as described extensively below. After allowing the listing and trading of Bitcoin Futures ETFs that hold primarily CME Bitcoin Futures, however, the only consistent outcome would be approving Spot Bitcoin ETPs on the basis that the CME Bitcoin Futures market is a regulated market of significant size. Including in the analysis the significant and preventable losses to U.S. investors that comes with Bitcoin Futures ETFs, disapproving Spot Bitcoin ETPs seems even more arbitrary and capricious. Given the current landscape, approving this proposal (and others like it) and allowing Spot Bitcoin ETPs to be listed and traded alongside Bitcoin Futures ETFs would establish a consistent regulatory approach, provide U.S. investors with choice in product structures for bitcoin exposure, and offer flexibility in the means of gaining exposure to bitcoin through transparent, regulated, U.S. exchange-listed vehicles.

[48] *See e.g.,* ''Bitcoin ETF's Success Could Come at Fundholders' Expense,'' Wall Street Journal (October 24, 2021), available at: *https://www.wsj.com/articles/bitcoin-etfs-success-could-come-at-fundholders-expense-11635080580;* ''Physical Bitcoin ETF Prospects Accelerate,'' ETF.com (October 25, 2021), available at: *https://www.etf.com/sections/blog/physical-bitcoin-etf-prospects-shine?nopaging=1&__cf_chl_jschl_tk__=pmd_JsK.fjXz9eAQW9zol0qpzhXDrrlpIVdoCloLXbLjl44-1635476946-0-gqNtZGzNApCjcnBszQql.*

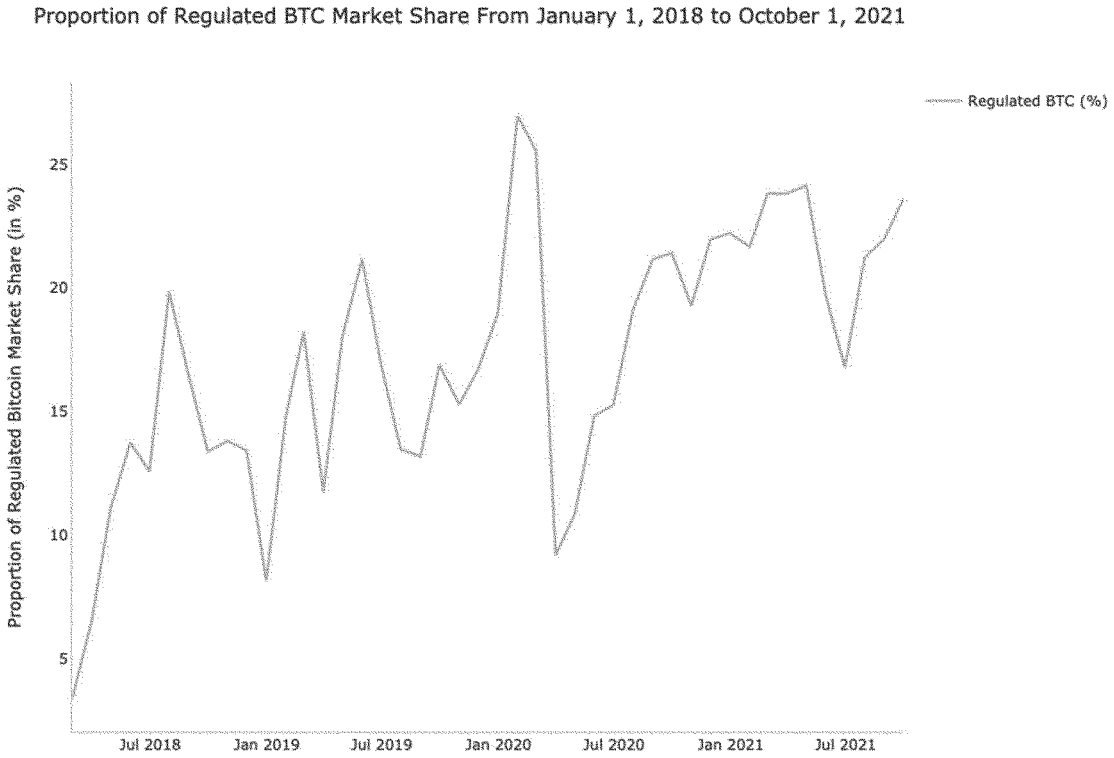
[49] *Id.*

[50] See, *e.g.,* Division of Investment Management Staff, Staff Statement on Funds Registered Under the Investment Company Act Investing in the Bitcoin Futures Market, May 11, 2021 (''The Bitcoin futures market also has not presented the custody challenges associated with some cryptocurrency-based investing because the futures are cash-settled'').

Bitcoin Futures [51]

CME began offering trading in Bitcoin Futures in 2017. Each contract represents five bitcoin and is based on the CME CF Bitcoin Reference Rate.[52] The contracts trade and settle like other cash-settled commodity futures contracts. Nearly every measurable metric related to Bitcoin Futures has trended consistently up since launch.

According to the Sponsor, the increase in the volume on CME is reflected in a higher proportion of the bitcoin market share. This is illustrated by plotting the proportion of monthly volume traded in bitcoin on the CME [53] (categorized as regulated in the chart and used as the numerator) in relation to the total bitcoin market, which comprises of the sum of the volume of bitcoin futures on the CME and the spot volume on cryptocurrency exchanges [54] (categorized as unregulated and used as the denominator) from January 1, 2018 to October 1, 2021 illustrates this point.



The proportion of volume traded on CME has increased from less than 5% at inception, to more than 20% over three and a half years. Furthermore, the CME market, as well as other crypto-linked markets, and the spot market are highly correlated. In markets that are globally and efficiently integrated, one would expect that changes in prices of an asset across all markets to be highly correlated. The rationale behind this is that quick and efficient arbitrageurs would capture potentially profitable opportunities, consequently converging prices to the average intrinsic value very rapidly.

Bitcoin markets exhibit a high degree of correlation. Using daily Bitcoin prices from centralized exchanges, ETP providers, and the CME from January 20, 2021 to October 1, 2021,[55] the Sponsor calculates the Pearson correlation of returns [56] across these markets and find a high degree of correlation.

Correlations are between 57% and 99%, with the latter found mainly across centralized exchanges due to their higher level of interconnectedness. The lower correlations pertain mainly to the ETPs, which are relatively newer products and are mainly offered by a few competing market makers who are required to trade in large blocks, thus making it economically infeasible to capture small mispricings. As additional investors and arbitrageurs enter the market and capture the mispricing opportunities between these markets, it is likely that there will be much higher levels of correlations across all markets.

[51] Unless otherwise noted, all data and analysis presented in this section and referenced elsewhere in the filing has been provided by the Sponsor.

[52] According to CME, the CME CF Bitcoin Reference Rate aggregates the trade flow of major bitcoin spot exchanges during a specific calculation window into a once-a-day reference rate of the U.S. dollar price of bitcoin. Calculation rules are geared toward maximum transparency and real-time replicability in underlying spot markets, including Bitstamp, Coinbase, Gemini, itBit, and Kraken. For additional information, refer to *https://www.cmegroup.com/trading/cryptocurrency-indices/cf-bitcoin-reference-rate.html?redirect=/trading/cf-bitcoin-reference-rate.html.*

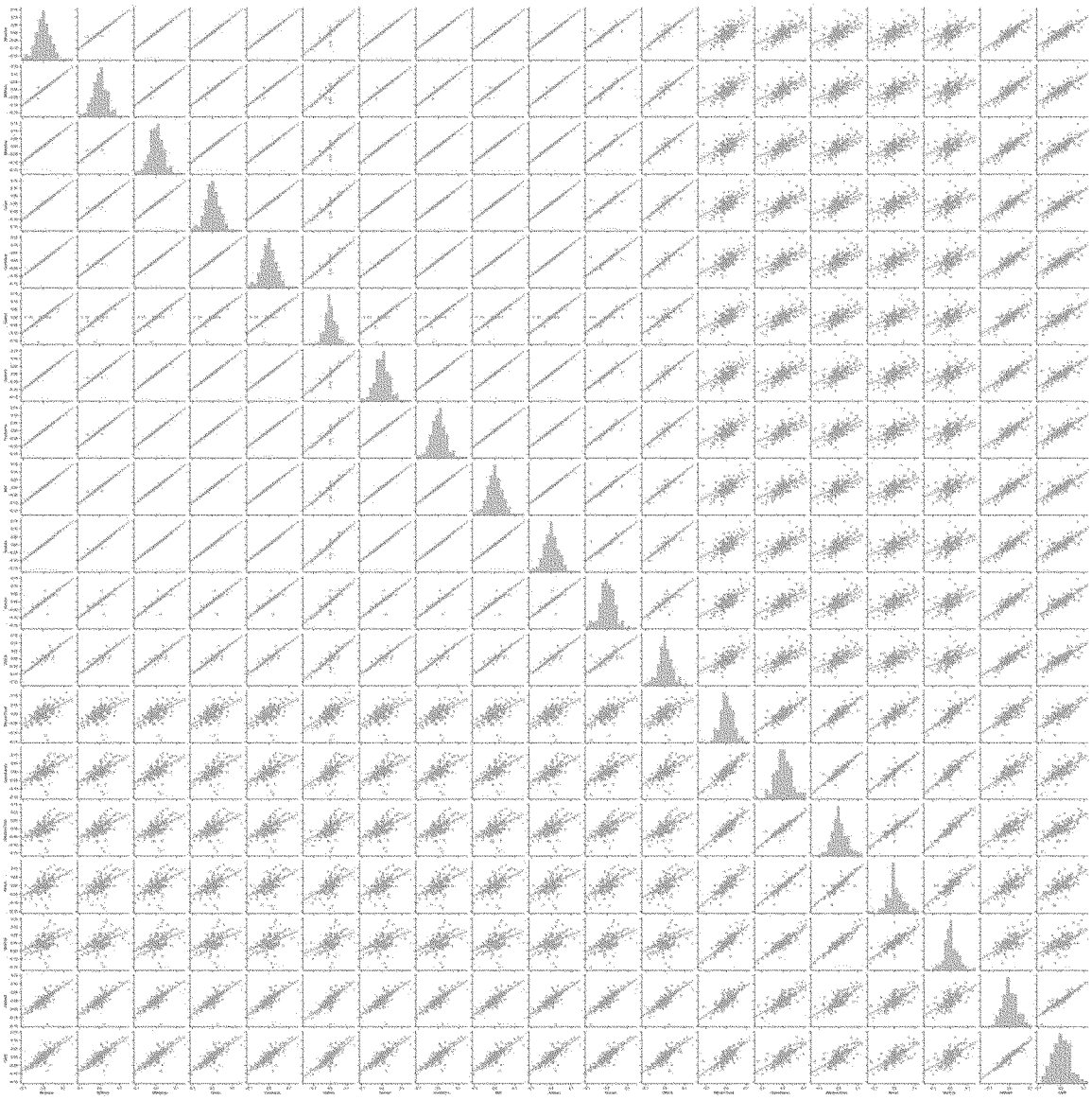
[53] Data on Bitcoin futures is obtained from *https://www.cmegroup.com/markets/cryptocurrencies/bitcoin/bitcoin.volume.html.*

[54] Data on Bitcoin volume traded on cryptocurrency exchanges is obtained from *https://www.cryptocompare.com.*

[55] The calculation of correlations used the period January 20, 2021 to October 1, 2021 as this is the common period across all the exchanges and data sources being analyzed.

[56] The Pearson correlation is a measure of linear association between two variables, and indicates the magnitude as well as direction of this relationship. The value can range between −1 (suggesting a strong negative association) and 1 (suggesting a strong positive association).

Pairwise Correlation of Bitcoin Daily Returns across Centralized Exchanges, ETPs, and the CME



Pair-wise correlations of Bitcoin returns are also calculated on hourly and minute-by-minute sampling frequencies in order to estimate the intra-day associations across the different Bitcoin markets. The results remain largely the same as shown in the charts below, with correlations ranging between 70% and 97% among centralized exchanges, and between 55% and 72% between ETPs and centralized exchanges. This suggests that Bitcoin prices across all considered markets move very similarly and in a very efficient manner to quickly reflect changes in market conditions, not only on a daily basis, but also at much higher intra-day frequencies.

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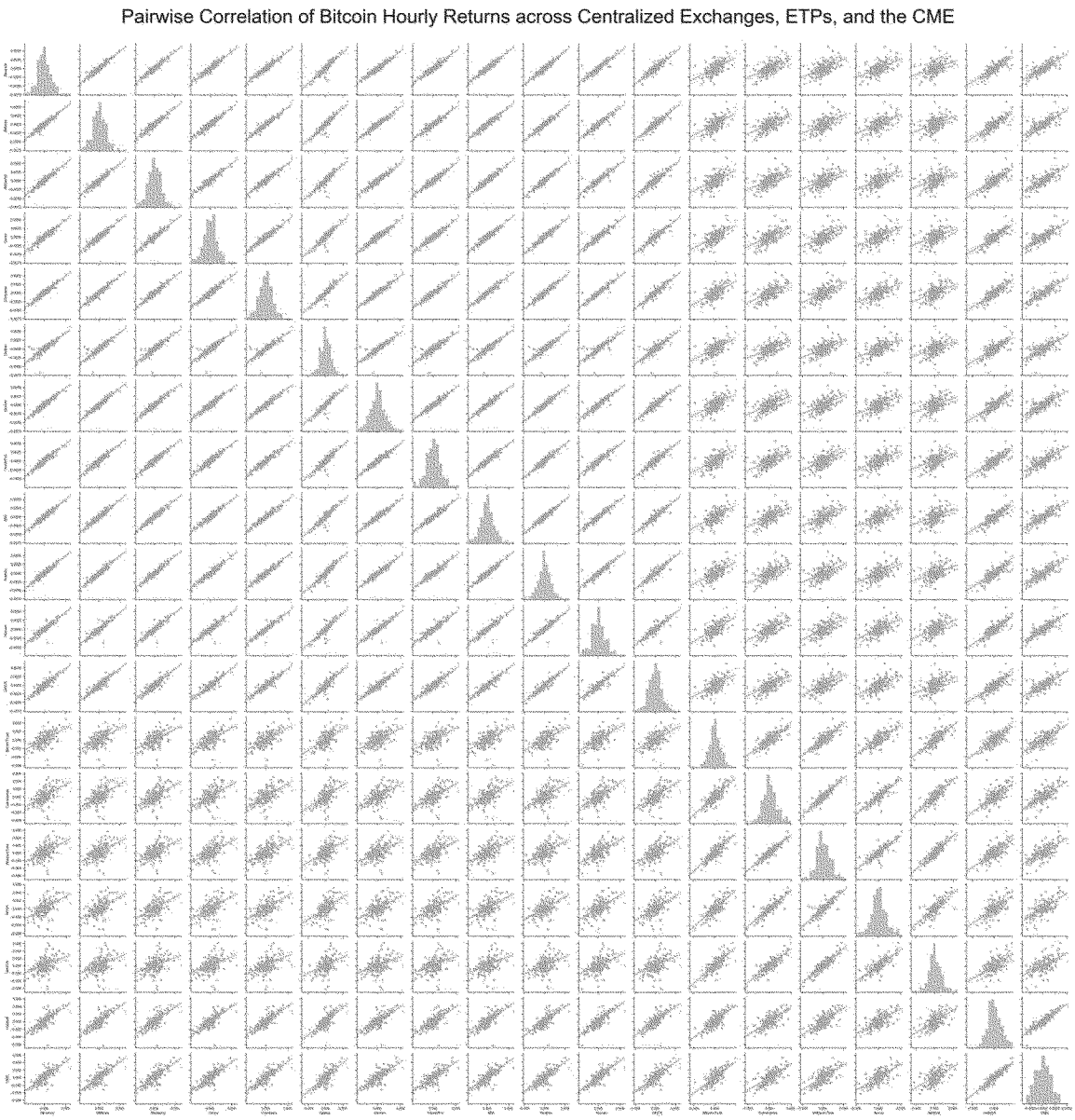
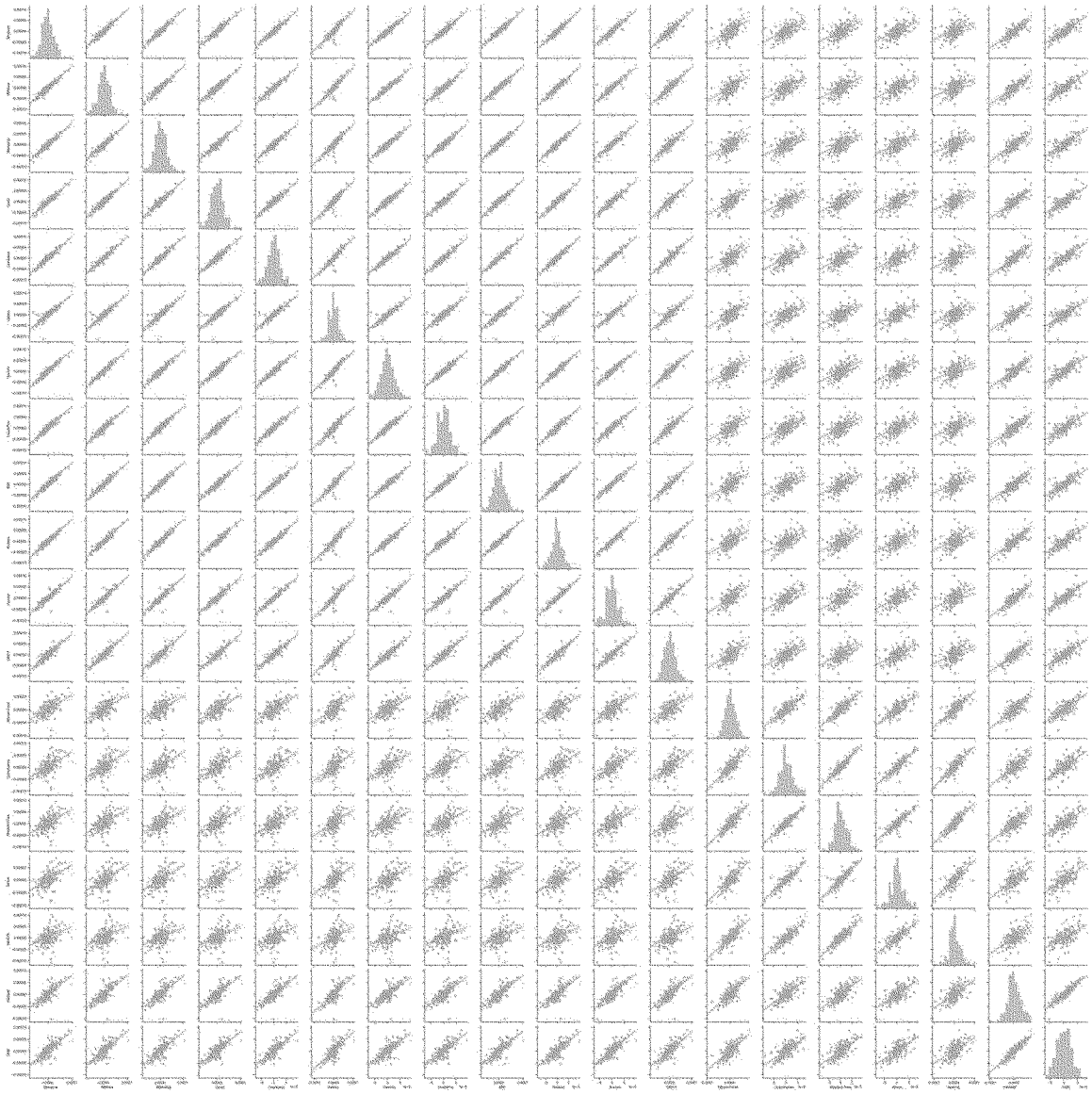

Pairwise Correlation of Bitcoin Hourly Returns across Centralized Exchanges, ETPs, and the CME

Pairwise Correlation of Bitcoin Minutely Returns across Centralized Exchanges, ETPs, and the CME



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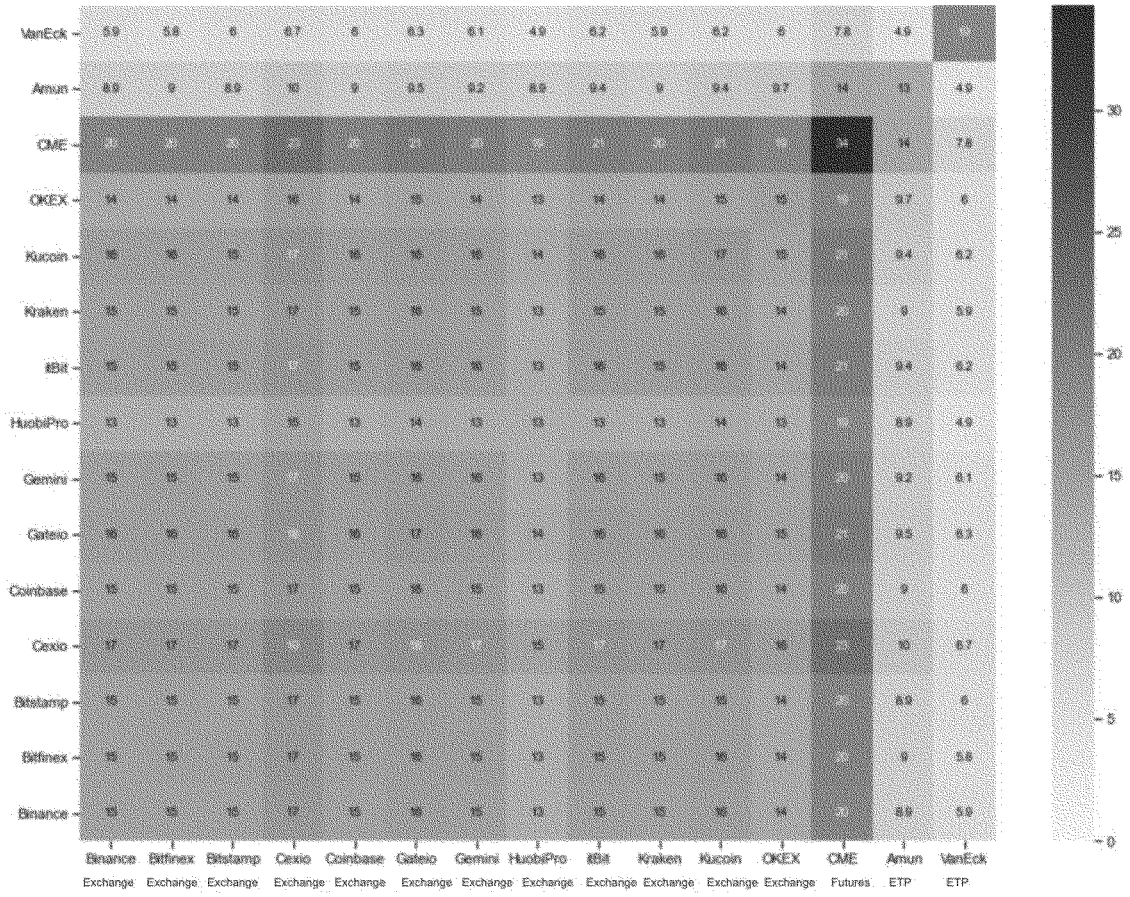
According to the Sponsor's research, this relationship holds true during periods of extreme price volatility. This implies that no single Bitcoin market can deviate significantly from the consensus, such that the market is sufficiently large and has an inherent unique resistance to manipulation.

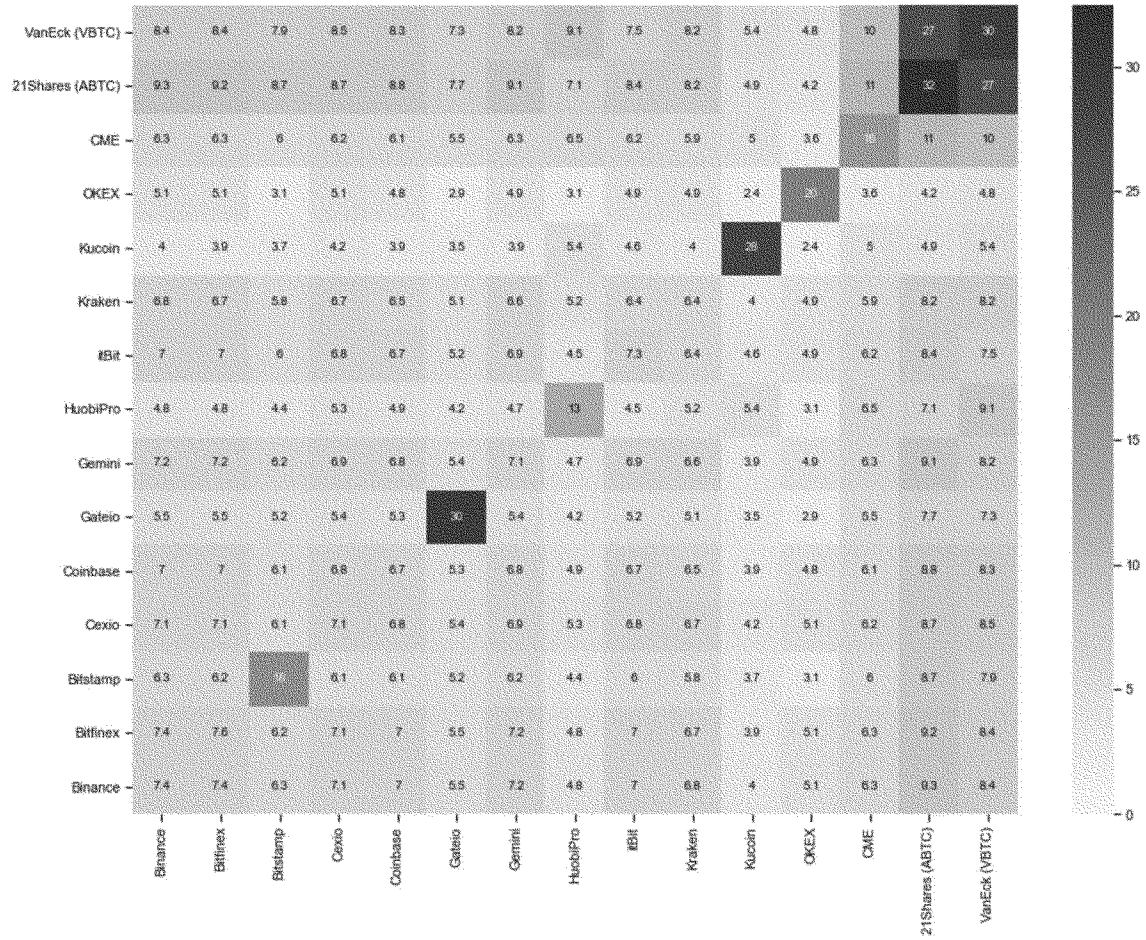
Hence, the Sponsor introduces a statistical comoment called cokurtosis, which measures to what extent two random variables change together.[57] If two returns series exhibit a high degree of cokurtosis, this means that they tend to undergo extreme positive and negative changes simultaneously. A cokurtosis value larger than +3 or less than −3 is considered statistically significant. The following table shows that the level of cokurtosis is positive and very high between all market combinations of hourly returns,[58] which suggests that Bitcoin markets tend to move very similarly especially for extreme price deviations.

[57] Coskewness and Cokurtosis are higher order cross-moments used in finance to examine how assets move together. Coskewness measures the extent to which two variables undergo extreme deviations at the same time, whereby a positive (negative) value means that both values exhibit positive (negative) values simultaneously. While this measure is useful for estimating comovements in one direction or the other, it does not allow us to test whether two variables comove similarly in either direction. For that, we apply the cokurtosis, which measures the extent to which two variables undergo both extreme positive and negative deviations at the same time.

Cokurtosis of Bitcoin Hourly Returns across Centralized Exchanges, ETPs, and the CME



As a robustness check, the cokurtosis metric is also calculated using minute-by-minute returns, and the conclusion remains the same, suggesting that all Bitcoin markets move in tandem especially during extreme market movements.



These results present evidence of a robust global Bitcoin market that quickly reacts in a unanimous manner to extreme price movements across both the spot markets, futures and ETP markets.

The Sponsor further believes that academic research corroborates the overall trend outlined above and supports the thesis that the Bitcoin Futures pricing leads the spot market and, thus, a person attempting to manipulate the Shares would also have to trade on that market to manipulate the ETP. Specifically, the Sponsor believes that such research indicates that bitcoin futures lead the bitcoin spot market in price formation.[59]

Section 6(b)(5) and the Applicable Standards

The Commission has approved numerous series of Trust Issued Receipts,[60] including Commodity-Based Trust Shares,[61] to be listed on U.S. national securities exchanges. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of Section 6(b)(5) of the Act, specifically including: (i) The requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices; [62] and

[59] *See* Hu, Y., Hou, Y. and Oxley, L. (2019). ''What role do futures markets play in Bitcoin pricing? Causality, cointegration and price discovery from a time-varying perspective'' (available at: *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7481826/*). This academic research paper concludes that ''There exist no episodes where the Bitcoin spot markets dominates the price discovery processes with regard to Bitcoin futures. This points to a conclusion that the price formation originates solely in the Bitcoin futures market. We can, therefore, conclude that the Bitcoin futures markets dominate the dynamic price discovery process based upon time-varying information share measures. Overall, price discovery seems to occur in the Bitcoin futures markets rather than the underlying spot market based upon a time-varying perspective.''

[60] See Exchange Rule 14.11(f).

[61] Commodity-Based Trust Shares, as described in Exchange Rule 14.11(e)(4), are a type of Trust Issued Receipt.

[62] As the Exchange has stated in a number of other public documents, it continues to believe that bitcoin is resistant to price manipulation and that ''other means to prevent fraudulent and manipulative acts and practices'' exist to justify dispensing with the requisite surveillance sharing agreement. The geographically diverse and continuous nature of bitcoin trading render it difficult and prohibitively costly to manipulate the price of bitcoin. The fragmentation across bitcoin platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of bitcoin prices through continuous trading activity challenging. To the extent that there are bitcoin exchanges engaged in or allowing wash trading or other activity intended to manipulate the price of bitcoin on other markets, such pricing does not normally impact prices on other exchange because participants will generally ignore markets with quotes that they deem non-executable. Moreover, the linkage between the bitcoin markets and the presence of arbitrageurs in those markets means that the manipulation of the price of bitcoin price on any single venue would require manipulation of the global bitcoin price in order to be effective. Arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there

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(ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of Section 6(b)(5) of the Act and that this filing sufficiently demonstrates that the CME Bitcoin Futures market represents a regulated market of significant size and that, on the whole, the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by quantifiable investor protection issues that would be resolved by approving this proposal.

(i) Designed To Prevent Fraudulent and Manipulative Acts and Practices

In order to meet this standard in a proposal to list and trade a series of Commodity-Based Trust Shares, the Commission requires that an exchange demonstrate that there is a comprehensive surveillance-sharing agreement in place [63] with a regulated market of significant size. Both the Exchange and CME are members of ISG.[64] The only remaining issue to be addressed is whether the Bitcoin Futures market constitutes a market of significant size, which both the Exchange and the Sponsor believe that it does. The terms ''significant market'' and ''market of significant size'' include a market (or group of markets) as to which: (a) There is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct; and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[65]

The Commission has also recognized that the ''regulated market of significant size'' standard is not the only means for satisfying Section 6(b)(5) of the act, specifically providing that a listing exchange could demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement.[66]

(a) Manipulation of the ETP

According to the Sponsor's research presented above, the Bitcoin Futures market is the leading market for bitcoin price formation. Where Bitcoin Futures lead the price in the spot market such that a potential manipulator of the bitcoin spot market (beyond just the constituents of the Index [67]) would have to participate in the Bitcoin Futures market, it follows that a potential manipulator of the Shares would similarly have to transact in the Bitcoin Futures market because the Index is based on spot prices. Further, the Trust only allows for in-kind creation and redemption, which, as further described below, reduces the potential for manipulation of the Shares through manipulation of the Index or any of its individual constituents, again emphasizing that a potential manipulator of the Shares would have to manipulate the entirety of the bitcoin spot market, which is led by the Bitcoin Futures market. As such, the Exchange believes that part (a) of the significant market test outlined above is satisfied and that common membership in ISG between the Exchange and CME would assist the listing exchange in detecting and deterring misconduct in the Shares.

(b) Predominant Influence on Prices in Spot and Bitcoin Futures

The Exchange and Sponsor also believe that trading in the Shares would not be the predominant force on prices in the Bitcoin Futures market or spot market for a number of reasons, including the significant volume in the Bitcoin Futures market, the size of bitcoin's market cap, and the significant liquidity available in the spot market. In addition to the Bitcoin Futures market data points cited above, the spot market for bitcoin is also very liquid. According to data from CoinRoutes from February 2021, the cost to buy or sell $5 million worth of bitcoin averages roughly 10 basis points with a market impact of 30 basis points.[68] For a $10 million market order, the cost to buy or sell is roughly 20 basis points with a market impact of 50 basis points. Stated another way, a market participant could enter a market buy or sell order for $10 million of bitcoin and only move the market 0.5%. More strategic purchases or sales (such as using limit orders and executing through OTC bitcoin trade desks) would likely have less obvious impact on the market—which is consistent with MicroStrategy, Tesla, and Square being able to collectively purchase billions of dollars in bitcoin. As such, the combination of Bitcoin Futures leading price discovery, the overall size of the bitcoin market, and the ability for market participants, including authorized participants creating and redeeming in-kind with the Trust, to buy or sell large amounts of bitcoin without significant market impact will help prevent the Shares from becoming the predominant force on pricing in either the bitcoin spot or Bitcoin Futures markets, satisfying part (b) of the test outlined above.

(c) Other Means To Prevent Fraudulent and Manipulative Acts and Practices

As noted above, the Commission also permits a listing exchange to demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Exchange and Sponsor believe that such conditions are present. According to the Sponsor, a significant portion of the considerations around crypto pricing have historically stemmed from a lack of consistent pricing across markets. However, according to the Sponsor's

will be strong concentration of funds on any particular bitcoin exchange or OTC platform. As a result, the potential for manipulation on a trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences.

[63] As previously articulated by the Commission, ''The standard requires such surveillance-sharing agreements since ''they provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.'' The Commission has emphasized that it is essential for an exchange listing a derivative securities product to enter into a surveillance-sharing agreement with markets trading underlying securities for the listing exchange to have the ability to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable federal securities laws and rules. The hallmarks of a surveillance-sharing agreement are that the agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one party to the agreement from obtaining this information from, or producing it to, the other party.'' The Commission has historically held that joint membership in the Intermarket Surveillance Group (''ISG'') constitutes such a surveillance sharing agreement. See Wilshire Phoenix Disapproval.

[64] For a list of the current members and affiliate members of ISG, see *www.isgportal.com.*

[65] *See* Wilshire Phoenix Disapproval.

[66] *See* Winklevoss Order at 37580. The Commission has also specifically noted that it ''is not applying a 'cannot be manipulated' standard; instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met.'' Id. at 37582.

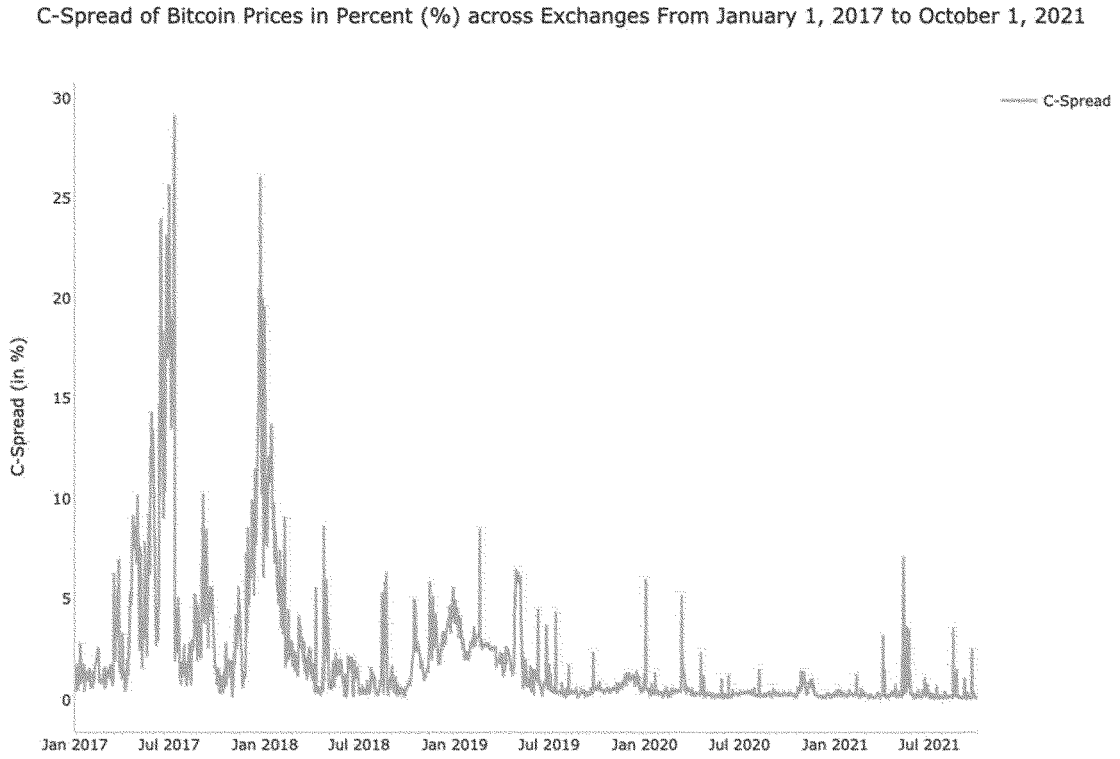
[67] As further described below, the ''Index'' for the Fund is the S&P Bitcoin Index. The current exchange composition of the Index is Binance, Bitfinex, Bitflyer, Bittrex, Bitstamp, Coinbase Pro, Gemini, HitBTC, Huobi, Kraken, KuCoin, and Poloniex.

[68] These statistics are based on samples of bitcoin liquidity in USD (excluding stablecoins or Euro liquidity) based on executable quotes on Coinbase Pro, Gemini, Bitstamp, Kraken, LMAX Exchange, BinanceUS, and OKCoin during February 2021.

research, cross-exchange spreads in Bitcoin have been declining consistently over the past several years. Based on the daily Bitcoin price series from several popular centralized exchanges [69] the Sponsor has calculated the largest cross-exchange percentage spread (labelled as %C-Spread) by deducting the highest or maximum price (P) at time t from the lowest or minimum, and dividing by the lowest across all exchanges (i). Formally, this is expressed as:

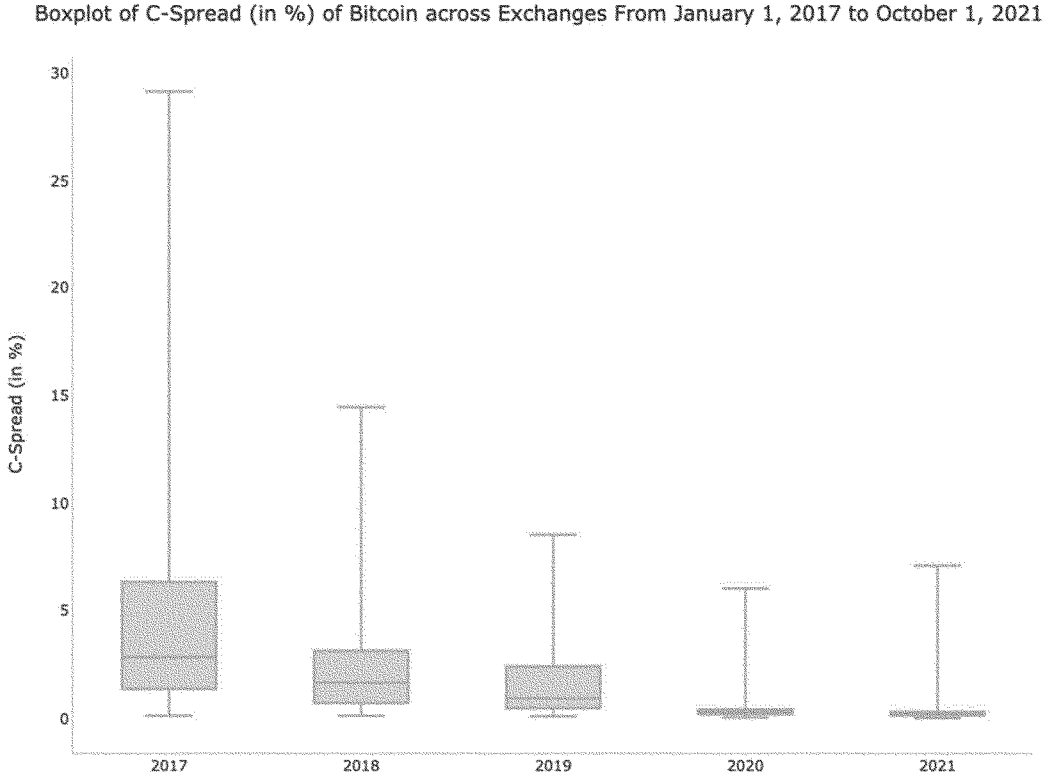
$$\%C - Spread_t = \frac{max(P_{i,t}) - min(P_{i,t})}{min(P_{i,t})}$$

The results show a clear and sharp decline in the %C-Spread, indicating that the Bitcoin market has become more efficient as cross-exchange prices have converged over time.



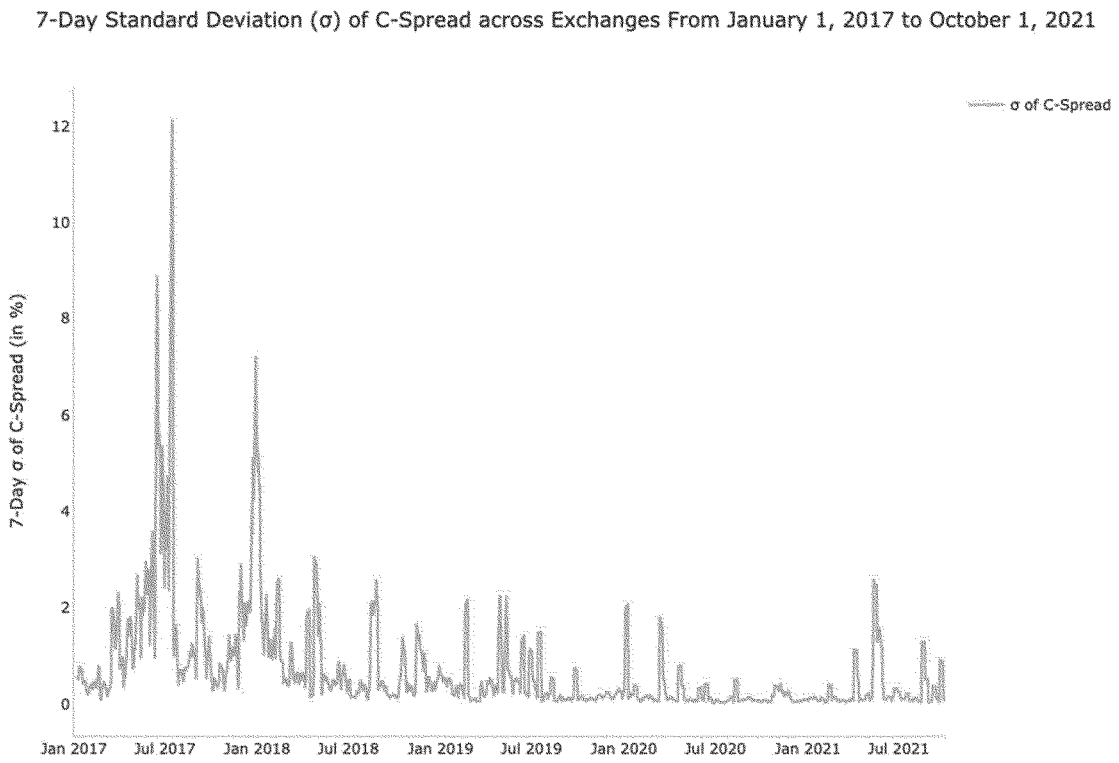
In addition, the magnitude of outlier % C-spreads has also declined over time. This boxplot shows that, not only did the median value of the %C-Spread decline over time, but also the extreme outlier values. For instance, the maximum %C-Spread for 2017, 2018, 2019, 2020, and 2021 are 29.14%, 14.45%, 8.54%, 6.04%, and 7.1%, respectively. The market has experienced a 38% year-on-year decline in the annual median %C-Spread indicating a greater degree of Bitcoin price convergence across exchanges and a more efficient market.

[69] The exchanges include Binance, Bitfinex, Bithumb, Bitstamp, Cexio, Coinbase, Coinone, Gateio, Gemini, HuobiPro, itBit, Kraken, Kucoin, and OKEX.

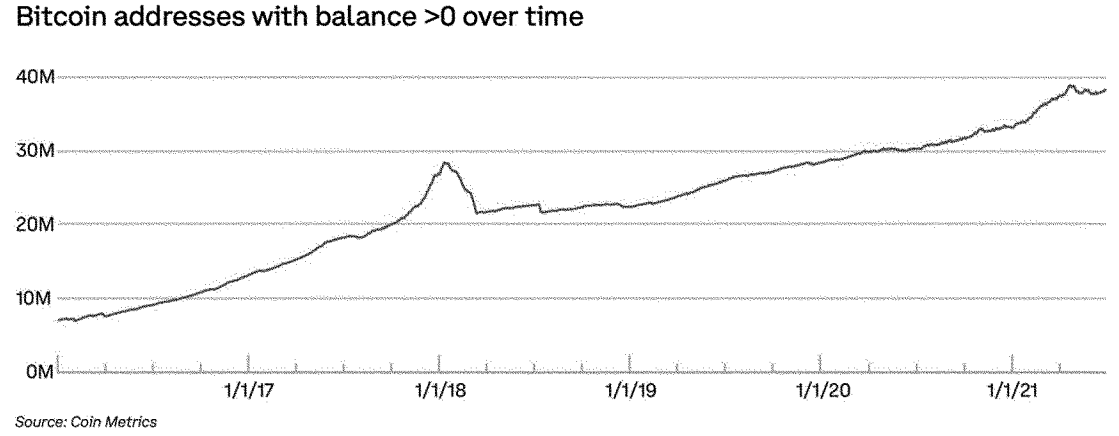


The dispersion (σ) of Bitcoin Prices has also declined over the same period. This chart shows the 7-day rolling standard deviation of the %C-Spread from January 1, 2017 to October 1, 2021. The Sponsor's research finds that the dispersion in Bitcoin prices across all exchanges has decreased over time, indicating that prices on all the considered exchanges converge towards the intrinsic average much more efficiently. This suggests that the market has become better at quickly reaching a consensus price for Bitcoin.

As the pricing of the crypto market becomes increasingly efficient, pricing methodologies become more accurate and less susceptible to manipulation. The clustering of prices across a variety of sources within the primary market points towards robust price discovery mechanisms and efficient arbitrage.



One factor that has contributed to the overall efficiency of, and improved price discovery within the Bitcoin market is the increase in the number of participants, and subsequently, the total dollar amount allocated to this market. This can be illustrated by the following chart, which shows the number of wallet addresses holding Bitcoin from January 2016 to June 2021.



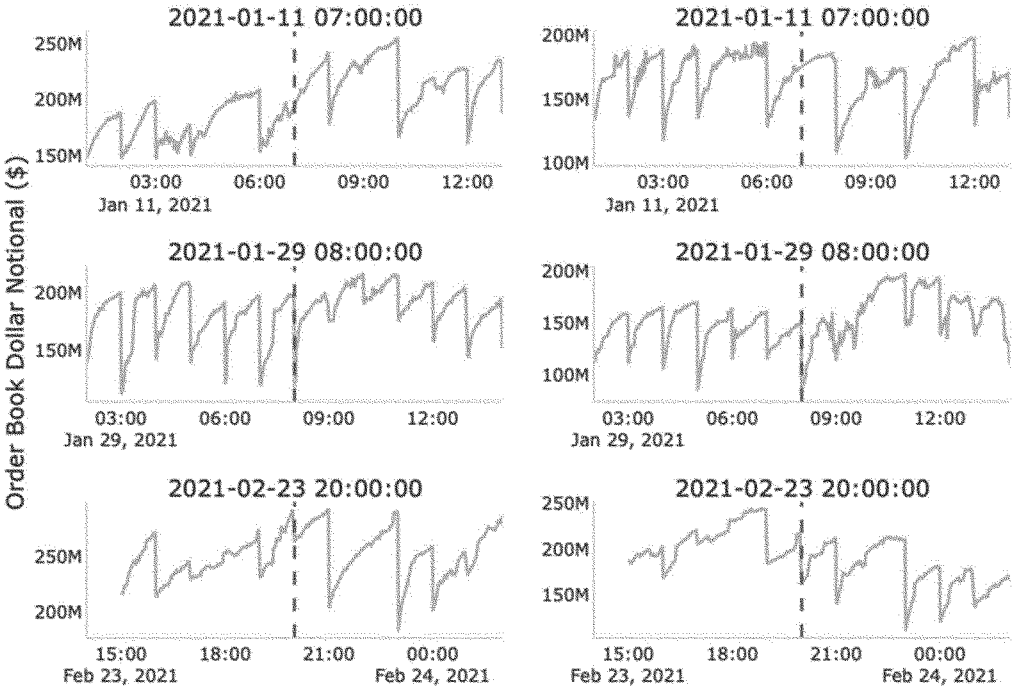
The increase in the number of participants has manifested itself in higher liquidity in the market. This is exhibited in the following chart, which shows the daily aggregated dollar notional of the bid and ask order books within the first 100 price levels across several of the largest centralized crypto exchanges from October 2020 to April 2021. Specifically, the dollar notional that is allocated closest to the mid price has increased from around $230 million to $860 million over that period, representing a 270% increase in half a year.

An increased notional order book suggests that there is a higher degree of consensus among investors regarding the price of Bitcoin. Moreover, this market characteristic hampers any attempt of price manipulation by any single large entity.

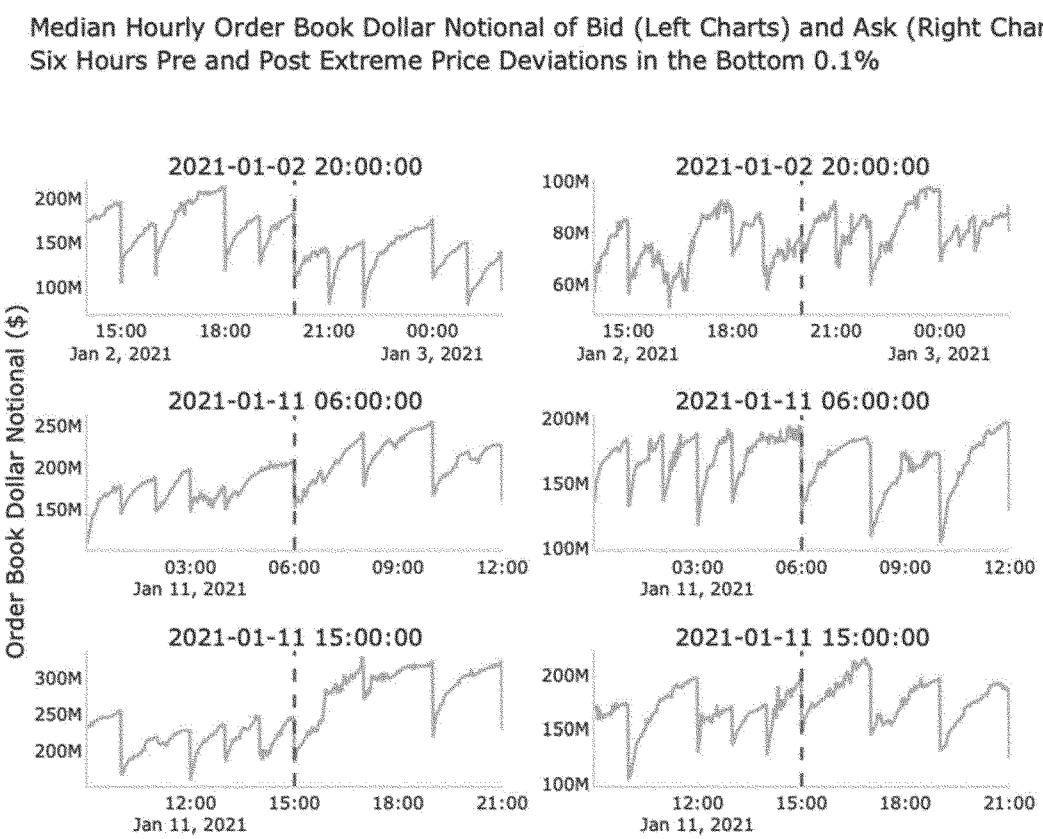
As a robustness check, the Sponsor investigates whether the dollar notional in the order book changes significantly prior to, and post an extreme price event. Specifically, for events constituting large increases in the price of Bitcoin, if the ask (or sell) side of the order book experiences a significant shrinkage in the dollar notional right before the event, then this may be an indication of market manipulation whereby the ask-side of the order book becomes sufficiently thin for a large order to move the price upward. Similarly, for events constituting large decreases in the price of Bitcoin, if the bid (or buy) side of the order book experiences a significant shrinkage in the dollar notional prior to such events, then this may be an indication of market manipulation whereby the thinner bid-side of the order book may potentially lead to significant downward price movements.

Using the top and bottom 0.1% of hourly price changes from October 2020 to April 2021 as events of extreme upward and downward market movements, respectively, the Sponsor plotted the bid (left charts) and ask (right charts) dollar notional of the Bitcoin order book within a six-hour window around these events in the chart below, which shows the results for extreme upward price movements. The extreme price events (indicated by the dashed green lines) perfectly coincide with the decrease in dollar notional of the ask-side of the order book. This is indicative of an efficient market, whereby large market movements are quickly and dynamically absorbed by a thick orderbook. Moreover, the dollar notional on the ask side after the event is replenished back to its pre-event level, which implies that market participants' reactions are quick to restore the market back to its equilibrium level.

Median Hourly Order Book Dollar Notional of Bid (Left Charts) and Ask (Right Charts) on Six Hours Pre and Post Extreme Price Deviations in the Top 0.1%



The same results and conclusions are found for extreme downward price movements. The charts below show that such price events perfectly coincide with shrinkages on the bid side of the order book (left charts), indicating an efficient and dynamic Bitcoin market. Moreover, the bid-side of the order book after the event is also restored back to its pre-event level, which suggests that the market is symmetrically efficient in moving back to equilibrium.



Finally, offering only in-kind creation and redemption will provide unique protections against potential attempts to manipulate the Shares. While the Sponsor believes that the Index which it uses to value the Trust's bitcoin is itself resistant to manipulation based on the methodology further described below, the fact that creations and redemptions are only available in-kind makes the manipulability of the Index significantly less important. Specifically, because the Trust will not accept cash to buy bitcoin in order to create new shares or, barring a forced redemption of the Trust or under other extraordinary circumstances, be forced to sell bitcoin to pay cash for redeemed shares, the price that the Sponsor uses to value the Trust's bitcoin is not particularly important.[70] When authorized participants are creating with the Trust, they need to deliver a certain number of bitcoin per share (regardless of the valuation used) and when they're redeeming, they can similarly expect to receive a certain number of bitcoin per share. As such, even if the price used to value the Trust's bitcoin is manipulated (which the Sponsor believes that its methodology is resistant to), the ratio of bitcoin per Share does not change and the Trust will either accept (for creations) or distribute (for redemptions) the same number of bitcoin regardless of the value. This not only mitigates the risk associated with potential manipulation, but also discourages and disincentivizes manipulation of the Index because there is little financial incentive to do so.

(ii) Designed To Protect Investors and the Public Interest

The Exchange believes that the proposal is designed to protect investors and the public interest. Over the past several years, U.S. investor exposure to bitcoin through OTC Bitcoin Funds has grown into the tens of billions of dollars and more than a billion dollars of exposure through Bitcoin Futures ETFs. With that growth, so too has grown the quantifiable investor protection issues to U.S. investors through roll costs for Bitcoin Futures ETFs and premium/discount volatility and management fees for OTC Bitcoin Funds. The Exchange believes that the concerns related to the prevention of fraudulent and manipulative acts and practices have been sufficiently addressed to be consistent with the Act and, to the extent that the Commission disagrees with that assertion, such concerns are now outweighed by investor protection concerns. As such, the Exchange believes that approving this proposal (and comparable proposals) provides the Commission with the opportunity to allow U.S. investors with access to bitcoin in a regulated and transparent exchange-traded vehicle that would act to limit risk to U.S. investors by: (i) Reducing premium and discount volatility; (ii) reducing management fees through meaningful competition; (iii) reducing risks and costs associated with investing in Bitcoin Futures ETFs and operating companies that are imperfect proxies for bitcoin exposure; and (iv) providing an alternative to custodying spot bitcoin.

ARK 21Shares Bitcoin ETF

Delaware Trust Company is the trustee (''Trustee''). The Bank of New York Mellon will be the administrator (''Administrator'') and transfer agent (''Transfer Agent''). Foreside Global Services, LLC will be the marketing agent (''Marketing Agent'') in connection with the creation and redemption of ''Baskets'' of Shares. ARK Investment Management LLC (''ARK'') will provide assistance in the marketing of the Shares. Coinbase Custody Trust Company, LLC, a third-party regulated custodian (the ''Custodian''), will be responsible for custody of the Trust's bitcoin.

According to the Registration Statement, each Share will represent a

[70] While the Index will not be particularly important for the creation and redemption process, it will be used for calculating fees.

fractional undivided beneficial interest in the bitcoin held by the Trust. The Trust's assets will consist of bitcoin held by the Custodian on behalf of the Trust. The Trust generally does not intend to hold cash or cash equivalents. However, there may be situations where the Trust will unexpectedly hold cash on a temporary basis.

According to the Registration Statement, the Trust is neither an investment company registered under the Investment Company Act of 1940, as amended,[71] nor a commodity pool for purposes of the Commodity Exchange Act (''CEA''), and neither the Trust nor the Sponsor is subject to regulation as a commodity pool operator or a commodity trading adviser in connection with the Shares.

When the Trust sells or redeems its Shares, it will do so in ''in-kind'' transactions in blocks of 5,000 Shares (a ''Creation Basket'') at the Trust's NAV. Authorized participants will deliver, or facilitate the delivery of, bitcoin to the Trust's account with the Custodian in exchange for Shares when they purchase Shares, and the Trust, through the Custodian, will deliver bitcoin to such authorized participants when they redeem Shares with the Trust. Authorized participants may then offer Shares to the public at prices that depend on various factors, including the supply and demand for Shares, the value of the Trust's assets, and market conditions at the time of a transaction. Shareholders who buy or sell Shares during the day from their broker may do so at a premium or discount relative to the NAV of the Shares of the Trust.

Investment Objective

According to the Registration Statement and as further described below, the investment objective of the Trust is to seek to track the performance of bitcoin, as measured by the performance of the S&P Bitcoin Index (the ''Index''), adjusted for the Trust's expenses and other liabilities. In seeking to achieve its investment objective, the Trust will hold bitcoin and will value the Shares daily based on the Index. The Trust will process all creations and redemptions in-kind in transactions with authorized participants. The Trust is not actively managed.

The Index

As described in the Registration Statement, the Fund will use the Index to calculate the Trust's NAV. The Index is a U.S. dollar-denominated composite reference rate for the price of bitcoin. There is no component other than bitcoin in the Index. The underlying exchanges are sourced by Lukka Inc. (the ''Data Provider'')[72] based on a combination of qualitative and quantitative metrics to analyze a comprehensive data set and evaluate factors including legal/regulation, KYC/transaction risk, data provision, security, team/exchange, asset quality/diversity, market quality and negative events. The Index price is currently sourced from the following set of exchanges: Binance, Bitfinex, Bitflyer, Bittrex, Bitstamp, Coinbase Pro, Gemini, HitBTC, Huobi, Kraken, KuCoin, and Poloniex. As the digital ecosystem continues to evolve, the Data Provider can add additional or remove exchanges based on the processes established by Lukka's Pricing Integrity Oversight Board.[73]

The Index methodology is intended to determine the fair market value (''FMV'') for bitcoin by determining the principal market for bitcoin as of 4pm ET daily. The Index methodology uses a ranking approach that considers several exchange characteristics including oversight and intra-day trading volume. Specifically, to rank the credibility and quality of each exchange, the Data Provider dynamically assigns a Base Exchange Score (''BES'') score to the key characteristics for each exchange.

The BES reflects the fundamentals of an exchange and determines which exchange should be designated as the principal market at a given point of time. This score is determined by computing a weighted average of the values assigned to four different exchange characteristics. The exchange characteristics are as follows: (i) Oversight; (ii) microstructure efficiency; (iii) data transparency and (iv) data integrity.

Oversight

This score reflects the rules in place to protect and to give access to the investor. The score assigned for exchange oversight will depend on parameters such as jurisdiction, regulation, ''Know Your Customer and Anti-Money Laundering Compliance'' (KYC/AML), among other proprietary factors.

Microstructure Efficiency

The effective bid ask spread is used as a proxy for efficiency. For example, for each exchange and currency pair, the Data Provider takes an estimate of the ''effective spread'' relative to the price.

Data Transparency

Transparency is the term used for a quality score that is determined by the level of detail of the data offered by an exchange. The most transparent exchanges offer order-level data, followed by order book, trade-level, and then candles.

Data Integrity

Data integrity reconstructs orders to ensure the transaction amounts that make up an order equal the overall order amount matching on both a minute and daily basis. This data would help expose nefarious actions such as wash trading or other potential manipulation of data.

The methodology then applies a five-step weighting process for identifying a principal exchange and the last price on that exchange. Following this weighting process, an executed exchange price is assigned for bitcoin as of 4pm ET. The Index price is determined according to the following procedure:

- *Step 1:* Assign each exchange a Base Exchange Score (''BES'') reflecting static exchange characteristics such as oversight, microstructure and technology, as discussed below.
- *Step 2:* Adjust the BES based on the relative monthly volume each exchange services. This new score is the Volume Adjusted Score (''VAS'').
- *Step 3:* Decay the VAS based on the time passed since the last trade on the exchange. Here, the Data Provider is assessing the level of activity in the market by considering the frequency (volume) of trades. The decay factor reflects the time since the last trade on the exchange. This is the final Decayed Volume Adjusted Score (''DVAS''), which tracks the freshness of the data by tracking most recent trades.
- *Step 4:* Rank the exchanges by the DVAS score and designate the highest-ranking exchange as the principal market for that point in time. The principal market is the exchange with the highest DVAS.
- *Step 5:* After selecting a primary exchange, an executed exchange price is used for bitcoin representing FMV at 4p.m. ET. The Data Provider takes the last traded prices at that moment in time on that trading venue for the relevant

[71] 15 U.S.C. 80a–1.

[72] Lukka is an independent third-party digital asset data company engaged by the Sponsor to provide fair market value (FMV) bitcoin prices. This price, commercially available from Lukka, will form the basis for determining the value of the Trust's Bitcoin Holdings. Lukka is not affiliated with the Trust or the Sponsor other than through a commercial relationship. All of Lukka's products are also SOC 1 and 2 Type 2 certified.

[73] The purpose of Lukka's Pricing Integrity Oversight Board is to ensure (i) the integrity and validity of the Lukka pricing and valuation products and (ii) the Lukka pricing and valuation products remain fit for purpose in the rapidly evolving market and corresponding regulatory environments.

pair (Bitcoin/USD) when determining the Index price.

As discussed in the Registration Statement, the fact that there are multiple bitcoin spot markets that may contribute prices to the Index price makes manipulation more difficult in a well-arbitraged and fractured market, as a malicious actor would need to manipulate multiple spot markets simultaneously to impact the Index price, or dramatically skew the historical distribution of volume between the various exchanges.

The Data Provider has designed a series of automated algorithms designed to supplement the core Lukka Prime Methodology in enhancing the ability to detect potentially anomalous price activity which could be detrimental to the goal of obtaining a Fair Market Value price that is representative of the market at a point in time.[74]

In addition to the automated algorithms, the Data Provider has dedicated resources and has established committees to ensure all prices are representative of the market. Any price challenges will result in an independent analysis of the price. This includes assessing whether the price from the selected exchange is biased according to analyses designed to recognize patterns consistent with manipulative activity, such as a quick reversion to previous traded levels following a sharp price change or any significant deviations from the volume weighted average price on a particular exchange or pricing on any other exchange included in the Lukka Prime eligibility universe. Policies and procedures for any adjustments to prices or changes to core parameters (*e.g.,* exchange selection) are described in the Lukka Price Integrity Manual.[75]

Upon detection or external referral of suspect manipulative activities, the case is raised to the Price Integrity Oversight Board. These checks occur on an on-going, intraday basis and any investigations are typically resolved promptly, in clear cases within minutes and in more complex cases same business day. The evidence uncovered shall be turned over to the Data Provider's Price Integrity Oversight Board for final decision and action. The Price Integrity Oversight Board may choose to pick an alternative primary market and may exclude such market from future inclusion in the Index methodology or choose to stand by the original published price upon fully evaluating all available evidence. It may also initiate an investigation of prior prices from such markets and shall evaluate evidence presented on a case-by-case basis.

After the Lukka Prime price is generated, the S&P DJI (''The Index Provider'') performs independent quality checks as a second layer of validation to those employed by the Data Provider, including checks against assets with large price movements, assets with missing prices, assets with zero prices, assets with unchanged prices, assets that have ceased pricing and assets where the price does not match the Lukka Prime primary exchange. The Index Provider may submit a price challenge to Lukka if any of the checks listed above are found to be material. Lukka will perform an independent review of the price challenge to ensure the price is representative of the fair value of a particular cryptocurrency. If there is a change, the process will follow that described in the Recalculation Policy found on The Index Provider Digital Assets Indices Policies & Practices and Index Mathematics Methodology.

In addition, The Index Provider currently provides the below additional quality assurance mechanisms with respect to crypto price validation. These checks are based on current market conditions, internal system processes and other assessments. The Index Provider reserves the right within its sole discretion to supplement, modify and/or remove individual checks and/or the parameters used within the checks, at any time without notice.

Crypto Price and Exchange Validation

- Check for any assets with no price received from Lukka;
- Check for any assets with a zero price received from Lukka;
- Check for any assets with a large change from the previous day. (Outliers +/− 40%);
- Check for any assets with a stale price, aggregating the number of days the price remains stale;
- Confirm the Lukka price matches the Lukka Prime primary exchange price;
- Confirm the Lukka price is consistent with other Lukka Prime exchange prices;
- Check the volume of the Lukka Prime exchanges and challenge the Lukka primary exchange if the exchange is not within the top percentile of the trading volume for that asset;
- Aggregation of Lukka Prime primary exchange changes.

Availability of Information

In addition to the price transparency of the Index, the Trust will provide information regarding the Trust's bitcoin holdings as well as additional data regarding the Trust. The Trust will provide an Intraday Indicative Value (''IIV'') per Share updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's Regular Trading Hours (9:30 a.m. to 4:00 p.m. E.T.). The IIV will be calculated by using the prior day's closing NAV per Share as a base and updating that value during Regular Trading Hours to reflect changes in the value of the Trust's bitcoin holdings during the trading day.

The IIV disseminated during Regular Trading Hours should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day. The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Trading Hours by one or more major market data vendors. In addition, the IIV will be available through on-line information services.

The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) The current NAV per Share daily and the prior business day's NAV and the reported closing price; (b) the BZX Official Closing Price [76] in relation to the NAV as of the time the NAV is calculated and a calculation of the premium or discount of such price against such NAV; (c) data in chart form displaying the frequency distribution of discounts and premiums of the Official Closing Price against the NAV, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (d) the prospectus; and (e) other applicable quantitative information. The Trust will also disseminate the Trust's holdings on a daily basis on the Trust's website. The price of bitcoin will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours. Information about the Index, including key elements of how the Index is calculated, will be publicly available at *https://www.spglobal.com/spdji/en/indices/digital-assets/sp-bitcoin-index//.*

The NAV for the Trust will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time. Quotation and last-sale information

[74] Upon request, Lukka can provide additional information and detail to the Commission regarding the algorithms and data quality checks that are put in place, with confidential treatment requested.

[75] Upon request, Lukka can provide the Commission the Lukka Pricing Integrity Manual, with confidential treatment requested.

[76] As defined in Rule 11.23(a)(3), the term ''BZX Official Closing Price'' shall mean the price disseminated to the consolidated tape as the market center closing trade.

regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association (''CTA'').

Quotation and last sale information for bitcoin is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters, as well as the Index. Information relating to trading, including price and volume information, in bitcoin is available from major market data vendors and from the exchanges on which bitcoin are traded. Depth of book information is also available from bitcoin exchanges. The normal trading hours for bitcoin exchanges are 24 hours per day, 365 days per year.

Net Asset Value

NAV means the total assets of the Trust including, but not limited to, all bitcoin and cash less total liabilities of the Trust, each determined on the basis of generally accepted accounting principles. The Administrator determines the NAV of the Trust on each day that the Exchange is open for regular trading, as promptly as practical after 4:00 p.m. EST. The NAV of the Trust is the aggregate value of the Trust's assets less its estimated accrued but unpaid liabilities (which include accrued expenses). In determining the Trust's NAV, the Administrator values the bitcoin held by the Trust based on the price set by the Index as of 4:00 p.m. EST. The Administrator also determines the NAV per Share.

Creation and Redemption of Shares

According to the Registration Statement, on any business day, an authorized participant may place an order to create one or more baskets. Purchase orders must be placed by 4:00 p.m. Eastern Time, or the close of regular trading on the Exchange, whichever is earlier. The day on which an order is received is considered the purchase order date. The total deposit of bitcoin required is an amount of bitcoin that is in the same proportion to the total assets of the Trust, net of accrued expenses and other liabilities, on the date the order to purchase is properly received, as the number of Shares to be created under the purchase order is in proportion to the total number of Shares outstanding on the date the order is received. Each night, the Sponsor will publish the amount of bitcoin that will be required in exchange for each creation order. The Administrator determines the required deposit for a given day by dividing the number of bitcoin held by the Trust as of the opening of business on that business day, adjusted for the amount of bitcoin constituting estimated accrued but unpaid fees and expenses of the Trust as of the opening of business on that business day, by the quotient of the number of Shares outstanding at the opening of business divided by 5,000. The procedures by which an authorized participant can redeem one or more Creation Baskets mirror the procedures for the creation of Creation Baskets.

Rule 14.11(e)(4)—Commodity-Based Trust Shares

The Shares will be subject to BZX Rule 14.11(e)(4), which sets forth the initial and continued listing criteria applicable to Commodity-Based Trust Shares. The Exchange will obtain a representation that the Trust's NAV will be calculated daily and that these values and information about the assets of the Trust will be made available to all market participants at the same time. The Exchange notes that, as defined in Rule 14.11(e)(4)(C)(i), the Shares will be: (a) Issued by a trust that holds a specified commodity [77] deposited with the trust; (b) issued by such trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity; and (c) when aggregated in the same specified minimum number, may be redeemed at a holder's request by such trust which will deliver to the redeeming holder the quantity of the underlying commodity.

Upon termination of the Trust, the Shares will be removed from listing. The Trustee, Delaware Trust Company, is a trust company having substantial capital and surplus and the experience and facilities for handling corporate trust business, as required under Rule 14.11(e)(4)(E)(iv)(a) and that no change will be made to the trustee without prior notice to and approval of the Exchange. The Exchange also notes that, pursuant to Rule 14.11(e)(4)(F), neither the Exchange nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions or delays in calculating or disseminating any underlying commodity value, the current value of the underlying commodity required to be deposited to the Trust in connection with issuance of Commodity-Based Trust Shares; resulting from any negligent act or omission by the Exchange, or any agent of the Exchange, or any act, condition or cause beyond the reasonable control of the Exchange, its agent, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in an underlying commodity. Finally, as required in Rule 14.11(e)(4)(G), the Exchange notes that any registered market maker (''Market Maker'') in the Shares must file with the Exchange in a manner prescribed by the Exchange and keep current a list identifying all accounts for trading in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, which the registered Market Maker may have or over which it may exercise investment discretion. No registered Market Maker shall trade in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, in an account in which a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by this Rule. In addition to the existing obligations under Exchange rules regarding the production of books and records (see, *e.g.,* Rule 4.2), the registered Market Maker in Commodity-Based Trust Shares shall make available to the Exchange such books, records or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading the underlying physical commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, as may be requested by the Exchange.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. The Exchange will halt trading in the Shares under the conditions specified in BZX Rule 11.18. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the bitcoin underlying the Shares; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule

[77] For purposes of Rule 14.11(e)(4), the term commodity takes on the definition of the term as provided in the Commodity Exchange Act. As noted above, the CFTC has opined that Bitcoin is a commodity as defined in Section 1a(9) of the Commodity Exchange Act. *See* Coinflip.

14.11(e)(4)(E)(ii), which sets forth circumstances under which trading in the Shares may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. BZX will allow trading in the Shares during all trading sessions on the Exchange. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in BZX Rule 11.11(a), the minimum price variation for quoting and entry of orders in securities traded on the Exchange is $0.01 where the price is greater than $1.00 per share or $0.0001 where the price is less than $1.00 per share.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Commodity-Based Trust Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Trust or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. The Exchange may obtain information regarding trading in the Shares and Bitcoin Futures via ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.[78]

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (i) The procedures for the creation and redemption of Baskets (and that the Shares are not individually redeemable); (ii) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (iii) how information regarding the IIV and the Trust's NAV are disseminated; (iv) the risks involved in trading the Shares outside of Regular Trading Hours[79] when an updated IIV will not be calculated or publicly disseminated; (v) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (vi) trading information.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Shares. Members purchasing the Shares for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act[80] in general and Section 6(b)(5) of the Act[81] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission has approved numerous series of Trust Issued Receipts,[82] including Commodity-Based Trust Shares,[83] to be listed on U.S. national securities exchanges. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of Section 6(b)(5) of the Act, specifically including: (i) The requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices;[84] and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of Section 6(b)(5) of the Act and that this filing sufficiently demonstrates that the CME Bitcoin Futures market represents a regulated market of significant size and that, on the whole, the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by quantifiable investor protection issues that would be resolved by approving this proposal.

(i) Designed To Prevent Fraudulent and Manipulative Acts and Practices

In order to meet this standard in a proposal to list and trade a series of Commodity-Based Trust Shares, the Commission requires that an exchange demonstrate that there is a comprehensive surveillance-sharing

[78] For a list of the current members and affiliate members of ISG, *see www.isgportal.com.*

[79] Regular Trading Hours is the time between 9:30 a.m. and 4:00 p.m. Eastern Time.

[80] 15 U.S.C. 78f.

[81] 15 U.S.C. 78f(b)(5).

[82] See Exchange Rule 14.11(f).

[83] Commodity-Based Trust Shares, as described in Exchange Rule 14.11(e)(4), are a type of Trust Issued Receipt.

[84] As the Exchange has stated in a number of other public documents, it continues to believe that bitcoin is resistant to price manipulation and that ''other means to prevent fraudulent and manipulative acts and practices'' exist to justify dispensing with the requisite surveillance sharing agreement. The geographically diverse and continuous nature of bitcoin trading render it difficult and prohibitively costly to manipulate the price of bitcoin. The fragmentation across bitcoin platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of bitcoin prices through continuous trading activity challenging. To the extent that there are bitcoin exchanges engaged in or allowing wash trading or other activity intended to manipulate the price of bitcoin on other markets, such activity does not normally impact prices on other exchange because participants will generally ignore markets with quotes that they deem non-executable. The reason is that wash trading aims to manipulate the volume rather than the price of an asset to give the impression of heightened market activity in hopes of attracting investors to that asset. Moreover, wash trades are executed within an exchange rather than cross exchange since the entity executing the wash trades would aim to trade against itself, and as such, this can only happen within an exchange. Should the wash trades of that entity result in a deviation of the price on that exchange relative to others, arbitrageurs would then be able to capitalize on this mispricing, and bring the manipulated price back to equilibrium, resulting in a loss to the entity executing the wash trades. Moreover, the linkage between the bitcoin markets and the presence of arbitrageurs in those markets means that the manipulation of the price of bitcoin price on any single venue would require manipulation of the global bitcoin price in order to be effective. Arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular bitcoin exchange or OTC platform. As a result, the potential for manipulation on a trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences.

agreement in place [85] with a regulated market of significant size. Both the Exchange and CME are members of ISG.[86] The only remaining issue to be addressed is whether the Bitcoin Futures market constitutes a market of significant size, which both the Exchange and the Sponsor believe that it does. The terms ''significant market'' and ''market of significant size'' include a market (or group of markets) as to which: (a) There is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct; and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[87]

The Commission has also recognized that the ''regulated market of significant size'' standard is not the only means for satisfying Section 6(b)(5) of the act, specifically providing that a listing exchange could demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement.[88]

(a) Manipulation of the ETP

According to the Sponsor's research presented above, the Bitcoin Futures market is the leading market for bitcoin price formation. Where Bitcoin Futures lead the price in the spot market such that a potential manipulator of the bitcoin spot market (beyond just the constituents of the Index [89]) would have to participate in the Bitcoin Futures market, it follows that a potential manipulator of the Shares would similarly have to transact in the Bitcoin Futures market because the Index is based on spot prices. Further, the Trust only allows for in-kind creation and redemption, which, as further described below, reduces the potential for manipulation of the Shares through manipulation of the Index or any of its individual constituents, again emphasizing that a potential manipulator of the Shares would have to manipulate the entirety of the bitcoin spot market, which is led by the Bitcoin Futures market. As such, the Exchange believes that part (a) of the significant market test outlined above is satisfied and that common membership in ISG between the Exchange and CME would assist the listing exchange in detecting and deterring misconduct in the Shares.

(b) Predominant Influence on Prices in Spot and Bitcoin Futures

The Exchange and Sponsor also believe that trading in the Shares would not be the predominant force on prices in the Bitcoin Futures market or spot market for a number of reasons, including the significant volume in the Bitcoin Futures market, the size of bitcoin's market cap, and the significant liquidity available in the spot market. In addition to the Bitcoin Futures market data points cited above, the spot market for bitcoin is also very liquid. According to data from CoinRoutes from February 2021, the cost to buy or sell $5 million worth of bitcoin averages roughly 10 basis points with a market impact of 30 basis points.[90] For a $10 million market order, the cost to buy or sell is roughly 20 basis points with a market impact of 50 basis points. Stated another way, a market participant could enter a market buy or sell order for $10 million of bitcoin and only move the market 0.5%. More strategic purchases or sales (such as using limit orders and executing through OTC bitcoin trade desks) would likely have less obvious impact on the market—which is consistent with MicroStrategy, Tesla, and Square being able to collectively purchase billions of dollars in bitcoin. As such, the combination of Bitcoin Futures leading price discovery, the overall size of the bitcoin market, and the ability for market participants, including authorized participants creating and redeeming in-kind with the Trust, to buy or sell large amounts of bitcoin without significant market impact will help prevent the Shares from becoming the predominant force on pricing in either the bitcoin spot or Bitcoin Futures markets, satisfying part (b) of the test outlined above.

(c) Other Means To Prevent Fraudulent and Manipulative Acts and Practices

As noted above, the Commission also permits a listing exchange to demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Exchange and Sponsor believe that such conditions are present. According to the Sponsor, a significant portion of the considerations around crypto pricing have historically stemmed from a lack of consistent pricing across markets. However, according to the Sponsor's research, cross-exchange spreads in Bitcoin have been declining consistently over the past several years. Based on the daily Bitcoin price series from several popular centralized exchanges [91] the Sponsor has calculated the largest cross-exchange percentage spread (labelled as %C-Spread) by deducting the highest or maximum price (P) at time t from the lowest or minimum, and dividing by the lowest across all exchanges (i). Formally, this is expressed as:

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[85] As previously articulated by the Commission, ''The standard requires such surveillance-sharing agreements since ''they provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.'' The Commission has emphasized that it is essential for an exchange listing a derivative securities product to enter into a surveillance-sharing agreement with markets trading underlying securities for the listing exchange to have the ability to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable federal securities laws and rules. The hallmarks of a surveillance-sharing agreement are that the agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one party to the agreement from obtaining this information from, or producing it to, the other party.'' The Commission has historically held that joint membership in ISG constitutes such a surveillance sharing agreement. See Wilshire Phoenix Disapproval.

[86] For a list of the current members and affiliate members of ISG, see *www.isgportal.com*.

[87] *See* Wilshire Phoenix Disapproval.

[88] *See* Winklevoss Order at 37580. The Commission has also specifically noted that it ''is not applying a 'cannot be manipulated' standard; instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met.'' Id. at 37582.

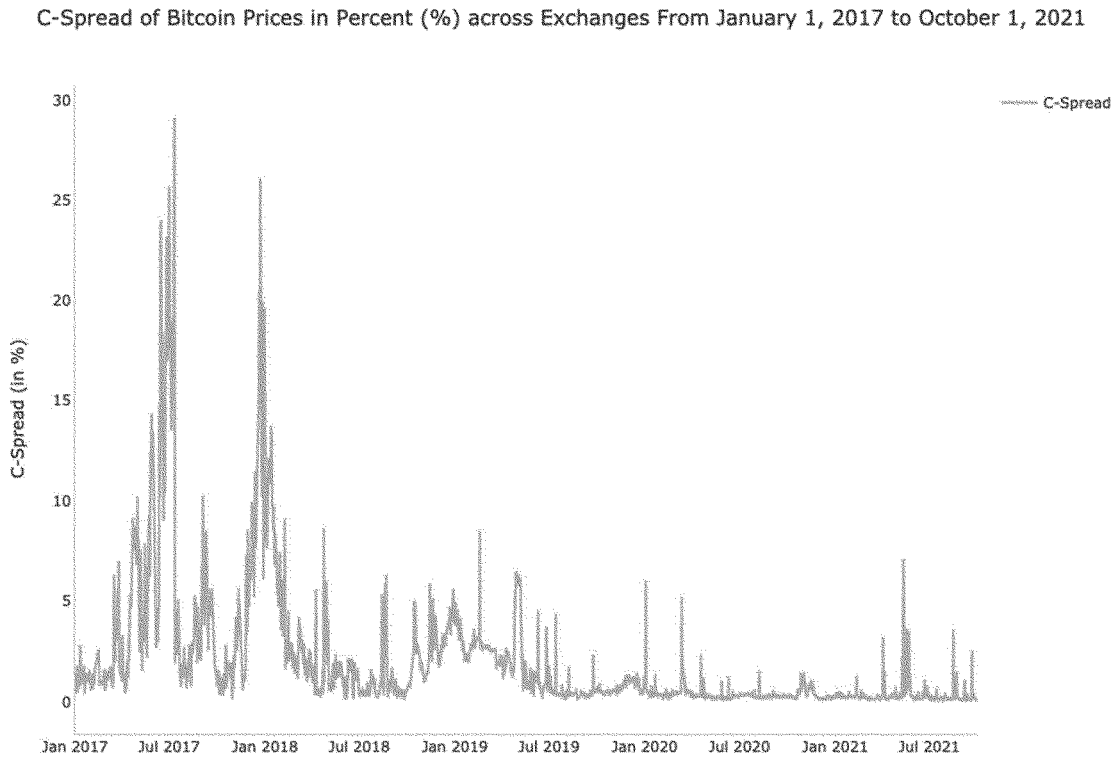
[89] As further described below, the ''Index'' for the Fund is the S&P Bitcoin Index. The current exchange composition of the Index is Binance, Bitfinex, Bitflyer, Bittrex, Bitstamp, Coinbase Pro, Gemini, HitBTC, Huobi, Kraken, KuCoin, and Poloniex.

[90] These statistics are based on samples of bitcoin liquidity in USD (excluding stablecoins or Euro liquidity) based on executable quotes on Coinbase Pro, Gemini, Bitstamp, Kraken, LMAX Exchange, BinanceUS, and OKCoin during February 2021.

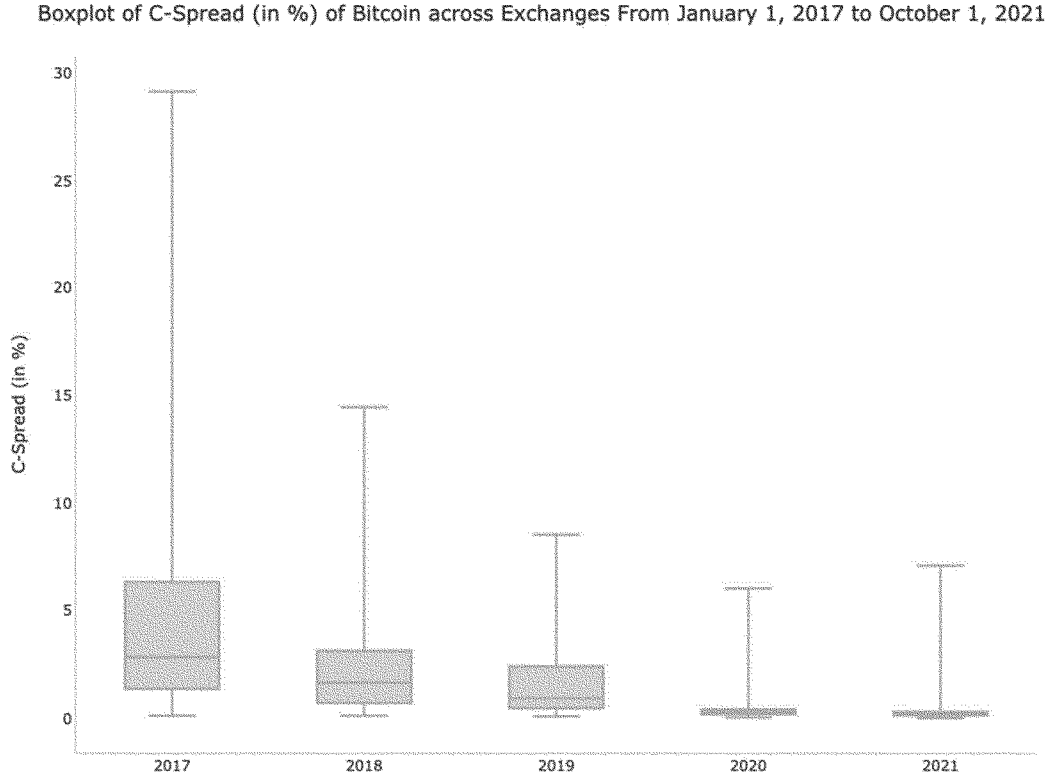
[91] The exchanges include Binance, Bitfinex, Bithumb, Bitstamp, Cexio, Coinbase, Coinone, Gateio, Gemini, HuobiPro, itBit, Kraken, Kucoin, and OKEX.

$$\%C - Spread_t = \frac{max(P_{i,t}) - min(P_{i,t})}{min(P_{i,t})}$$

The results show a clear and sharp decline in the %C-Spread, indicating that the Bitcoin market has become more efficient as cross-exchange prices have converged over time.

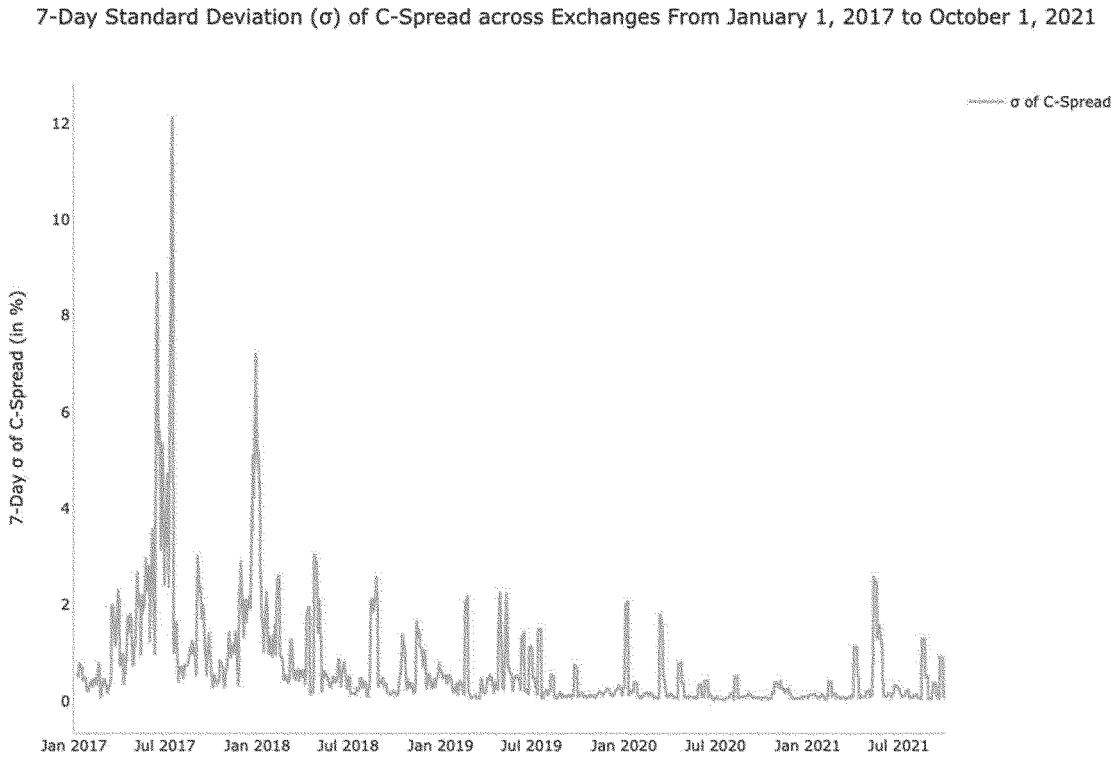


In addition, the magnitude of outlier % C-spreads has also declined over time. This boxplot shows that, not only did the median value of the %C-Spread decline over time, but also the extreme outlier values. For instance, the maximum %C-Spread for 2017, 2018, 2019, 2020, and 2021 are 29.14%, 14.45%, 8.54%, 6.04%, and 7.1%, respectively. The market has experienced a 38% year-on-year decline in the annual median %C-Spread indicating a greater degree of Bitcoin price convergence across exchanges and a more efficient market.

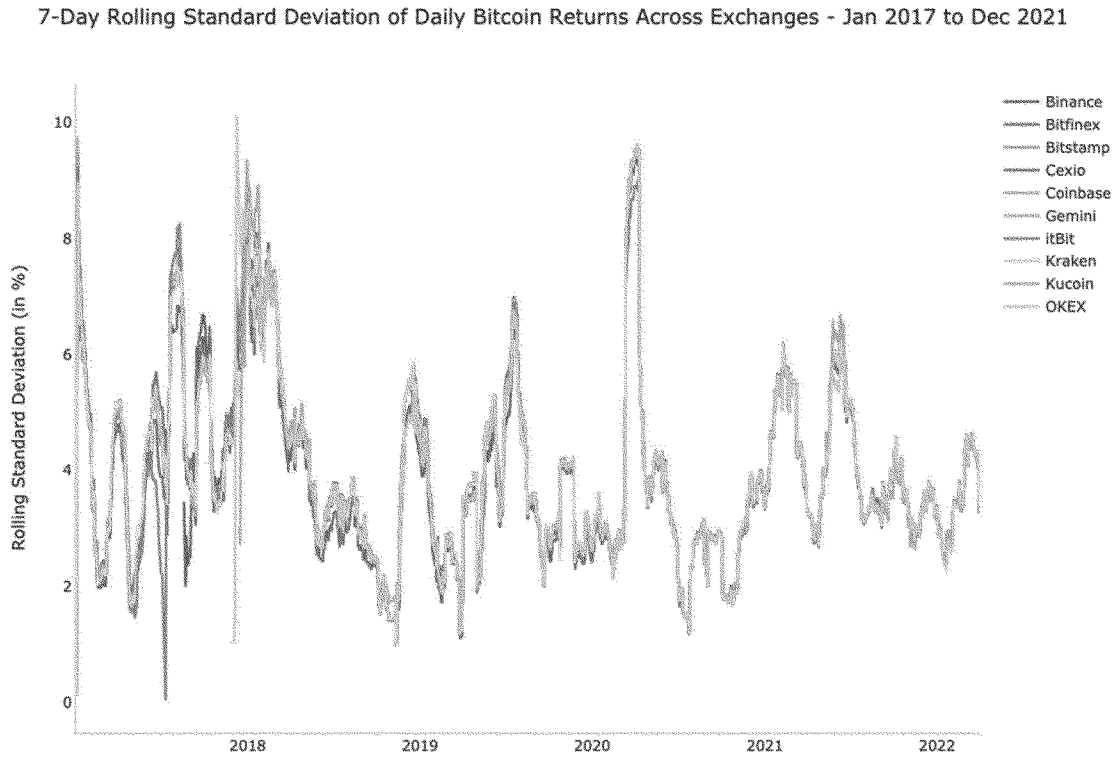


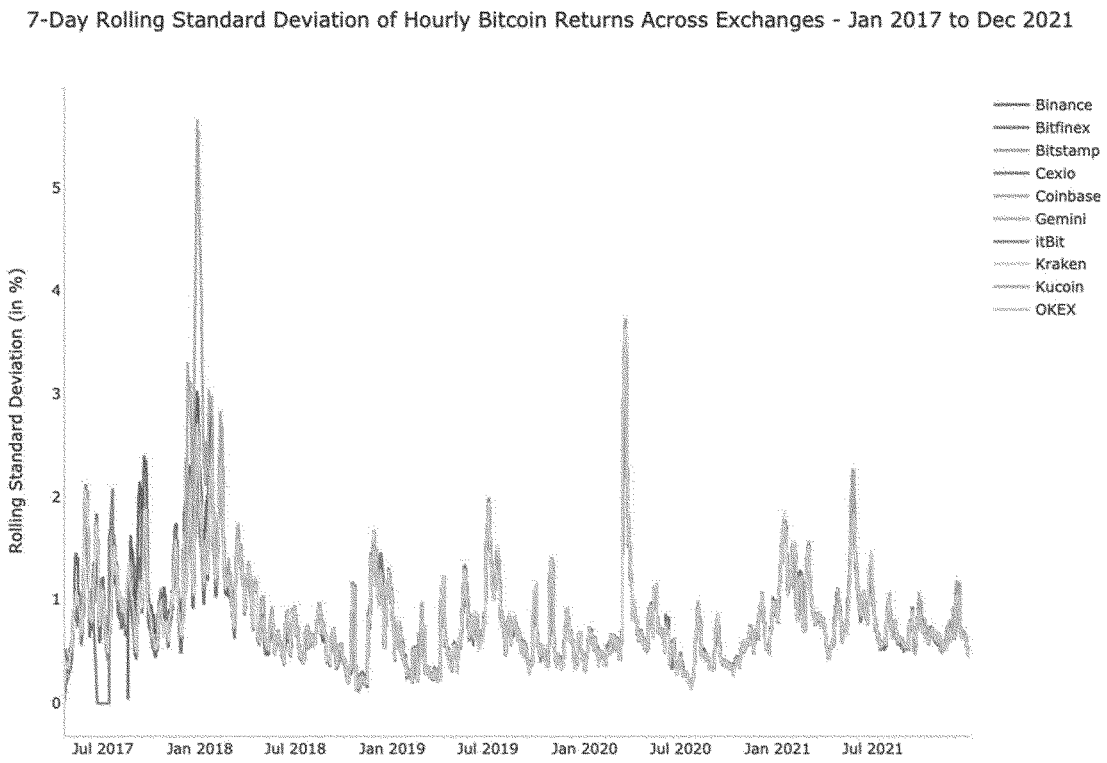
The dispersion (σ) of Bitcoin Prices has also declined over the same period. This chart shows the 7-day rolling standard deviation of the %C-Spread from January 1, 2017 to October 1, 2021. The Sponsor's research finds that the dispersion in Bitcoin prices across all exchanges has decreased over time, indicating that prices on all the considered exchanges converge towards the intrinsic average much more efficiently. This suggests that the market has become better at quickly reaching a consensus price for Bitcoin.

As the pricing of the crypto market becomes increasingly efficient, pricing methodologies become more accurate and less susceptible to manipulation. The clustering of prices across a variety of sources within the primary market points towards robust price discovery mechanisms and efficient arbitrage.

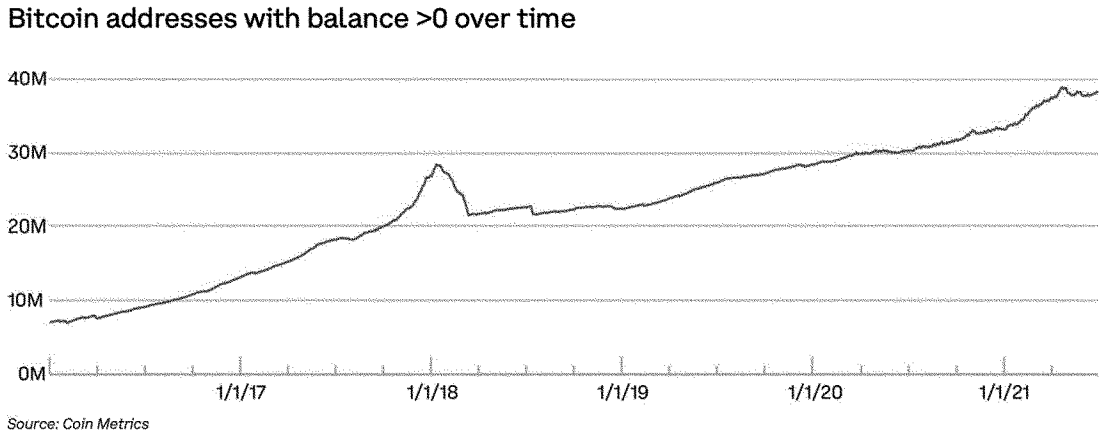


It is very important to note that the cross-exchange spreads, and therefore the process of price discovery in the Bitcoin market has improved significantly over time despite the market experiencing rather uniform albeit sinusoidal volatility. This can be shown in the graphs below where we can clearly observe a slightly decreasing yet consistent level of volatility in the Bitcoin market based on daily and hourly returns across the considered exchanges. Again, this further supports the argument that the Bitcoin market has exhibited significant improvements in terms of price discovery over time, irrespective and despite of the volatility of the asset itself, which can be attributed to efficient arbitrage operations.





One factor that has contributed to the overall efficiency of, and improved price discovery within the Bitcoin market is the increase in the number of participants, and subsequently, the total dollar amount allocated to this market. This can be illustrated by the following chart, which shows the number of wallet addresses holding Bitcoin from January 2016 to June 2021.



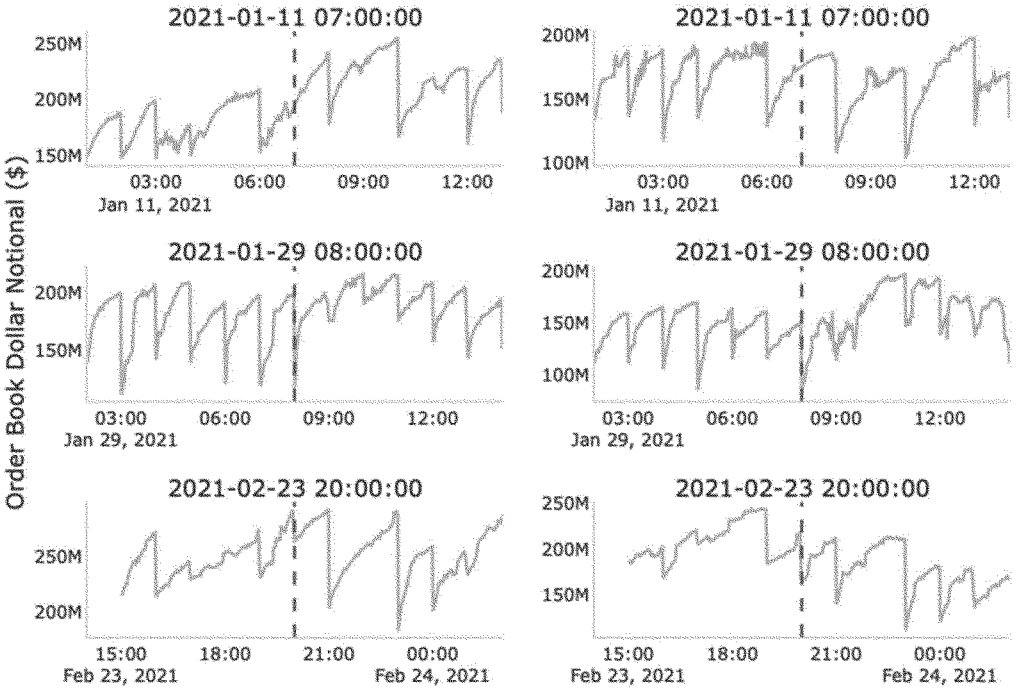
The increase in the number of participants has manifested itself in higher liquidity in the market. This is exhibited in the following chart, which shows the daily aggregated dollar notional of the bid and ask order books within the first 100 price levels across several of the largest centralized crypto exchanges from October 2020 to April 2021. Specifically, the dollar notional that is allocated closest to the mid price has increased from around $230 million to $860 million over that period, representing a 270% increase in half a year.

An increased notional order book suggests that there is a higher degree of consensus among investors regarding the price of Bitcoin. Moreover, this market characteristic hampers any attempt of price manipulation by any single large entity.

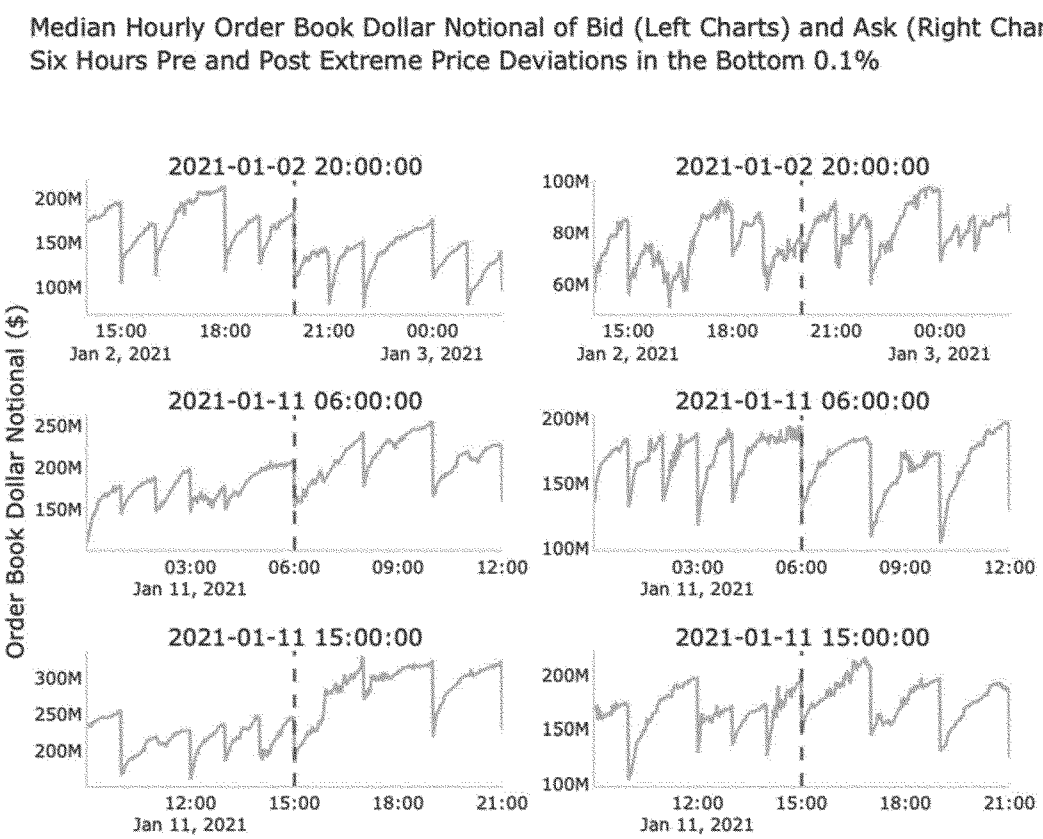
As a robustness check, the Sponsor investigates whether the dollar notional in the order book changes significantly prior to, and post an extreme price event. Specifically, for events constituting large increases in the price of Bitcoin, if the ask (or sell) side of the order book experiences a significant shrinkage in the dollar notional right before the event, then this may be an indication of market manipulation whereby the ask-side of the order book becomes sufficiently thin for a large order to move the price upward. Similarly, for events constituting large decreases in the price of Bitcoin, if the bid (or buy) side of the order book experiences a significant shrinkage in the dollar notional prior to such events, then this may be an indication of market manipulation whereby the thinner bid-side of the order book may potentially lead to significant downward price movements.

Using the top and bottom 0.1% of hourly price changes from October 2020 to April 2021 as events of extreme upward and downward market movements, respectively, the Sponsor plotted the bid (left charts) and ask (right charts) dollar notional of the Bitcoin order book within a six-hour window around these events in the chart below, which shows the results for extreme upward price movements. The extreme price events (indicated by the dashed green lines) perfectly coincide with the decrease in dollar notional of the ask-side of the order book. This is indicative of an efficient market, whereby large market movements are quickly and dynamically absorbed by a thick orderbook. Moreover, the dollar notional on the ask side after the event is replenished back to its pre-event level, which implies that market participants' reactions are quick to restore the market back to its equilibrium level.

Median Hourly Order Book Dollar Notional of Bid (Left Charts) and Ask (Right Charts) on Six Hours Pre and Post Extreme Price Deviations in the Top 0.1%



The same results and conclusions are found for extreme downward price movements. The charts below show that such price events perfectly coincide with shrinkages on the bid side of the order book (left charts), indicating an efficient and dynamic Bitcoin market. Moreover, the bid-side of the order book after the event is also restored back to its pre-event level, which suggests that the market is symmetrically efficient in moving back to equilibrium.



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Finally, offering only in-kind creation and redemption will provide unique protections against potential attempts to manipulate the Shares. While the Sponsor believes that the Index which it uses to value the Trust's bitcoin is itself resistant to manipulation based on the methodology further described below, the fact that creations and redemptions are only available in-kind makes the manipulability of the Index significantly less important. Specifically, because the Trust will not accept cash to buy bitcoin in order to create new shares or, barring a forced redemption of the Trust or under other extraordinary circumstances, be forced to sell bitcoin to pay cash for redeemed shares, the price that the Sponsor uses to value the Trust's bitcoin is not particularly important.[92] When authorized participants are creating with the Trust, they need to deliver a certain number of bitcoin per share (regardless of the valuation used) and when they're redeeming, they can similarly expect to receive a certain number of bitcoin per share. As such, even if the price used to value the Trust's bitcoin is manipulated (which the Sponsor believes that its methodology is resistant to), the ratio of bitcoin per Share does not change and the Trust will either accept (for creations) or distribute (for redemptions) the same number of bitcoin regardless of the value. This not only mitigates the risk associated with potential manipulation, but also discourages and disincentivizes manipulation of the Index because there is little financial incentive to do so.

(ii) Designed To Protect Investors and the Public Interest

The Exchange believes that the proposal is designed to protect investors and the public interest. Over the past several years, U.S. investor exposure to bitcoin through OTC Bitcoin Funds has grown into the tens of billions of dollars and more than a billion dollars of exposure through Bitcoin Futures ETFs. With that growth, so too has grown the quantifiable investor protection issues to U.S. investors through roll costs for Bitcoin Futures ETFs and premium/discount volatility and management fees for OTC Bitcoin Funds. The Exchange believes that the concerns related to the prevention of fraudulent and manipulative acts and practices have been sufficiently addressed to be consistent with the Act and, to the extent that the Commission disagrees with that assertion, also believes that such concerns are now outweighed by these investor protection concerns. As such, the Exchange believes that approving this proposal (and comparable proposals) provides the Commission with the opportunity to allow U.S. investors with access to bitcoin in a regulated and transparent exchange-traded vehicle that would act to limit risk to U.S. investors by: (i) Reducing premium and discount volatility; (ii) reducing management fees through meaningful competition; (iii) reducing risks and costs associated with investing in Bitcoin Futures ETFs and operating companies that are imperfect proxies for bitcoin exposure; and (iv) providing an alternative to custodying spot bitcoin.

Commodity-Based Trust Shares

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed on the Exchange pursuant to the initial and continued listing criteria in Exchange Rule 14.11(e)(4). The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance

[92] While the Index will not be particularly important for the creation and redemption process, it will be used for calculating fees.

procedures for derivative products, including Commodity-Based Trust Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Trust or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. The Exchange may obtain information regarding trading in the Shares and listed bitcoin derivatives via the ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

Availability of Information

The Exchange also believes that the proposal promotes market transparency in that a large amount of information is currently available about bitcoin and will be available regarding the Trust and the Shares. In addition to the price transparency of the Index, the Trust will provide information regarding the Trust's bitcoin holdings as well as additional data regarding the Trust. The Trust will provide an IIV per Share updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's Regular Trading Hours (9:30 a.m. to 4:00 p.m. E.T.). The IIV will be calculated by using the prior day's closing NAV per Share as a base and updating that value during Regular Trading Hours to reflect changes in the value of the Trust's bitcoin holdings during the trading day.

The IIV disseminated during Regular Trading Hours should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day. The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Trading Hours by one or more major market data vendors. In addition, the IIV will be available through on-line information services.

The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) The current NAV per Share daily and the prior business day's NAV and the reported closing price; (b) the BZX Official Closing Price in relation to the NAV as of the time the NAV is calculated and a calculation of the premium or discount of such price against such NAV; (c) data in chart form displaying the frequency distribution of discounts and premiums of the Official Closing Price against the NAV, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (d) the prospectus; and (e) other applicable quantitative information. The Trust will also disseminate the Trust's holdings on a daily basis on the Trust's website. The price of bitcoin will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours. Information about the Index, including key elements of how the Index is calculated, will be publicly available at *https://www.spglobal.com/spdji/en/indices/digital-assets/sp-bitcoin-index/.*

The NAV for the Trust will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA.

Quotation and last sale information for bitcoin is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters, as well as the Index. Information relating to trading, including price and volume information, in bitcoin is available from major market data vendors and from the exchanges on which bitcoin are traded. Depth of book information is also available from bitcoin exchanges. The normal trading hours for bitcoin exchanges are 24 hours per day, 365 days per year

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change, rather will facilitate the listing and trading of an additional exchange-traded product that will enhance competition among both market participants and listing venues, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2022–031 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2022–031. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for

inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2022–031 and should be submitted on or before June 22, 2022

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[93]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–11676 Filed 5–31–22; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before August 1, 2022.

ADDRESSES: Send all comments to Kelly LoTempio, Detailee for the Office of Strategic Alliances, Small Business Administration, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Kelly LoTempio, Detailee for the Office of Strategic Alliances, 716–551–3249, *kelly.lotempio@sba.gov,* Curtis B. Rich, Agency Clearance Office, 202–205–7030 *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: Small business owners or advocates who have been nominated for an SBA recognition award submit this information for use in evaluating nominee's eligibility for an award: Verifying accuracy of information submitted and determining whether there are any actual or potential conflicts of interest. Awards are presented to winners during the Presidentially declared Small Business Week.

Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection

OMB Control Number: 3245–0360.
Title: U.S. Small Business Administration Award Nominations.
Description of Respondents: Nominated Small Business Owners or Advocates.
Form Number: 3300–3315/2023 Nomination Guidelines.
Annual Responses: 600.
Annual Burden: 1,200.

Curtis Rich,

Agency Clearance Officer.

[FR Doc. 2022–11755 Filed 5–31–22; 8:45 am]

BILLING CODE 8026–09–P

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2022–0024]

Agency Information Collection Activities: Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes a new collection and revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA

Comments: https://www.reginfo.gov/public/do/PRAMain. Submit your comments online referencing Docket ID Number [SSA–2022–0024].

(SSA) Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov*

Or you may submit your comments online through *https://www.reginfo.gov/public/do/PRAMain,* referencing Docket ID Number [SSA–2022–0024].

SSA submitted the information collections below to OMB for clearance. Your comments regarding these information collections would be most useful if OMB and SSA receive them within 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than July 1, 2022. Individuals can obtain copies of these OMB clearance packages by writing to *OR.Reports.Clearance@ssa.gov.*

1. Disability Perception Survey (DPS)—0960–NEW.

Background

The Social Security Administration's (SSA's) Social Security Disability Insurance (SSDI) program provides crucial financial support to individuals unable to work due to a medical condition. Having access to and understanding information about SSDI among working adults is an important factor in connecting people with benefits. The purpose of the survey is to understand the type of information working adults currently have about the SSDI program to improve projections of disability applications and incidence.

SSA is requesting clearance to administer the Disability Perception Survey (DPS) to a sample of working age adult SSDI program recipients, and those who may qualify for this benefit, to capture attitudes and perceptions about SSDI among working-age adults in the general population, and to determine what roles those factors ultimately play in an individual's decision to apply to the program.

The DPS evaluation will consist of two parts: (1) The DPS administered to working-age adults (18 to 64 years of age) SSDI program recipients, and those who may qualify for SSDI benefits; and (2) links of the survey data, including the individuals' social security numbers, to individuals' administrative records for research purpose. SSA will use the data the DPS collects to learn about the average American SSDI adult recipient's knowledge and understanding of the SSDI program and about who qualifies for these benefits. Section 1110(a) of the Social Security Act (Act) gives the Commissioner of Social Security authorization to help

[93] 17 CFR 200.30–3(a)(12).

fund research or demonstration projects relating to the prevention and reduction of dependency. SSA contracted with NORC at the University of Chicago to conduct the DPS data collection.

DPS Project Description

The DPS will focus on a series of multiple-choice, open-ended, and vignette-style questions across five topic areas:

- General knowledge about the SSDI program, including perspectives on the causes of disability, eligibility requirements, the likelihood of receiving benefits, and the documentation required to apply for the program;
- Perceptions about the impact of work-limiting impairments including how and to what degree people with disabilities participate in the workforce, their work outcomes, use of services, barriers to work, and knowledge about SSA programs designed to help beneficiaries find and keep jobs;
- Thoughts about SSDI based on personal experience or associations with SSDI beneficiaries and others, the likelihood of receiving benefits due to changes in one's personal health status, the impact of reduced financial resources, and factors considered when deciding whether to apply for SSDI;
- Opinions and reactions to how impairments described in brief vignettes of work-limiting and disabling experiences may affect current or future employment; and
- The impact of the COVID–19 pandemic on employment or participation in SSDI or other safety net programs.

The DPS is targeting 5,011 completed interviews among 18–64 year old adults across the U.S. population.

Recruitment

NORC will sample respondents for the study through NORC's AmeriSpeak sampling frame. AmeriSpeak uses a multi-stage probability sample that fully represents the U.S. household population. NORC uses a two-stage process for AmeriSpeak panel recruitment:

- *Initial recruitment:* NORC will invite panelists to participate in the DPS by email and or SMS text, with an invitation through the AmeriSpeak member web portal, which alerts panelist there is a survey available to them. The participant will receive an email with the survey URL which allows them to log into AmeriSpeak. NORC will also invite panelists who previously indicated their preference for responding to surveys by telephone. For those who request a telephone survey, NORC's telephone interviewers will call the respondent and ask them to participate in the survey, if the respondent wants to participate NORC will conduct the survey.
- *Non-response follow-ups:* NORC will sample a portion of non-responders and follow-up with a face-to face recruitment of the sampled non-responders. Non-response follow-up reduces non-response bias significantly by improving the representativeness of the AmeriSpeak Panel with respect to certain hard-to-reach segments of the population underrepresented by recruitment relying only on mail and telephone.

Eligibility criteria include those ages 18–64 years old who understand English or Spanish, and who have the ability to provide informed consent as well as a Social Security Number.

Participants in the DPS will receive the Informed Consent as part of the first screens of the survey. If NORC conducts the survey by telephone, the interviewer will review the main points on the consent with the participant. The Informed Consent, whether online or read by the interviewer, will include:

- The purpose of the survey and the primary topics addressed in the survey questions;
- The information that the respondents may withdraw at any time;
- The voluntary nature of the study;
- A statement that the information collected is completely confidential and will not be used by SSA for the purposes of determining eligibility for benefits, nor for purposes other than research or program evaluation;
- The approximate time it will take to complete the survey;
- The incentive amount for participation, and how the respondent will receive their incentive;
- Information on who to call if they have questions about their rights as a survey participants;

If the respondents give their informed consent, but cannot provide their SSN, the survey will end, and the respondent will not continue further. Survey participants will receive $20 as reimbursement for completing the DPS.

Following the emailing of the survey URL, NORC will follow up 10 times over the course of a 32-week field period to remind respondents to complete the survey. NORC will send the participants reminder scripts both by email and text messages to complete the survey. NORC will also send reminders by mail, via a reminder letter and postcard. The respondents are working adults (age 18–64) SSDI program recipients, and those who may qualify for SSDI benefits for SSDI benefits.

Type of Request: Request for a new information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
DPS (Web version)	4,259	1	17	1,207	*$11.70	**$14,122
DPS (Phone version)	752	1	17	213	*11.70	**2,492
Totals	5,011			1,420		16,614

*We based this figure on the average DI payments based on SSA's current FY 2022 data (*https://www.ssa.gov/legislation/2022factsheet.pdf*).

**This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

2. Application for Widow's or Widower's Insurance Benefits—20 CFR 404.335–404.338, & 404.603—0960–0004. Section 2029(e) and 202(f) of the Act set forth the requirements for entitlement to widow(er)'s benefits, including the requirements to file an application. For SSA to make a formal determination for entitlement to widow(er)'s benefits, we use Form SSA–10 to determine whether an applicant meets the statutory and regulatory conditions for entitlement to widow(er)'s Title II benefits. SSA employees interview individuals applying for benefits either face-to-face or via telephone, and enter the information on the paper form or into

the Modernized Claims System (MCS). The respondents are applicants for widow(er)'s benefits.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office or for teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
SSA–10 (Paper)	2,116	1	30	1,058	* 28.01		*** 29,635
SSA–10 (MCS)	570,540	1	30	285,270	* 28.01	** 21	*** 13,583,702
Totals	572,656			286,328			*** 13,613,337

* We based this figure on the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

** We based this figure by averaging the average FY 2022 wait times for field offices and teleservice centers, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

3. Request to be Selected as a Payee—20 CFR 404.2010–404.2055, 416.601–416.665—0960–0014. SSA requires an individual applying to be a representative payee for a Social Security beneficiary or Supplemental Security Income (SSI) recipient to complete Form SSA–11–BK, or supply the same information to a field office technician. SSA obtains information from applicant payees regarding their relationship to the beneficiary, personal qualifications; concern for the beneficiary's well-being; and intended use of benefits if appointed as payee. The respondents are individuals, private sector businesses and institutions, and State and local government institutions and agencies applying to become representative payees.

Type of Request: Revision of an OMB approved information collection.

INDIVIDUALS/HOUSEHOLDS (90%)

Modality of collection	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office or teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
Representative Payee System (RPS)	1,761,300	1	12	352,260	* 39	** 21	*** 37,779,885
Paper Version	70,452	1	12	14,090	* 39		*** 549,510
Total	1,831,752			366,350			*** 38,329,395

PRIVATE SECTOR (9%)

Modality of collection	Number of respondents	Frequency of response	Average burden per response (minutes)	Total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office or teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
Representative Payee System (RPS)	176,130	1	12	35,226	* 39	** 21	*** 3,778,008
Paper Version	7,045	1	12	1,409	* 39		*** 54,951
Total	183,175			36,635			*** 3,832,959

STATE/LOCAL/TRIBAL GOVERNMENT (1%)

Modality of collection	Number of respondents	Frequency of response	Average burden per response (minutes)	Total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office or teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
Representative Payee System (RPS)	19,570	1	12	3,914	* 39	** 21	*** 419,796

STATE/LOCAL/TRIBAL GOVERNMENT (1%)—Continued

Modality of collection	Number of respondents	Frequency of response	Average burden per response (minutes)	Total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office or teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
Paper Version	350	1	12	70	*39	.....	***2,730
Total	19,920	1	12	3,984	*39	.....	***422,526
Grand Total	2,034,847	.....	.....	406,969	.....	.....	***42,584,880

*We based these figures by averaging the average hourly wages for Social and Human Service Assistants (*https://www.bls.gov/oes/current/oes211093.htm*); average hourly wages for Lawyers (*https://www.bls.gov/oes/current/oes231011.htm*); and the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

**We based this figure by averaging the average FY 2022 wait times for field offices and teleservice centers, based on SSA's current management information data.

***This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

4. Statement for Determining Continuing Eligibility for Supplemental Security Income Payment—20 CFR 416.204—0960–0145. SSA uses Form SSA–8202–BK to conduct low and middle-error profile (LEP/MEP) telephone, or face-to-face redetermination interviews with SSI recipients and representative payees, if applicable. SSA conducts LEP redeterminations interviews on a 6-year cycle, and MEP redeterminations annually. SSA requires the information we collect during the interview to determine whether: (1) SSI recipients met, and continue to meet, all statutory and regulatory requirements for SSI eligibility; and (2) the SSI recipients received, and are still receiving, the correct payment amounts. This information includes non-medical eligibility factors such as income, resources, and living arrangements. To complete Form SSA–8202–BK, the respondents may need to obtain information from employers or financial institutions. The respondents are SSI recipients and their representatives, if applicable.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office or teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
SSA–8202–BK	67,698	1	21	23,694	*11.70	.....	***277,220
SSI Claims System	1,764,207	1	20	588,069	*11.70	**21	***14,104,830
Totals	1,831,905	.....	.....	611,763	.....	.....	***14,382,050

*We based this figure on the average DI payments based on SSA's current FY 2022 data (*https://www.ssa.gov/legislation/2022factsheet.pdf*).

**We based this figure by averaging the average FY 2022 wait times for field offices and teleservice centers, based on SSA's current management information data.

***This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

5. Application for Supplemental Security Income—20 CFR 416.305–416.335, Subpart C—0960–0444. SSA uses Form SSA–8001–BK to determine an applicant's eligibility for SSI and SSI payment amounts. SSA employees also collect this information during interviews with members of the public who wish to file for SSI. SSA uses the information for two purposes: (1) To formally deny SSI for nonmedical reasons when information the applicant provides results in ineligibility; or (2) to establish a disability claim, but defer the complete development of non-medical issues until SSA approves the disability. The respondents are applicants for SSI payments.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office or teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
SSI Claims System	800,963	1	20	266,988	*19.86	**21	***10,869,875
iClaim and SSI Claims System	129,736	1	20	43,245	*19.86	**21	***1,760,649

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office or teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
SSA–8001–BK (Paper Version)	31,776	1	20	10,592	* 19.86	** 21	*** 431,240
Totals	962,475			320,825			*** 13,061,764

* We based this figure by averaging both the average DI payments based on SSA's current FY 2022 data (*https://www.ssa.gov/legislation/2022factsheet.pdf*), and the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

** We based this figure by averaging the average FY 2022 wait times for field offices and teleservice centers, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

6. Employer Verification of Records for Children Under Age 7—20 CFR 404.801–404.803, 404.821–404.822–0960–0505. To ensure we credit the correct person with the reported earnings, SSA verifies wage reports for children under age seven with the children's employers before posting to the earnings record. SSA uses form SSA–L3231, Request for Employer Information for this purpose. SSA technicians mail the form to the employer(s) and request they complete it and mail it back to the appropriate processing center. The respondents are employers who report earnings for children under age seven.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
SSA–L3231	4,633	1	10	772	* 28.01	** 21,624

* We based this figure on the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

7. Wage Reports and Pension Information—20 CFR 422.122(b)—0960–0547. Pension plan administrators annually file plan information with the Internal Revenue Service, which then forwards the information to SSA. SSA maintains and organizes this information by plan number, plan participant's name, and Social Security number. Per Section 1131(a) of the Act, pension plan participants are entitled to request this information from SSA. The Wage Reports and Pension Information regulation, 20 CFR 422.122(b) of the Code of Federal Regulations, stipulates that before SSA disseminates this information, the requestor must first submit a written request with identifying information to SSA. The respondents are requestors of pension plan information.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of Response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time for teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
Requests for Pension Plan Information	580	1	30	290	* 28.01	** 19	*** 13,277

* We based this figure on the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

** We based this figure on the average FY 2022 wait times for teleservice centers, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

8. Centenarian and Medicare Non-Utilization Project Development Worksheets: Face-to-Face Interview and Telephone Interview—20 CFR 416.204(b) and 422.135—0960–0780. SSA conducts interviews with centenary Title II beneficiaries and Title XVI recipients, and Medicare Non-Utilization Project (MNUP) beneficiaries age 90 and older to: (1) Assess if the beneficiaries are still living; (2) prevent fraud through identity misrepresentation; and (3) evaluate the well-being of the recipients to determine if they need a representative payee, or a change in representative payee. SSA field office personnel obtain the information through one-time, in-person

interviews with the centenarians and MNUP beneficiaries, who are those Title II beneficiaries ages 90–99, who show non-utilization of Medicare benefits for an extended period and the absence of private insurance, health maintenance organization, or nursing home, which are all indicators that an individual may be deceased. If the centenarians and MNUP beneficiaries have representatives or caregivers, SSA personnel invite them to the interviews. During these interviews, SSA employees make overall observations of the centenarians, MNUP beneficiaries, and their representative payees (if applicable). The interviewer uses the appropriate Development Worksheet as a guide for the interview, in addition to documenting findings during the interview. SSA conducts the interviews either over the telephone or through a face-to-face discussion with the respondents either in a field office, or at the Centenarian or MNUP beneficiary's residence. Respondents are MNUP and Centenarian beneficiaries, and their representative payees, or their caregivers.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) **	Average wait time in field office or teleservice centers (minutes) ***	Total annual opportunity cost (dollars) ****
Centenarian Project—Title XVI Only *	194	1	15	49	** 28.01	*** 21	**** 3,277
MNUP—All Title II Responses	4,210	1	15	1,053	** 28.01	*** 21	**** 70,781
Totals	4,404			1,102			**** 74,058

* Some cases are T2 rollovers from prior Centenarian workloads.

** We based this figure on the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*

*** We based this figure by averaging the average FY 2022 wait times for field offices and teleservice centers, based on SSA's current management information data.

**** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

9. COVID–19 Symptoms Screener for In-Person Hearings, and VIPr Mobile Application and Telephone Screener for Office visits—20 CFR 404.929, 404.933, 416.1429, 416.1433, 418.1350, 422.103–422.110, and 422.203—0960–0824.

Background

During the recent COVID–19 pandemic, SSA conducted its services almost exclusively online or by telephone, to protect the health of both the public and our employees. We took these measures in accordance with relevant Centers for Disease Control COVID–19 pandemic guidance, and to comply with existing Occupational Safety and Health Act provisions regarding workplace safety.

We have resumed in-person hearings, as well as in-person field office visits. We use the current CDC-suggested COVID–19 screening symptoms questionnaire for people coming in for in-person vists. The questionnaire for in-office visits is available via telephone, SSA mobile application (VIPr App), or kiosk. We require satisfactory answers to the screening questions, *i.e.,* demonstrating that field office visitors did not demonstrate symptoms of COVID–19 and had not been exposed to someone with COVID–19, for the appointment to proceed. If the individuals answered yes to any of the COVID screening questions, we offer them the option of completing their interview via video teleconferencing or using our online options, or we offer to reschedule their in-person interview for a later date.

Information Collection Description

Because of COVID–19 health and safety considerations, we plan to continue requiring all members of the public entering an SSA field office for a visit, or a hearing office to participate in an in-person hearing, to complete a brief screener questionnaire designed to identify COVID–19 symptoms.

For individuals visiting a hearings office, we provide a link to the screener questionnaire in the mailed notice of scheduled hearings. People participating in a hearing can complete and submit the questionnaire online within 24 hours before the start of the hearing. If hearings participants do not wish to use the internet, they can call the hearings office where the hearing is scheduled and complete the questionnaire over the phone.

Similarly, we will give field office visitors the option of completing the screener questionnaire either via telephone or through SSA's mobile application, VIPr, prior to entering the building. As part of our pre-screening questions prior to scheduling an appointment, we will remind potential visitors of our telephone and internet options, will explain our mask requirement policy, and will administer a brief screener questionnaire designed to identify COVID–19 symptoms. For those members of the public who do not schedule an appointment, we have a poster in our field office windows visible from the outside instructing visitors about the need to complete the screening questionnaire and about our masking policies.

Regardless of whether an individual schedules an appointment or visits a field office without prior scheduling, we will continue to request satisfactory completion of the screener in advance of entering the building as a prerequisite for entering the field office.

SSA's screener questionnaire asks questions relating to personal experience of any COVID symptoms; exposure to someone diagnosed with COVID; or travel by means other than land travel, such as car, bus, ferry, or train. SSA uses the screener responses to determine if the participant is ''cleared'' or ''not cleared'' to enter an SSA field or hearing office. If participants answer ''no'' to all questions, they are ''cleared'' to participate. If they answer ''yes'' to any part of the screener, they will be considered ''not cleared.'' Individuals who are not cleared may request SSA to reschedule their visit at least 14 days after the COVID–19 symptoms first presented, or 14 days after they tested positive for COVID–19.

Alternatives to Completing the Information Collection

Although we will continue to require completion of the screener questionnaire for any in-person hearing or field office visit, we do not require this screener questionnaire for other modalities of appeals hearings, or field office services. One may choose an online video hearing or telephone hearing as an alternative to an in-person hearing, just as we also have online and telephone services for field office transactions. Claimants may obtain Social Security payments regardless of the hearing method they choose, and field office visitors may submit their documentation using our internet services, telephone requests, or by mailing their documentation to SSA.

The respondents are beneficiaries or applicants requesting an in-person hearing, or members of the public entering a field office.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in office or for teleservice centers (minutes) **	Total annual opportunity cost (dollars) ****
COVID Screener Questionnaire	359,160	1	10	59,860	* 19.86	** 10	**** 2,377,639
VIPr Mobile App	16,554	1	5	1,380	* 28.01	*** 21	**** 200,944
Telephone Screener	661,554	1	10	110,259	* 28.01	*** 21	**** 9,573,902
Totals	1,037,268			171,499			**** 12,152,485

* We based the Covid Screener Questionnaire figure on averaging both the average DI payments based on SSA's current FY 2022 data (*https://www.ssa.gov/legislation/2022factsheet.pdf*), and the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*). We based the VIPr Mobile App and Telephone Screener on the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

** We based this figure on the average FY 2022 wait times for hearing offices, based on SSA's current management information data.

*** We based this figure on the average FY 2022 wait times for field offices and teleservice centers, based on SSA's current management information data.

**** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

Dated: May 25, 2022.

Naomi Sipple,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2022–11685 Filed 5–31–22; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0106]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: RED (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 1, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0106 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0106 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2022–0106, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel RED is:

—*Intended Commercial Use of Vessel:* ''Day charters.''

—*Geographic Region Including Base of Operations:* ''Vermont, New York.'' (Base of Operations: Charlotte, VT)

—*Vessel Length And Type:* 43′ Sail

The complete application is available for review identified in the DOT docket as MARAD 2022–0106 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or

a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0106 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–11648 Filed 5–31–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0102]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: CUP DYNASTY (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 1, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0102 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0102 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2022–0102, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel CUP DYNASTY is:

—*Intended Commercial Use of Vessel:* ''The vessel will be chartered for day-use and transport up to 12 passengers as requested by charter guests.''
—*Geographic Region Including Base of Operations:* ''Washington'' (Base of Operations: Bellingham, WA)
—*Vessel Length and Type:* 45.5′ Motor-powered catamaran

The complete application is available for review identified in the DOT docket as MARAD 2022–0102 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0102 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–11651 Filed 5–31–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0110]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: BLU REVERIE (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 1, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0110 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0110 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2022–0110, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel BLU REVERIE is:

—*Intended Commercial Use of Vessel:* ''Passenger charter.''

—*Geographic Region Including Base of Operations:* ''California, Puerto Rico'' (Base of Operations: Redwood City Port, CA)

—Vessel Length and Type: 48′ Sail

The complete application is available for review identified in the DOT docket as MARAD 2022–0110 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled ADDRESSES. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in

English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0110 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–11643 Filed 5–31–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0112]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: FOR THE MOMENT (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 1, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0112 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0112 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2022–0112, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel FOR THE MOMENT is:

—INTENDED COMMERCIAL USE OF VESSEL: ''Inland day charters and tours, special event shuttle service, and resort launch and tender service.''
—GEOGRAPHIC REGION INCLUDING BASE OF OPERATIONS: ''Florida, New York, Connecticut, and Rhode Island.'' (Base of Operations: Fort Lauderdale, FL)
—VESSEL LENGTH AND TYPE: 24.5′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2022 0112 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach

additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0112 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–11646 Filed 5–31–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0105]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: KAMAKAHONU (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 1, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0105 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0105 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2022–0105, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel KAMAKAHONU is:

—INTENDED COMMERCIAL USE OF VESSEL: ''Diving, snorkel, tours.''
—GEOGRAPHIC REGION INCLUDING BASE OF OPERATIONS: ''Hawaii, California, Washington, Florida.'' (Base of Operations: Kona, Hawaii)
—VESSEL LENGTH AND TYPE: 28′ Motor—

The complete application is available for review identified in the DOT docket as MARAD 2022–0105 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0105 or visit the Docket

Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–11650 Filed 5–31–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0103]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: BONUS ROUND (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 1, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0103 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0103 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2022–0103, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel BONUS ROUND is:

—Intended Commercial Use of Vessel: ''Occasional charters around the Florida east coast, specializing in high end term charters.''
—Geographic Region Including Base of Operations: ''Florida'' (Base of Operations: Miami, FL)
—Vessel Length and Type: 78.7′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2022–0103 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0103 or visit the Docket

Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–11645 Filed 5–31–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–X2022–0111]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: SKY (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 1, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0111 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0111 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2022–0111, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel SKY is:

—*Intended Commercial Use of Vessel:* ''Small commercial passenger charter operation.''

—*Geographic Region Including Base of Operations:* ''Florida'' (Base of Operations: Miami, FL)

—*Vessel Length and Type:* 78.5′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2022–0111 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0111 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that

you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–11654 Filed 5–31–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0104]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: EBB & FLOW (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 1, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0104 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0104 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2022–0104, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email James.Mead@*dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel EBB & FLOW is:

—*Intended Commercial Use of Vessel:* ''We intend to operate as an Uninspected Passenger Vessel for live-aboard and day sail, luxury catamaran sailing charters for up to 6 passengers in near coastal areas. We currently operate in the U.S. Virgin Islands during the winter and would like to base in Newport, Rhode Island for summers offering charters in all of New England. We are also exploring opportunities of chartering in the Chesapeake Bay, Florida Coast, and the Pacific Coast.''

—*Geographic Region Including Base of Operations:* ''Rhode Island, Massachusetts, New York, Connecticut, New Hampshire, Maine, Florida, Virginia, Maryland, North Carolina, California, Oregon, Washington, Alaska, Georgia, South Carolina, Delaware, New Jersey.'' (Base of Operations: Saint Thomas, U.S. Virgin Islands)

—*Vessel Length and Type:* 56′ Sail.

The complete application is available for review identified in the DOT docket as MARAD 2022–0104 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0104 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–11653 Filed 5–31–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0107]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: SALTY K (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 1, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0107 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0107 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2022–0107, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel SALTY K is:

—*Intended Commercial Use of Vessel:* ''Recreational and Sportfishing charters.''

—*Geographic Region Including Base of Operations:* ''California'' (Base of Operations: San Diego, CA)

—*Vessel Length and Type:* 78′ Motor.

The complete application is available for review identified in the DOT docket as MARAD 2022–0107 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0107 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for

new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

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(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–11652 Filed 5–31–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0108]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: HAIL YEAH II (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 1, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0108 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0108 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2022–0108, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel HAIL YEAH II is:

—*Intended Commercial Use of Vessel:* ''Intend to use the vessel for pleasure charters only and anchoring at nearby islands, beaches and sandbars. The use would be limited to OUPV six-pack charters in the Tampa Bay FL area.''

—*Geographic Region Including Base of Operations:* ''Florida'' (Base of Operations: Treasure Island, FL)

—*Vessel Length and Type:* 48′ Motor.

The complete application is available for review identified in the DOT docket as MARAD 2022–0108 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0108 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal

identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

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(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–11647 Filed 5–31–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0109]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: LE REVE (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 1, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0109 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0109 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2022–0109, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel LE REVE is:

—*Intended Commercial Use of Vessel:* ''Sailing charters.''

—*Geographic Region Including Base of Operations:* ''North Carolina, South Carolina, Georgia, Virginia, Maryland, Delaware'' (Base of Operations: St. Thomas, US Virgin Islands)

—*Vessel Length and Type:* 62′ Sail

The complete application is available for review identified in the DOT docket as MARAD 2022–0109 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0109 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by

email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

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(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–11644 Filed 5–31–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2020–0075]

Grant of Petitions for Temporary Exemption From Shoulder Belt Requirement for Side-Facing Seats on Motorcoaches

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of grant of petitions for temporary exemption.

SUMMARY: In accordance with the procedures in our regulations, NHTSA is granting 13 petitions from various final stage manufacturers (the petitioners) of motorcoaches for a temporary exemption from a shoulder belt requirement of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, ''Occupant crash protection,'' for side-facing seats. This grant permits the petitioners to install Type 1 seat belts (lap belt only) at side-facing seating positions, instead of Type 2 seat belts (lap and shoulder belts). After reviewing the petitions and the comments received, the agency has determined that the requested exemption is warranted to enable the petitioners to sell a vehicle whose overall level of safety or impact protection is at least equal to that of a nonexempted vehicle.

DATES: This exemption applies to the petitioner's motorcoaches produced from June 1, 2022 until June 1, 2024.

FOR FURTHER INFORMATION CONTACT: Daniel Koblenz, Office of Chief Counsel, NCC–200, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, West Building, Washington, DC 20590. Telephone: (202) 366–2992.

SUPPLEMENTARY INFORMATION:

I. Background

a. Statutory Authority for Temporary Exemptions

The National Traffic and Motor Vehicle Safety Act (Safety Act), codified as 49 U.S.C. Chapter 301, provides the Secretary of Transportation authority to exempt, on a temporary basis, under specified circumstances, and on terms the Secretary deems appropriate, motor vehicles from a motor vehicle safety standard or bumper standard. This authority and circumstances are set forth in 49 U.S.C. 30113. The authority for implementing this section has been delegated to NHTSA by 49 CFR 1.95.

NHTSA established 49 CFR part 555, *Temporary Exemption from Motor Vehicle Safety and Bumper Standards,* to implement the statutory provisions concerning temporary exemptions. Under part 555, subpart A, a vehicle manufacturer seeking an exemption must submit a petition for exemption containing specified information. Among other things, the petition must set forth (a) the reasons why granting the exemption would be in the public interest and consistent with the objectives of the Safety Act, and (b) required information showing that the manufacturer satisfies one of four bases for an exemption.[1] The petitioners submitted individual petitions and applied on the basis that they are otherwise unable to sell a motor vehicle with an overall safety level at least equal to that of nonexempt vehicles (*see* 49 CFR 555.6(d)). A manufacturer is eligible for an exemption under this basis only if NHTSA determines the exemption is for not more than 2,500 vehicles to be sold in the U.S. in any 12-month period. An exemption under this basis may be granted for not more than 2 years but may be renewed upon reapplication.[2]

b. FMVSS No. 208

On November 25, 2013, NHTSA published a final rule amending FMVSS No. 208 to require seat belts for each passenger seating position in all new over-the-road buses (OTRBs) (regardless of gross vehicle weight rating (GVWR)), and all other buses with GVWRs greater than 11,793 kilograms (kg) (26,000 pounds (lb)) (with certain exclusions).[3]

In the notice of proposed rulemaking (NPRM) preceding the final rule (75 FR 50958, August 18, 2010) NHTSA proposed to permit manufacturers the option of installing either a Type 1 (lap belt) or a Type 2 (lap and shoulder belt) on side-facing seats.[4] The proposed option was consistent with a provision in FMVSS No. 208 that allows lap belts for side-facing seats on buses with a GVWR of 4,536 kg (10,000 lb) or less. NHTSA proposed the option because the agency was unaware of any demonstrable increase in associated risk of lap belts compared to lap and shoulder belts on side-facing seats. NHTSA believed that[5] ''a study commissioned by the European Commission regarding side-facing seats on minibuses and motorcoaches found that due to different seat belt designs, crash modes and a lack of real world data, it cannot be determined whether a lap belt or a lap/shoulder belt would be the most effective.[6]''

However, after the NPRM was published, the Motorcoach Enhanced Safety Act of 2012 was enacted as part of the Moving Ahead for Progress in the 21st Century Act (MAP–21), Public Law 112–141 (July 6, 2012). Section 32703(a) of MAP–21 directed the Secretary of Transportation (authority delegated to NHTSA) to ''prescribe regulations requiring safety belts to be installed in motorcoaches at each designated seating position.''[7] As MAP–21 defined ''safety

[1] 49 CFR 555.5(b)(5) and 555.5(b)(7).

[2] 49 CFR 555.8(b) and (e).

[3] 78 FR 70416 (November 25, 2013); response to petitions for reconsideration, 81 FR 19902 (April 6, 2016). The final rule became effective November 28, 2016 for buses manufactured in a single stage, and a year later for buses manufactured in more than one stage.

[4] 75 FR 50971.

[5] 75 FR 50971–50972.

[6] *http://ec.europa.eu/enterprise/automotive/projects/safety_consid_long_stg.pdf.*

[7] MAP–21 states at § 32702(6) that ''the term 'motorcoach' has the meaning given the term 'over-the-road bus' in section 3038(a)(3) of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note), but does not include a bus used in public transportation provided by, or on behalf of, a public transportation agency; or a school bus, including a multifunction school activity bus.''

Continued

belt'' to mean an integrated lap and shoulder belt, the final rule amended FMVSS No. 208 to require lap and shoulder belts at all designated seating positions, including side-facing seats, on OTRBs.[8]

Even as it did so, however, the agency reiterated its view that ''the addition of a shoulder belt at [side-facing seats on light vehicles] is of limited value, given the paucity of data related to side facing seats.'' [9] NHTSA also reiterated that there have been concerns expressed in literature in this area about shoulder belts on side-facing seats, noting in the final rule that, although the agency has no direct evidence that shoulder belts may cause serious neck injuries when applied to side-facing seats, there are simulation data indicative of potential carotid artery injury when the neck is loaded by the shoulder belt.[10] The agency also noted that Australian Design Rule ADR 5/04, ''Anchorages for Seatbelts'' specifically prohibits shoulder belts for side-facing seats.

Given that background, and believing there would be few side-facing seats on OTRBs, NHTSA stated in the November 2013 final rule that the manufacturers at issue may petition NHTSA for a temporary exemption under 49 CFR part 555 to install lap belts instead of lap and shoulder belts at side-facing seats.[11] The basis for the petition would be that the applicant is unable to sell a bus whose overall level of safety is at least equal to that of a non-exempted vehicle. In other words, for side-facing seats, lap belts provide at least an equivalent level of safety as lap and shoulder belts.

c. Overview of Petitions

In accordance with 49 U.S.C. 30113 and the procedures in 49 CFR part 555, 13 final stage manufacturers of motorcoaches submitted petitions asking NHTSA for a temporary exemption from the shoulder belt requirement of FMVSS No. 208 for side-facing seats on their OTRBs under 49 CFR 555.6(d). The petitions are related to a petition for temporary exemption NHTSA received from Hemphill Brothers Leasing Company, LLC (Hemphill) on the same shoulder belt requirement of FMVSS No. 208 for side-facing seats on entertainer buses, which NHTSA granted on November 14, 2019.[12] [13] NHTSA published a notice of receipt of the 13 petitions on August 20, 2020.[14]

The petitioners describe themselves as ''final stage manufacturers'' of motorcoaches. The petitioners state that they typically receive a bus shell [15] from an ''original manufacturer'' and ''customize[s] the Over-the-Road Bus ('OTRB') to meet the needs of entertainers, politicians, musicians, celebrities and other specialized customers who use motorcoaches as a necessity for their businesses.'' The petitioners state that they build out the complete interior of the bus shell, including—

> roof escape hatch; fire suppression systems (interior living space, rear tires, electrical panels, bay storage compartments, and generator); ceiling, side walls and flooring; seating; electrical system, generator, invertor and house batteries; interior lighting; interior entertainment equipment; heating, ventilation and cooling system; galley with potable water, cooking equipment, refrigerators, and storage cabinets; bathroom and showers; and sleeping positions.

In support of their assertions that the exempted vehicles would provide an overall level of safety or impact protection at least equal to that of nonexempt vehicles, the petitioners reiterate NHTSA's statements in the November 2013 final rule. The petitioners state that NHTSA has not conducted testing on the impact or injuries to passengers in side-facing seats in motorcoaches, so ''there is no available credible data that supports requiring a Type 2 belt at the side-facing seating positions.'' The petitioners state that if they comply with the final rule as published, they would be ''forced to offer'' customers—

> a motorcoach with a safety feature that could make the occupants less safe, or certainly at least no more safe, than if the feature was not installed. The current requirement in FMVSS 208 for Type 2 belts at side-facing seating positions in OTRBs makes the applicants unable to sell a motor vehicle whose overall level of safety is equivalent to or exceeds the level of safety of a non-exempted vehicle.

In support of their assertion that the exemption would be consistent with the public interest, the petitioners state that ''NHTSA's analysis in developing this rule found that such belts presented no demonstrable increase in associated risk.'' The petitioners also state that the final rule requiring Type 2 belts at side-facing seats ''was not the result of any change in NHTSA policy or analysis, but rather resulted from an overly broad mandate by Congress for 'safety belts to be installed in motorcoaches at each designated seating position.' '' They state that, based on the existing studies noted in the rulemaking, Type 1 belts at side-facing seats may provide equivalent or even superior occupant protection than Type 2 belts.

The petitioners believe that an option for Type 1 belts at side-facing seats is consistent with the objectives of the Safety Act because it allows the manufacturer to determine the best approach to motor vehicle safety depending on the intended use of the vehicle and its overall design. Additionally, the petitioners state the option meets the need for motor vehicle safety because data indicate no demonstrable difference in risk between the two types of belts when installed in side-facing seats. Finally, the petitioners note that the option would provide an objective standard that is easy for manufacturers to understand and meet.

Comments

On August 20, 2020 NHTSA published a notice of receipt of the 13 petitions for temporary exemption and requested comment on the petitions.[16] The agency received 15 comments on the petitions.

Most commenters were final-stage manufacturers of entertainer-type motorcoaches that submitted identical comments supporting the petition, including from some of the petitioners themselves. These commenters state that the entertainer motorcoaches at issue are custom built and typically include side-facing, perimeter seating. They state that fewer than 100 entertainer motorcoaches are manufactured each year. They believe that there are no available data supporting requiring a Type 2 belt at side-facing seats and are concerned that serious injury to passengers could result if they installed the shoulder belts at those seats. Another entertainer

Section 3038(a)(3) (49 U.S.C. 5310 note) states: ''The term 'over-the-road bus' means a bus characterized by an elevated passenger deck located over a baggage compartment.''

[8] For side-facing seats on buses other than OTRBs, in the final rule NHTSA permitted either lap or lap/shoulder belts at the manufacturer's option.

[9] 78 FR 70448, quoting from the agency's Anton's Law final rule which required lap/shoulder belts in forward-facing rear seating positions of light vehicles, 59 FR 70907.

[10] Editors: Fildes, B., Digges, K., ''Occupant Protection in Far Side Crashes,'' Monash University Accident Research Center, Report No. 294, April 2010, pg. 57.

[11] 78 FR 70448.

[12] 84 FR 61966.

[13] Originally, 41 manufacturers submitted petitions, but later all but 13 withdrew their petitions. The petitions are almost identical but for the name and address of the petitioner.

[14] 85 FR 51550.

[15] The petitions state that the bus shell ''generally contains the following components: Exterior frame; driver's seat; dash cluster, speedometer, emissions light and emissions diagnosis connector; exterior lighting, headlights, marker lights, turn signals lights, and brake lights; exterior glass, windshield and side lights with emergency exits; windshield wiper system; braking system; tires, tire pressure monitoring system and suspension; and engine and transmission.''

[16] 85 FR 51550; Docket No. NHTSA–2020–0075.

motorcoach manufacturer [17] stated that there are no statistics or test models showing that a shoulder belt provides a benefit on side-facing seats.

The American Bus Association (ABA), a trade association for operators who transport the public, and the National Interstate Insurance Company, an insurance provider to the commercial passenger transportation industry, strongly supported the petitions.[18] These commenters also affirm that fewer than 100 entertainer motorcoaches are manufactured each year. They expressed concern that serious injury to passengers could result from operators and manufacturers complying with the FMVSS No. 208 rule to install the shoulder belts and believe there are no data that support requiring a Type 2 seat belt at side-facing seats.

The Automotive Safety Council (ASC) neither supported nor argued against the exemption, stating that there is insufficient evidence to determine whether shoulder belts on side-facing seats would have a positive or negative impact on safety.

An individual, David DeVeau, from a design and development company argued that NHTSA should not approve an exemption from the shoulder belt requirement. However, Mr. DeVeau did not provide evidence that granting an exemption would impact safety, either positively or negatively. NHTSA also received an anonymous comment arguing against the exemption citing a recent SAE technical paper on injury risks to side-facing occupants.[19] However, the head/torso restraints examined in this paper were side- or seat-mounted air bag systems, not the Type 2 (lap and shoulder) belt system that is at issue in this request for exemption. Thus, NHTSA did not find the cited paper helpful in assessing the petitions.

Agency Analysis and Decision

After reviewing the 13 petitions and the comments received, the agency is granting the petitions. Granting the petitions will enable the petitioners to sell a vehicle whose overall level of safety or impact protection is at least equal to that of a nonexempted vehicle.

In the rulemaking implementing MAP–21's mandate for seat belts on motorcoaches, NHTSA's proposal in the NPRM was to allow manufacturers an option of installing Type 1 (lap belt) or Type 2 (lap and shoulder belt) on side-facing seats. The proposed option was consistent with a provision in FMVSS No. 208 that allows lap belts for side-facing seats on buses with a GVWR of 4,536 kg (10,000 lb) or less. NHTSA proposed the option because the agency was unaware of any demonstrable increase in associated risk of lap belts compared to lap and shoulder belts on side-facing seats. That is, the agency believed that lap belts were as protective as lap and shoulder belts on side-facing seats.

Commenters and the petitioners raise safety concerns about the shoulder belt portion of a lap and shoulder belt on side-facing seats. The commenters and the petitioner do not provide information supporting their beliefs about the potential for ''serious injury'' beyond reciting what NHTSA said on the matter in the November 2013 final rule. Accordingly, NHTSA believes that the potential safety risk at issue is theoretical at this point; as explained in the November 2013 final rule, the agency cannot affirmatively conclude, based on available information, that shoulder belts on side-facing seats are associated with a demonstrated risk of serious neck injuries in frontal crashes. However, at the same time, NHTSA believes a shoulder belt is of limited value on side-facing seats for the reasons explained in the final rule.[20] Given the uncertainties about shoulder belts on side-facing seats, the few side-facing seats there are on buses subject to the November 2013 final rule, and that FMVSS No. 208 does not require shoulder belts on side-facing seats on any other vehicle type, NHTSA is granting the petitions for temporary exemption.

The grant will permit the petitioners to install Type 1 seat belts (lap belt only) at side-facing seating positions, instead of Type 2 seat belts (lap and shoulder belts) at those positions, on the OTRBs they manufacture. This exemption does not apply to forward-facing designated seating positions on the petitioners' vehicles. Under FMVSS No. 208, the forward-facing seating positions must have Type 2 lap and shoulder belts.[21]

NHTSA believes that granting the petitioners' exemption request is consistent with the public interest. The exemption will enable the applicant to sell buses whose overall level of safety is at least equal to that of non-exempted vehicles. Further, we believe that the petitioners are small entities.[22] Thus, this temporary exemption not only permits the manufacturer to sell vehicles whose overall level of safety is at least equal to that of non-exempted vehicles, but provides relief to a small business by, as the petitioner notes, providing ''an objective standard that is easy for manufacturers to understand and meet.''

A grant is consistent with the Safety Act. The requested exemption will not impact general motor vehicle safety because the exempted buses will provide overall safety at least equal to that of nonexempted buses. Further, the petitioners each produce a small number of affected vehicles annually. The petitioners did not specify exactly how many buses they would manufacture under the exemption, but several commenters, including the ABA and the National Interstate Insurance Company, have noted that ''fewer than 100 entertainer-type motorcoaches with side-facing seats are manufactured and enter the U.S. market each year.'' Thus, NHTSA concludes that the petitioners will manufacture very few vehicles relative to the 2,500 per manufacturer limit set forth in the Safety Act and 49 CFR 555.6(d)(4). Further, as explained below, in accordance with 49 CFR 555.9 and § 30113(h) of the Safety Act, prospective purchasers will also be notified of the exemption prior to making their purchasing decisions. The vehicles must have a label notifying prospective purchasers that the vehicles are exempted from the shoulder belt requirement of FMVSS No. 208 for the side-facing seats.

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[17] Superior Coach Interiors, which was among the ''other petitioners'' attached to the Hemphill petition.

[18] National Interstate describes itself as currently insuring a significant share of the entertainment motorcoach industry market and states that it has consistently insured motorcoaches for 30 years.

[19] ''A Human Body Model Study on Restraints for Side-Facing Occupants in Frontal Crashes of an Automated Vehicle,'' (SAE Technical Paper 2020–01–0980).

[20] We note that the SAE technical report cited by one of the anonymous commenters, which found that lap/torso restraints were more effective at protecting side-facing occupants than lap-only restraints, is not pertinent to this exemption, since the torso restraints studied in the report were air bags, not Type 2 seat belts.

[21] On October 2, 2019, the National Transportation Safety Board (NTSB) issued Recommendation H–19–14 in connection with the NTSB's investigation of an October 6, 2018 Schoharie, New York limousine crash. H–19–14 recommends that NHTSA ''[r]equire lap/shoulder belts for each passenger seating position on all new vehicles modified to be used as limousines.'' The limousine in the Schoharie crash had between 18 and 22 seating positions and a GVWR of 13,080 lb. Under FMVSS No. 208, vehicles with 11 or more seating positions and a GVWR between 10,000 lb and 26,000 lb are not required to have seat belts in passenger seats. The NTSB recommendation would apply a passenger seat belt requirement to those vehicles.

[22] According to 13 CFR 121.201, the Small Business Administration's size standards regulations used to define small business concerns, manufacturers of these buses fall under North American Industry Classification System (NAICS) No. 336213, Motor Home Manufacturing, which has a size standard of 1,250 employees or fewer.

Labeling

Under 49 CFR 555.9(b), a manufacturer of an exempted vehicle must securely affix to the windshield or side window of each exempted vehicle a label containing a statement that the vehicle meets all applicable FMVSSs in effect on the date of manufacture ''except for Standard Nos. [Listing the standards by number and title for which an exemption has been granted] exempted pursuant to NHTSA Exemption No._____.'' This label notifies prospective purchasers about the exemption and its subject. Under § 555.9(c)(2), this information must also be included on the vehicle's certification label.[23]

The text of § 555.9 does not expressly indicate how the required statement on the two labels should read in situations in which an exemption covers part, but not all, of an FMVSS. In this case, NHTSA believes that a blanket statement that the vehicle has been exempted from Standard No. 208, without an indication that the exemption is limited to the shoulder belt on side-facing seats, could be confusing. A purchaser might incorrectly believe that the vehicle has been exempted from all of FMVSS No. 208's requirements. For this reason, NHTSA believes the two labels should read, in relevant part, ''except for the shoulder belt requirement for side-facing seats (Standard No. 208, Occupant Crash Protection), exempted pursuant to NHTSA Exemption No._____.'' The Exemption Number is set forth below for each petitioner.

In accordance with 49 U.S.C. 30113(b)(3)(B)(iv), the applicants are granted NHTSA Temporary Exemption Nos. EX 21–01 (All Access Coach Leasing LLC), 21–02 (Amadas Coach), 21–03 (Creative Mobile Interiors), 21–04 (D&S Classic Coach Inc.), 21–05 (Farber Specialty Vehicles), 21–06 (Florida Coach, Inc.), 21–07 (Geomarc, Inc.), 21–08 (Integrity Interiors LLC), 21–09 (Nitetrain Coach Company, Inc.), 21–10 (Pioneer Coach Interiors LLC), 21–11 (Roberts Brothers Coach Company), 21–12 (Russell Coachworks LLC), and 21–13 (Ultra Coach Inc.), from the shoulder belt requirement of 49 CFR 571.208 for side-facing seats on their motorcoaches. The exemption shall remain effective for the period designated at the beginning of this document in the **DATES** section.

Authority: 49 U.S.C. 30113; delegation of authority at 49 CFR 1.95.

Steven S. Cliff,

Deputy Administrator.

[FR Doc. 2022–11697 Filed 5–31–22; 8:45 am]

BILLING CODE 4910–59–P

[23] 49 CFR 555.9(c)(2) refers to § 567.5(c)(7)(iii) as the regulation setting forth the certification statement final-stage manufacturers are to use in their certification labels. That reference to § 567.5(c)(7)(iii) is outdated; it should be to § 567.5(d)(2)(v)(A). The certification label requirements for final-stage manufacturers formerly were in § 567(c)(7)(iii) but the requirements were moved to § 567.5(d)(2)(v)(A) (*see,* 70 FR 7433; February 14, 2005).

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2022–0035]

Pipeline Safety: Request for Special Permit; Tennessee Gas Pipeline Company, LLC

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

ACTION: Notice.

SUMMARY: PHMSA is publishing this notice to solicit public comments on a request for special permit received from the Tennessee Gas Pipeline Company, LLC (TGP). The special permit request is seeking relief from compliance with certain requirements in the federal pipeline safety regulations. At the conclusion of the 30-day comment period, PHMSA will review the comments received from this notice as part of its evaluation to grant or deny the special permit request.

DATES: Submit any comments regarding this special permit request by July 1, 2022.

ADDRESSES: Comments should reference the docket number for this special permit request and may be submitted in the following ways:

- *E-Gov Website: http://www.Regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: You should identify the docket number for the special permit request you are commenting on at the beginning of your comments. If you submit your comments by mail, please submit two (2) copies. To receive confirmation that PHMSA has received your comments, please include a self-addressed stamped postcard. Internet users may submit comments at *http://www.Regulations.gov.*

Note: There is a privacy statement published on *http://www.Regulations.gov.* Comments, including any personal information provided, are posted without changes or edits to *http://www.Regulations.gov.*

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this notice, it is important that you clearly designate the submitted comments as CBI. Pursuant to 49 Code of Federal Regulations (CFR) 190.343, you may ask PHMSA to give confidential treatment to information you give to the agency by taking the following steps: (1) Mark each page of the original document submission containing CBI as ''Confidential''; (2) send PHMSA, along with the original document, a second copy of the original document with the CBI deleted; and (3) explain why the information you are submitting is CBI. Unless you are notified otherwise, PHMSA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this notice. Submissions containing CBI should be sent to Kay McIver, DOT, PHMSA–PHP–80, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Any commentary PHMSA receives that is not specifically designated as CBI will be placed in the public docket for this matter.

FOR FURTHER INFORMATION CONTACT:

General: Ms. Kay McIver by telephone at 202–366–0113, or by email at *kay.mciver@dot.gov.*

Technical: Mr. Steve Nanney by telephone at 713–272–2855, or by email at *steve.nanney@dot.gov.*

SUPPLEMENTARY INFORMATION: PHMSA received a special permit request from the TGP, a subsidiary of Kinder Morgan, Inc., seeking a waiver from the requirements of 49 CFR 192.611(a) and (d): Change in class location: Confirmation or revision of maximum

allowable operating pressure, and 49 CFR 192.619(a): Maximum allowable operating pressure: Steel or plastic pipelines.

This special permit is being requested in lieu of pipe replacement, pressure reduction, or new pressure tests for 17 proposed natural gas transmission special permit segments totaling 41,508.27 feet (approximately 7.861 miles). These special permit segments, which have changed from a Class 1 to Class 3 location, are as follows:

Special permit segment number	County, state	Outside diameter (inches)	Line name	Length (feet)	Year installed	Maximum allowable operating pressure (pounds per square inch gauge)
667	Cheatham, TN	30	500–1	495.65	1959	936
671	Robertson, TN	30	500–1	2,410.73	1959	936
672	Robertson, TN	30	500–1	3,888.06	1959	936
673	Robertson, TN	30	500–2	4,229.45	1965	936
674	Robertson, TN	30	500–2	2,409.11	1965	936
675	Robertson, TN	30	500–2	3,153.17	1965	936
676	Robertson, TN	30	800–1	664.71	1954	936
677	Robertson, TN	30	800–1	2,414.56	1954	936
678	Robertson, TN	30	800–1	3,882.31	1954	936
679	Dickson, TN	30	800–1	3,906.15	1954	936
680	Cheatham, TN	30	800–1	425.09	1954	936
707	Robertson, TN	30	500–1	3,415.69	1959	936
708	Robertson, TN	30	800–1	3,410.81	1954	936
709	Dickson, TN	30	800–1	2,345.02	1954	936
710	Hickman, TN	30	500–2	2,492.68	1968	936
714	Robertson, TN	30	500–1	997.68	1959	936
715	Lobelville, TN	30	800–1	967.40	1954	936

The special permit request, proposed special permit with conditions, and draft environmental assessment (DEA) for the above listed TGP special permit segments are available for review and public comments in Docket No. PHMSA–2022–0035. PHMSA invites interested persons to review and submit comments on the special permit request and DEA in the docket. Please include any comments on potential safety and environmental impacts that may result if the special permit is granted. Comments may include relevant data.

Before issuing a decision on the special permit request, PHMSA will evaluate all comments received on or before the comments closing date. Comments received after the closing date will be evaluated, if it is possible to do so without incurring additional expense or delay. PHMSA will consider each relevant comment it receives in making its decision to grant or deny this special permit request.

Issued in Washington, DC on May 16, 2022, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2022–11658 Filed 5–31–22; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2018–0190]

Aviation Consumer Protection Advisory Committee Matters

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Notice of public meeting.

SUMMARY: The U.S. Department of Transportation (Department) announces that the public meeting of the Aviation Consumer Protection Advisory Committee (ACPAC) which was originally scheduled to be held on March 21 and 22, 2022 is rescheduled to June 28 and 29, 2022. In addition, one of the topics planned for discussion at the rescheduled meeting has changed from Airline Ticket Refunds to Airline Ancillary Service Fees.

DATES: The meeting, which was originally scheduled to be held on March 21 and 22, 2022, will now be held from 9:30 a.m.-5:00 p.m. (ET) on June 28 and 29, 2022.

ADDRESSES: The June 28 and 29 meeting will take place in-person at the DOT headquarters building, at 1200 New Jersey Avenue SE in Washington, DC, and will be livestreamed. Attendance is open to the public, up to the room's capacity. A detailed agenda will be available on the ACPAC website at least one week before the meeting.

FOR FURTHER INFORMATION CONTACT: To register for the next in-person meeting, please contact the Department by email at *ACPAC@dot.gov.* Attendance is open to the public subject to any capacity limitations. For further information, contact Kimberly Graber, Deputy Assistant General Counsel, by telephone at (202) 366–1695 or by email at *kimberly.graber@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The ACPAC evaluates current aviation consumer protection programs and provides recommendations to the Secretary for improving them, as well as recommending any additional consumer protections that may be needed.

On November 11, 2021, the Department issued a **Federal Register** notice announcing two meetings of the ACPAC, the first to be held on December 2, 2021 and the second to be held on March 21 and 22, 2022. The ACPAC held the December 2, 2021 meeting as planned. One of the topics discussed at the December 2, 2021 meeting was Airline Ticket Refunds. The Department planned to continue discussion of the Airline Ticket Refunds topic at the March 21 and 22, 2022 meeting concurrently with the projected date of the public comment period for the Notice of Proposed Rulemaking (NPRM) on Airline Ticket Refund and Consumer Protections (RIN 2105–AF04). However, due to delays associated with the rulemaking process and the

availability of the ACPAC members, the meeting originally scheduled for March 21 and 22, 2022 will now be held on June 28 and 29, 2022.

II. Agenda

As previously indicated, the Department intended to use the June 28 and 29, 2022 meeting to continue the discussion on Airline Ticket Refunds and to discuss Enhancing Consumer Access to Airline Flight Information. While the NPRM on Airline Ticket Refunds was submitted to the Office of Information and Regulatory Affairs (OIRA) for its review, the NPRM is not expected to be issued before the date of this ACPAC meeting. As a result, the Department will schedule a meeting at a future date to discuss the NPRM on Airline Ticket Refunds.

The Department still plans to discuss Enhancing Consumer Access to Airline Flight Information at the June meeting. The Executive Order on Promoting Competition in the American Economy, issued on July 9, 2021 (Competition Executive Order), directed the Department to take action to protect consumers and promote competition. Specifically, the Department is directed, among other things, to ''promote enhanced transparency and consumer safeguards, as appropriate and consistent with applicable law, including through potential rulemaking, enforcement actions, or guidance documents, with the aims of: (1) Enhancing consumer access to airline flight information so that consumers can more easily find a broader set of available flights, including by new or lesser known airlines . . . .'' The ACPAC will consider the topic of enhancing access to airline flight information, including examining what is meant by airline flight information and how best to ensure that consumers can more easily find a broader set of available flights.

The Competition Executive Order also directs the Department to consider initiating a rulemaking to ensure that consumers have ancillary fee information, including baggage fees, change fees, and cancellation fees at the time of ticket purchase. The Department has announced that it has initiated such a rulemaking and plans to issue a notice of proposed rulemaking on transparency of airline ancillary service fees this calendar year. The Department, after consultation with the ACPAC members, has decided to discuss enhancing airline ancillary service fees at the June 28 and 29, 2022 meeting. The ACPAC will consider how best to ensure the disclosure of ancillary service fee information to consumers and whether the sharing of information between airlines and ticket agents is needed to ensure that consumers have access to ancillary fee information when they purchase air transportation from ticket agents.

III. Public Participation

The meetings will be open to the public; however, attendance may be limited due to constraints of the physical meeting space. To register, please send an email to the Department at *ACPAC@dot.gov* as set forth in the **FOR FURTHER INFORMATION CONTACT** section. The Department is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language interpreter or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Members of the public may also present written comments at any time. The docket number referenced above (DOT–OST–2018–0190) has been established for committee documents including any written comments that may be filed. At the discretion of the Chairperson or Designated Federal Officer, after completion of the planned agenda, individual members of the public may provide oral comments time permitting. Any oral comments presented must be limited to the objectives of the committee and will be limited to five (5) minutes per person. Individual members of the public who wish to present oral comments must notify the Department of Transportation via email at *ACPAC@dot.gov* that they wish to attend and present oral comments no later than Friday, June 21, 2022.

Speakers are requested to submit a written copy of their prepared remarks for inclusion in the meeting records and for circulation to ACPAC members by June 21, 2022. All prepared remarks submitted on time will be accepted and considered as part of the meeting's record.

IV. Viewing Documents

You may view documents mentioned in this notice at *https://www.regulations.gov.* After entering the docket number (DOT–OST–2018–0190), click the link to ''Open Docket Folder'' and choose the document to review.

Issued in Washington, DC, on or around this 25th day of May 2022.

John E. Putnam,

General Counsel.

[FR Doc. 2022–11567 Filed 5–31–22; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Comment Request; OCC Supplier Registration Form

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of an information collection, as required by the Paperwork Reduction Act of 1995 (PRA). In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and respondents are not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning the renewal of its information collection titled, ''OCC Supplier Registration Form.''

DATES: Comments must be submitted on or before August 1, 2022.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, Attention: 1557–0316, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''1557–0316'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Following the close of this notice's 60-day comment period, the OCC will

publish a second notice with a 30-day comment period. You may review comments and other related materials that pertain to this information collection beginning on the date of publication of the second notice for this collection by the method set forth in the next bullet.

• *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Hover over the ''Information Collection Review'' drop down menu. Click on ''Information Collection Review.'' From the ''Currently under Review'' drop-down menu, select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0316'' or ''OCC Supplier Registration Form.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.

• For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, OCC Clearance Officer, (202) 649–5490, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of title 44 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 OCC is publishing notice of the proposed collection of information set forth in this document.

Title: OCC Supplier Registration Form.

OMB Control No.: 1557–0316.

Frequency of Response: On occasion.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 100.

Estimated Total Annual Burden Hours: 17 hours.

Abstract: Section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act requires the OCC to develop and implement standards and procedures to ensure, to the maximum extent possible, the fair inclusion and utilization of minorities, women, and minority-owned and women-owned businesses in all business and activities of the agency at all levels, including procurement, insurance, and all types of contracts [1] and to develop standards for coordinating technical assistance to such businesses.[2]

In order to comply with the Congressional mandate to develop standards for the fair inclusion and utilization of minority- and women-owned businesses and to provide effective technical assistance to these businesses, the OCC developed an ongoing system to collect up-to-date contact information and capabilities statements from potential suppliers. This information allows the OCC to update and enhance its internal database of interested minority- and women-owned businesses. This information also allows the OCC to measure the effectiveness of its technical assistance and outreach efforts and to target areas where additional outreach efforts are necessary.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. The OCC invites comment on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information shall have practical utility;

(b) The accuracy of the OCC's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology, and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2022–11731 Filed 5–31–22; 8:45 am]

BILLING CODE 4810–33–P

[1] 12 U.S.C. 5452(c)(1).

[2] 12 U.S.C. 5452(b)(2)(B).

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them. Additionally, OFAC is publishing the names of one or more persons that have been removed from OFAC's SDN List. Their property and interests in property are no longer blocked, and U.S. persons are no longer generally prohibited from engaging in lawful transactions with them.

DATES: See Supplementary Information section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea M. Gacki, Director, tel.: 202–622–2480; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

Notice of OFAC Actions

On May 25, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under

the relevant sanctions authorities listed below.

BILLING CODE 4810–AL–P

Individuals:

1. CELIK, Abdulhamid (a.k.a. CELIK, Abdulhamit; a.k.a. CHELIK, Abdulhamit), Turkey; DOB 01 Feb 1968; POB Mardin, Kiziltepe, Turkey; nationality Turkey; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport U00093082 (Turkey); National ID No. 55735353242 (Turkey) (individual) [SDGT] [IFSR] (Linked To: SHAHRIYARI, Behnam).

   Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism," 66 FR 49079, as amended by Executive Order 13886 of September 9, 2019, "Modernizing Sanctions To Combat Terrorism," 84 FR 48041 (E.O. 13224, as amended), for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Behnam SHAHRIYARI, a person whose property and interests in property are blocked pursuant to E.O. 13224.

2. ETTEHADI, Esam (Arabic: عصام اتحادی), Iran; DOB 31 Jul 1989; POB Ahvaz, Iran; citizen Iran; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport N48228437 (Iran) expires 10 Mar 2024; National ID No. 1820011917 (Iran) (individual) [SDGT] [IFSR] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE).

   Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE, a person whose property and interests in property are blocked pursuant to E.O. 13224.

3. GUNDUZ, Seyyid Cemal, Turkey; DOB 12 Jan 1957; POB Bakirkoy, Turkey; nationality Turkey; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport U10533074 (Turkey); National ID No. 11581778738 (Turkey) (individual) [SDGT] [IFSR] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE).

Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE, a person whose property and interests in property are blocked pursuant to E.O. 13224.

4. HAMIDI, Mihrab Suhrab (a.k.a. HAMIDI, Mikhrab Sukhrab; a.k.a. MIHRAB, Suhrab Hamidi), Moscow, Russia; DOB 15 Dec 1970; nationality Afghanistan; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport P02458563 (Afghanistan); Tax ID No. 771387042305 (Russia) (individual) [SDGT] [IFSR] (Linked To: RPP LIMITED LIABILITY COMPANY).

   Designated pursuant to 1(a)(iii)(A) of E.O. 13224, as amended, for having acted or purported to act for or on behalf of, directly or indirectly, RPP LIMITED LIABILITY COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

5. KARIMIAN, Mohammad Sadegh, Tehran, Iran; DOB 22 May 1987; POB Semirom, Esfahan, Iran; nationality Iran; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport T47389358 (Iran) expires 30 Jan 2024; National ID No. 1209880970 (Iran) (individual) [SDGT] [IFSR] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE).

   Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE, a person whose property and interests in property are blocked pursuant to E.O. 13224.

6. KASHANIMEHR, Alireza (a.k.a. KASHANI, Alireza; a.k.a. XASHANIMEHR, Alireza), Iran; DOB 13 Mar 1990; nationality Iran; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport R40925019 (Iran) expires 14 Mar 2022; alt. Passport X15243089 (Iran) expires 05 Feb 2014 (individual) [SDGT] [IFSR] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE).

   Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE, a person whose property and interests in property are blocked pursuant to E.O. 13224.

7. KASKARIY, Abdulaziz (a.k.a. CASCARI, Abdulaziz), Street 11/5, Number 4, Apartment 9, Istanbul, Zeytinburnu District 34025, Turkey; 2nd Floor, 32 Itaewon-ro 14-gil, Itaewon 1-dong, Yongsan-gu, Seoul, Korea, South; DOB 09 Jun 1991; nationality Turkey; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886 (individual) [SDGT] (Linked To: TURKOCA IMPORT EXPORT TRANSIT CO., LTD.).

Designated pursuant to section 1(a)(iii)(E)(1) of Executive Order 13224, as amended, for being a leader or official of, TURKOCA IMPORT EXPORT TRANSIT CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

8. MONZAVI, Azim (Arabic: عظیم منزوی), Iran; DOB 20 Sep 1963; POB Shahrekord, Iran; citizen Iran; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport A30472984 (Iran) expires 08 Jul 2019; alt. Passport E49290734 (Iran) expires 16 Jun 2024; National ID No. 4622001640 (Iran) (individual) [SDGT] [IRGC] [IFSR] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE).

   Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE, a person whose property and interests in property are blocked pursuant to E.O. 13224.

9. NABIZADA, Kamaluddin Gulam (a.k.a. NABI, Kamalden Ghulam; a.k.a. NABI, Kamaluddin Gulam; a.k.a. NABIZADA, Kamal; a.k.a. NABIZADAH, Kamaluddin), Afghanistan; Prospect Mira, Moscow, 129110, Russia; DOB 27 Nov 1957; POB Mazare Sharif, Afghanistan; alt. POB Balkh Province, Afghanistan; nationality Afghanistan; alt. nationality Russia; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886 (individual) [SDGT] [IFSR] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE).

   Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE, a person whose property and interests in property are blocked pursuant to E.O. 13224.

10. SANLI, Hakki Selcuk, Turkey; DOB 01 Apr 1956; POB Adana, Turkey; nationality Turkey; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport U24492445 (Turkey) expires 31 May 2031; National ID No. 17107188340 (Turkey) (individual) [SDGT] [IFSR] (Linked To: Behnam SHAHRIYARI).

    Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Behnam SHAHRIYARI, a person whose property and interests in property are blocked pursuant to E.O. 13224.

Entities:

1. CHINA HAOKUN ENERGY LIMITED (a.k.a. CHINA HAOKUN ENERGY CO., LTD. (Chinese Traditional: 中國昊坤能源有限公司)), Unit 502, 5/F, 87-105 Chatham Road South, Kowloon, Hong Kong, China; Room 1701, 17/F, Hong Kong Trade Centre, Nos. 161-167 Des Voeux Road Central, Hong Kong, China; Unit 502, 5/F, 87-105 Chatham Road South, Tsim Sha Tsui, Kowloon, Hong Kong, China; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; C.R.

No. 2444610 (Hong Kong); Legal Entity Number 549300EKQFUDEPZTLV86 (Hong Kong) [SDGT] [IFSR] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE).

Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE, a person whose property and interests in property are blocked pursuant to E.O. 13224.

2. CONCEPTO SCREEN SAL OFF-SHORE (a.k.a. CONCEPTOSCREEN), Mirna Chalouhi Commercial Center, Boulevard Sin El-Fil, Beirut, Lebanon; Additional Sanctions Information - Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 10 Jan 2008; License 1802294 (Lebanon) [SDGT] (Linked To: HIZBALLAH).

   Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, HIZBALLAH, a person whose property and interests in property are blocked pursuant to E.O. 13224.

3. FUJIE PETROCHEMICAL ZHOUSHAN CO., LTD. (a.k.a. "FUJIE PETROCHEM"), 304-15, Ganghang Building, Shengsixian Maji Shangang District, Zhoushan, Zhejiang, China; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Registration Number 330935000003013 (China) [SDGT] [IFSR] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE).

   Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE, a person whose property and interests in property are blocked pursuant to E.O. 13224.

4. HAOKUN ENERGY GROUP COMPANY LIMITED (a.k.a. HAOKUN ENERGY GROUP CO., LTD. (Chinese Simplified: 吴坤能源集团有限公司); a.k.a. "HAOKUN ENERGY"), Building 6, Central District, Haidian District, Beijing 100191, China; Website www.haokunny.com; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Unified Social Credit Code (USCC) 911101053063517353 (China) [SDGT] (Linked To: CHINA HAOKUN ENERGY LIMITED).

   Designated pursuant to section 1(a)(iii)(B) of Executive Order 13224, as amended, for owning or controlling, directly or indirectly, CHINA HAOKUN ENERGY LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

5. PETRO CHINA PARS CO. (Arabic: شركت پترو چين پارس) (a.k.a. PARS PETROCHINA COMPANY), No. 25, Second Alley, Zarafshan Shomali, Shahrak Qarb, Tehran, Iran; First Floor, Unit No. 281, Salehiar Commercial Complex, Chabahar Free Zone

9971769479, Iran; Website www.petrochinapars.com; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 25 May 2013; National ID No. 14003437540 (Iran); Registration Number 1825 (Iran) [SDGT] [IFSR] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE).

Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE, a person whose property and interests in property are blocked pursuant to E.O. 13224.

6. RPP LIMITED LIABILITY COMPANY (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ РПП) (a.k.a. "LLC RPP"; a.k.a. "OOO RPP" (Cyrillic: "ООО РПП"); a.k.a. "RPP LLC"), 6/26 Floor/Rm, Bldg. 10-2, Nab. Presnenskaya, Moscow 125039, Russia; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 12 Nov 2015; Tax ID No. 7704335359 (Russia); Registration Number 5157746040645 (Russia) [SDGT] [IFSR] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE).

Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE, a person whose property and interests in property are blocked pursuant to E.O. 13224.

7. SHANDONG SEA RIGHT PETROCHEMICAL CO., LTD. (f.k.a. SHANDONG CHENXI PETROCHEMICAL CO., LTD.; a.k.a. SHANDONG HAIYOU PETROCHEMICAL GROUP CO. LTD. (Chinese Simplified: 山东海右石化集团有限公司)), Industrial Park, Xiazhuang Town, Ju County, Rizhao, Shandong 276514, China; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 22 Aug 2006; Organization Code 792470309 (China); Legal Entity Number 300300F6NDTLFTB20270 (China); Registration Number 371100228041077 (China); Unified Social Credit Code (USCC) 91371122792470309X (China) [SDGT] [IFSR] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE).

Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE, a person whose property and interests in property are blocked pursuant to E.O. 13224.

8. TURKOCA IMPORT EXPORT TRANSIT CO., LTD. (Korean: 투르코사 수출입 트랜짓 주식회사) (f.k.a. TUREUKOSASUCHULIPTEULAENJIT CO., LTD.), Rm 401, 4/F, Rishu Bldg, 25 Hangang-daero 48-gil, Yongan-gu, Seoul 04382, Korea, South; Daekyong building, Ground floor 9-79, 59-1 Duteopbawi-ro, Huam-dong, Yongsan-gu, Seoul, Korea, South; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 18 Nov 2019;

Business Registration Number 3858701478 (Korea, South); Registration Number 1101117294773 (Korea, South) [SDGT] [IFSR] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE).

Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE, a person whose property and interests in property are blocked pursuant to E.O. 13224.

9. ZAMANOIL DMCC (a.k.a. ZAMANOIL - DMCC (Arabic: زمانويل - م.د.م.س)), Jumeirah Lakes Towers Unit No: Au-06-F, Gold Tower (Au), Plot No, Dubai, United Arab Emirates; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 22 Nov 2018; Registration Number DMCC-582921 (United Arab Emirates) [SDGT] [IFSR] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE).

Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE, a person whose property and interests in property are blocked pursuant to E.O. 13224.

BILLING CODE 4810–AL–C

On May 31, 2013, OFAC designated the following persons pursuant to Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism.'' On May 25, 2022, OFAC determined that circumstances no longer warrant the inclusion of the following persons on the SDN List under this authority. Accordingly, the property and interests in property subject to U.S. jurisdiction of the following persons are no longer blocked, and they have been removed from the SDN List.

Entity

1. UKRAINIAN-MEDITERRANEAN AIRLINES (a.k.a. UKRAINSKE-TSCHERMOMORSKIE AVIALINII; a.k.a. UM AIR), 7 Shulyavska Street, Kiev 03055, Ukraine; Building Negin Sai Apartment 105, Valiasr Street, Tehran, Iran; 29 Ayar Street, Julia Dumna Building, Damascus, Syria; 38 Chkalova Street, building 1, office 10, Minsk, Belarus; Additional Sanctions Information—Subject to Secondary Sanctions [SDGT] [IFSR].

Individual:

1. MERHEJ, Rodrigue Elias (a.k.a. MERKHEZH, Rodrig); DOB 1970; alt. DOB 1969; alt. DOB 1971; POB Lebanon; Additional Sanctions Information—Subject to Secondary Sanctions (individual) [SDGT] [IFSR].

Dated: May 25, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–11756 Filed 5–31–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 8822 and 8822–B

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Change of Address or Change of Address or Responsible Party—Business.

DATES: Written comments should be received on or before August 1, 2022 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *omb.unit@irs.gov.* Include ''OMB Number 1545–1163—Change of Address or Change of Address or Responsible Party—Business'' in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to Martha R. Brinson, at (202) 317–5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Change of Address or Change of Address or Responsible Party—Business.

OMB Number: 1545–1163.

Form Numbers: 8822 and 8822–B.

Abstract: Form 8822 is used by taxpayers to notify the Internal Revenue Service that they have changed their home or business address or business location. Form 8822–B is used to notify the Internal Revenue Service of a change in a business mailing address, business location, or the identity of a responsible party.

Current Actions: There are no changes to the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 1,000,000.

Estimated Time per Respondent: 13 minutes.

Estimated Total Annual Burden Hours: 222,942 hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments will be of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 25, 2022.

Martha R. Brinson,

Tax Analyst.

[FR Doc. 2022–11657 Filed 5–31–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 14039,14039 (SP), 14039–B and 14039–B (SP)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 14039, Identity Theft Affidavit, Form 14039 (SP), Declaracion Jurada sobre el Robo de Identidad, Form 14039–B, Business Identity Theft Affidavit and Form 14039–B (SP), Declaracion Jurada sobre el Robo de Identidad de un Negocio.

DATES: Written comments should be received on or before August 1, 2022 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *omb.unit@irs.gov.* Include ''OMB Number 1545–2139—Forms 14039, 14039 (SP), 14039–B and 14039–B (SP)'' in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to Martha R. Brinson, at (202) 317–5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Form 14039, Identity Theft Affidavit, Form 14039 (SP), Declaracion Jurada sobre el Robo de Identidad, Form 14039–B, Business Identity Theft Affidavit and Form 14039–B (SP), Declaracion Jurada sobre el Robo de Identidad de un Negocio.

OMB Number: 1545–2139.

Form Numbers: 14039, 14039 (SP), 14039–B and 14039–B (SP).

Abstract: The primary purpose of these forms is to provide a method of reporting identity theft issues to the IRS so that the IRS may document situations where individuals or businesses are or may be victims of identity theft. Additional purposes include the use in the determination of proper tax liability and to relieve taxpayer burden. The information may be disclosed only as provided by 26 U.S.C 6103.

Current Actions: There are no changes to the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations and not-for-profit institutions. Forms 14039 and 14039 (SP).

Estimated Number of Respondents: 382,433.

Estimated Time per Respondent: 1 hour 20 minutes.

Estimated Total Annual Burden Hours: 508,636. Forms 14039–B and 14039–B (SP).

Estimated Number of Respondents: 20,000.

Estimated Time per Respondent: 18 minutes.

Estimated Total Annual Burden Hours: 6,200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments will be of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 25, 2022.

Martha R. Brinson,

Tax Analyst.

[FR Doc. 2022–11656 Filed 5–31–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Notification of Citizens Coinage Advisory Committee June 14, 2022, Public Meeting

ACTION: Notice of meeting.

Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens

Coinage Advisory Committee (CCAC) public meeting scheduled for June 14, 2022.

Date: June 14, 2022.

Time: 8:30 a.m. to 3:30 p.m. (EDT).

Location: 8th Floor Conference Room; United States Mint; 801 9th Street NW; Washington, DC 20220.

Subject: Review and discussion of candidate designs for 2024 Native American $1 Coin; review and discussion of candidate designs for 2024 American Innovation $1 Coins honoring innovations in Illinois and Alabama; review and discussion of candidate designs for the Congressional Gold Medals awarded to the United States Capitol Police and those who protected the U.S. Capitol on January 6, 2021; and discussion of recommendations for the CCAC 2022 Annual Report.

Interested members of the public may dial in to listen to the meeting at (888) 330–1716; Access Code: 1137147.

Interested persons should call the CCAC HOTLINE at (202) 354–7502 for the latest update on meeting time and access information.

The CCAC advises the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals; advises the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made; and makes recommendations with respect to the mintage level for any commemorative coin recommended.

For members of the public interested in listening in to the provided call number, this is a reminder that the public attendance is for listening purposes only. Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by email to *info@ccac.gov.*

For Accommodation Request: If you need an accommodation to listen to the CCAC meeting, please contact the Diversity Management and Civil Rights Office by June 9, 2022, at 202–354–7260 or 1–888–646–8369 (TYY).

FOR FURTHER INFORMATION CONTACT: Jennifer Warren, United States Mint Liaison to the CCAC; 801 9th Street NW; Washington, DC 20220; or call 202–354–7208.

(Authority: 31 U.S.C. 5135(b)(8)(C))

Eric Anderson,

Executive Secretary, United States Mint.

[FR Doc. 2022–11655 Filed 5–31–22; 8:45 am]

BILLING CODE 4810–37–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Agency Information Collection Activity: VBA Contractor Background Investigation Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed of a new collection approved New collection and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 1, 2022.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–NEW'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–NEW'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: 5 CFR part 731.

Title: VBA Contractor Background Investigation Request, VA Form 20–10276.

OMB Control Number: 2900–NEW.

Type of Review: New Collection.

Abstract: The VA Form 20–10276 will be used to request information necessary to conduct a background investigation of a VBA contractor. The results will determine the suitability and trustworthiness of the VBA contractor to have their background investigation adjudicated. After a favorable adjudication, they may receive a personal identity verification (PIV) Card to access VA systems.

Affected Public: Individuals and Households.

Estimated Annual Burden is: 833 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 5,000 per year.

By direction of the Secretary:

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2022–11659 Filed 5–31–22; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Department of Energy

10 CFR Parts 429, 430 and 431

Energy Conservation Program: Test Procedures for Residential and Commercial Clothes Washers; Final Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429, 430 and 431

[EERE–2016–BT–TP–0011]

RIN 1904–AD95

Energy Conservation Program: Test Procedures for Residential and Commercial Clothes Washers

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

ACTION: Final rule.

SUMMARY: This final rule amends the U.S. Department of Energy's (''DOE'') test procedures for residential and commercial clothes washers to further specify test conditions, instrument specifications, and test settings; address large clothes container capacities; add product-specific enforcement provisions; delete obsolete provisions; and consolidate all test cloth-related provisions and codify additional test cloth material verification procedures used by industry. This final rule also establishes a new test procedure for residential and commercial clothes washers with additional modifications for certain test conditions, measurement of average cycle time, required test cycles, tested load sizes, semi-automatic clothes washer provisions, new performance metrics, and updated usage factors. The new test procedure will be used for the evaluation and issuance of updated efficiency standards, as well as to determine compliance with the updated standards, should such standards be established.

DATES: The effective date of this rule is July 1, 2022. The amendments will be mandatory for product testing starting November 28, 2022. Manufacturers will be required to use the amended test procedure until the compliance date of any final rule establishing amended energy conservation standards based on the newly established test procedure. At such time, manufacturers will be required to begin using the newly established test procedure.

The incorporation by reference of certain materials listed in this rule is approved by the Director of the Federal Register on July 1, 2022.

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

A link to the docket web page can be found at *www.regulations.gov/docket/EERE2016-BT-TP-0011.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

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

FOR FURTHER INFORMATION CONTACT:

Mr. Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

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

SUPPLEMENTARY INFORMATION: DOE incorporates by reference the following standards into part 430.

American Association of Textile Chemists and Colorists (''AATCC'') Test Method 79–2010, ''Absorbency of Textiles,'' Revised 2010.

AATCC Test Method 118–2007, ''Oil Repellency: Hydrocarbon Resistance Test,'' Revised 2007.

AATCC Test Method 135–2010, ''Dimensional Changes of Fabrics after Home Laundering,'' Revised 2010.

Copies of AATCC test methods can be obtained from AATCC, P.O. Box 12215, Research Triangle Park, NC 27709, (919) 549–3526, or by going to *www.aatcc.org.*

International Electrotechnical Commission (''IEC'') 62301, ''Household electrical appliances—Measurement of standby power,'' (Edition 2.0, 2011–01).

Copies of IEC 62301 are available from the American National Standards Institute, 25 W. 43rd Street, 4th Floor, New York, NY 10036, (212) 642–4900, or by going to *webstore.ansi.org.*

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

Table of Contents

I. Authority and Background

Consumer (residential) clothes washers (''RCWs'') are included in the list of ''covered products'' for which DOE is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6292(a)(7)) DOE's test procedures for RCWs are currently prescribed at title 10 of the Code of Federal Regulations (''CFR'') part 430 Section 23(j), and subpart B appendices J1 (''appendix J1'') and J2 (''appendix J2''). DOE also prescribes a test method for measuring the moisture absorption and retention characteristics of new lots of energy test cloth, which is used in testing clothes washers, at appendix J3 to subpart B (''appendix J3''). Commercial clothes washers (''CCWs'') are 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)(H)) The test procedures for CCWs must be the same as those established for RCWs. (42 U.S.C. 6314(a)(8)) The following sections discuss DOE's authority to establish test procedures for RCWs and CCWs and relevant background information regarding DOE's consideration of test procedures for these products and equipment.

A. Authority

The Energy Policy and Conservation Act, as amended (''EPCA''),[1] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B [2] of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency. These products include RCWs. (42 U.S.C. 6292(a)(7)) Title III, Part C [3] of EPCA, added by Public Law 95–619, Title IV, section 441(a), established the Energy Conservation Program for Certain Industrial Equipment. This equipment includes CCWs. (42 U.S.C. 6311(1)(H)) Both RCWs and CCWs are the subject of this document.

The energy conservation program under EPCA consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6291; 42 U.S.C. 6311), test procedures (42 U.S.C. 6293; 42 U.S.C. 6314), labeling provisions (42 U.S.C. 6294; 42 U.S.C. 6315), energy conservation standards (42 U.S.C. 6295; 42 U.S.C. 6313), and the authority to require information and reports from manufacturers (42 U.S.C. 6296; 42 U.S.C. 6316).

The Federal testing requirements consist of test procedures that manufacturers of covered products must use as the basis for (1) certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA (42 U.S.C. 6295(s); 42 U.S.C. 6316(a)), and (2) making other representations about the efficiency of those products (42 U.S.C. 6293(c); 42 U.S.C. 6314(d)). Similarly, DOE must use these test procedures to determine whether the products comply with any relevant standards promulgated under EPCA. (42 U.S.C. 6295(s); 42 U.S.C. 6316(a))

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

Under 42 U.S.C. 6293 and 42 U.S.C. 6314, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products and equipment, respectively. EPCA requires that any test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use or estimated annual operating cost of a covered product or equipment during a representative average use cycle (as determined by the Secretary) or period of use and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3); 42 U.S.C. 6314(a)(2))

In addition, EPCA requires that DOE amend its test procedures for all covered products to integrate measures of standby mode and off mode energy consumption into the overall energy efficiency, energy consumption, or other energy descriptor, unless the current test procedure already incorporates the standby mode and off mode energy consumption, or if such integration is technically infeasible. (42 U.S.C. 6295(gg)(2)(A)) [4] If an integrated test procedure is technically infeasible, DOE must prescribe separate standby mode and off mode energy use test procedures for the covered product, if a separate test is technically feasible. (42 U.S.C. 6295(gg)(2)(A)(ii)) Any such amendment must consider the most current versions of the International Electrotechnical Commission (''IEC'') Standard 62301 [5] and IEC Standard 62087 [6] as applicable. (42 U.S.C. 6295(gg)(2)(A))

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

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

[1] 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.

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

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

[4] EPCA does not contain an analogous provision for commercial equipment.

[5] IEC 62301, *Household electrical appliances—Measurement of standby power* (Edition 2.0, 2011–01).

[6] IEC 62087, *Audio, video and related equipment—Methods of measurement for power consumption* (Edition 1.0, Parts 1–6: 2015, Part 7: 2018).

EPCA requires the test procedures for CCWs to be the same as the test procedures established for RCWs. (42 U.S.C. 6314(a)(8)) As with the test procedures for RCWs, EPCA requires that DOE evaluate, at least once every 7 years, the test procedures for CCWs 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))

DOE is publishing this final rule in satisfaction of the 7-year review requirement specified in EPCA. (42 U.S.C. 6293(b)(1)(A); 42 U.S.C. 6314(a)(1))

B. Background

As discussed, DOE's existing test procedures for clothes washers appear in appendix J1, appendix J2, and appendix J3.

DOE originally established its clothes washer test procedure, codified at 10 CFR part 430, subpart B, appendix J (''appendix J''), in a final rule published Sept. 28, 1977. 42 FR 49802 (''September 1977 Final Rule''). Since that time, the test procedure has undergone several amendments that are relevant to this rulemaking, summarized as follows and described in additional detail in a notice of proposed rulemaking (''NOPR'') that DOE published on September 1, 2021. 86 FR 49140 (''September 2021 NOPR'').

DOE amended appendix J in August 1997 (62 FR 45484 (Aug. 27, 1997); (''August 1997 Final Rule'') and January 2001 (66 FR 3313 (Jan. 12, 2001); ''January 2001 Final Rule''). The August 1997 Final Rule also established an appendix J1. 62 FR 45484. DOE amended appendix J1 in the January 2001 Final Rule (66 FR 3313) and in March 2012. 77 FR 13888 (Mar. 7, 2012) (''March 2012 Final Rule''). The March 2012 Final Rule also established a new test procedure at appendix J2 and removed the obsolete appendix J.[7] *Id.*

DOE most recently amended both appendix J1 and appendix J2 in a final rule published on August 5, 2015. 80 FR 46729 (''August 2015 Final Rule''). The August 2015 Final Rule also moved the test cloth qualification procedures from appendix J1 and appendix J2 to the newly created appendix J3. 80 FR 46729, 46735. The current version of the test procedure at appendix J2 includes provisions for determining modified energy factor (''MEF_{J2}'')[8] and integrated modified energy factor (''IMEF'') in cubic feet per kilowatt-hour per cycle (''ft^3/kWh/cycle''); and water factor (''WF'') and integrated water factor (''IWF'') in gallons per cycle per cubic feet (''gal/cycle/ft^3''). RCWs manufactured on or after January 1, 2018, must meet current energy conservation standards, which are based on IMEF and IWF, determined using appendix J2. 10 CFR 430.32(g)(4); 10 CFR 430.23(j)(2)(ii) and (4)(ii). CCWs manufactured on or after January 1, 2018, must meet current energy conservation standards, which are based on MEF_{J2} and IWF, determined using appendix J2. 10 CFR 431.154 and 10 CFR 431.156(b).

On May 22, 2020, DOE published a request for information (''RFI'') (''May 2020 RFI'') to initiate an effort to determine whether to amend the current test procedures for clothes washers. 85 FR 31065. In the September 2021 NOPR, DOE responded to stakeholders' comments on the May 2020 RFI, and proposed amendments to appendix J2 and appendix J3 as well as to establish a new test procedure at 10 CFR part 430, subpart B, appendix J (''appendix J'') that would establish new energy efficiency metrics: The energy efficiency ratio (''EER'') as the energy efficiency metric for RCWs (replacing IMEF); active-mode energy efficiency ratio (''AEER'') as the energy efficiency metric for CCWs (replacing MEF_{J2}); and the water efficiency ratio (''WER'') as the water efficiency metric for both RCWs and CCWs (replacing IWF); as well as incorporate a number of revisions to improve test procedure representativeness and reduce test burden. 86 FR 49140.

On December 16, 2020, DOE established separate product classes for top-loading RCWs with a cycle time of less than 30 minutes and for front-loading RCWs with a cycle time of less than 45 minutes. 85 FR 81359 (''December 2020 Final Rule''). DOE re-evaluated the new short-cycle product classes in response to Executive Order 13900, ''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.'' 86 FR 7037 (Jan. 25, 2021). In addition, stakeholders and interested parties filed multiple lawsuits challenging the December 2020 Final Rule, and DOE received several petitions for reconsideration of the December 2020 Final Rule. Following the re-evaluation of the December 2020 Final Rule, DOE published a NOPR on August 11, 2021, that proposed to repeal the short-cycle product classes. 86 FR 43970. DOE repealed the short-cycle product classes in a final rule published on January 19, 2022. 87 FR 2673.

The comment period of the September 2021 NOPR was initially set to close on November 1, 2021. 86 FR 49140. In response to a stakeholder request,[9] on October 28, 2021, DOE published a notice (''October 2021 Notice'') extending the comment period until November 29, 2021. 86 FR 59652.

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

TABLE I.1—LIST OF COMMENTERS WITH WRITTEN SUBMISSIONS IN RESPONSE TO SEPTEMBER 2021 NOPR

Commenter(s)	Reference in this final rule	Commenter type
Anonymous	Anonymous	Individual.
John Oeisratnas	Oeisratnas	Individual.
Kenneth Warren	Warren	Individual.

[7] In that rulemaking, DOE also adopted procedures to measure standby mode and off mode energy consumption into the energy efficiency metrics in the then-newly created appendix J2. Manufacturers were not required to incorporate those changes until the compliance date of an amended standard. 77 FR 13888, 13932. Amended standards were then adopted through a direct final rule that required the use of appendix J2 for RCWs manufactured on or after the 2015 compliance date. 77 FR 32308, 32313 (May 31, 2012). The appendix J follows a similar approach because manufacturers would not be required to incorporate the amendments proposed in appendix J until the compliance date of an amended standard.

[8] The current appendix J2 test procedure defines modified energy factor as ''MEF'' (*i.e.,* without the ''J2'' subscript). In the CCW test procedure regulations at 10 CFR 431.152, DOE defines the term ''MEF_{J2}'' to mean modified energy factor as determined in section 4.5 of appendix J2. As discussed in a CCW test procedure final rule published December 3, 2014, since the calculated value of modified energy factor in appendix J2 is not equivalent to the calculated value of modified energy factor in appendix J1, DOE added the ''J2'' subscript to the appendix J2 MEF descriptor to avoid any potential ambiguity that would result from using the same energy descriptor for both test procedures. 79 FR 71624, 71626. To maintain consistency with this approach, this final rule adds the ''J2'' subscript to the MEF metric defined in section 4.5 of appendix J2. See section III.H.10 of this document.

[9] Request from Association of Home Appliance Manufacturers (EERE–2016–BT–TP–0011–0020) available at *www.regulations.gov/comment/EERE-2016-BT-TP-0011-0020.*

TABLE I.1—LIST OF COMMENTERS WITH WRITTEN SUBMISSIONS IN RESPONSE TO SEPTEMBER 2021 NOPR—Continued

Commenter(s)	Reference in this final rule	Commenter type
Micah Mutrux	Mutrux	Individual.
Appliance Standards Awareness Project, American Council for an Energy-Efficient Economy, Consumer Federation of America, and Natural Resources Defense Council.	Joint Efficiency Advocates	Efficiency Organizations.
Ameren, ComEd, and Northwest Energy Efficiency Alliance	Joint Commenters	Efficiency Organization & Utilities.
Association of Home Appliance Manufacturers	AHAM	Trade Association.
GE Appliances	GEA	Manufacturer.
Pacific Gas and Electric Company, Sempra Energy, Southern California Edison (collectively, the California Investor-Owned Utilities).	CA IOUs	Utilities.
People's Republic of China	P.R. China	Nation.
Samsung Electronics America	Samsung	Manufacturer.
Whirlpool Corporation	Whirlpool	Manufacturer.

Whirlpool commented that it supports AHAM's comments on the September 2021 NOPR. (Whirlpool, No. 26 at p. 2) GEA also commented that it supports AHAM's comments on the September 2021 NOPR, and incorporated AHAM's comments by reference. (GEA, No. 32 at p. 2)

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[10]

II. Synopsis of the Final Rule

In this final rule, DOE amends appendix J2 as follows:

(1) Further specify supply water temperature test conditions and water meter resolution requirements;

(2) Add specifications for measuring wash water temperature using submersible data loggers;

(3) Expand the load size table to accommodate clothes container capacities up to 8.0 cubic feet (''ft^3'');

(4) Define ''user-adjustable adaptive water fill control;''

(5) Specify the applicability of the wash time setting for clothes washers with a range of wash time settings;

(6) Specify how the energy test cycle flow charts apply to clothes washers that internally generate hot water;

(7) Specify that the energy test cycle flow charts are to be evaluated using the Maximum load size;

(8) Specify that testing is to be conducted with any network settings disabled if instructions are available to the user to disable these functions;

(9) Further specify the conditions under which data from a test cycle would be discarded;

(10) Add product-specific enforcement provisions to accommodate the potential for test cloth lot-to-lot variation in remaining moisture content (''RMC'');

(11) Delete or correct obsolete definitions, metrics, and the clothes washer-specific waiver section; and

(12) Move additional test cloth related specifications to appendix J3.

In this final rule, DOE also updates 10 CFR part 430, subpart B, appendix J3, ''Uniform Test Method for Measuring the Moisture Absorption and Retention Characteristics,'' as follows:

(1) Consolidate all test cloth-related provisions, including those moved from appendix J2;

(2) Reorganize sections for improved readability; and

(3) Codify the test cloth material verification procedure as used by industry.

In this final rule, DOE also adds appendix J to 10 CFR part 430, subpart B, ''Uniform Test Method for Measuring the Energy Consumption of Automatic and Semi-Automatic Clothes Washers,'' which will be used for the evaluation and issuance of any updated efficiency standards, as well as to determine compliance with the updated standards, should DOE determine that amended standards are warranted based on the criteria established by EPCA.[11] The new appendix J will include the following additional provisions beyond the amendments to appendix J2:

(1) Modify the hot water supply temperature range;

(2) Modify the clothes washer preconditioning requirements;

(3) Modify the Extra-Hot Wash threshold temperature;

(4) Add measurement and calculation of average cycle time;

(5) Reduce the number of required test cycles by requiring the use of no more than two Warm Wash/Cold Rinse cycles, and no more than two Warm Wash/Warm Rinse cycles;

(6) Reduce the number of required test cycles by removing the need for one or more cycles used for measuring RMC;

(7) Reduce the number of load sizes from three to two for units currently tested with three load sizes;

(8) Modify the load size definitions consistent with two, rather than three, load sizes;

(9) Update the water fill levels to be used for testing to reflect the modified load size definitions;

(10) Specify the installation of single-inlet clothes washers, and simplify the test procedure for semi-automatic clothes washers;

(11) Define new performance metrics that are based on the weighted-average load size rather than clothes container capacity: ''energy efficiency ratio,'' ''active-mode energy efficiency ratio,'' and ''water efficiency ratio;''

(12) Update the final moisture content assumption in the drying energy formula;

(13) Update the number of annual clothes washer cycles from 295 to 234; and

(14) Update the number of hours assigned to low-power mode to be based on the clothes washer's measured cycle time rather than an assumed fixed value.

Finally, in this final rule, DOE is removing appendix J1 and updating the relevant sections of 10 CFR parts 429, 430 and 431 in accordance with the edits discussed previously, and modifying the product-specific enforcement provisions regarding the determination of RMC.

The adopted amendments are summarized in Table II.1 compared to the test procedure provision prior to the

[10] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop test procedures for RCWs and CCWs. (Docket No. EERE–2016–BT–TP–0011, which is maintained at *www.regulations.gov*). The references are arranged as follows: (Commenter name, comment docket ID number, page of that document).

[11] Information regarding the ongoing RCW and CCW energy conservation standards rulemakings can be found at docket numbers EERE–2017–BT–STD–0014 and EERE–2019–BT–STD–0044, respectively.

amendment, as well as the reason for the adopted change.

TABLE II.1—SUMMARY OF CHANGES IN APPENDIX J2 TEST PROCEDURE

Current Appendix J2 test procedure	Amended Appendix J2 test procedure	Attribution
Specifies a water meter resolution of no larger than 0.1 gallons.	Requires a water meter with a resolution no larger than 0.01 gallons if the hot water use is less than 0.1 gallons.	Improve representativeness of test results.
Specifies a target water supply temperature at the high end of the water supply temperature range.	Specifies the midpoint of the allowable range as the target water temperature.	Reduce test burden.
Specifically allows the use of temperature indicating labels for measuring wash water temperature.	Adds specification for using a submersible temperature logger to measure wash water temperature.	Reduce test burden.
Specifies the test load sizes for clothes container capacities up to 6.0 ft^3.	Specifies the test load sizes for clothes container capacities up to 8.0 ft^3.	Response to waiver.
Provides product-specific enforcement provisions to address anomalous RMC results that are not representative of a basic model's performance.	Provides additional product-specific enforcement provisions to accommodate differences in RMC values that may result from DOE using a different test cloth lot than was used by the manufacturer for testing and certifying the basic model.	Accommodate potential source of variation in enforcement testing.
Specifies discarding data from a wash cycle that provides a visual or audio indicator to alert the user that an out-of-balance condition has been detected, or that terminates prematurely if an out-of-balance condition is detected.	Specifies discarding the test data if during a wash cycle the clothes washer signals the user by means of a visual or audio alert that an out-of-balance condition has been detected or terminates prematurely.	Response to test laboratory question.
Does not explicitly address the required configuration for network-connected functionality.	Specifies that clothes washers with connected functionality shall be tested with the network-connected functions disabled if such settings can be disabled by the end-user, and the product's user manual provides instructions on how to do so.	Improve reproducibility of test results.
Does not provide an explicit definition for ''user-adjustable adaptive water fill controls'' or ''wash time''.	Provides a definition for ''user-adjustable adaptive water fill controls'' and for ''wash time''.	Improve readability.
Specifies that user-adjustable automatic clothes washers must be tested with the water fill setting in the most or least energy-intensive setting without defining energy-intensive.	Changes the wording to specify selecting the setting based on the most, or least, amount of water used.	Response to test laboratory question.
Does not specify on which load size to evaluate the energy test cycle flow charts.	Specifies evaluating the flow charts using the maximum load size.	Response to test laboratory question, improve reproducibility of test results.
Does not explicitly address how to evaluate the Cold/Cold energy test cycle flow chart for clothes washers that internally generate hot water.	Explicitly addresses clothes washers that internally generate hot water.	Response to test laboratory question.
Does not provide direction for all control panel styles on clothes washers that offer a range of wash time settings.	Clarifies how to test cycles with a range of wash time settings.	Improve readability.
Includes test cloth verification specifications in appendix J2.	Moves all test cloth related provisions to appendix J3.	Improve readability.
Contains obsolete provisions	Updates or deletes obsolete provisions, including appendix J1 in its entirety.	Improve readability.

TABLE II.2—SUMMARY OF CHANGES IN APPENDIX J TEST PROCEDURE IN COMPARISON TO APPENDIX J2

Current Appendix J2 test procedure	New Appendix J test procedure	Attribution
Specifies a water meter resolution of no larger than 0.1 gallons.	Requires a water meter with a resolution no larger than 0.01 gallons if the hot water use is less than 0.1 gallons.	Improve representativeness of test results.
Does not specify how to install clothes washers with a single inlet.	Specifies installing clothes washers with a single inlet to the cold water inlet.	Provide further direction for unaddressed feature.
Specifies a hot water supply temperature of 130–135 °F.	Specifies a hot water supply temperature of 120–125 °F.	Improve representativeness of test results.
Defines the Extra-Hot Wash threshold as 135 °F	Specifies an Extra-Hot Wash threshold of 140 °F	Improve representativeness of test results and reduce test burden.
Specifies a target water supply temperature at the high end of the water supply temperature range.	Specifies the midpoint of the allowable range as the target water temperature.	Reduce test burden.
Specifically allows the use of temperature indicating labels for measuring wash water temperature.	Adds specification for using a submersible temperature logger to measure wash water temperature.	Reduce test burden.
Specifies different pre-conditioning requirements for water-heating and non-water-heating clothes washers.	Requires the same pre-conditioning requirements for all clothes washers.	Improve reproducibility of test results.
Specifies the test load sizes for clothes container capacities up to 6.0 ft^3.	Specifies the test load sizes for clothes container capacities up to 8.0 ft^3.	Response to waiver.
Requires 3 tested load sizes on clothes washers with automatic water fill control systems.	Reduces the number of load sizes to test to 2, and specifies new load sizes.	Reduce test burden.

TABLE II.2—SUMMARY OF CHANGES IN APPENDIX J TEST PROCEDURE IN COMPARISON TO APPENDIX J2—Continued

Current Appendix J2 test procedure	New Appendix J test procedure	Attribution
Defines load sizes for each 0.1 ft^3 increment in clothes container capacity.	Redefines load sizes for each increment in clothes container capacity, consistent with reduction from 3 to 2 load sizes.	Maintain representativeness.
Defines water fill levels to use with each tested load sizes on clothes washers with manual water fill control systems.	Changes the water fill levels consistent with the updated load sizes.	Maintain representativeness.
Requires testing up to 3 Warm Wash temperature selections.	Requires testing a maximum of 2 Warm Wash temperature selections.	Reduce test burden.
Specifies that the RMC is to be measured on separate cycle(s) from the energy test cycle.	Specifies that the RMC is to be measured on all energy test cycles.	Reduce test burden, improve representativeness of test results.
Provides product-specific enforcement provisions to address anomalous RMC results that are not representative of a basic model's performance.	Provides additional product-specific enforcement provisions to accommodate differences in RMC values that may result from DOE using a different test cloth lot than was used by the manufacturer for testing and certifying the basic model.	Accommodate potential source of variation in enforcement testing.
Does not specify a measure of cycle time	Specifies provisions for measuring cycle time	Improve representativeness of test results.
Specifies discarding data from a wash cycle that provides a visual or audio indicator to alert the user that an out-of-balance condition has been detected, or that terminates prematurely if an out-of-balance condition is detected.	Specifies discarding the test data if during a wash cycle the clothes washer signals the user by means of a visual or audio alert that an out-of-balance condition has been detected or terminates prematurely.	Response to test laboratory question.
Does not explicitly state how to test semi-automatic clothes washers.	Provides explicit test provisions for testing semi-automatic clothes washers.	Provide further direction for unaddressed feature.
Does not explicitly address the required configuration for network-connected functionality.	Specifies that clothes washers with connected functionality shall be tested with the network-connected functions disabled if such settings can be disabled by the end-user, and the product's user manual provides instructions on how to do so.	Improve reproducibility of test results.
Defines metrics that are based on clothes container capacity (IMEF, MEF_{J2}, IWF).	Specifies new metrics that are based on the weighted-average load size (EER, AEER, WER).	Improve representativeness of test results.
Calculates the energy required for a clothes dryer to remove the remaining moisture of the test load assuming a final moisture content of 4 percent.	Updates the assumed final moisture content to 2 percent.	Improve representativeness of test results.
Estimates the number of annual use cycles for clothes washers as 295, based on the 2005 Residential Energy Consumption Survey (''RECS'') data.	Updates the estimate to 234 cycles per year, based on the latest available 2015 RECS data.	Update with more recent consumer usage data.
Estimates the number of hours spent in low-power mode as 8,465, based on 295 cycles per year and an assumed 1-hour cycle time.	Calculates the number of hours spent in low-power mode for each clothes washer based on 234 cycles per year and measured cycle time.	Improve representativeness of test results.
Does not specify how to test a clothes washer that does not provide water inlet hoses.	Specifies using a water inlet hose length of no more than 72 inches.	Response to test laboratory question.
Does not provide an explicit definition for ''user-adjustable adaptive water fill controls'' or ''wash time''.	Provides a definition for ''user-adjustable adaptive water fill controls'' and for ''wash time''.	Improve readability.
Categorizes water fill control systems into automatic fill or manual fill categories.	Categorizes water fill control systems based on how the user interacts with the controls and whether the water fill level is based on the size or weight of the clothing load.	Improve readability.
Specifies that user-adjustable automatic clothes washers must be tested with the water fill setting in the most or least energy-intensive setting without defining energy-intensive.	Changes the wording to specify selecting the setting based on the most, or least, amount of water used.	Response to test laboratory question.
Does not specify on which load size to evaluate the energy test cycle flow charts.	Specifies evaluating the flow charts using the large load size.	Response to test laboratory question, improve reproducibility of test results.
Does not explicitly address how to evaluate the Cold/Cold energy test cycle flow chart for clothes washers that internally generate hot water.	Explicitly addresses clothes washers that internally generate hot water.	Response to test laboratory question.
Does not provide direction for all control panel styles on clothes washers that offer a range of wash time settings.	Clarifies how to test cycles with a range of wash time settings.	Improve readability.

TABLE II.3—SUMMARY OF CHANGES IN APPENDIX J3 TEST PROCEDURE

Current Appendix J3 test procedure	Amended Appendix J3 test procedure	Attribution
Includes test cloth verification specifications in appendix J2.	Moves all test cloth related provisions to appendix J3.	Improve readability.

TABLE II.3—SUMMARY OF CHANGES IN APPENDIX J3 TEST PROCEDURE—Continued

Current Appendix J3 test procedure	Amended Appendix J3 test procedure	Attribution
Does not include all aspects of test cloth verification procedures performed by industry.	Codifies additional test cloth verification procedures performed by industry, in appendix J3.	Codify industry practice.

DOE has determined that the amendments to appendix J2 and appendix J3 described in section III of this document and adopted in this document will not alter the measured efficiency of clothes washers or require retesting or recertification solely as a result of DOE's adoption of the amendments to the test procedures, and that the proposed test procedures would not be unduly burdensome to conduct.

DOE has determined that the amendments in the new appendix J would alter the measured efficiency of clothes washers, in part because the amended test procedure adopts a different energy efficiency metric and water efficiency metric than in the current test procedures. However, use of new appendix J is not required until the compliance date of any standards amended based on the test procedure in appendix J, should such amendments be adopted. Discussion of DOE's actions are addressed in detail in section III of this document.

The effective date for the amendments adopted in this final rule is 30 days after publication of this document in the **Federal Register**. Representations of energy use or energy efficiency must be based on testing in accordance with the amended appendix J2 test procedures beginning 180 days after the publication of this final rule. Manufacturers will be required to certify compliance using the new appendix J test procedure beginning on the compliance date of any final rule establishing amended energy conservation standards for clothes washers that are published after the effective date of this final rule.

III. Discussion

In the following sections, DOE describes the amendments made to the test procedures for residential and commercial clothes washers.

A. General Comments

DOE received a number of general comments from stakeholders, as summarized below.

Oeiratnas, Warren, and an anonymous commenter expressed general support of the September 2021 NOPR. (Oeisratnas, No. 24 at p. 1; Warren, No. 15 at p. 1; Anonymous, No. 23 at p. 1) Another anonymous commenter expressed general support of improving efficiency in clothes washers. (Anonymous, No. 21 at p. 1)

AHAM commented in opposition to DOE publishing the RCW energy conservation standards preliminary analysis on September 29, 2021 (''September 2021 RCW Standards Preliminary Analysis''; 86 FR 53886) before finalizing a test procedure, or before the comment period on the September 2021 NOPR closed. (AHAM, No. 27 at p. 3) AHAM stated that although DOE provided some additional time for comment on both the test procedure and the preliminary analysis for standards, having both rules open for comment at the same time and before commenters have had sufficient time to evaluate and conduct the proposed test procedure does not allow commenters to meaningfully comment on either the proposed test procedure or the preliminary analysis. (*Id.*) AHAM also commented that, while it recognizes and supports DOE's interest in moving the clothes washer energy conservation standards and test procedure rulemakings forward, DOE should have released its test procedure proposal before conducting its RCW Standards Preliminary Analysis so that DOE could receive feedback on the test procedure proposal before proceeding with its analysis. (*Id.*) AHAM concluded that it is likely that DOE will need to conduct additional analyses based on the finalized test procedure before proposing a new energy conservation standard. (*Id.*)

GEA expressed concern with the development of an energy conservation standard for a product without a set test procedure. (GEA, No. 32 at p. 2) GEA stated that without a finalized test procedure, it is difficult to effectively comment on the September 2021 RCW Standards Preliminary Analysis, particularly due to complexities of comparing data between new appendix J and appendix J2 test procedures. (*Id.*) GEA recommended that DOE accept and consider feedback generated by the testing program coordinated by AHAM, and that DOE complete the ongoing test procedure rulemaking before moving forward with the RCW standards rulemaking. (*Id.*)

In response to AHAM and GEA's comments regarding the publication of the September 2021 NOPR and the September 2021 RCW Standards Preliminary Analysis, neither the prior version nor the current version of DOE's ''Procedures, Interpretations, and Policies for Consideration of New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Certain Commercial/Industrial Equipment'' found in appendix A (''appendix A'') specify that a final amended test procedure will be issued prior to issuing standards pre-NOPR rulemaking documents (*e.g.,* a standards preliminary analysis). *See* 10 CFR part 430, subpart C, appendix A (Jan. 1, 2020 edition); 86 FR 70892, 70928 (Dec. 13, 2021). Rather, the prior version of the Process Rule provided that test procedure rulemakings establishing methodologies used to evaluate proposed energy conservation standards would be finalized at least 180 days prior to publication of a NOPR proposing new or amended energy conservation standards. Section 8(d) of appendix A of 10 CFR part 430 subpart C (Jan. 1, 2020 edition). The current version of the Process Rule generally provides that new test procedures and amended test procedures that impact measured energy use or efficiency will be finalized at least 180 days prior to the close of the comment period for a NOPR proposing new or amended energy conservation standards. 86 FR 70892, 70928. DOE will continue to conduct additional analyses based on this finalized test procedure before proposing any new energy conservation standards, and stakeholders will be provided an opportunity to comment on any updated analysis as part of any proposal published regarding amended standards.

AHAM commented that DOE should not proceed with its determination on a clothes washer energy conservation standard until there is adequate data showing the accuracy, repeatability, and reproducibility of new appendix J and changes to appendix J2. (AHAM, No. 27 at pp. 2–3) AHAM added that it is currently unable to provide detailed comment on the accuracy, repeatability, reproducibility, and test burden associated with the new test procedure. (*Id.*) In particular, AHAM stated that it cannot provide detailed comment on the following topics: Pre-conditioning requirements (see section III.C.6 of this document), defining new test load sizes

and their associated load usage factors (see section III.D.1.b of this document), water fill setting selections for the proposed load sizes (see section III.D.2 of this document), the revised calculation of RMC (see section III.D.4.a of this document), semi-automatic clothes washers [12] (see section III.D.8 of this document), replacing capacity with weighted-average load sizes in the efficiency metrics (see section III.E.1 of this document), and inverting the water efficiency metric (see section III.E.2 of this document). (AHAM, No. 27 at pp. 4–8) AHAM stated that it and its members have developed a robust testing plan to evaluate the proposed test procedure changes, but will not have the testing completed until the end of 2021, and will need much of January 2022 to aggregate and present the results to DOE. (AHAM, No. 27 at pp. 2–3) AHAM commented that, while AHAM appreciates DOE's consideration of AHAM's October 11, 2021 comment extension request,[13] the 28-day comment period extension DOE provided as part of the October 2021 Notice is still not sufficient for AHAM and its members to provide a full set of meaningful comments. (*Id.*) AHAM stated that it plans to continue testing and, when it is complete, will provide an additional comment to DOE based on the test results. (*Id.*)

Whirlpool commented that industry testing regarding proposed new appendix J is ongoing. (Whirlpool, No. 26 at pp. 2–3) Whirlpool commented that, given the magnitude of changes proposed for the new appendix J test procedure, Whirlpool did not have adequate time to complete and analyze all desired testing during the comment period for the September 2021 NOPR. (*Id.*) Whirlpool also commented that it is taking appropriate steps in its test laboratory to ensure proper testing to new appendix J. (*Id.*) Whirlpool added that its comments on the September 2021 NOPR are preliminary, and that its comments may need to be supplemented or corrected once investigative testing is completed. (*Id.*) In particular, Whirlpool stated that it cannot provide detailed comments on the following topics: Tested load sizes (see section III.D.1 of this document), the efficiency metrics (see section III.E of this document), and consumer usage assumptions (see section III.G of this document). (Whirlpool, No. 26 at pp. 7–11)

GEA commented that it is participating in testing organized by AHAM to test 26 models across seven test laboratories to evaluate the proposed changes to the clothes washer test procedure. (GEA, No. 32 at p. 2) GEA expressed concern that GEA and other AHAM members are devoting substantial financial resources to this testing, and that DOE is not accommodating this test plan by failing to provide the February 1, 2021 comment deadline extension originally proposed by AHAM. (*Id.*) GEA added that it is particularly concerned about the impact of the proposed new metrics, which are based on weighted-average load size instead of capacity, and the impact of DOE's proposed changes to the load usage factors. (*Id.*)

DOE appreciates the efforts described by AHAM and manufacturers in conducting testing to evaluate the proposed changes to the clothes washer test procedure. DOE welcomes and encourages interested parties to submit test data in support of the RCW standards rulemaking. DOE notes that much of the reservation expressed by AHAM and manufacturers was with regard to the impact on measured energy as a result of the proposed amendments to the test procedure. Impacts on measured energy use between the then-current appendix J2 and the proposed appendix J test procedures were factored into the September 2021 RCW Standards Preliminary Analysis and presented in the accompanying Technical Support Document (''TSD'').[14] Specifically, testing and modeling of results between the two test procedures were used to generate preliminary translations (*i.e.,* ''crosswalks'') between the appendix J2 and appendix J metrics for each defined efficiency level. To the extent that provisions of appendix J result in higher measured energy compared to appendix J2, such impacts were factored into the crosswalk of baseline [15] and higher efficiency levels. As stated in chapter 5, section 5.3.3.3 of the preliminary analysis TSD, DOE plans to continue testing additional units to appendix J as finalized in this document and will continue to refine its approach for determining appropriate crosswalk translations in future stages of the standards rulemaking. Details regarding the expected impacts on measured energy are discussed in greater detail throughout sections III.C, III.D, and III.E of this document.

In the September 2021 NOPR, DOE proposed introductory text to both appendix J2 and the proposed new appendix J that provides the timeline for use of appendix J2 and appendix J. 86 FR 49140, 49146, 49205, 49218.

P.R. China recommended that DOE clarify the relationship between new appendix J and appendix J2, and the implementation timeline of new appendix J and appendix J2. (P.R. China, No. 25 at p. 3)

As discussed, DOE is establishing a new test procedure at a new appendix J at 10 CFR part 430 subpart B, which DOE would use for the evaluation and issuance of updated efficiency standards. Use of new appendix J is not required until the compliance date of any new or amended standards that are based on new appendix J. (42 U.S.C. 6295(gg)(2)(C)).

This final rule maintains the introductory notes in appendix J and appendix J2 as proposed in the September 2021 NOPR, while updating the reference date from January 1, 2021, to January 1, 2022. Specifically:

- Manufacturers must use the results of testing under appendix J2 to determine compliance with the relevant standards for clothes washers from § 430.32(g)(4) and from § 431.156(b) as they appeared in the January 1, 2022 edition of 10 CFR parts 200–499.
- Before the date 180 days following publication of this final rule, representations must be based upon results generated either under appendix J2 as amended in this final rule or under appendix J2 as it appeared in the 10 CFR parts 200–499 edition revised as of January 1, 2022.
- On or after 180 days following publication of this final rule, but before the compliance date of any amended standards for clothes washers, any representations must be made based upon results generated using appendix J2 as amended in this final rule.
- On or after the compliance date of any future amended standards provided in § 430.32(g) or in § 431.156 that are published after January 1, 2022, any representations must be based upon results generated using appendix J.

DOE further notes that any representations related to energy or water consumption of RCWs or CCWs must be made in accordance with the

[12] AHAM's comments on semi-automatic clothes washers include comments on temperature selection, temperature usage factors, cycles required for test, and the general implementation of the proposed test provisions for semi-automatic clothes washers. All of these aspects are discussed in section III.D.8 of this document.

[13] Available at *www.regulations.gov/comment/EERE-2016-BT-TP-0011-0020.*

[14] See, for example, Table 5.3.7 in chapter 5 of the RCW preliminary analysis TSD describes the impact of each proposed test procedure revision on each individual component of the efficiency metrics. The Residential Clothes Washers Energy Conservation Standards Preliminary Technical Support Document is available at *www.regulations.gov/document/EERE-2017-BT-STD-0014-0030.*

[15] DOE uses the term ''baseline'' to refer to performance that is minimally compliant with the applicable standard.

appropriate appendix that applies (*i.e.,* appendix J or appendix J2) when determining compliance with the relevant standard and that manufacturers may also use appendix J to certify compliance with any amended standards prior to the applicable compliance date for those standards.

Warren suggested that DOE be more specific in how the proposed regulations would be enforced, including who would be responsible to verify regulation requirements, the necessary amount of funding to support this rule, and the expected process by which clothes washers are to be inspected. (Warren, No. 15 at p. 1)

DOE specifies certification, compliance, and enforcement regulations for consumer products and commercial and industry equipment covered by DOE's energy conservation standards program at 10 CFR part 429. Subpart A to part 429 specifies general provisions; subpart B to part 429 (''Certification'') sets forth the procedures for manufacturers to certify that their covered products and covered equipment comply with the applicable energy conservation standards; and subpart C to part 429 (''Enforcement'') describes the enforcement authority of DOE to ensure compliance with the conservation standards and regulations.

B. Scope of Applicability

This final rule covers those consumer products that meet the definition of ''clothes washer,'' as codified at 10 CFR 430.2.

EPCA does not define the term ''clothes washer.'' DOE has defined a ''clothes washer'' as a consumer product designed to clean clothes, utilizing a water solution of soap and/or detergent and mechanical agitation or other movement, that must be one of the following classes: Automatic clothes washers, semi-automatic clothes washers, and other clothes washers. 10 CFR 430.2.

An ''automatic clothes washer'' is a class of clothes washer that has a control system that is capable of scheduling a preselected combination of operations, such as regulation of water temperature, regulation of the water fill level, and performance of wash, rinse, drain, and spin functions without the need for user intervention subsequent to the initiation of machine operation. Some models may require user intervention to initiate these different segments of the cycle after the machine has begun operation, but they do not require the user to intervene to regulate the water temperature by adjusting the external water faucet valves. *Id.*

A ''semi-automatic clothes washer'' is a class of clothes washer that is the same as an automatic clothes washer except that user intervention is required to regulate the water temperature by adjusting the external water faucet valves. *Id.*

''Other clothes washer'' means a class of clothes washer that is not an automatic or semi-automatic clothes washer. *Id.*

This final rule also covers commercial equipment that meets the definition of ''commercial clothes washer.'' ''Commercial clothes washer'' is defined as a soft-mount front-loading or soft-mount top-loading clothes washer that—

(A) Has a clothes container compartment that—

(i) For horizontal-axis clothes washers, is not more than 3.5 cubic feet; and

(ii) For vertical-axis clothes washers, is not more than 4.0 cubic feet; and

(B) Is designed for use in—

(i) Applications in which the occupants of more than one household will be using the clothes washer, such as multi-family housing common areas and coin laundries; or

(ii) Other commercial applications.

(42 U.S.C. 6311(21); 10 CFR 431.452)

DOE is not changing the scope of products and equipment covered by its clothes washer test procedures, or the relevant definitions, in this final rule.

C. Testing Conditions and Instrumentation

1. Water Meter Resolution

Section 2.5.5 of the previous appendix J2 required the use of water meters (in both the hot and cold water lines) with a resolution no larger than 0.1 gallons and a maximum error no greater than 2 percent of the measured flow rate. As discussed in the September 2021 NOPR, DOE has observed that some clothes washers use very small amounts of hot water on some temperature selections, on the order of 0.1 gallons or less. 86 FR 49140, 49146. For example, some clothes washers have both Cold and Tap Cold temperature selections, and the Cold selection may use a fraction of a gallon of hot water. *Id.*

In DOE's experience with such clothes washers, the maximum load size typically uses more than 0.1 gallons of hot water on each of the available temperature selections (providing indication of which temperature selections use hot water), whereas the average and minimum load sizes may use a quantity less than 0.1 gallons. *Id.* For these clothes washers, a water meter resolution of 0.1 gallons would be insufficient to provide an accurate measurement of hot water consumption because the volume of hot water measured would be less than the resolution of the water meter. *Id.* As discussed in the September 2021 NOPR, DOE's testing suggests that clothes washers that use such low volumes of heated water represent a minority of units on the market. *Id.* DOE tentatively concluded that requiring greater water meter precision for all clothes washers would represent an undue burden for those clothes washer models for which water meters with the currently required level of precision provide representative results. *Id.* DOE therefore proposed the use of a hot water meter with more precise resolution only for clothes washers with hot water usage less than 0.1 gallons in any of the individual cycles within the energy test cycle.

Specifically, DOE proposed to specify in section 2.5.5 of both appendix J2 and new appendix J that if the volume of hot water for any individual cycle within the energy test cycle is less than 0.1 gallons (0.4 liters), the hot water meter must have a resolution no larger than 0.01 gallons (0.04 liters). 86 FR 49140, 49147. DOE requested comment on this proposal, and on the extent to which manufacturers and test laboratories already use water meters with this greater resolution. *Id.* DOE also requested comment on whether this proposal would require manufacturers to retest any basic models that have already been certified under the existing water meter resolution requirements. *Id.*

The Joint Efficiency Advocates commented that they support DOE's proposal to require higher water meter resolution for hot water use measurements. (Joint Efficiency Advocates, No. 28 at pp. 3–4) However, the Joint Efficiency Advocates recommended that instead of requiring a water meter resolution of 0.01 gallons for clothes washers that use less than 0.1 gallons of water, DOE should require a water meter resolution of 0.01 gallons for all hot water use measurements. (*Id.*) The Joint Efficiency Advocates added that requiring a resolution no larger than 0.01 gallons if hot water use is less than 0.1 gallons suggests that hot water usage is known prior to testing. (*Id.*) The Joint Efficiency Advocates concluded that requiring a 0.01-gallon resolution would more accurately reflect hot water and energy usage. (*Id.*)

The CA IOUs commented that they support DOE's proposal to require a water meter resolution of 0.01 gallons for clothes washers that use less than 0.1 gallons of water. (CA IOUs, No. 29 at p. 6) However, the CA IOUs stated

that it is difficult to discern whether the higher resolution provision would be required, since the test laboratory would need previous knowledge that there is a low-level use of hot water prior to the test. (*Id.*) The CA IOUs encouraged DOE to consider requiring the 0.01-gallon resolution for all products tested under appendix J2 and new appendix J, or alternatively provide clarification for how a testing laboratory would know prior to testing that it would need to use 0.01-gallon-resolution water meters. (*Id.*)

AHAM commented that DOE's proposal to require a water meter resolution of 0.01 gallons for clothes washers that use less than 0.1 gallons of hot water could provide a benefit by increasing the accuracy of the measurements, but could increase test burden due to the cost of obtaining higher-resolution meters. (AHAM, No. 27 at p. 8) AHAM additionally commented that DOE's water meter resolution proposal may not be practical, since laboratories outside of those operated by manufacturers may not have insight into which cycles use less than 0.1 gallons of hot water. (*Id.*)

In response to comments that the volume of hot water would need to be known prior to testing in order to use a water meter with the correct resolution, DOE notes that this concern would likely apply only to third-party laboratories, since manufacturers would have advance knowledge of the expected water usage of their own products. DOE acknowledges that it may not be possible for a third-party test laboratory to know in advance the expected water usage of a clothes washer. In DOE's experience, in practice, an examination of test results during testing can yield insights as to whether a clothes washer is using less than 0.1 gallons of hot water. As one example, as described earlier in this section, if the maximum load size uses close to 0.1 gallons of hot water on a particular temperature setting, the average and minimum load sizes are likely to use a quantity less than 0.1 gallons. As another example, laboratories may be aware of trends among models from the same product lines, such as models containing both ''Tap Cold'' and ''Cold'' settings that use very little hot water on the ''Cold'' setting. As yet another example, other measured parameters such as water pressure can indicate when a water valve is opened on the clothes washer; *e.g.,* a test cycle that indicates no hot water use (in the case where a water meter with 0.1 gallon resolution is used), but for which the water pressure data indicated a brief opening of the hot water valve, would suggest that a smaller quantity of hot water may have been used and that a more precise water meter resolution is required.

DOE tentatively concluded in the September 2021 NOPR that most, if not all, third-party laboratories already have water meters with the more precise resolution. DOE also estimated the cost of a water meter that provides the proposed resolution, including associated hardware, to be around $600 for each device. 86 FR 49140, 49191. DOE reiterates these cost estimates in section III.K.1 of this document. DOE received no comments in response to the September 2021 NOPR regarding DOE's estimated cost of a water meter.

DOE determines in this final rule that for clothes washers that use less than 0.1 gallons of hot water on certain temperature selections required for testing, the use of the more precise water meters would improve the reproducibility of testing and the representativeness of the results without being unduly burdensome. DOE also determines that requiring greater water meter precision for all clothes washers (*i.e.,* as opposed to only those that use less than 0.1 gallons of hot water on certain temperature selections) would represent an undue burden for those clothes washer models for which water meters with the currently required level of precision provide representative results. For these reasons and those discussed above, DOE is finalizing its proposal, consistent with the September 2021 NOPR, by amending section 2.5.5 of both appendix J2 and new appendix J to specify that if the volume of hot water for any individual cycle within the energy test cycle is less than 0.1 gallons (0.4 liters), the hot water meter must have a resolution no larger than 0.01 gallons (0.04 liters).

2. Installation of Single-Inlet Machines

Section 2.10 of appendix J2 provides specifications for installing a clothes washer, referencing both the hot water and cold water inlets. Additionally, section 2.5.5 of appendix J2 specifies that a water meter must be installed in both the hot and cold water lines. DOE is aware of RCWs on the market that have a single water inlet rather than separate hot and cold water inlets. 86 FR 49140, 49147. DOE has observed two types of single-inlet RCWs: (1) Semi-automatic clothes washers, which are generally intended to be connected to a kitchen or bathroom faucet and which require user intervention to regulate the water temperature by adjusting the external water faucet valves; and (2) automatic clothes washers intended to be connected only to a cold water inlet, and which regulate the water temperature through the use of an internal heating element to generate any hot water used during the cycle. *Id.*

For single-inlet *semi-automatic* clothes washers, DOE has observed that these clothes washers are most often designed to be connected to a kitchen or bathroom faucet, with a single hose connecting the faucet to the single inlet on the clothes washer (*i.e.,* both cold and hot water are supplied to the clothes washer through a single hose).[16] The user regulates the water temperature externally by adjusting the faucet(s) to provide cold, warm, or hot water temperatures for the wash and rinse portions of the cycle.

In the September 2021 NOPR, DOE stated that additional direction in the test procedure is warranted to produce test results that reflect representative consumer usage of cold, warm, and hot wash/rinse temperatures. *Id.* DOE therefore proposed for testing of semi-automatic RCWs to require connection to only the cold water supply in new appendix J, enabling testing of only the Cold/Cold wash/rinse temperature, and proposed to calculate the energy and water performance at other wash/rinse temperatures formulaically from the Cold Wash/Cold Rinse (''Cold/Cold'') cycle data. 86 FR 49140, 49148. DOE asserted that the energy and water performance at temperatures other than Cold/Cold could be calculated numerically using test data from the Cold/Cold cycle, because the measured characteristics [17] of a semi-automatic clothes washer cycle do not depend on the inlet water temperature. 86 FR 49140, 49148. DOE proposed to make this change only in the new appendix J because connecting to only the cold water inlet may differ from how such units are currently being tested by manufacturers and laboratories under appendix J2. *Id.* DOE requested information about implementing this change to appendix J2 as well, specifically regarding how single-inlet semi-automatic clothes washers are being tested and any potential impact on the measured energy use of these clothes washers on the market. *Id.*

For single-inlet *automatic* clothes washers, in the September 2021 NOPR, DOE proposed to specify that all single-inlet automatic clothes washers be

[16] As noted, some models may provide or accommodate a Y-shaped hose to connect the separate cold and hot water faucets or supply lines.

[17] Measured characteristics of a semi-automatic clothes washer cycle include total water consumption, electrical energy consumption, cycle time, and bone-dry and cycle complete load weights. See section III.D.8 of this document for more details.

installed to the cold water supply only, based on a review of user manuals. 86 FR 49140, 49148. DOE proposed to include this provision in the new appendix J only. *Id.* The proposed edit to section 2.10.1 of the new appendix J is that if the clothes washer has only one water inlet, the inlet would be connected to the cold water supply in accordance with the manufacturer's instructions. *Id.* DOE requested comment on this proposal, and on whether this requirement should be included in only the new appendix J, or whether, if adopted, it should be included as an amendment to appendix J2. *Id.*

P.R. China commented in support of requiring single-inlet clothes washers to be installed to the cold water supply only. (P.R. China, No. 25 at p. 3) P.R. China also recommended that DOE add test methods that would evaluate single-inlet clothes washers' heating functions using different programs where the water is heated to different temperatures. *(Id.)* DOE received no comments regarding how single-inlet clothes washers are being tested currently to appendix J2 or whether the proposed amendments should also be adopted in appendix J2.

In response to P.R. China's recommendation, DOE notes that a single-inlet clothes washer with a heating function would be classified as an *automatic* single-inlet clothes washer and as such would be tested using the temperature selections determined to be part of the energy test cycle using the flowcharts provided in section 2.12 of appendix J2 or new appendix J.

For the reasons discussed, DOE is finalizing its proposal to require in section 2.10.1 of the new appendix J that a clothes washer with only one water inlet be connected to the cold water supply in accordance with the manufacturer's instructions. DOE is unable to determine whether these amendments would change how such units are currently being tested by manufacturers and laboratories under appendix J2 and therefore is not adopting these amendments in appendix J2. As described further in section III.D.8 of this document, DOE is also finalizing its proposal for semi-automatic clothes washers in new appendix J to require testing of only the Cold/Cold wash/rinse temperature and to calculate the energy and water performance at other wash/rinse temperatures formulaically from the Cold/Cold cycle data.

3. Water Supply Temperatures

a. Hot Water Supply Temperature

Section 2.2 of appendix J2 requires maintaining the hot water supply temperature between 130 degrees Fahrenheit (''°F'') (54.4 degrees Celsius (''°C'')) and 135 °F (57.2 °C), using 135 °F as the target temperature.

DOE has revised the hot water supply temperature requirements several times throughout the history of the clothes washer test procedures to remain representative of household water temperatures at the time of each analysis. When establishing the original clothes washer test procedure at appendix J in 1977, DOE specified a hot water supply temperature of 140 °F ± 5 °F for clothes washers equipped with thermostatically controlled inlet water valves. 42 FR 49802, 49808. In the August 1997 Final Rule, DOE specified in appendix J1 that for clothes washers in which electrical energy consumption or water energy consumption is affected by the inlet water temperatures,[18] the hot water supply temperature cannot exceed 135 °F (57.2 °C); and for other clothes washers, the hot water supply temperature is to be maintained at 135 °F ± 5 °F (57.2 °C ± 2.8 °C). 62 FR 45484, 45497. DOE maintained these same requirements in the original version of appendix J2. In the August 2015 Final Rule, DOE adjusted the allowable tolerance of the hot water supply temperature in section 2.2 of appendix J2 to between 130 °F (54.4 °C) and 135 °F (57.2 °C) for all clothes washers, but maintained 135 °F as the target temperature. 80 FR 46729, 46734–46735.

As noted in the September 2021 NOPR, DOE analyzed household water temperatures as part of the test procedure final rule for residential and commercial water heaters published July 11, 2014. 79 FR 40541 (''July 2014 Water Heater Final Rule''). In the July 2014 Water Heater Final Rule, DOE revised the hot water delivery temperature from 135 °F to 125 °F based on an analysis of data showing that the average set point temperature for consumer water heaters in the field is 124.2 °F (51.2 °C), which was rounded to the nearest 5 °F, resulting in a test set point temperature of 125 °F. 79 FR 40541, 40554. Additionally, a 2011 compilation of field data across the United States and southern Ontario by Lawrence Berkeley National Laboratory (''LBNL'') [19] found a median daily outlet water temperature of 122.7 °F (50.4 °C). *Id.* Further, DOE noted in the July 2014 Water Heater Final Rule that water heaters are commonly set with temperatures in the range of 120 °F to 125 °F. *Id.*

Additionally, section 2.3.2. of DOE's consumer dishwasher test procedure, codified at 10 CFR part 430 subpart B, appendix C1 (''appendix C1''), specifies a hot water supply temperature of 120 °F ± 2 °F for water-heating dishwashers designed for heating water with a nominal inlet temperature of 120 °F, which includes nearly all consumer dishwashers currently on the U.S. market. This water supply temperature is intended to be representative of household hot water temperatures.

In the September 2021 NOPR, DOE proposed to update the hot water supply temperature in the new appendix J from 130–135 °F to 120–125 °F. *Id.* Additionally, DOE proposed to change the value of ''T,'' the temperature rise that represents the nominal difference between the hot and cold water inlet temperatures, from 75 °F to 65 °F, consistent with the differential between the nominal values for the proposed hot water supply temperature (120–125 °F) and the cold water supply temperature (55–60 °F). 86 FR 49140, 49149–49150. DOE requested comment on any potential impact to testing costs that may occur by harmonizing temperatures between the clothes washer and dishwasher test procedures, and the impacts on manufacturer burden associated with any changes to the hot water supply temperature. 86 FR 49140, 49150.

The Joint Efficiency Advocates commented in support of DOE specifying a hot water supply temperature of 120–125 °F and decreasing the temperature rise from 75 °F to 65 °F accordingly. (Joint Efficiency Advocates, No. 28 at p. 3) Referencing DOE's discussion in the July 2014 Water Heater Final Rule and the September 2021 NOPR, the Joint Efficiency Advocates stated that a hot water supply temperature of 120–125 °F would better reflect current clothes washer usage conditions than the 135 °F temperature specified in the current test procedure. (*Id.*) The comment also noted that the proposed reduction of the hot water temperature rise for appendix J was reasonable. (*Id.*)

The Joint Commenters commented in support of DOE's proposal to specify the clothes washer hot water supply temperature range from 120 to 125 °F,

[18] For example, water-heating clothes washers or clothes washers with thermostatically controlled water valves.

[19] Lutz, JD, Renaldi, Lekov A, Qin Y, and Melody M, ''Hot Water Draw Patterns in Single Family Houses: Findings from Field Studies,'' LBNL Report number LBNL–4830E (May 2011). Available at *www.escholarship.org/uc/item/2k24v1kj.*

stating that it is a reasonable representation of real-world supply temperatures. (Joint Commenters, No. 31 at p. 10)

AHAM commented that if DOE proceeds with adjusting the hot water temperature to 125 °F, all provisions within the test procedure relating to maximum water temperature should be adjusted to 125 °F as well, including the flow charts within the test procedure. (AHAM, No. 27 at p. 9) AHAM added that the flow charts have been helpful to manufacturers and test laboratories, and that it is therefore critical that they be properly adjusted to account for the temperature change. (*Id.*) AHAM also commented that this change could limit customer choice with respect to temperature controls, asserting that since the proposed temperature requirement for the Extra-hot Wash/Cold Rinse cycle would be 140 °F, but the Hot Wash/Cold Rinse cycle would not be able to get above 125 °F without the use of an internal water heater, a clothes washer with a temperature setting between 125 °F and 140 °F would experience a negative impact to its energy use. (*Id.*) AHAM added that this change would mean that manufacturers would no longer realistically be able to offer consumers temperatures between 125 °F and 140 °F, and that product redesign would be required. (*Id.*) AHAM added that additional testing may illuminate this concern and, if so, AHAM would provide DOE with more information. (*Id.*)

In response to AHAM's comment that decreasing the hot inlet supply temperature to a range of 120 to 125 °F would result in greater measured energy for a clothes washer with a temperature setting between 125 °F and 140 °F due to the need to use an internal water heater, DOE expects that the overall measured energy use of a temperature setting between 125 °F and 140 °F would remain roughly the same even with the reduced hot water inlet temperature. The total measured energy for each cycle includes both the machine electrical energy (which includes any energy expended for internal water heating) as well as the energy used to heat the water externally in a water heater (*i.e.,* the water heating energy). As discussed further in section III.G.6 of this document, the calculation of water heating energy assumes a 100 percent efficient external electric water heater. DOE would expect an internal water heater within a clothes washer to operate similarly at a thermal efficiency of roughly 100 percent. Accordingly, for a given wash temperature, the amount of thermal energy measured by the test procedure is roughly the same regardless of whether the heated water is supplied by an external water heater or an internal water heating element within the clothes washer, or a combination of both.

As an example, consider a clothes washer with a hot wash temperature of 135 °F and a test cycle that uses 20 gallons of water. Under the appendix J2 test procedure with a nominal hot water supply temperature of 135 °F, all 20 gallons would be hot water, externally heated with an associated water heating energy of 3.6 kWh.[20] Using instead a nominal hot water supply temperature of 125 °F, the same test cycle would similarly use 20 gallons of externally-heated water (heated to 125 °F rather than 135 °F), plus additional internal water heating to increase the temperature by an additional 10 °F to 135 °F. In this scenario, the external water heating energy would be calculated as 3.12 kWh,[21] and the internal water heater would be expected to use around 0.48 kWh,[22] for a total of 3.6 kWh (matching the first scenario).

As exemplified, DOE concludes that any change in the balance between externally heated water and internally heated water as a result of changing the inlet supply temperature would have negligible, if any, impact on overall energy use and therefore would not limit a manufacturer's ability to continue to offer wash temperatures between 125 °F and 140 °F. As discussed previously, any impacts to measured energy, however minor, as a result of changes to the hot water supply inlet temperature were accounted for in the crosswalk between the appendix J2 and appendix J metrics developed for the September 2021 RCW Standards Preliminary Analysis. DOE will continue to consider any such impacts in future stages of the standards rulemaking. Furthermore, given DOE's determination that a hot water supply temperature range of 120 °F to 125 °F is more representative of household hot water temperatures, any change in measured energy as a result of changing the hot water supply inlet temperature would be more representative of consumer use.

For the reasons discussed previously, DOE is finalizing its proposal to update the hot water supply temperature in the new appendix J from 130–135 °F to 120–125 °F, and to update the value of ''T'' to 65 °F accordingly, consistent with the September 2021 NOPR. DOE reiterates that any impacts to measured energy as a result of changes to the hot water inlet supply temperature will be accounted for in the crosswalk between the appendix J2 and appendix J metrics as part of the ongoing standards analysis, such that DOE does not expect the changes implemented in this final rule to require significant product redesign.

b. Target Water Supply Temperatures

Section 2.2 of appendix J2 specified that the hot water supply temperature must be maintained between 130 °F (54.4 °C) and 135 °F (57.2 °C), using 135 °F as the target temperature. Section 2.2 of appendix J2 specified maintaining a cold water temperature between 55 °F and 60 °F, using 60 °F as the target temperature.

In the September 2021 NOPR, DOE proposed to remove the ''target'' temperature associated with each water supply temperature range, and to instead define only the allowable temperature range. 86 FR 49140, 49151. Based on experience working with third-party test laboratories, as well as its own testing experience, DOE recognizes that maintaining a target temperature for the water supply that represents one edge of the allowable temperature range, rather than the midpoint, may be difficult. *Id.* On electronic temperature-mixing valves commonly used by test laboratories, the output water temperature is maintained within an approximately 2-degree tolerance above or below a target temperature programmed by the user (*e.g.,* if the target temperature is set at 135 °F, the controller may provide water temperatures ranging from 133 °F to 137 °F). *Id.* To ensure that the water inlet temperature remains within the allowable range, such a temperature controller would need to be set to around the midpoint of the range, which conflicts with the test procedure requirement. *Id.*

Specifically, DOE proposed in the September 2021 NOPR that the cold water supply temperature range be defined as 55 °F to 60 °F in both appendix J2 and the new appendix J; the hot water supply temperature range in appendix J2 be defined as 130 °F to 135 °F; and the hot water supply temperature range in the new appendix J be defined as 120 °F to 125 °F. *Id.*

DOE requested comment on its proposal to remove the target temperatures and instead specify water supply temperature ranges as 55 °F to 60 °F for cold water in both appendix J2 and the new appendix J, 130 °F to 135 °F for hot water in appendix J2, and 120 °F

[20] Calculated as 20 gallons (gal) × 75 °F temperature rise × 0.0024 kWh/gal/°F specific heat of water, per section 4.1.2 of appendix J2.

[21] Calculated as 20 gal × 65 °F temperature rise × 0.0024 kWh/gal/°F.

[22] Calculated as 20 gal × 10 °F temperature rise × 0.0024 kWh/gal/°F × 100% assumed efficiency.

to 125 °F for hot water in the new appendix J. *Id.*

Whirlpool stated that it opposes DOE's proposal to remove the target temperatures from the proposed hot or cold water supply temperature requirements, stating that DOE provided no strong rationale to remove them. (Whirlpool, No. 26 at pp. 5–6) Whirlpool further commented that removing the target condition could reduce reproducibility by increasing the chances that test laboratories will conduct testing throughout the entire allowable range, rather than test at or near a single target temperature. (*Id.*) For example, as stated by Whirlpool, the absence of a target temperature may force manufacturers to be extremely conservative in the testing and certification of products and always test at the part of the range that produces the least energy efficient results. (*Id.*) Whirlpool expressed concern that removing the target temperature could increase the overall variation between laboratory test results. (*Id.*)

AHAM commented that it opposes DOE's proposal to specify a target temperature range instead of a target temperature. (AHAM, No. 27 at pp. 9–10) AHAM recommended that DOE align its proposed test procedure with other DOE test procedures in which the target temperature has a tolerance and nominal target, rather than any temperature within a specified range (*e.g.,* X ± Y with nominal X as the target), in order to increase reproducibility. (*Id.*) AHAM commented that while it recognizes that any value within a temperature range would be a valid test, a target nominal temperature would discourage test laboratories from testing at one end of the range or the other. (*Id.*) AHAM further commented that a need for a repeatable, reproducible test is increasing since manufacturers' ability to conservatively rate and ensure continued compliance with standards decreases as energy conservation standards get more stringent. (*Id.*) AHAM also added that removing the target temperature would have an impact on calculating the water heating energy, since the temperature rise between the cold and hot water supply temperatures would be less certain. (*Id.*)

Considering comments received, DOE recognizes that specifying a target temperature for the supply water may be helpful in ensuring reproducible test results. DOE also recognizes, as discussed, that best practice by laboratories is to configure the water temperature controller setpoint to the midpoint of the temperature range in order to accommodate fluctuations both above and below the setpoint, thus ensuring that the water inlet temperature remains within the allowable range throughout the duration of testing. For these reasons, in this final rule, DOE is amending the temperature supply specifications to specify targeting the midpoint of each range. DOE reiterates that specifying a target temperature setpoint is intended to promote reproducibility of results and does not invalidate test data that is not centered around the target temperature but remains within the specified allowable range.

DOE further notes that by targeting the midpoint of both the hot water temperature range and the cold water temperature range, the value of ''T'' used in the water heating energy formula (as discussed in section III.C.3.a of this document) represents the difference between the targeted values for both appendix J2 and new appendix J.

4. Extra-Hot Wash Determination

Clothes washers are tested using an energy test cycle determined by taking into consideration all cycle settings available to the end user. Section 2.12 of appendix J2. Figure 2.12.5 of appendix J2 specifies that for the energy test cycle to include an Extra-Hot Wash/Cold Rinse, the clothes washer must have an internal heater and the Normal cycle [23] must, in part, contain a wash/rinse temperature selection that has a wash temperature greater than 135 °F. The 135 °F threshold matches the high end of the hot water inlet temperature range specified in section 2.2 of appendix J2.

DOE has revised the Extra-Hot wash temperature parameters previously. In the August 1997 Final Rule, DOE revised the threshold temperature for Extra-Hot Wash from 140 °F to 135 °F in conjunction with changing the minimum hot water supply temperature in appendix J from 140 °F in appendix J to 135 °F. 62 FR 45484, 45497. As noted, appendix J2 retains this threshold temperature of 135 °F for Extra-Hot Wash.

As described in the September 2021 NOPR, the proposal to update the hot water inlet temperature from 130–135 °F to 120–125 °F in new appendix J prompted DOE to reassess the threshold temperature for the Extra-Hot wash temperature in new appendix J. 86 FR 49140, 49150. Because the inclusion of an Extra-Hot Wash/Cold Rinse in the energy test cycle requires the clothes washer to have an internal heater, the threshold temperature is not limited to the input temperature. *Id.*

In the September 2021 NOPR, DOE indicated that based on test data from a broad range of clothes washers, over 70 percent of Extra-Hot cycles have a wash water temperature that exceeds 140 °F. 86 FR 49140, 49150. Furthermore, DOE research indicated that 140 °F is widely cited as a threshold for achieving sanitization. *Id.* DOE therefore proposed specifying in new appendix J that the Extra-Hot Wash threshold be 140 °F. *Id.* DOE preliminarily concluded that a temperature threshold of 140 °F would align with 140 °F as an accepted temperature threshold for sanitization, and therefore may be more representative of consumer expectations and usage of an Extra-Hot Wash cycle, than the current 135 °F threshold. *Id.*

In addition to improving representativeness, DOE noted in the September 2021 NOPR that changing the Extra-Hot Wash temperature threshold to 140 °F could potentially reduce test burden. *Id.* As discussed more fully in section III.C.5 of this document, a threshold of 140 °F would enable easier confirmation that an Extra-Hot temperature has been achieved when measuring wash temperature with non-reversible temperature indicator labels, as permitted by section 3.3 of appendix J2.

In the September 2021 NOPR, DOE requested comment on its proposal to specify in the new appendix J that the Extra-Hot Wash/Cold Rinse designation would apply to a wash temperature greater than or equal to 140 °F. 86 FR 49140, 49151. DOE also requested any additional data on the wash temperature of cycles that meet the appendix J2 definition of Extra-Hot Wash/Cold Rinse. *Id.* DOE also expressed interest in data and information on any potential impact to testing costs that may occur by changing the Extra-Hot Wash temperature threshold, and the impacts on manufacturer burden associated with any changes to the Extra-Hot Wash/Cold Rinse definition. *Id.*

Whirlpool commented that it supports DOE's proposal to change the Extra-Hot Wash temperature threshold to 140 °F because that is the minimum threshold temperature for various international clothes sanitization standards, including the standards published by the World

[23] Section 1.25 of appendix J2 defines the Normal cycle as the cycle recommended by the manufacturer (considering manufacturer instructions, control panel labeling, and other markings on the clothes washer) for normal, regular, or typical use for washing up to a full load of normally soiled cotton clothing. For machines where multiple cycle settings are recommended by the manufacturer for normal, regular, or typical use for washing up to a full load of normally soiled cotton clothing, then the Normal cycle is the cycle selection that results in the lowest IMEF or MEF_{J2} value.

Health Organization. (Whirlpool, No. 26 at p. 5) Whirlpool additionally suggested that there should be consideration of some tolerance on top of this threshold temperature at 140 °F (*e.g.,* 2 °F). (*Id.*) Whirlpool further explained that without including a tolerance, a manufacturer using this Extra-Hot temperature setting for sanitization may be penalized for conservatively setting higher Extra-Hot temperature settings beyond 140 °F to account for temperature variation during a sanitization period. (*Id.*) Whirlpool added that, using submersible temperature loggers to measure water temperatures, as proposed in the September 2021 NOPR,[24] there should be no issue identifying when such an Extra-Hot water temperature threshold (*e.g.,* 142 °F or 143 °F) is reached. (*Id.*)

DOE notes that the Extra-Hot Wash temperature is a threshold temperature, rather than a target temperature; as such, defining a tolerance on the 140 °F threshold, as suggested by Whirlpool, would not be appropriate. Adding a tolerance to the threshold value would effectively result in raising the threshold value by the tolerance amount. DOE notes that the current Extra-Hot Wash threshold of 135 °F does not have a defined tolerance. Any wash temperature that meets or exceeds the threshold temperature would be considered an Extra-Hot Wash. For these reasons, DOE is not adding a tolerance to the threshold value for the Extra-Hot Wash water temperature in this final rule.

As discussed previously, any impacts to measured energy as a result of changes to the definition of Extra-Hot Wash were accounted for in the crosswalk between the appendix J2 and appendix J metrics developed for the September 2021 RCW Standards Preliminary Analysis. DOE will continue to consider any such impacts in future stages of the standards rulemaking.

For the reasons discussed above, DOE is finalizing its proposal, consistent with the September 2021 NOPR, to specify in the new appendix J that the minimum temperature threshold for the Extra-Hot Wash/Cold Rinse is 140 °F. This change is reflected in the Extra-Hot Wash/Cold Rinse flowchart and the Hot Wash/Cold Rinse flowchart in section 2.12.1 of the new appendix J, as well as any references to this temperature threshold elsewhere throughout the new appendix J. DOE reiterates that any impacts to measured energy as a result of changes to the definition of Extra-Hot Wash will be accounted for in the crosswalk between the appendix J2 and appendix J metrics as part of the ongoing standards analysis, such that DOE does not expect the changes implemented in this final rule to require significant product redesign.

5. Wash Water Temperature Measurement

Section 3.3 of appendix J2 allows the use of non-reversible temperature indicator labels to confirm that a wash temperature greater than the Extra-Hot Wash threshold temperature of 135 °F has been achieved. As discussed in the September 2021 NOPR, DOE is aware that none of the temperature indicator labels on the market provide an indicator at 135 °F, the current Extra-Hot Wash water temperature threshold. 86 FR 49140, 49152. Because of this, temperature indicator labels can be used to confirm that the water temperature reached 135 °F only if the water temperature exceeds 140 °F. *Id.* Such temperature indicator labels are unable to identify an Extra-Hot Wash/Cold Rinse cycle if the temperature of the cycle is greater than 135 °F but less than 140 °F. *Id.* DOE recognizes the potential benefit of other methods of measurement to supplement or replace the temperature indicator labels. *Id.*

In the September 2021 NOPR, DOE proposed to allow the use of a submersible temperature logger as an additional temperature measurement option to confirm that an Extra-Hot Wash temperature greater than 135 °F has been achieved during the wash cycle for appendix J2, and greater than 140 °F for new appendix J. *Id.* DOE proposed that the submersible temperature logger must have a time resolution of at least one data point every 5 seconds and a temperature measurement accuracy of ±1 °F. *Id.* As described currently for temperature indicator labels, the proposed amendment included a note that failure to measure a temperature of 135 °F would not necessarily indicate of the lack of an Extra-Hot Wash temperature. *Id.* However, such a result would not be conclusive due to the lack of verification of that the required water temperature was achieved, in which case an alternative method must be used to confirm that an Extra-Hot Wash temperature greater than 135 °F has been achieved during the wash cycle. *Id.*

DOE requested comment on its proposal to allow the use of a submersible temperature logger in appendix J2 and new appendix J as an option to confirm that an Extra-Hot Wash temperature greater than the Extra-Hot Wash threshold has been achieved during the wash cycle. *Id.* DOE also requested data and information confirming (or disputing) DOE's discussion of the benefits and limitations of using a submersible temperature logger, including DOE's determination that a submersible logger's failure to measure a temperature greater than the Extra-Hot Wash threshold does not necessarily indicate that the cycle under test does not meet the definition of an Extra-Hot Wash/Cold Rinse cycle. *Id.*

AHAM commented in support of DOE's proposal to allow the use of a submersible temperature logger, but noted that the shift in the Extra-Hot Wash temperature threshold makes this change less necessary than it may have been in the past. (AHAM, No. 27 at p. 10)

Whirlpool commented in support of DOE's proposal to allow for the use of a submersible temperature logger as an additional temperature measurement option to confirm that the Extra-Hot Wash temperature threshold has been achieved during the wash cycle. (Whirlpool, No. 26 at p. 6)

DOE also proposed in the September 2021 NOPR to move the description of allowable temperature measuring devices from section 3.3 of appendix J2 to section 2.5.4 of both appendix J2 and the proposed new appendix J (''Water and air temperature measuring devices''), specifying the use of non-reversible temperature indicator labels in new section 2.5.4.1, and adding specifications for the use of submersible temperature loggers to new section 2.5.4.2 of both appendix J2 and the proposed new appendix J. 86 FR 49140, 49152.

DOE received no comments in response to its proposal to move the description of allowable temperature measuring devices.

For the reasons discussed above, DOE finalizes its proposal, consistent with the September 2021 NOPR, to allow the use of a submersible temperature logger in appendix J2 and new appendix J as an option to confirm that an Extra-Hot Wash temperature greater than the Extra-Hot Wash threshold has been achieved during the wash cycle. DOE also finalizes its proposal, consistent with the September 2021 NOPR, to restructure section 2.5.4 of appendix J2 and new appendix J as described.

6. Pre-Conditioning Requirements

Section 2.11 of appendix J2 specifies the procedure for clothes washer pre-conditioning. The current preconditioning procedure requires that any clothes washer that has not been

[24] See discussion of wash temperature measurements in section III.C.4 of this document.

filled with water in the preceding 96 hours, or any water-heating clothes washer that has not been in the test room at the specified ambient conditions for 8 hours, must be preconditioned by running it through a Cold Rinse cycle and then draining it to ensure that the hose, pump, and sump are filled with water. The purpose of pre-conditioning is to promote repeatability and reproducibility of test results by ensuring a consistent starting state for each test, as well as to promote the representativeness of test results by ensuring that the clothes washer is operated consistent with the defined ambient conditions. In particular, the additional specification for water-heating clothes washers was first suggested in a supplemental NOPR published on April 22, 1996, (''April 1996 SNOPR''), in which DOE expressed concern about the testing of water-heating clothes washers that may have been stored at a temperature outside of the specified ambient temperature range (75 °F ± 5 °F) prior to testing. 61 FR 17589, 17594–17595. DOE stated that the energy consumed in a water-heating clothes washer may be affected by the ambient temperature. *Id.* Thus, if the ambient temperature prior to and during testing is relatively hot, then less energy will be consumed than under typical operating conditions, *i.e.,* the test would understate the clothes washer's energy consumption. *Id.* Conversely, if the ambient temperature prior to and during the test is relatively cold, then the test would overstate the clothes washer's energy consumption. *Id.* In the subsequent August 1997 Final Rule, DOE added the pre-conditioning requirement for water-heating clothes washers, which requires water-heating units to be pre-conditioned if they had not been in the test room at ambient conditions for 8 hours. 62 FR 45484, 45002, 45009, 45010.

In the September 2021 NOPR, DOE expressed concern that the energy use of non-water-heating clothes washers could also be affected by the starting temperature of the clothes washer, particularly those that implement temperature control by measuring internal water temperatures during the wash cycle. 86 FR 49140, 49153. For example, if the ambient temperature prior to testing is relatively hot, causing the internal components of the clothes washer to be at a higher temperature than the specified ambient temperature range, less hot water may be consumed during the test than otherwise would be if the starting temperature of the clothes washer is within the specified ambient temperature range. *Id.* Noting that third-party test laboratories cannot necessarily identify whether a unit is a water-heating clothes washer or not, DOE proposed to require pre-conditioning for all clothes washers that have not been in the test room at the specified ambient condition for 8 hours, regardless of whether the clothes washer is water-heating or non-water-heating. 86 FR 49140, 49153. DOE proposed to make this change only in new appendix J, due to the potential impact on the measured energy use. *Id.*

DOE requested comment on this proposal and requested information regarding whether test laboratories typically pre-condition water-heating and non-water-heating clothes washers using the same procedure. *Id.*

DOE also proposed in the September 2021 NOPR to remove the definitions of ''water-heating clothes washer'' and ''non-water-heating clothes washer'' from section 1 of the proposed new appendix J, since the differentiation between these terms would no longer be needed.

The Joint Commenters commented in support of DOE's proposal to specify preconditioning of all clothes washers before measurement in order to ensure reproducibility. (Joint Commenters, No. 31 at p. 10)

Whirlpool commented that, pending results from investigative testing, Whirlpool tentatively agrees with DOE's proposal to require the pre-conditioning procedure for all clothes washers because it would reduce overall variation, and would remove any possible small advantage from leftover warm water or warmer components from the previous cycle(s). (Whirlpool, No. 26 at p. 6)

For the reasons discussed above, DOE finalizes its proposal, consistent with the September 2021 NOPR, to require pre-conditioning for all clothes washers that have not been in the test room at the specified ambient condition for 8 hours, regardless of whether the clothes washer is water-heating or non-water-heating, in new appendix J. DOE also finalizes its proposal, consistent with the September 2021 NOPR, to remove the definitions of ''water-heating clothes washer'' and ''non-water-heating clothes washer'' from section 1 of new appendix J.

D. Cycle Selection and Test Conduct

1. Tested Load Sizes

Table 5.1 of appendix J2 provides the minimum, average, and maximum load sizes to be used for testing based on the measured capacity of the clothes washer. The table defines capacity ''bins'' in 0.1 ft^3 increments. The load sizes for each capacity bin are determined as follows:

- Minimum load is 3 pounds (''lb'') for all capacity bins;
- Maximum load (in lb) is equal to 4.1 times the mean clothes washer capacity of each capacity bin (in ft^3); and
- Average load is the arithmetic mean of the minimum load and maximum load.

These three load sizes are used for testing clothes washers with automatic water fill control systems (''WFCS''). Clothes washers with manual WFCS are tested with only the minimum and maximum load sizes.

a. Expanding the Load Size Table

Table 5.1 of appendix J2 previously accommodated clothes washers with capacities up to 6.0 ft^3. On May 2, 2016 and April 10, 2017, DOE granted waivers to Whirlpool and Samsung, respectively, for testing RCWs [25] with capacities between 6.0 and 8.0 ft^3, by further extrapolating Table 5.1 using the same equations to define the maximum and average load sizes as described above. 81 FR 26215; 82 FR 17229. DOE's regulations in 10 CFR 430.27 contain provisions allowing any interested person to seek a waiver from the test procedure requirements if certain conditions are met. A waiver requires manufacturers to use an alternate test procedure in situations where the DOE test procedure cannot be used to test the product or equipment, or where use of the DOE test procedure would generate unrepresentative results. 10 CFR 430.27(a)(1). DOE's regulations at 10 CFR 430.27(l) require that as soon as practicable after the granting of any waiver, DOE will publish in the **Federal Register** a NOPR to amend its regulations so as to eliminate any need for the continuation of such waiver. As soon thereafter as practicable, DOE will publish in the **Federal Register** a final rule. 10 CFR 430.27(l).

In the September 2021 NOPR, DOE proposed to expand Table 5.1 in both appendix J2 and the new appendix J to accommodate clothes washers with capacities up to 8.0 ft^3. 86 FR 49140, 49153. In appendix J2, DOE proposed to expand Table 5.1 using the same equations as the current table, as described above, and consistent with the load size tables provided in the two granted waivers. *Id.* For the new appendix J, DOE proposed to expand Table 5.1 based on a revised

[25] As noted, CCWs are limited under the statutory definition to a maximum capacity of 3.5 cubic feet for horizontal-axis CCWs and 4.0 cubic feet for vertical-axis CCWs. (42 U.S.C. 6311(21))

methodology for defining the load sizes, as further discussed in section III.D.1.b of this document. *Id.* DOE requested comment on its proposal to expand the load size table in both appendix J2 and the new appendix J to accommodate RCWs with capacities up to 8.0 ft^3. *Id.*

AHAM commented in support of DOE's proposal to expand the load size table in appendix J2 and new appendix J to accommodate clothes washers with capacities up to 8.0 ft^3. (AHAM, No. 27 at p. 10)

For the reasons stated above, DOE is finalizing its proposal, consistent with the September 2021 NOPR, to expand Table 5.1 in both appendix J2 and the new appendix J to accommodate clothes washers with capacities up to 8.0 ft^3. DOE further discusses the termination of the subject waivers in section III.L of this document.

b. Defining New Load Sizes

As discussed in the previous section, appendix J2 currently defines three load sizes for automatic clothes washers (minimum, average, and maximum) for each capacity bin in Table 5.1 of the appendix. The current load size definitions (*i.e.,* the defining of three load sizes, and the equations used to determine each of the three load sizes) are based on consumer usage data analyzed during the test procedure rulemaking that culminated in the August 1997 Final Rule. As part of that rulemaking, AHAM presented to DOE data from the Procter & Gamble Company (''P&G'') showing the distribution of consumer load sizes for 2.4 ft^3 and 2.8 ft^3 clothes washers, which represented typical clothes washer capacities at the time (''1995 P&G data'').[26] The 1995 P&G data indicated that the distribution of consumer load sizes followed an approximate normal distribution slightly skewed towards the lower end of the size range.

In response to the May 2020 RFI, the Northwest Energy Efficiency Alliance (''NEEA'') submitted a comment that cited data from a 2014 Field Study published on November 10, 2014 (''2014 NEEA Field Study'').[27] 86 FR 49140, 49156. The 2014 NEEA Field Study found an average clothes washer load size of 7.6 lb, which NEEA characterized as being close to the average load size of 8.5 lb that corresponds with the 2010 market-weighted average capacity of 3.5 ft^3. *Id.* NEEA stated, however, that the market-weighted average capacity as of 2019 has increased to 4.4 ft^3, for which appendix J2 defines an average load size of 10.4 lb.[28] *Id.* NEEA asserted that using a fixed average load size of 7.6 lb would increase representativeness, stating that the growing inconsistency between field-measured average load size and appendix J2-calculated average load size indicates that average load size is independent of clothes washer capacity and is relatively small. *Id.* NEEA also stated that using a fixed average load size would reduce test burden, since less work would be required by the laboratory to build an inventory of custom appendix J2-defined average loads for each clothes washer capacity. *Id.*

As stated in the September 2021 NOPR, DOE did not agree with NEEA's conclusion that the 2014 NEEA field study confirms that the field average load size is independent of clothes container size and is relatively small. *Id.* In particular, NEEA did not present any field data demonstrating average consumer load sizes for a sample of clothes washers with an average capacity of 4.4 ft^3. *Id.* Therefore, DOE stated in the September 2021 NOPR that no conclusions could be drawn from the 2014 NEEA Field Study regarding how consumer load sizes may have changed as average clothes washer capacity has increased from around 3.5 ft^3 in 2010 to 4.4 ft^3 in 2019. *Id.* While DOE agreed that using a fixed average load size could decrease test burden by avoiding the need to inventory different average load sizes for each possible capacity, for the reasons described above, DOE preliminarily concluded that the data provided by NEEA do not justify using a fixed average load size across all clothes container capacities. *Id.* DOE stated in the September 2021 NOPR that it is not aware of any more recent, nationally representative field data indicating that the consumer load size distribution in relation to clothes washer capacity has changed since the introduction of the three load sizes in the August 1997 Final Rule. 86 FR 49140, 49158.

Given the increasing prevalence of more feature-rich clothes washer models that require a higher number of test cycles under appendix J2, DOE proposed in the September 2021 NOPR to reduce test burden by reducing the number of defined load sizes for the proposed new appendix J from three to two for clothes washers with automatic WFCS. Specifically, DOE proposed to replace the minimum, maximum, and average load sizes for automatic clothes washers with two new load sizes in the new appendix J, designated as ''small'' and ''large.'' 86 FR 49140, 49157. The new proposed small and large load sizes would continue to represent the same roughly normal distribution presented in the 1995 P&G data described previously. The weighted-average load size using the proposed small and large load sizes would match the weighted-average load size using the current minimum, average, and maximum load sizes. The small and large load sizes would represent approximately the 25th and 75th percentiles of the normal distribution, respectively. As proposed, the small and large load sizes would have equal load usage factors (''LUFs'') [29] of 0.5.

Specifically, DOE proposed to calculate the ''small'' and ''large'' load sizes using Equation III.1 and Equation III.2, respectively. 86 FR 49140, 49158.

$$\text{Small load size } [lb] = 0.90 \times \text{Capacity } [ft^3] + 2.34$$

Equation III.1 Proposed Determination of the Small Test Load Size

$$\text{Large load size } [lb] = 3.12 \times \text{Capacity } [ft^3] + 0.72$$

Equation III.2 Proposed Determination of the Large Test Load Size

[26] The full data set presented by AHAM is available at *www.regulations.gov/document/EERE-2006-TP-0065-0027.*

[27] Hannas, Benjamin; Gilman, Lucinda. 2014. *Dryer Field Study* (Report#E14 287). Portland, OR. Northwest Energy Efficiency Alliance. Available online at: *neea.org/resources/rbsa-laundry-study.*

[28] NEEA's estimate of 4.4 ft^3 average capacity in 2019 is based on NEEA's 2019 ENERGY STAR Retail Products Platform data.

[29] LUFs are weighting factors that represent the percentage of wash cycles that consumers run with a given load size and are discussed further in section III.G.5 of this document.

In the September 2021 NOPR, DOE tentatively concluded that the new small and large load sizes would substantially reduce test burden while maintaining or improving representativeness. 86 FR 49140, 49153. DOE's proposal would reduce test burden under the new appendix J by requiring only two load sizes to be tested instead of three for clothes washers with automatic WFCS. *Id.* 86 FR at 49158. Specifically, the number of cycles tested would be reduced by 33 percent for clothes washers with automatic WFCS, which represent a large majority of clothes washers on the market. *Id.* DOE tentatively concluded that this proposal would maintain representativeness because the new proposed small and large load sizes would continue to represent the same roughly normal distribution presented in the 1995 P&G data described previously. *Id.* at 86 FR 49157. The weighted-average load size using the proposed small and large load sizes would match the weighted-average load size using the current minimum, average, and maximum load sizes, and thus would produce test results with equivalent representativeness. 86 FR 49140, 49158. Further, defining the small and large loads to represent approximately the 25th and 75th percentiles of the normal distribution could improve representativeness by balancing the goal of capturing as large of a load size range as possible while remaining representative of the ''peak'' of the load distribution curve, which represents the most frequently used load sizes. *Id.*

As noted in the September 2021 NOPR, clothes washers with manual WFCS are tested only with the minimum and maximum load sizes, in contrast to clothes washers with automatic WFCS, which are tested with all three load sizes in appendix J2. 86 FR 49140, 49158. Given DOE's proposal to define only two load sizes in the proposed new appendix J, DOE proposed in the September 2021 NOPR that the same two load sizes be used for all clothes washers, regardless of whether a clothes washer's WFCS is automatic or manual. *Id.*

DOE requested comment on its proposal to replace the minimum, maximum, and average load sizes with the small and large load sizes in the new appendix J. 86 FR 49140, 49158–49159. DOE sought comment on how reducing the number of load sizes tested would impact the representativeness of test results. *Id.* DOE also requested data and information to quantify the reduction in test burden that would result from reducing the number of load sizes from three to two for clothes washers with automatic WFCS. *Id.*

The Joint Commenters, CA IOUs, and Joint Efficiency Advocates expressed concern that the 1995 P&G data used to determine the representative load sizes for new appendix J are out of date. (Joint Commenters, No. 31 at pp. 8–9; CA IOUs, No. 29 at pp. 3–5; Joint Efficiency Advocates, No. 28 at pp. 4–5) The Joint Commenters and Joint Efficiency Advocates further commented that capacities represented in the P&G study (2.4 and 2.8 ft^3) are much smaller than the current market average of 4.4 ft^3, and asserted that extrapolation of the P&G data may not be appropriate, especially as DOE proposes to extend its test procedure to include basket sizes from 6.0 to 8.0 ft^3. (Joint Commenters, No. 31 at pp. 8–9; Joint Efficiency Advocates, No. 28 at pp. 4–5) The CA IOUs noted that, at the time of the 1995 P&G Study, the ''regular'' 2.4 ft^3 and ''large'' 2.8 ft^3 clothes washers had average load sizes of 5.7 lb and 6.7 lb, respectively; but as the average tub volume has since increased to almost 4.0 ft^3, the average clothes washer on the market today uses a weighted-average test load size of 9.7 lb. (CA IOUs, No. 29 at pp. 3–5) The Joint Commenters also commented that clothes washers in 1995, when the P&G study was published, were much less feature rich than today, and that the P&G study may not represent consumer choice about load size on modern clothes washers. (Joint Commenters, No. 31 at pp. 8–9) The Joint Commenters stated as an example that consumers may separate a single load into multiple smaller loads to tailor the available washing cycles to the textiles. (*Id.*)

The CA IOUs presented data from a forthcoming paper titled ''PG&E Home Energy Use Study—Laundry Weight Report,'' (''2021 PG&E data''), which surveyed 97 California households and which the CA IOUs characterized as finding no significant relationship between clothes washer capacity and load size. (CA IOUs, No. 29 at pp. 3–5) The CA IOUs commented that these findings from the PG&E study align with comments made by NEEA and the Joint Efficiency Advocates [30] in response to the May 2020 RFI, which the CA IOUs characterized as also finding no correlation between clothes washer capacity and load size. (*Id.*) The CA IOUs further commented that the findings from the 2021 PG&E data do not reflect what is represented in Table 5.1 of appendix J2 and new appendix J. (*Id.*) In their comment on the September 2021 NOPR, the CA IOUs categorized the 2021 PG&E data by capacity: Clothes washers with capacities less than 4.0 ft^3, clothes washers with capacities between 4.0 and 5.0 ft^3, and clothes washers with capacities greater than 5.0 ft^3. (*Id.*) Each capacity category showed a roughly normal distribution in load size, but the average load size was roughly the same for all three categories: 8.01 lb for clothes washers smaller than 4.0 ft^3, 8.34 lb for clothes washers between 4.0 and 5.0 ft^3, and 7.17 for clothes washers larger than 5.0 ft^3. (*Id.*) The CA IOUs commented that, in contrast, Table 5.1 in new appendix J would define load sizes of 8.25 lb for clothes washers smaller than 4.0 ft^3, 10.28 lb for clothes washers between 4.0 and 5.0 ft^3, and 12.28 for clothes washers larger than 5.0 ft^3. (*Id.*)

The Joint Efficiency Advocates also commented that using the proposed large and small load sizes continues to result in test loads for large-capacity washers being significantly greater than those for smaller clothes washers. (Joint Efficiency Advocates, No. 28 at pp. 4–5) For example, the small and large loads for a 6.0 ft^3 clothes washer are 7.74 and 19.44 lb, respectively, compared to load sizes of 5.49 and 11.64 lb, respectively, for a 3.5 ft^3 clothes washer. (*Id.*) The Joint Efficiency Advocates commented that a large difference in load sizes between capacities is not consistent with the 2014 NEEA Field Study or with the 2021 PG&E data presented by the CA IOUs in response to the September 2021 NOPR. *(Id.)* The Joint Efficiency Advocates expressed concern that larger capacity clothes washers may be less efficient than smaller capacity clothes washers when washing a load of 7 to 8 lb, which they asserted is a load size more representative of real-world conditions. (*Id.*) The Joint Efficiency Advocates also referenced a 2020 report published by NEEA titled ''Coming Clean: Revealing Real-World Efficiency of Clothes Washers'' [31] (''2020 NEEA Report''), which presented test results from 12 RCWs and suggested that an efficiency rank order change was observed when testing the appendix J2-specified maximum load versus a

[30] In the September 2021 NOPR, the set of joint commenters including Appliance Standards Awareness Project, American Council for an Energy-Efficient Economy, Consumer Federation of America, and Natural Resources Defense Council was abbreviated as the ''Joint Commenters'' and this is how the CA IOUs refer to them in their comment. In this document, that same set of commenters is abbreviated as the ''Joint Efficiency Advocates,'' and are therefore referred to as such here.

[31] Foster Porter, Suzanne; Denkenberger, Dave. 2020. *Coming Clean: Revealing Real-World Efficiency of Clothes Washers.* Portland, OR. Northwest Energy Efficiency Alliance. Available online at: *neea.org/resources/coming-clean-revealing-real-world-efficiency-of-clothes-washers.*

constant load of 8.45 lb. (*Id.*) The Joint Efficiency Advocates summarized an example from the 2020 NEEA Report showing that among front-loading RCWs, the largest unit in the sample demonstrated the most efficient performance at the maximum load, but the least efficient performance using the constant 8.45 lb load. (*Id.*)

The Joint Commenters commented that they understand DOE's reasons for rejecting the data from the 2014 NEEA Field Study on the grounds that they are regional and seasonal in nature, and that they represent a limited sample size. (Joint Commenters, No. 31 at pp. 8–9) The CA IOUs expressed a similar sentiment, and stated that they acknowledge DOE's concerns regarding the potential limitations of regional studies such as the ones presented by the CA IOUs' in response to the May 2020 RFI. (CA IOUs, NO. 29 at pp. 3–5)

The Joint Commenters, CA IOUs, and Joint Efficiency Advocates recommended that DOE conduct further investigation regarding load sizes. (Joint Commenters, No. 31 at pp. 8–9; CA IOUs, No. 29 at pp. 3–5; Joint Efficiency Advocates, No. 28 at pp. 4–5) The Joint Commenters and CA IOUs recommended that, before the next clothes washer test procedure update, DOE should commission a nationally representative field laundry study to improve representativeness of modern load sizes. (Joint Commenters, No. 31 at pp. 8–9; CA IOUs, No. 29 at pp. 3–5) The Joint Efficiency Advocates encouraged DOE to investigate the relationship between clothes washer capacity and energy/water use at a constant load size and to consider specifying constant load sizes across all capacities. (Joint Efficiency Advocates, No. 28 at pp. 4–5)

Additionally, the Joint Commenters commented that there was no information available on the 1995 P&G study to confirm whether the study was nationally, annually, and statistically representative of households in the U.S. (Joint Commenters, No. 31 at pp. 8–9) The Joint Commenters expressed concern that the P&G study may not be more geographically and seasonally relevant than the more recent NEEA laundry study. (*Id.*) The Joint Commenters also added that NEEA is planning to update its regional laundry study and would welcome a conversation with DOE to determine how its regional data could be made more relevant or complementary to DOE's own study. (*Id.*)

AHAM commented that it appreciates DOE's proposal to reduce the number of load sizes tested from three to two, stating that at a first glance, it appears that DOE's proposed new load sizes will reduce test burden. (AHAM, No. 27 at p. 4) AHAM commented, however, that it must complete its testing in order to more holistically evaluate DOE's proposal and provide feedback to DOE on the reduction in test burden and the representativeness of test results. (*Id.*) AHAM added that the proposed new load sizes could lead to a need for significant product redesign, and could potentially impact RMC. (*Id.*)

Samsung recommended that DOE continue to use three test load sizes. (Samsung, No. 30 at pp. 2–3) Samsung explained that while reducing the number of load sizes would reduce test burden and represent the same statistical load usage distribution as in appendix J2, automatic WFCSs have been generally designed to detect three to four discrete load levels (*e.g.,* minimum, average, maximum, and full). (*Id.*) Samsung expressed concern that reducing the test load to two sizes could result in manufacturers changing the load detection algorithm designs to detect a lower number of discrete load levels, which could increase the amount of water and energy use by consumers. (*Id.*) Samsung further explained that changing from three to two load sizes could result in clothes washers using a larger amount of water than necessary for loads smaller than the ''small'' load, and more water for loads larger than the ''large'' load. (*Id.*)

P.R. China recommended that DOE increase the proposed large load size. (P.R. China, No. 25 at p. 3) P.R. China commented that, since the proposed small and large load sizes are relatively smaller than the current average and maximum load sizes, they only evaluate the energy consumption of a clothes washer that is loaded with half or less of the full capacity. (*Id.*) P.R. China expressed concern that using the proposed small and large load sizes would not be reflective of energy consumption for a clothes washer that is heavily or fully loaded, which P.R. China asserted is more common in normal use. (*Id.*)

DOE greatly appreciates the additional consumer usage data provided by commenters and submitted to the docket for DOE's consideration. The 2021 PG&E data suggests that a roughly normal distribution of load sizes remains applicable across the range of clothes washer capacities represented in the report (roughly 3.3 to 5.3 ft^3), consistent with the trend from the 1995 P&G data. DOE also acknowledges that the results of the 2021 PG&E data are suggestive that consumers may not be consistently loading larger capacity machines with proportionately larger load sizes (on average), as is implied by the relationship between load sizes and capacity defined in Table 5.1 of appendix J2. DOE remains concerned, however, that the 2021 PG&E data is not nationally representative. DOE would expect clothing load composition to vary significantly among regions of the United States (*e.g.,* warmer and colder climates, urban and rural households), which could coincide with different load size patterns in clothes washer usage. DOE is also mindful that population demographics (*e.g.,* household size, age of household members, *etc.*) could also affect laundry usage patterns. DOE also notes that the results from the 2021 PG&E data conflict with 2016 PG&E data presented previously by the CA IOUs in response to the May 2020 RFI, which suggested that consumer average load sizes for clothes washers in the range of 2 to 5 ft^3 capacity are *larger* than the appendix J2 load sizes. 86 FR 49140, 49157. The conflicting conclusions between the submitted reports as well as their limited geographic representation do not provide sufficient justification for DOE to change the relationship of load size with capacity at this time.

DOE continues to welcome additional data that could be used to inform future changes to the test load sizes. DOE potentially would consider a collection of diverse regional studies as a proxy for a single nationally representative data set. As suggested by the Joint Commenters, DOE welcomes further dialogue to determine how additional regional data could be made more relevant or complementary to DOE's consideration of potential further amendments to the test procedure.

DOE also appreciates AHAM's intention to provide test data for DOE to consider when it becomes available. DOE reiterates that any impacts to measured energy, however minor, as a result of changes to the load size definitions were accounted for in the crosswalk between the appendix J2 and appendix J metrics developed for the September 2021 RCW Standards Preliminary Analysis. DOE will continue to consider any such impacts in future stages of the standards rulemaking.

In response to Samsung's concern that reducing the number of load sizes to two could result in manufacturers changing the load detection algorithms in way that could increase water and energy use, DOE acknowledges that the small and large load sizes proposed for appendix J represent a narrower range than the range represented by the

minimum and maximum load sizes specified in appendix J2.[32] DOE expects that any changes that manufacturers would make to the load detection algorithms to optimize performance when tested to appendix J (which Samsung asserted could result in fewer discrete water fill levels) would be balanced against consumer expectation that when using an adaptive fill setting, the quantity of water determined by the clothes washer appropriately matches the size of the load. Changing the test procedure load size definitions does not preclude clothes washer manufacturers from designing load sensing algorithms from detecting any number of discrete load levels. DOE further notes that the historical data and more recent data discussed in this section indicate that consumer load size distribution follows a roughly normal distribution. Any impacts due to the type of load detection changes described by Samsung would be expected to affect the ''tail ends'' of the normal distribution, which by definition represent relatively low consumer usage; *i.e.,* the very small and very large load sizes that could be impacted are not as representative of average consumer use as the range of load sizes represented by the small and large load sizes as proposed. Weighing all of these factors, DOE has determined that the use of two load sizes as proposed in the September 2021 NOPR provides a reasonable balance between considerations of representativeness and test burden as required by EPCA. 42 U.S.C. 6293(b)(3); 42 U.S.C. 6314(a)(2)

In response to P.R. China's comment on the distribution of load sizes, DOE does not agree with the assertion that small and large load sizes as proposed in the September 2021 NOPR represent half or less than half of the full capacity. As proposed, the large load size in appendix J represents roughly 80 percent of the maximum load size defined in appendix J2; *i.e.,* roughly 80 percent of the full capacity of a clothes washer.[33] As discussed, historical and recent data indicate that U.S. consumer load size distribution follows a roughly normal distribution, such that the maximum load size is much less commonly used than the load sizes proposed for appendix J.

Taking into consideration the discussion presented in the September 2021 NOPR, comments submitted by interested parties in response to DOE's proposals, and DOE's analysis and response to comments, DOE finalizes its proposal, consistent with the September 2021 NOPR, to replace the minimum, maximum, and average load sizes with the small and large load sizes in new appendix J. As discussed, DOE welcomes any opportunities to continue working with interested parties to collect nationally representative data on the relationship between load size and capacity. DOE reiterates that any impacts to measured energy as a result of changes to the tested load sizes will be accounted for in the crosswalk between the appendix J2 and appendix J metrics as part of the ongoing standards analysis, such that DOE does not expect the changes implemented in this final rule to require significant product redesign.

2. Water Fill Setting Selections for the Proposed Load Sizes

Section 3.2.6 of appendix J2 prescribes the water fill setting selections to use with each load size based on the type of WFCS on the clothes washer. As discussed in section III.D.1.b of this document, consistent with the proposal in the September 2021 NOPR, DOE is defining new small and large load sizes in appendix J, in contrast to the minimum, maximum, and average load sizes defined in appendix J2. 86 FR 49140, 49159–49160. To test clothes washers using these new small and large load sizes, the appropriate water fill setting selections also needs to be provided in the new appendix J for each load size for each type of WFCS.

Appendix J2 defines two main types of WFCS: Manual WFCS, which ''requires the user to determine or select the water fill level,'' and automatic WFCS, which ''does not allow or require the user to determine or select the water fill level, and includes adaptive WFCS and fixed WFCS.'' Sections 1.22 and 1.5 of appendix J2, respectively. Section 3.2.6.2 of appendix J2 further distinguishes between user-adjustable and not-user-adjustable automatic WFCS. Additionally, section 3.2.6.3 of appendix J2 accommodates clothes washers that have both an automatic WFCS and an alternate manual WFCS. Amendments to the definitions of fixed WFCS and user-adjustable WFCS are further discussed in section III.H.3.a of this document.

Section 3.2.6.1 of appendix J2 specifies that clothes washers with a manual WFCS are set to the maximum water level available for the wash cycle under test for the maximum test load size and the minimum water level available for the wash cycle under test for the minimum test load size.

Section 3.2.6.2.1 of appendix J2 specifies that clothes washers with non-user-adjustable automatic WFCS are tested using the specified maximum, minimum, and average test load sizes, and that the maximum, minimum, and average water levels are selected by the control system when the respective test loads are used (*i.e.,* no selection of water fill level is required by the user).

Section 3.2.6.2.2 of appendix J2 specifies that clothes washers with user-adjustable automatic WFCS undergo four tests. The first test is conducted using the maximum test load and with the automatic WFCS set in the setting that will give the most energy intensive result. The second test is conducted with the minimum test load and with the automatic WFCS set in the setting that will give the least energy intensive result. The third test is conducted with the average test load and with the automatic WFCS set in the setting that will give the most energy intensive result for the given test load. The fourth test is conducted with the average test load and with the automatic WFCS set in the setting that will give the least energy intensive result for the given test load. The energy and water consumption for the average test load and water level are calculated as the average of the third and fourth tests.

In the September 2021 NOPR, DOE proposed to specify the use of the second-lowest water fill level setting for the proposed small load size, and the maximum water fill level setting for the proposed large load size for clothes washers with manual WFCS. 86 FR 49140, 49159. DOE proposed to use the second-lowest water fill level setting for the proposed small size because the proposed small load is larger than the current minimum load, and using the minimum water fill setting for the larger-sized ''small'' load may not be representative of consumer use, particularly because consumers tend to select more water than is minimally necessary for the size of the load being washed. *Id.* Although DOE was not aware of any clothes washers with manual WFCS currently on the market with only two water fill level settings available, DOE also proposed to accommodate such a design by specifying that if the water fill level selector has two settings available for the wash cycle under test, the minimum

[32] As discussed, the small and load sizes proposed for appendix J are defined at approximately the 25th and 75th percentiles of the normal distribution, respectively; whereas the minimum and maximum load sizes under appendix J2 are defined at approximately the 14th and 88th percentiles of the normal distribution, respectively, as described in the September 2021 NOPR. 86 FR 49140, 49154.

[33] DOE assumes that the maximum load size defined in appendix J2 represents 100 percent full capacity.

water fill level setting would be selected for the small load size, consistent with the current specification in appendix J2. *Id.*

To accommodate the proposed ''small'' and ''large'' load sizes in the new appendix J, DOE proposed to require testing clothes washers with user-adjustable WFCS using the small test load size at the setting that provides the least energy-intensive [34] result, and the large test load size at the setting that provides the most energy-intensive result. *Id.* This proposal captures the same range of water fill performance as the current test procedure (*i.e.,* capturing the range of least-intensive to most-intensive results). *Id.*

For clothes washers with non-user-adjustable automatic WFCS, no changes are required because the water fill levels are determined automatically by the WFCS.

DOE requested comment on its proposal to change the water fill level selections in the new appendix J for clothes washers with manual and user-adjustable automatic WFCS to reflect the proposed small and large test load sizes. 86 FR 49140, 49160.

The Joint Commenters commented in support of DOE's proposed water fill level selections for manual WFCSs in new appendix J. (Joint Commenters, No. 31 at p. 10). The Joint Commenters commented that DOE's proposal establishes a reasonable representation of normal consumer use given the load sizes proposed in new appendix J. *(Id.)*

Although AHAM did not comment specifically on the proposed changes to the water fill level selections, AHAM did comment on DOE's proposed definitions for certain types of WFCSs. DOE summarizes and addresses these comments in section III.H.3.a of this document.

For the reasons stated above, DOE finalizes its proposal, consistent with the September 2021 NOPR, to change the water fill level selections in the new appendix J for clothes washers with manual and user-adjustable automatic WFCS to reflect the proposed small and large test load sizes.

3. Determination of Warm Wash Tested Settings

Section 3.5 of appendix J2 states that if a clothes washer has four or more Warm Wash/Cold Rinse (''Warm/Cold'') temperature selections, either all discrete selections shall be tested, or the clothes washer shall be tested at the 25-percent, 50- percent, and 75-percent positions of the temperature selection device between the hottest hot (≤135 °F (57.2 °C)) wash and the coldest cold wash. If a selection is not available at the 25-, 50- or 75-percent position, in place of each such unavailable selection, the next warmer temperature selection shall be used. DOE refers to the latter provision as the ''25/50/75 test.'' Section 3.6 of appendix J2 states that the 25/50/75 test provision also applies to the Warm Wash/Warm Rinse (''Warm/Warm'') temperature selection.

DOE first established the 25/50/75 test in appendix J1 as part of the August 1997 Final Rule to address the test burden for clothes washers that offer a large number of warm wash temperature selections, if the test procedure were to require testing all warm temperature selections. 62 FR 45484, 45497. In the August 1997 Final Rule, DOE considered clothes washers with more than three warm wash temperatures to be clothes washers with infinite warm wash temperature selections, therefore allowing them to also use the 25/50/75 test. 62 FR 45484, 45498. DOE concluded at that time that testing at the various test points of the temperature range, with a requirement to test to the next higher selection if a temperature selection is not available at a specified test point, would provide data representative of the warm wash temperature selection offerings. *Id.*

In the September 2021 NOPR, DOE noted that the 25/50/75 test was adopted before the widespread use of electronic controls, which now allow for the assignment of wash water temperatures that may not reflect the physical spacing between temperature selections on the control panel. 86 FR 49140, 49160. For example, with electronic controls, the 25-percent, 50-percent, and 75-percent positions on the dial may not necessarily correspond to 25-percent, 50-percent, and 75-percent temperature differences between the hottest and coldest selections. *Id.* DOE is aware of clothes washers on the market with four or more warm wash temperature selections, in which the temperature selections located at the 25-, 50-, and 75- percent positions are low-temperature cycles that have wash temperatures only a few degrees higher than the coldest wash temperature; whereas the temperature selection labeled ''Warm'' is located beyond the 75-percent position on the temperature selection dial and is therefore not included for testing under the 25/50/75 test. *Id.*

In the September 2021 NOPR, DOE proposed to require testing of both the hottest Warm/Cold setting and the coldest Warm/Cold setting for all clothes washers in the new appendix J instead of the current provisions to either test all warm wash selections or conduct the 25/50/75 test. 86 FR 49140, 49161. Water consumption, electrical energy consumption, and all other measured values [35] would be averaged between the two tested cycles to represent the Warm/Cold cycle. *Id.* DOE proposed to make the same changes to the Warm/Warm cycle in the new appendix J. *Id.* DOE's proposal would decrease the test burden under the new appendix J for clothes washers that offer more than two Warm/Cold or Warm/Warm temperature settings, which DOE estimates represent around half of the market, by reducing the number of Warm/Cold and Warm/Warm tested cycles from three to two. *Id.*

Because this proposed approach may change the measured energy use of clothes washers that offer more than two Warm/Cold or Warm/Warm settings, the proposed edits were not proposed for appendix J2 and therefore would not affect the measured efficiency of existing clothes washers. *Id.* As discussed previously, any impacts to measured energy as a result of changes to the required warm wash settings were accounted for in the crosswalk between the appendix J2 and appendix J metrics developed for the September 2021 RCW Standards Preliminary Analysis. DOE will continue to consider any such impacts in future stages of the standards rulemaking.

In the September 2021 NOPR, DOE tentatively concluded that the proposed approach in the new appendix J would maintain representativeness by continuing to capture the complete range of Warm Wash temperatures available for selection (*i.e.,* by relying on an average of the hottest Warm/Cold setting and the coldest Warm/Cold setting). *Id.* For models that are currently tested using the 25/50/75 test and for which certain ''Warm'' settings are located beyond the 75-percent position on the temperature selection dial and therefore not included for testing, DOE's proposal would capture entire range of available Warm Wash temperatures available to the consumer, and therefore would improve representativeness. *Id.*

In the September 2021 NOPR, DOE requested comment on the proposal to

[34] As described in section III.H.3.b of this document, DOE is updating the phrase ''the setting that will give the most energy-intensive result'' to ''the setting that uses the most water'' (and likewise for the setting that will give the least energy-intensive result) to reflect the original intent of this provision.

[35] As discussed in sections III.D.4.a and III.D.5 of this document, DOE is requiring measurements of wet weight, and cycle time for each tested cycle under new appendix J.

require in the new appendix J testing only the hottest and the coldest Warm/Cold settings. *Id.* DOE also requested data and information on how this proposed change to the Warm Wash temperature settings required for testing would impact representativeness, testing costs, and manufacturer burden. *Id.*

The Joint Efficiency Advocates commented that DOE's proposal to require testing on the hottest Warm/Cold and coldest Warm/Cold settings for all clothes washers instead of the ''25/50/75'' test will more accurately reflect energy usage of Warm Wash settings while decreasing burden. (Joint Efficiency Advocates, No. 28 at pp. 2–3)

The Joint Commenters commented in support of DOE's proposal to test and average the hottest and coldest Warm/Cold temperatures and encouraged DOE to apply an identical approach to clothes washers with Warm/Warm settings. (Joint Commenters, No. 31 at pp. 3–4) The Joint Commenters further agreed with DOE's tentative determination that DOE's proposal concerning Warm/Cold testing would reduce test burden by eliminating test runs for clothes washers with more than two Warm/Cold settings, and increase representation of typical hot water use of clothes washer by testing temperature selections that would not have been tested using the 25/50/75 rule. (*Id.*)

AHAM commented that, while it appreciates DOE's attempt to ease testing burden in its proposal by only requiring testing on the hottest and coldest Warm/Cold settings for all clothes washers, using only coldest and hottest of the warm cycles could increase the measured water heating energy in the IMEF calculation. (AHAM, No. 27 at pp. 10–11) AHAM asserted that in order to offset this increase in water heating energy, the hottest warm setting would need to be redesigned with a reduced temperature, resulting in the hottest warm setting being cooler than what consumers expect for a warm setting. (*Id.*) AHAM also commented that additional testing is required to determine whether detergents, especially laundry pods, will dissolve as well at lower temperatures. (*Id.*) Lastly, AHAM stated that this change will impact measured energy and commented that this impact needs to be accounted for in any energy conservation standard that DOE develops. (*Id.*)

Whirlpool commented that DOE's proposal to require testing on the hottest and coldest Warm/Cold temperatures may eliminate the ability of manufacturers to offer a warm and/or hot wash setting for consumers that meets the temperature level(s) and performance that they expect on their clothes washer, especially from Warm/Cold temperature settings. (Whirlpool, No. 26 at pp. 7–8) Whirlpool added that these impacts could also become compounded by any amendment to clothes washer standards. (*Id.*) Whirlpool also expressed concern that lower warm and/or hot wash temperatures could impact cleaning performance since most detergents, especially lower cost detergents and laundry pods, are designed to be most effective at current wash temperatures. (*Id.*)

DOE notes that the reservations expressed by AHAM and Whirlpool are related to the impact on measured energy as a result of this proposed amendment to the test procedure. As discussed previously, impacts on measured energy use between the then-current appendix J2 and the proposed appendix J test procedures were factored into the crosswalk relating the appendix J2 and appendix J metrics developed for the September 2021 RCW Standards Preliminary Analysis, such that DOE does not expect the changes implemented in this final rule to require any significant changes to wash water temperatures. In particular, any increase in measured energy as a result of this amendment would be factored into the crosswalk (*i.e.,* manufacturers would not necessarily be required to decrease wash temperatures to ''offset'' any increase in measured energy under appendix J).

Specifically, as presented in Table 5.3.7 in chapter 5 of the preliminary TSD, DOE determined through testing that this amendment would result in a 17 percent increase, on average, in the water heating energy use for clothes washers with 3 or more Warm/Cold temperature settings, in which the two coldest Warm/Cold temperatures use much less hot water than the hottest Warm/Cold temperature. This increase was factored into the metric translations.

In response to the Joint Commenters' request that DOE consider applying an identical approach to clothes washers with Warm/Warm settings, DOE's proposal in the September 2021 NOPR applied to both Warm/Cold and Warm/Warm settings.

For the reasons discussed, DOE finalizes its proposal, consistent with the September 2021 NOPR, to require in the new appendix J testing only the hottest and the coldest Warm/Cold and Warm/Warm settings. DOE reiterates that any impacts to measured energy as a result of changes to the tested warm wash settings will be accounted for in the crosswalk between the appendix J2 and appendix J metrics as part of the ongoing standards analysis, such that DOE does not expect the changes implemented in this final rule to require any significant changes to wash water temperatures.

4. Remaining Moisture Content

Section 3.8.4 of appendix J2 requires that for clothes washers that have multiple spin settings [36] available within the energy test cycle that result in different RMC values, the maximum and minimum extremes of the available spin settings must be tested with the maximum load size on the Cold/Cold temperature selection.[37] The final RMC is the weighted average of the maximum and minimum spin settings, with the maximum spin setting weighted at 75 percent and the minimum spin setting weighted at 25 percent. The RMC measurement is used to calculate the drying energy component of IMEF. On most clothes washers, the drying energy component represents the largest portion of energy captured in the MEF_{J2} and IMEF metrics.

a. Revised Calculation

In the September 2021 NOPR, DOE tentatively concluded that the current method of measuring RMC may no longer produce test results that measure energy and water use during a representative average use cycle or period of use, particularly as the prevalence of clothes washers with complex electronic controls continues to increase in the market. 86 FR 49140, 49162. On a clothes washer with basic controls (*e.g.,* in which the available spin settings are the same regardless of what wash/rinse temperature is selected), measuring RMC using only the Cold/Cold cycle would be expected to provide RMC results that are equally representative of the other available wash/rinse temperatures, which as noted comprise the majority of consumer cycle selections. *Id.* However, on a clothes washer in which the selection of wash/rinse temperature affects which spin settings are available to be selected, measuring RMC using

[36] The term ''spin settings'' refers to spin times or spin speeds. The maximum spin setting results in a lower (better) RMC.

[37] On clothes washers that provide a Warm Rinse option, appendix J2 requires that RMC be measured on both Cold Rinse and Warm Rinse, with the final RMC calculated as a weighted average using TUFs of 73 percent for Cold Rinse and 27 percent for Warm Rinse. DOE has observed very few clothes washer models on the market that offer Warm Rinse. For simplicity throughout this discussion, DOE references the testing requirements for clothes washers that offer Cold Rinse only.

only the Cold/Cold cycle may not necessarily provide results that measure energy and water use during a representative average use cycle or period of use (*i.e.,* across the range of wash/rinse temperature options selected by consumers, as represented by the temperature use factors). *Id.* For example, data presented by NEEA in response to the May 2020 RFI suggested that the specific cycle configuration from which RMC is measured is programed with a longer spin time than other temperature settings available to the consumer, resulting in a significantly better RMC measurement than would be experienced by the consumer on the majority of wash cycles performed. *Id.*

In the September 2021 NOPR, DOE proposed an amended method for measuring RMC in the new appendix J that would require measuring RMC on each of the energy test cycles using the default spin settings, and determining the final RMC by weighting the individual RMC measurements using the same Temperature Usage Factors (''TUFs'') [38] and LUFs that apply to the water and energy measurements. *Id.* DOE asserted that the proposed update to the RMC measurement would provide a more representative measure of RMC than the current test procedures because RMC would be measured on all of the energy test cycles rather than only the Cold/Cold cycles, which represent only 37 percent of consumer cycles and may not share the same RMC performance as the other 63 percent of consumer cycles.[39] *Id.* DOE also tentatively concluded that this proposal would reduce overall test burden. 86 FR 49140, 49163. The proposal would require weighing the cloth before and after each test cycle, but would avoid the need to perform extra cycles for capturing both the maximum and minimum spin settings available on the clothes washer if such spin settings are not activated by default as part of the energy test cycle. *Id.* To DOE's knowledge, many laboratories already measure and record the test load weight after each test cycle as a means for identifying potential cycle anomalies or to provide additional data that can be used to verify quality control retrospectively. *Id.* In cases where a laboratory currently does not measure the weight after completion of the cycle, DOE's proposal would incur a *de minimis* amount of additional time to weigh the load after the cycle, which can be performed using the same scale used to weigh the load at the beginning of the cycle.

DOE acknowledged that its proposal would likely impact the measured RMC value and thus would impact a clothes washer's IMEF value. 86 FR 49140, 49163. Therefore, DOE proposed the revised RMC procedure only in the proposed new appendix J and not in appendix J2. *Id.*

In the September 2021 NOPR, DOE requested comment on its proposal to revise the RMC procedure so that RMC would be measured at the default spin setting for each temperature selection and load size, and the individual RMC values would be averaged using TUFs and LUFs to calculate the final RMC. *Id.* DOE sought data and information regarding how this change to the RMC calculation would impact testing costs and manufacturer test burden. *Id.* DOE further requested comment on whether DOE should implement any changes to the RMC calculation in appendix J2 to address clothes washers with spin settings that are available only on certain temperature selections. *Id.*

Samsung commented in support of DOE's proposed changes to the RMC measurement, stating that the changes would make the metric more representative of real-world usage. (Samsung, No. 30 at p. 3)

The CA IOUs commented in support of DOE's proposal to measure RMC as a part of all energy test cycles, stating that it would improve the representativeness of the drying energy measurement, which is the largest component of energy use. (CA IOUs, No. 29 at p. 2)

The Joint Efficiency Advocates commented that DOE's proposed amendment to measure RMC for all cycles tested rather than on a single cold-cold test cycle would more accurately estimate drying energy usage than the current method. (Joint Efficiency Advocates, No. 28 at p. 2) The Joint Efficiency Advocates noted that, using appendix J2, clothes washers that only offer the maximum spin speed on the Cold/Cold cycle have lower spin settings at other temperature settings that are not being factored into the RMC calculation, even though these cycles represent the majority of cycles used by consumers, according to the TUFs. (*Id.*) The Joint Efficiency Advocates also cited data from the 2020 NEEA Report that showed significant IMEF rank order changes between washers when comparing RMC values measured on Cold/Cold cycles and RMC values measured on Warm/Cold cycles for the same test loads. (*Id.*) The Joint Efficiency Advocates concluded that DOE's proposal to measure RMC for each energy test cycle at the default spin setting and calculate an overall RMC using TUF- and LUF-weighted averages would make drying energy usage calculations more consistent with the other energy and water usage calculations, and that the proposed amendment would improve representativeness and provide more accurate relative rankings of clothes washers by better capturing real-world RMC and drying energy usage. (*Id.*)

The Joint Commenters commented in support of DOE's proposal to measure RMC at the default spin setting for each test cycle. (Joint Commenters, No. 31 at pp. 2–3) The Joint Commenters added that measuring RMC at the default setting would reduce test burden, increase representativeness, and could potentially result in an estimated 1.0 quad of energy savings for clothes dryers.[40] (*Id.*) The Joint Commenters further commented that DOE's proposed RMC measurement changes would be one of the best opportunities to improve the test procedure for three reasons: drying energy use is the largest and most important contributor to IMEF, and would remain the most significant contributor to the proposed EER and AEER metrics; according to the Joint Commenters, default spin settings are more representative of real-world use instead of the ''best case'' scenario; and testing RMC under different temperature settings and load sizes revealed substantial rank order changes. (*Id.*)

Whirlpool commented that DOE's proposed change to the RMC measurement would likely have significant implications on Whirlpool's product design, cost, performance, and customer satisfaction. (Whirlpool, No. 26 at pp. 8–9) Whirlpool also noted that RMC accounts for over 70 to 75 percent of energy measured by the IMEF. (*Id.*) Whirlpool further commented that, since today's clothes washers are designed and tested for appendix J2, product redesign would be necessary because, without modifying clothes washer spinning strategies for the proposed RMC measurement method in new appendix J, Whirlpool expects the measured RMC of its clothes washer models under the proposed amendments to increase significantly. (Whirlpool, No. 26 at p. 9) Specifically,

[38] As described in more detail in section III.G.4 of this document, TUFs are weighting factors that represent the percentage of time that consumers choose a particular wash/rinse temperature selection for the wash cycle.

[39] 37 percent is the TUF for the Cold/Cold temperature selection as specified in Table 4.1.1 of appendix J2.

[40] The Joint Commenters referenced NEEA's comment on the May 2020 RFI in which NEEA estimated the potential savings over a 30-year period, assuming the change in the RMC measurement would lead to clothes washer manufacturers changing their machines to make the spin portion of all temperature settings match the current spin portion of the Cold/Cold setting.

Whirlpool explained that measuring RMC on smaller loads leads to a higher RMC because smaller loads do not experience as much compression against the drum during spinning as larger loads. (*Id.*) Whirlpool also commented that their concern about RMC measurement is especially pronounced for baseline top-loading clothes washers, which do not spin as fast as front-loading clothes washers for a variety of technical reasons. (*Id.*) Whirlpool explained that in order to address DOE's proposed RMC change, Whirlpool would need to increase spin speeds and have longer high-spin plateau times. (*Id.*) Whirlpool noted that these changes would ultimately lead to enormous stress placed on the clothes washers and would degrade their overall reliability. (*Id.*) Whirlpool commented that they would need to make changes to the motor, tub composition, and other structural changes to the washer, all of which would add product cost. (*Id.*) Whirlpool also expressed concerns related to consumers' perception of these changes, including increased cost and performance concerns such as increased vibration and noise from faster and longer spins, in addition to longer cycle times from longer high-spin plateaus. (*Id.*) Whirlpool also stated that consumers may also notice that the overall electrical energy of the clothes washer increases as clothes washers spin longer and faster. (*Id.*) Whirlpool also commented that an increase in measured mechanical energy could lead to the annual energy consumption reported on the Federal Trade Commission (''FTC'') EnergyGuide label showing that a new model uses more energy (*i.e.,* appears less efficient) than a model currently owned by a consumer. (*Id.*)

AHAM commented that it opposes changing the RMC calculation in appendix J2, stating that the proposed changes would impact measured energy. (AHAM, No. 27 at p. 11)

DOE also received comments from interested parties suggesting that DOE add an RMC adjustment factor to account for test cloth material composition. These comments are discussed in section III.I.1 of this document.

DOE notes that the reservations expressed by AHAM and Whirlpool, particularly with regard to implications for product design and performance, stem from the impact on measured energy as a result of this proposed amendment to the test procedure. As discussed previously, impacts on measured energy use between the then-current appendix J2 and the proposed appendix J test procedures were factored into the crosswalk relating to the appendix J2 and appendix J metrics developed for the September 2021 RCW Standards Preliminary Analysis. Specifically, as presented in Table 5.3.7 in chapter 5 of the preliminary TSD, DOE determined through testing that this amendment would result in a 3.8 percent increase in drying energy for units in which the spin cycle is consistent across temperature selections and thus the primary factor affecting measured RMC is the smaller load sizes; a 27 percent increase in drying energy for units in which the spin cycle is significantly faster or longer on the Cold/Cold setting (which would be tested under appendix J2) than on the other temperature settings (which would all be tested under appendix J); and a 21 percent increase in drying energy for units in which the default spin speed setting on the Normal cycle (which would be tested under appendix J) is not the maximum spin speed setting (which would be tested under appendix J2). These increases in RMC under appendix J were factored into the metric translations. As stated in the September 2021 RCW Standards Preliminary Analysis, DOE plans to continue testing additional units to appendix J and will continue to refine its approach for determining appropriate crosswalk translations in future stages of the standards rulemaking.

For the reasons discussed, DOE finalizes its proposal, consistent with the September 2021 NOPR, to require measuring RMC on each of the energy test cycles in appendix J using the default spin settings, and determining the final RMC by weighting the individual RMC measurements using the same TUFs and LUFs that apply to the water and energy measurements. DOE has determined that the amendment to the RMC measurement provides a more representative measure of RMC because RMC is measured on all of the energy test cycles. DOE also concludes that this amendment reduces overall test burden. DOE reiterates that any impacts to measured energy as a result of changes to the RMC calculation will be accounted for in the crosswalk between the appendix J2 and appendix J metrics as part of the ongoing standards analysis, such that DOE does not expect the changes implemented in this final rule to require significant product redesign.

b. Definition of Bone-Dry

In section 1.6 of appendix J2, the term ''bone-dry'' is defined as a condition of a load of test cloth that has been dried in a dryer at maximum temperature for a minimum of 10 minutes, removed and weighed before cool down, and then dried again for 10-minute periods until the final weight change of the load is 1 percent or less.

In the absence of data or information indicating any problems with the current procedure, DOE did not propose any changes to the bone-dry definition or associated dryer temperature measurement method in the September 2021 NOPR. 86 FR 49140, 49163. DOE requested comment on its tentative conclusion not to propose changes to the bone-dry definition and associated dryer temperature measurement method. *Id.*

AHAM commented in support of DOE's proposal not to change the bone-dry definition and associated dryer temperature measurement method, stating that changes would be unnecessary. (AHAM, No. 27 at p. 11)

For the reasons discussed, this final rule does not make any changes to the bone-dry definition or associated dryer temperature measurement method.

c. Starting Moisture Content

Section 2.9.1 of appendix J2 requires the test load for energy and water consumption measurements to be bone-dry prior to the first cycle of the test, and allows the test load to be dried to a maximum of 104 percent of the bone-dry weight for subsequent testing. In the September 2021 NOPR, DOE noted that this allowance effectively allows for an increase to the starting moisture content of the load from 1 percent moisture (as implied in the definition of ''bone-dry'' in section 1 of appendix J2) to 4 percent moisture, which creates two concerns. 86 FR 49140, 49163.

First, for the largest clothes washers on the market, which use the largest test load sizes, a 4 percent tolerance can represent up to 1 lb of additional water weight in a starting test load. *Id.* DOE expressed concern that the range of starting water weights that this provision allows could reduce the repeatability and reproducibility of test results, particularly for larger clothes washers. *Id.*

Second, as described in section III.D.4.a of this document, DOE is requiring the measurement of RMC for all tested cycles in the new appendix J. *Id.* The RMC of each tested cycle is calculated based on the bone-dry weight at the start of the cycle. *Id.* Allowing the bone-dry weight to vary within a range of 1 percent to 4 percent moisture at the beginning of each tested cycle would introduce variability into the RMC calculation. *Id.*

Therefore, to improve repeatability and reproducibility of test results, DOE proposed in new appendix J to remove the provision that allows for a starting test load weight of 104 percent of the bone-dry weight, and instead require that each test cycle use a bone-dry test load. *Id.* In DOE's experience, most test laboratories use the bone-dry weight as the starting weight of each test load rather than a starting weight up to 104 percent of bone-dry, as allowed by section 2.9.1 of appendix J2. *Id.* DOE estimated that if a test laboratory does make use of this provision in section 2.9.1 of appendix J2, the requirement to use the bone-dry weight would add no more than 10 minutes of drying time per cycle to ensure that the test load has reached the bone-dry requirement. *Id.* DOE did not anticipate that this proposal would increase test burden because, in DOE's experience, most test laboratories dry the load from the previous test cycle while the next cycle is being tested on the clothes washer, such that a minor increase in drying time would not affect the overall time required to conduct the test procedure. *Id.*

DOE requested comment on its proposal to require that each test cycle use a bone-dry test load in the new appendix J. *Id.* DOE requested comment on whether test laboratories start test cycles with the test load at bone-dry or at up to 104 percent of the bone-dry weight. 86 FR 49140, 49163–49164. DOE further requested feedback on its assessment that this change would not affect test burden. 86 FR 49140, 49164.

The Joint Commenters commented in support of DOE's proposal to require bone-drying of textile loads before the start of each test run. (Joint Commenters, No. 31 at p. 10) The Joint Commenters further asserted that bone-drying the test load before each run would improve repeatability and reproducibility, given that RMC would be measured for each test run. (*Id.*) The Joint Commenters concluded that, since test laboratories must dry the test load before using it, DOE's proposal represents minimal to no additional test burden. (*Id.*)

AHAM commented in opposition to DOE's proposal to require each test cycle to use a bone-dry test load. (AHAM, No. 27 at p. 12) AHAM commented that while it understands the theoretical reason for this proposal, it may not be practically possible because as soon as the load cools, it starts to collect humidity. Therefore, AHAM asserted that it would not be possible for test laboratories to meet this requirement. (*Id.*)

P.R. China recommended that if each test cycle uses a bone-dry test load, DOE should add requirements to the temperature of the test load to make sure the test cloth is at ambient temperature prior to testing. (P.R. China, No. 25 at p. 3)

In response to AHAM's comments, DOE acknowledges that the concerns DOE expressed regarding the potential for over 1 lb of moisture in the starting ''dry'' load would apply only to the largest load sizes, and that for the large majority of tested loads, the potential amount of moisture in the starting dry load would be a smaller weight. DOE notes that the ''large'' test load sizes in appendix J implemented in this final rule are smaller than the ''maximum'' test load sizes defined in appendix J2 (as discussed in section III.D.1.b of this document), which partially alleviates this concern. DOE's testing experience also confirms AHAM's statement that a test cloth load begins to collect moisture as soon as the drying cycle is complete. DOE therefore concludes that logistical constraints during testing could create challenges for test laboratories to meet a bone-dry requirement for each individual test cycle.

In response to P.R. China's comment on adding a requirement that the load be at ambient temperature prior to testing, DOE does not expect that the temperature of the load prior to the start of the test cycle would have a significant impact on energy use for two reasons. First, DOE's teardowns of clothes washers conducted for the standards preliminary analysis indicate that most clothes washers measure wash water temperature either as the water enters the clothes washer through the inlet valves or within the detergent mixing chamber, such that the temperature of the test load would not affect the relative amounts of hot and cold water usage. Second, even for clothes washers that may measure the water temperature near the bottom of the wash tub in proximity to the load, the thermal mass of the test cloth fabric is significantly less than thermal mass of the amount of water used during the wash portion of the cycle, such that any residual heat contained within the test cloth would have a negligible impact on the temperature of the water.[41]

[41] For example, DOE testing indicates that a typical clothes washer may use a gallon or more of water (*i.e.,* over 8.3 lb of water) per lb of test cloth load. Furthermore, the specific heat of cotton and polyester fiber is around one-third of the specific heat of water. Based on these parameters, each 1 °F of elevated temperature in a given test load would result in no more than a 0.04 °F temperature rise in the wash water used for that cycle. (Calculated as 1 ÷ 8.3 ÷ 3).

For these reasons, DOE is not adopting the proposal from the September 2021 NOPR and is including in appendix J the provision from section 2.9.1 of appendix J2 to allow the test load to be dried to a maximum of 104 percent of the bone-dry weight for subsequent testing. Because each subsequent test load may not always start at the bone-dry weight, DOE is also not adopting the proposal from the September 2021 NOPR to require recording the bone-dry weight of the test load weight prior to each cycle. DOE notes that it is continuing to require that the bone-dry weight of each test load (which would be measured once at the start of testing) be used in calculating the RMC for each test cycle.

5. Cycle Time

a. Inclusion of a Cycle Time Measurement

The current test procedure does not specify a measurement for average cycle time. In the September 2021 NOPR, DOE is proposed to base the allocation of annual combined low-power mode hours on the measured average cycle time rather than a fixed value of 8,465 hours, for the new appendix J (see section III.G.3 of this document). 86 FR 49140, 49164. DOE therefore also proposed to require the measurement of average cycle time for the new appendix J. *Id.* Calculating the annual standby mode and off mode hours using the measured average cycle time would provide a more representative basis for determining the energy consumption in the combined low-power modes for the specific clothes washer under test. *Id.*

DOE proposed to define the overall average cycle time of a clothes washer model in new appendix J as the weighted average of the individual cycle times for each wash cycle configuration conducted as part of the test procedure, using the TUFs and LUFs for the weighting. *Id.* Using the weighted-average approach would align the average cycle time calculation with the calculations for determining weighted-average energy and water use. *Id.*

DOE noted that it does not expect the measurement of cycle time to increase test burden. *Id.* To DOE's knowledge, test laboratories are either already measuring cycle time for all tested cycles or using data acquisition systems to record electronic logs of each cycle, from which determining the cycle time would require minimal additional work. *Id.*

DOE requested comment on its proposal to add cycle time measurements and to calculate average cycle time using the weighted-average

method in the new appendix J. *Id.* DOE also requested comment on its assertion that adding cycle time measurements and a calculation of a weighted-average cycle time would not increase testing costs or overall test burden. *Id.*

Samsung commented in support of DOE's proposal to require reporting of weighted-average cycle time, stating that it would provide useful information for consumers comparing average cycle time differences between clothes washer models. (Samsung, No. 30 at p. 3)

The CA IOUs commented in support of DOE's proposal to measure cycle time on all test cycles and to include an average cycle time calculation, stating that there are significant consumer benefits in this information being disclosed. (CA IOUs, No. 29 at p. 2) The CA IOUs also recommended that DOE report average cycle time in the Compliance Certification Management System (''CCMS'') database, and that DOE work with the FTC to incorporate average cycle time into product labeling. (*Id.*)

The Joint Commenters commented in support of DOE's proposal to measure the cycle time of each test cycle and to calculate a weighted-average cycle time. (Joint Commenters, No 31 at p. 5) The Joint Commenters further agreed with DOE's tentative determination that DOE's cycle time measurement proposal would create no additional test burden since most test laboratories use time series data acquisition systems that obtain cycle time measurements automatically. (*Id.*) The Joint Commenters also commented that DOE's cycle time proposal would increase the representativeness of the low-power-mode energy usage, and would standardize cycle time marketing claims by establishing a standardized approach for measuring cycle times. (*Id.*) The Joint Commenters also encouraged DOE to require the reporting of average cycle time as part of clothes washer certification, stating that it would increase consumers' access to relevant information on cycle time, which the Joint Commenters asserted is an important aspect of clothes washer performance; increase transparency of reported energy efficiency metrics by clarifying how the energy efficiency metric is derived for a given clothes washer; and lead to continuous improvement of the test procedure over time since having access to additional data on cycle time would enable DOE and other stakeholders to continually evaluate the value of cycle time measurement in future rulemakings. (*Id.*)

AHAM commented in opposition to DOE's proposal to include a measurement of cycle time and a calculation of weighted-average cycle time. (AHAM, No. 27 at p. 12) AHAM commented that while cycle time is a key consideration for consumer utility, DOE properly accounts for cycle time in its evaluation of possible amended standards. (*Id.*)

For the reasons stated above, DOE determines that requiring test laboratories to include cycle time measurement would not increase test burden. DOE also determines that defining the annual standby mode and off mode hours using the measured average cycle time would provide a more representative basis for determining the energy consumption in the combined low-power modes for the specific clothes washer under test.

With regard to AHAM's comment opposing the proposed cycle time measurement on the basis that DOE accounts for cycle time in its evaluation of possible amended standards, DOE notes that the purpose of implementing a measurement of cycle time in the test procedure would differ from the purpose of evaluating cycle time as part of an energy conservation standards analysis. In an energy conservation standards analysis, cycle time could be evaluated, for example, to determine whether higher efficiency levels under consideration would require longer cycle times. Whereas, the purpose of the cycle time measurement as proposed in the September 2021 NOPR is to provide a more representative allocation of standby and off mode hours for a unit under test. Evaluating cycle time as part of an energy conservation standards analysis would not contribute to providing more representative test results when testing to the DOE test procedure.

For the reasons discussed in the September 2021 NOPR and in the preceding paragraphs, DOE is finalizing its proposal, consistent with the September 2021 NOPR, to require cycle time measurement in new appendix J. As discussed in section III.G.3 of this document, also consistent with the September 2021 NOPR, DOE finalizes its proposal to base the allocation of annual combined low-power mode hours on the measured average cycle time rather than a fixed value of 8,465 hours, for the new appendix J.

DOE notes it is not amending the certification or reporting requirements for clothes washers in this final rule to require reporting of cycle time measurements. Instead, DOE may consider proposals to amend the certification requirements and reporting for RCWs and CCWs under a separate rulemaking regarding appliance and equipment certification.

b. Definition of Cycle Time

Section 3.2.8 of appendix J2 specifies that for each wash cycle tested, include the entire active washing mode and exclude any delay start or cycle finished modes. ''Active washing mode'' is defined in section 1.2 of appendix J2 as ''a mode in which the clothes washer is performing any of the operations included in a complete cycle intended for washing a clothing load, including the main functions of washing, soaking, tumbling, agitating, rinsing, and/or removing water from the clothing.'' ''Delay start mode'' is defined in section 1.12 of appendix J2 as ''an active mode in which activation of washing mode is facilitated by a timer.'' ''Cycle finished mode'' is defined in section 1.11 of appendix J2 as ''an active mode that provides continuous status display, intermittent tumbling, or air circulation following operation in active washing mode.''

The Joint Efficiency Advocates recommended that DOE further clarify the definition of a clothes washer cycle. (Joint Efficiency Advocates, No. 28 at p. 6) The Joint Efficiency Advocates commented that some clothes washers may enter a new mode between the completion of the main cycle and subsequent standby mode. (*Id.*) The Joint Efficiency Advocates asserted that it is not clear whether energy usage in these scenarios is being captured by either the active mode or standby mode testing. (*Id.*) The Joint Efficiency Advocates also noted that, while the DOE test procedure for clothes dryers codified at 10 CFR part 430, subpart B, appendix D2 (''appendix D2'') specifies when the cycle shall be considered complete, there is no clear definition of what constitutes the beginning and end of a clothes washer cycle in the new appendix J. (*Id.*)

The CA IOUs recommended that DOE provide additional details in new appendix J to better define cycle time, stating that on some clothes washers the end of the cycle is unclear. (CA IOUs, No. 29 at p. 2) For example, the CA IOUs noted that some clothes washers have wrinkle-free settings in which the clothes washer tumbles the clothes once every 15 minutes for up to 12 hours after the cycle has finished. (*Id.*) The CA IOUs suggested that, similar to the way appendix D2 treats clothes dryers with similar wrinkle-free settings, DOE should include these types of extended cycle operations in the test procedure if they are activated by default or instructed by the manufacturer for normal use. (*Id.*)

In response to the Joint Efficiency Advocates and the CA IOUs' requests to clarify the cycle time definition, DOE reiterates that the requirement of section 3.2.8 in appendix J2 (and section 3.2.5 of appendix J as proposed) states explicitly that each wash cycle must include the entire active washing mode and exclude any delay start or cycle finished modes. A mode between completion of the main cycle and subsequent standby mode (including, for example, a wrinkle-free setting described by the CA IOUs), would be considered a cycle finished mode. DOE determines that the specification in section 3.2.8 of appendix J2 and section 3.2.5 of new appendix J to include only active washing mode, and to exclude delay start and cycle finish modes, provides sufficient specification regarding the wash cycle operations that comprise a complete cycle, and on which the measurement of cycle time is to be based.

For these reasons, DOE is not adding a definition of cycle time to either appendix J2 or new appendix J.

Regarding the suggestion by CA IOUs that DOE include extended cycle operations in the test procedure if they are activated by default or instructed by the manufacturer for normal use, DOE addressed the exclusion of cycle finished mode in the March 2012 Final Rule. Upon consideration of data and estimates provided in the NOPR published September 21, 2010 (75 FR 57556), additional energy consumption estimates provided in the supplemental NOPR published August 9, 2011 (76 FR 49238), the uncertainty regarding consumer usage patterns, and the additional test burden that would be required, DOE determined in the March 2012 Final Rule to adopt an ''alternate approach'' to account for the energy use in cycle finished mode. 77 FR 13888, 13896. Under this approach, all low-power mode hours are allocated to the inactive and off modes, and the low-power mode power is then measured in the inactive and off modes, depending on which of these modes is present. *Id.* None of the information provided in comments in response to the September 2021 NOPR would lead DOE to a different conclusion regarding the exclusion of cycle finished mode.

For these reasons, DOE is not amending in appendix J2 or implementing in new appendix J any provisions for measuring operation in cycle finished mode.

6. Capacity Measurement

Section 3.1 of appendix J2 provides the procedure for measuring the clothes container capacity, which represents the maximum usable volume for washing clothes. The clothes container capacity is measured by filling the clothes container with water and using the weight of the water to determine the volume of the clothes container. For front-loading clothes washers, this procedure requires positioning the clothes washer on its back surface such that the door opening of the clothes container faces upwards and is leveled horizontally. For all clothes washers, any volume that cannot be occupied by clothing load during operation is excluded.

In the March 2012 Final Rule, DOE revised the clothes container capacity measurement to better reflect the actual usable capacity compared to the previous measurement procedures. 77 FR 13888, 13917. In the August 2015 Final Rule, DOE further added to the capacity measurement procedure a revised description of the maximum fill volume for front-loading clothes washers, as well as illustrations of the boundaries defining the uppermost edge of the clothes container for top-loading vertical-axis clothes washers and the maximum fill volume for horizontal-axis clothes washers. 80 FR 46729, 46733.

For top-loading vertical-axis clothes washers, DOE defined the uppermost edge of the clothes container as the uppermost edge of the rotating portion of the wash basket. 77 FR 13888, 13917–13918. DOE also concluded that the uppermost edge is the highest horizontal plane that a dry clothes load could occupy in a top-loading vertical-axis clothes washer that would allow clothing to interact with the water and detergent properly. *Id.*

As discussed in the September 2021 NOPR, DOE is not aware of any changes to product designs since the March 2012 Final Rule that would cause DOE to reevaluate its conclusions about the most appropriate capacity fill level. 86 FR 49140, 49165. In DOE's experience, since the March 2012 Final Rule, the existing capacity fill definition is implemented consistently by test laboratories and results in repeatable and reproducible measurements of capacity. *Id.* DOE therefore did not propose any changes to the existing capacity measurement method. *Id.*

DOE requested comment on its tentative determination to maintain the current capacity measurement method. *Id.*

AHAM commented in support of DOE's proposal to not specify any alternatives to the current capacity measurement procedure, stating that it is accurate, repeatable, and reproducible. (AHAM, No. 27 at p. 12)

The Joint Commenters commented in support of DOE's proposal to retain the current capacity measurement test procedure, stating that it ensures reproducibility and enables third-party verification. (Joint Commenters, No. 31 at p. 11)

P.R. China recommended that DOE emphasize in the capacity measurement procedure that the groove on the rubber door seal of front-loading clothes washers should not be included in the capacity calculation. (P.R. China, No. 25 at pp. 3–4)

In response to P.R. China's recommendation, DOE notes that the groove on the rubber door seal of front-loading clothes washers cannot be occupied by the clothing load during operation, and therefore is already excluded from the capacity measurement. In practice, during the measurement of a front-loading clothes washer's capacity, the groove on the rubber door seal would be covered by the plastic bag specified in section 3.1.2 of appendix J2 for lining the inside of the clothes container for the purpose of the capacity measurement, and therefore would not be included in the capacity measurement.

For the reasons stated previously, DOE makes no changes to the capacity measurement method in this final rule.

7. Identifying and Addressing Anomalous Cycles

Section 3.2.9 of appendix J2 previously specified discarding the data from a wash cycle that ''provides a visual or audio indicator to alert the user that an out-of-balance condition has been detected, or that terminates prematurely if an out-of-balance condition is detected, and thus does not include the agitation/tumble operation, spin speed(s), wash times, and rinse times applicable to the wash cycle under test.''

In the September 2021 NOPR, DOE discussed that as clothes washer technology has improved, certain clothes washers are designed to self-correct out-of-balance loads or make other adjustments to the operation of the unit to complete the cycle without alerting the consumer or requiring user intervention. 86 FR 49140, 49166. DOE also recognized the benefit of objective and observable criteria to determine when an anomalous cycle has occurred, based on a single test, such that the data from that anomalous cycle should be discarded. *Id.*

To provide more objective and observable criteria, DOE proposed that data from a wash cycle would be discarded if either: The washing machine signals to the user by means of

an audio or visual alert that an off-balance condition has occurred; or the wash cycle terminates prematurely and thus does not include the agitation/tumble operation, spin speed(s), wash times, and rinse times applicable to the wash cycle under test. *Id.* The proposed reference to an audio or visual alert refers to a warning sound initiated by the clothes washer, or visual cue such as a flashing light or persistent error code, that is provided to the user to actively inform the user that a problem has occurred; as opposed to a more passive indication such as the drum hitting the side of the cabinet or a change in the projected cycle duration, which could go unnoticed by the user or which itself may not be an indication of an out-of-balance load that warrants discarding the data for a test cycle. *Id.* To emphasize this intent, DOE proposed to change the current phrase ''provides a visual or audio indicator to alert the user'' to ''signals to the user by means of a visual or audio alert'' in both section 3.2.9 of appendix J2 and section 3.2.6 of the new appendix J. *Id.*

DOE also proposed to change the current phrase ''terminates prematurely if an out-of-balance condition is detected'' to simply ''terminates prematurely,'' in recognition that other factors beyond an out-of-balance condition could also cause a wash cycle to terminate prematurely (*e.g.,* a clogged filter, mechanical malfunction, *etc.*), and that for any such reason, the data from that wash cycle would be discarded. *Id.*

DOE further proposed non-substantive wording changes to section 3.2.9 of appendix J2 and section 3.2.6 of the new appendix J to make explicit that if data are discarded for the reasons described in these sections, the wash cycle is repeated. *Id.*

DOE requested comment on the proposed criteria for determining whether test data are to be discarded. *Id.* Specifically, DOE requested comment on the proposal that test data are discarded if a washing machine either signals to the user by means of a visual or audio alert that an out-of-balance condition has occurred or terminates prematurely. *Id.* DOE requested comment on whether additional or alternate criteria would provide objective and observable indication during a single test that test data are to be discarded. *Id.*

AHAM commented in support of DOE's proposed definition for anomalous test cycles, but with one suggested change to replace ''. . .b) terminates prematurely and thus does not include the agitation/tumble operation . . .'' with ''. . . b) terminates prematurely; or c) does not include the agitation/tumble operation . . .'' (AHAM, No. 27 at pp. 12–13) AHAM commented that an anomalous cycle may not always terminate prematurely, but may instead only be apparent from the objective and observable criteria such as agitation/tumble operation, spin speeds, wash times, and rinse times applicable to the cycle under test. (*Id.*) AHAM further commented that a cycle may not terminate prematurely due to anomalous behavior because, in order to benefit the consumer, the clothes washer will address the anomalous behavior and finish the cycle without alerting the consumer or requiring consumer interaction. (*Id.*) AHAM noted that, in addition to benefitting the consumer, addressing anomalous behavior often saves energy and water by finishing the cycle with some incrementally increased water or energy usage instead of requiring a cycle to be canceled and completely re-run. (*Id.*) AHAM recommended that test cycles exhibiting signs of anomalous behavior without alerting the consumer should be considered invalid because they will likely impact test results if they occur during a test cycle by increasing energy and/or water consumption for that particular test, and it is unlikely that anomalous conditions happen frequently when consumers use the clothes washer. (*Id.*) While AHAM recognizes that third-party test laboratories may not know when a clothes washer changes its operation due to anomalous behavior without an audio/visual indicator, a proposal to require such an indicator would necessitate product changes that add unnecessary product cost. (*Id.*) AHAM further asserted that consumers may be dissatisfied if their clothes washer presents an audio/visual alert instead of fixing anomalous behavior automatically for the user because the user may have to fix the issue themselves, or make a service call. (*Id.*) GEA provided specific support of AHAM's comments regarding this proposed amendment. (GEA, No. 32 at p. 3)

Whirlpool commented in agreement with DOE's proposal on anomalous cycles to recognize that there may be other factors beyond an out-of-balance condition that could cause a wash cycle to terminate prematurely. (Whirlpool, No. 26 at p. 10) Whirlpool suggested, however, that DOE adopt AHAM's recommendation presented in its comments from the May 2020 RFI to determine anomalous cycles even when there are no visual or audio alerts to the user to indicate that something anomalous has occurred during the cycle. (*Id.*) Whirlpool commented that not alerting the user to anomalous clothes washer behavior is beneficial to the consumer, since alerting the consumer to anomalous behavior may result in the consumer incorrectly believing something is seriously wrong with the unit, which could lead to a service call or visit from the manufacturer. (*Id.*) Since consumer intervention may not be needed to fix anomalous behavior, Whirlpool suggested that DOE should not require that the clothes washer signal the user by means of a visual or audio alert. (*Id.*) Whirlpool also commented that adding a visual or audio alert adds unnecessary costs. (*Id.*)

GEA commented that it appreciates DOE's evaluation of the issue of anomalous cycles during testing. (GEA, No. 32 at pp. 2–3) GEA specified that the high spin speeds required by current energy conservation standards combined with increasing clothes washer capacity can lead to the need for clothes washers to adjust their normal cycle to ensure safe and effective cycles. (*Id.*) GEA also commented that handling of anomalous cycles without notifying the user is an important consumer feature that saves energy and consumers' time. (*Id.*) GEA further explained that requiring a consumer notification for an anomalous cycle that otherwise successfully washes and spins the load may lead to unnecessary rewash of cleaned clothing, which could lead to a waste of energy. (*Id.*)

DOE did not intend its proposal to be a design requirement. Rather, the intent of the proposal was to specify objective and observable criteria that—if observed on a particular unit under test—would indicate that the test data are to be discarded. The proposal would not require all clothes washers to provide audio or visual alerts if anomalies are detected. As stated above, DOE acknowledges the consumer benefit and potential energy savings benefit of clothes washers that are able to address anomalous behavior and finish the cycle without requiring consumer interaction. DOE expects that such anomalous cycles would occur infrequently and only under limited circumstances; more frequent occurrence would potentially indicate that such cycle behavior may be representative of what a consumer of that model would experience.

For the purpose of specifying criteria by which test data *must* be discarded, DOE reiterates the importance of specifying objective and observable criteria that could be used by an independent laboratory to determine when an anomalous cycle has occurred,

based on a single test, such that the data from that anomalous cycle would be discarded.

For these reasons, DOE finalizes its proposal, consistent with the September 2021 NOPR, to further specify objective and observable criteria that, if were to occur during testing, require the test data to be discarded, and the test cycle repeated. This amendment applies to both appendix J2 and appendix J.

8. Semi-Automatic Clothes Washers

Section III.C.2 of this document discussed the installation of semi-automatic clothes washers for testing. This section discusses the wash/rinse temperature selections and TUFs applicable to semi-automatic clothes washers. As noted, semi-automatic clothes washers are defined at 10 CFR 430.2 as a class of clothes washer that is the same as an automatic clothes washer except that user intervention is required to regulate the water temperature by adjusting the external water faucet valves. DOE's test procedure requirements at 10 CFR 430.23(j)(2)(ii) state that the use of appendix J2 is required to determine IMEF for both automatic and semi-automatic clothes washers.

Semi-automatic clothes washers inherently do not provide wash/rinse temperature selections on the control panel, as any combination of cold, warm, and hot wash temperatures and rinse temperatures are provided by the user's adjustment of the external water faucet valves. As discussed in the September 2021 NOPR, inherently, testing the Hot/Hot, Warm/Warm, and Cold/Cold wash/rinse temperature combinations require no changes to the water faucet valve positions between the wash and rinse portions of the cycle. However, testing the Hot/Warm, Hot/Cold, and Warm/Cold temperature combinations requires the test administrator to manually adjust the external water faucet valves between the wash and rinse portions of the cycle by. As reflected in DOE's definition of semi-automatic clothes washer, user intervention is required to regulate the water temperature of all semi-automatic clothes washers (*i.e.,* user regulation of water temperature is the distinguishing characteristic of a semi-automatic clothes washer). *See* 10 CFR 430.2.

Table 4.1.1 in appendix J2 contains columns that list TUFs based on the temperature selections available in the energy test cycle. Table 4.1.1 does not state which column(s) of the table are applicable to semi-automatic clothes washers. In the May 2012 Direct Final Rule, DOE stated that it was not aware of any semi-automatic clothes washers on the market. 77 FR 32307, 32317. However, DOE is currently aware of several semi-automatic clothes washer models available in the U.S. market.

a. Temperature Selections and Usage Factors

Appendix J as established in the September 1977 Final Rule required testing six wash/rinse temperature combinations: Hot/Hot, Hot/Warm, Hot/Cold, Warm/Warm, Warm/Cold and Cold/Cold. The TUFs in Table 6.1 of the 1977 version of appendix J used the same general usage factors for semi-automatic clothes washers as for automatic clothes washers. 42 FR 49802, 49810. For example, the Cold/Cold TUF of 0.15 was the same for both types, and the sum of Hot/Hot, Hot/Warm and Hot/Cold (with a total TUF of 0.30) for semi-automatic clothes washers was the same as the TUF for Hot/Cold on an automatic clothes washer with only three temperature selections.

DOE updated the TUFs in the August 1997 Final Rule, based on P&G data provided by AHAM. 62 FR 45484, 45491. Currently, Table 4.1.1 of appendix J2 does not include TUFs for all six of the temperatures required for testing in the 1977 version of appendix J.

In the September 2021 NOPR, DOE considered requiring that semi-automatic clothes washers be tested with the same six temperature settings as in the 1977 version of appendix J. 86 FR 49140, 49167.

By including all six possible temperature combinations, Table 6.1 of the 1977 version of appendix J included wash/rinse temperature settings that require the water temperature to be changed between the wash portion and the rinse portion of the cycle (*i.e.,* Hot/Warm, Hot/Cold, and Warm/Cold), and wash/rinse temperature settings that do not require any water temperature change (*i.e.,* Hot/Hot, Warm/Warm, and Cold/Cold). 86 FR 49140, 49167–49168. In Table 6.1 of the 1977 version of appendix J, temperature settings that do not require a water temperature change had higher usage factors than temperatures settings that do require a water temperature change, reflecting that consumers are more likely to use a single temperature for the entire duration of the cycle than to change the temperature between the wash and rinse portions of the cycle. 86 FR 49140, 49168.

In the September 2021 NOPR, DOE proposed to require testing only those temperature settings that do not require a water temperature change (*i.e.,* Hot/Hot, Warm/Warm, and Cold/Cold) for semi-automatic clothes washers in new appendix J. As indicated by the TUFs from the 1977 version of appendix J, consumers are more likely to use a single temperature for the entire duration of the cycle than to change the temperature between the wash and rinse portions of the cycle. *Id.* Changing the temperature between the wash and rinse portions of the cycle would require the consumer to monitor the operation of the clothes washer and adjust the temperature at the appropriate time. *Id.* DOE expects that consumers are more likely not to interact with the operation of the clothes washer during operation of the unit, once it has been started. *Id.* Not requiring testing of temperature combinations that would require the user to change the temperature between wash and rinse would reduce test burden significantly, while producing results that are representative of consumer usage. *Id.* DOE tentatively concluded that requiring testing all six possible temperature combinations would present undue burden compared to testing only those temperature combinations that do not require a water temperature change. *Id.*

In the September 2021 NOPR, DOE requested comment on its proposal for testing semi-automatic clothes washers in the proposed new appendix J that would require testing only the wash/rinse temperature combinations that do not require a wash temperature change between the wash and rinse portions of the cycle (*i.e.,* Hot/Hot, Warm/Warm, and Cold/Cold). *Id.*

To define the TUFs for these three temperature combinations, DOE proposed to use the TUFs from the existing column of Table 4.1.1 of appendix J2 specified for testing clothes washers with Hot/Cold, Warm/Cold, and Cold/Cold temperature selections, and presented in Table III.1. To further simplify the test procedure, since DOE proposed to require testing only those temperature selections that do not require a change in the water temperature, DOE proposed to label these selections ''Hot,'' ''Warm,'' and ''Cold,'' respectively (as opposed to ''Hot/Hot'', ''Warm/Warm'', and ''Cold/Cold'').

TABLE III.1—TEMPERATURE USAGE FACTORS FOR SEMI-AUTOMATIC CLOTHES WASHERS REFLECTING THREE REQUIRED TEMPERATURE COMBINATIONS PROPOSED IN THE SEPTEMBER 2021 NOPR

Wash/rinse temperature selection	Proposed TUF Values
Hot	0.14
Warm	0.49

TABLE III.1—TEMPERATURE USAGE FACTORS FOR SEMI-AUTOMATIC CLOTHES WASHERS REFLECTING THREE REQUIRED TEMPERATURE COMBINATIONS PROPOSED IN THE SEPTEMBER 2021 NOPR—Continued

Wash/rinse temperature selection	Proposed TUF Values
Cold	0.37

DOE requested feedback on its proposal to test semi-automatic clothes washers using TUF values of 0.14 for Hot, 0.49 for Warm, and 0.37 for Cold. *Id.* DOE further requested comment on whether the temperature selections and TUFs that DOE proposed for semi-automatic clothes washers would be representative of consumer use; and if not, which temperature selections and TUF values would better reflect consumer use. *Id.*

The Joint Commenters commented in support of DOE's proposal regarding temperature selection for semi-automatic clothes washers. (Joint Commenters, No. 31 at p. 11) The Joint Commenters further commented that consumers are unlikely to monitor the progress of a semi-automatic clothes washer cycle to change inlet water temperature mid-cycle. (*Id.*)

P.R. China recommended that DOE use different TUFs for automatic and semi-automatic clothes washers, and that DOE investigate more consumer usage data before determining TUF values for semi-automatic clothes washers. (P.R. China, No. 25 at p. 4) P.R. China commented that, as far as it knows, hot water is rarely used in semi-automatic clothes washers. (*Id.*)

AHAM commented that if AHAM's test data supports DOE's proposal, the proposal should apply only to products plumbed to both hot and cold water supplies to avoid penalizing products designed to be plumbed with only cold water. (AHAM, No. 27 at p. 7)

In response to P.R. China's comment that DOE should use different TUFs for automatic and semi-automatic clothes washers, the history of DOE's test specifications for semi-automatic clothes washers reflects DOE's historical understanding that consumers of semi-automatic clothes washers select among cold, warm, and hot wash temperatures with similar frequencies as consumers of automatic clothes washer. As discussed above, in the 1977 version of appendix J, the TUFs for automatic and semi-automatic clothes washers were aligned. DOE maintained this general alignment in appendix J through subsequent revisions of the test procedure in the August 1997 Final Rule and January 2001 Final Rule. In the initial version of appendix J1 established in the August 1997 Final Rule, DOE further maintained this alignment in combining the TUFs for both automatic and semi-automatic clothes washers into a single table of TUFs applicable to all types of clothes washers. DOE maintained this single table in subsequent versions of appendix J1 as amended by the January 2001 Final Rule, March 2012 Final Rule, and August 2015 Final Rule; as well as appendix J2 as established in the March 2012 Final Rule and subsequently amended in the August 2015 Final Rule. P.R. China presented no data to support its assertion that the TUFs for semi-automatic clothes washers should be different than for automatic clothes washers. Lacking any more recent data or information to suggest that DOE's historical understanding of consumer usage of semi-automatic clothes washers has changed in this regard, DOE maintains the alignment of the TUFs between semi-automatic and automatic clothes washers, as proposed in the September 2021 NOPR.

In response to AHAM's comment that the proposed TUFs should apply to only products plumbed to both hot and cold water supplies, DOE is not aware of any semi-automatic clothes washers that are plumbed to both hot and cold water supplies. In DOE's review of products on the market, all semi-automatic clothes washers are designed with a single water inlet that consumers connect to a water faucet, such as a kitchen faucet, that has the ability to provide water at a range of temperatures. Therefore, DOE does not make a distinction between semi-automatic clothes washers plumbed to both hot and cold water supplies—were such products to be brought to the market—and those plumbed with only cold water. To the extent that provisions of appendix J for semi-automatic clothes washers result in higher measured energy compared to appendix J2, impacts on measured energy use between the then-current appendix J2 and the proposed appendix J test procedures would be factored into the crosswalk relating the appendix J2 and appendix J metrics as part of the ongoing standards analysis.

For the reasons discussed above, DOE finalizes its proposal, consistent with the September 2021 NOPR, to test semi-automatic clothes washers under appendix J using only the wash/rinse temperature combinations that do not require a temperature change between the wash and rinse portions of the cycle (*i.e.,* Hot/Hot, Warm/Warm, and Cold/Cold). Also consistent with the September 2021 NOPR, DOE finalizes its proposal to define TUF values of 0.14 for Hot, 0.49 for Warm, and 0.37 for Cold in appendix J for semi-automatic clothes washers.

b. Cycles Required for Test

Inherent to semi-automatic clothes washer operation is that the clothes washer provides the same cycle operation for a given load size and cycle setting, regardless of the water temperature that the user provides. 86 FR 49140, 49168. As a result, when testing a semi-automatic clothes washer, machine energy consumption, total water consumption, bone-dry weight, cycle-completion weight, and cycle time for a given load size are unaffected by wash/rinse temperature. *Id.* When testing a given load size, only the relative amount of cold and hot water consumption is based on the water temperature provided by the user. *Id.* For the Cold cycle as proposed, all of the water used is cold; for the Hot cycle as proposed, all of the water used is hot; and for the Warm cycle as proposed, half of the water used is cold and half is hot.[42] Based on these relationships, for a given load size, once one of the test cycles has been performed and the total water consumption determined, the relative amounts of cold and hot water for the other required cycles can be determined formulaically rather than needing to be determined through testing. *Id.* Therefore, DOE tentatively determined that testing all three of the proposed temperature selections would be unnecessary, and that only a single test cycle is required for a given load size. *Id.* In the September 2021 NOPR, DOE proposed in new appendix J to require testing only the Cold cycle, and to determine the representative values for the Hot and Warm cycles formulaically based on the values measured for the Cold cycle. *Id.* This approach would reduce the test burden for semi-automatic clothes washers by requiring only two test cycles to be conducted (using the small and large test loads with the Cold cycle) as opposed to six cycles (using the small and large test loads with the Cold, Warm, and Hot cycles) and obtaining the other required values through calculation. *Id.*

[42] These water use determinations are based on the water faucet positions specified in section 3.2.3.2 of appendix J2, which specifies that to obtain a hot inlet water temperature, open the hot water faucet completely and close the cold water faucet; for a warm inlet water temperature, open both hot and cold water faucets completely; and for a cold inlet water temperature, close the hot water faucet and open the cold water faucet completely.

DOE also noted that if it were to require measuring six temperature selections (Hot/Hot, Hot/Warm, Hot/Cold, Warm/Warm, Warm/Cold, and Cold/Cold), the determination of hot and cold water use would be more complicated for temperature selections that require a water temperature change. 86 FR 49140, 49168–49169. The tester would first need to determine the proportion of wash water to rinse water, in order to be able to apportion the total volume of cold and hot water used between wash and rinse for each of the temperature selections determined formulaically. 86 FR 49140, 49169.

In the September 2021 NOPR, DOE requested comment on its proposal to require semi-automatic clothes washers to be tested using only the Cold cycle, and to determine the representative values for the Warm and Hot cycles formulaically, for the proposed new appendix J. 86 FR 49140, 49168.

DOE did not receive any comments regarding the proposal to require semi-automatic clothes washers to test only the Cold cycle, and to determine the representative values for the Warm and Hot cycles formulaically, for the proposed new appendix J.

For the reasons stated above, DOE finalizes its proposal, consistent with the September 2021 NOPR, to require semi-automatic clothes washers to be tested using only the Cold cycle, and to determine the representative values for the Warm and Hot cycles formulaically, for the proposed new appendix J.

c. Implementation

To implement the changes described above for semi-automatic clothes washers, DOE proposed in the September 2021 NOPR to create a section 3.4 in the new appendix J (see discussion in section III.H.7 of this document for an explanation of how section 3 of the new appendix J was proposed to be structured) specifying the cycles required for testing semi-automatic clothes washers. 86 FR 49140, 49169. DOE proposed a new section 3.4.1 that would specify the required test measurements for the Cold cycle and would define variables for each measured value and a new section 3.4.2 that would specify the formulas used to calculate the representative values for the Warm and Hot cycles, based on the measured values from the Cold cycle. *Id.*

DOE also proposed to create a section 2.12.2 in the new appendix J to state that the energy test cycle for semi-automatic clothes washers includes only the Cold Wash/Cold Rinse (''Cold'') test cycle. *Id.* DOE also proposed to create a section 2.12.1, which would parallel the current section 2.12 in appendix J2 and would be identified as applying to automatic clothes washers. *Id.* DOE further proposed to specify that section 3.2.1 of the new appendix J (which would mirror section 3.2.4 of appendix J2) would apply only to automatic clothes washers. *Id.*

In the September 2021 NOPR, DOE requested comment on whether to include explicit instructions for how to test semi-automatic clothes washers in appendix J2, and if so, whether DOE should implement the same procedures being proposed for the proposed new appendix J. 86 FR 49140, 49168. DOE also requested feedback on how manufacturers of semi-automatic clothes washers are currently testing their products using appendix J2. *Id.*

DOE did not receive any comments regarding the proposed implementation details for including explicit instructions on how to test semi-automatic clothes washers in appendix J. DOE also did not receive any comments on how manufacturers of semi-automatic clothes washers are currently testing their products using appendix J2 or whether to include explicit instructions for how to test semi-automatic clothes washers in appendix J2.

For the reasons stated above, DOE finalizes its proposal, consistent with the September 2021 NOPR, to create a section 3.4 in the new appendix J specifying the cycles required for testing semi-automatic clothes washers, including a new section 3.4.1 that specifies the required test measurements for the Cold cycle and defines variables for each measured value; and a new section 3.4.2 that specifies the formulas used to calculate the representative values for the Warm and Hot cycles, based on the measured values from the Cold cycle. DOE also finalizes its proposal, consistent with the September 2021 NOPR, to create a section 2.12.2 in the new appendix J to state that the energy test cycle for semi-automatic clothes washers includes only the Cold test cycle.

9. Optional Cycle Modifiers

Section 3.2.7 of appendix J2 previously stated that for clothes washers with electronic control systems, the manufacturer default settings must be used for any cycle selections, except for (1) the temperature selection, (2) the wash water fill levels, or (3) if necessary, the spin speeds on wash cycles used to determine RMC. Specifically, the manufacturer default settings must be used for wash conditions such as agitation/tumble operation, soil level, spin speed on wash cycles used to determine energy and water consumption, wash times, rinse times, optional rinse settings, water heating time for water-heating clothes washers, and all other wash parameters or optional features applicable to that wash cycle. Any optional wash cycle feature or setting (other than wash/rinse temperature, water fill level selection, or spin speed on wash cycles used to determine RMC) that is activated by default on the wash cycle under test must be included for testing unless the manufacturer instructions recommend not selecting this option, or recommend selecting a different option, for washing normally soiled cotton clothing.

DOE has observed a trend towards increased availability of optional cycle modifiers. 86 FR 49140, 49169. These optional settings may significantly impact the water and/or energy consumption of the clothes washer when activated. *Id.* DOE has observed that the default setting of these optional settings on the Normal cycle is most often in the off position; *i.e.,* the least energy- and water-intensive setting. *Id.* DOE suggested that the growing presence of such features may, however, be indicative of an increase in consumer demand and/or usage of these features. *Id.*

As noted in the September 2021 NOPR, DOE is not aware of any consumer usage data concerning the use of optional cycle modifiers, nor did interested parties provide any such data. 86 FR 49140, 49170. Although DOE maintains that the growing presence of such features may be indicative of an increase in consumer usage of these features, DOE lacks consumer usage data that would be required to incorporate the testing of such features in the test procedure. *Id.* Therefore, DOE did not propose to change the current requirement to use the manufacturer default settings for optional cycle modifiers. *Id.*

As discussed in section III.D.4 of this document, new appendix J requires measuring RMC on each tested cycle using the default spin settings for each cycle. *Id.* Consistent with this change from appendix J2, DOE proposed in the September 2021 NOPR to remove ''spin speeds on wash cycles used to determine RMC'' from the list of cycle settings that are excluded from the requirement to use the manufacturer default settings in section 3.2.4 (Manufacturer default settings) of the new appendix J. *Id.*

DOE requested comment on maintaining the current requirement to use the manufacturer default settings for optional cycle modifiers. *Id.*

The Joint Efficiency Advocates encouraged DOE to investigate the usage of cycle modifiers and consumer spin cycle selection behaviors, and their impact on energy and water use. (Joint Efficiency Advocates, No. 28 at p. 7) The Joint Efficiency Advocates stated that they agree with DOE's statement in the September 2021 NOPR that cycle modifiers have a growing presence, as evidenced by the fact that ''deep fill'' is a clothes washer selection filter on certain appliance vendors' websites. (*Id.*) The Joint Efficiency Advocates asserted that cycle modifiers such as ''deep fill'' are being captured by the test procedure only in certain cases. (*e.g.,* user-adjustable automatic clothes washers that have the ''deep fill'' setting on the water level control, which would be captured by the provision in section 3.2.6.2.2 of appendix J2, versus clothes washers that have a separate ''deep fill'' button that would be considered a cycle modifier and would not be tested under the proposed amended test procedure). (*Id.*) The Joint Efficiency Advocates also restated their comments in response to the May 2020 RFI, that if the test procedure requires testing of optional cycle modifiers only in their default position, and the default settings for optional modifiers are most often in the ''off'' position, the test procedure effectively assigns a value of zero to the energy and water use of those features, which the Joint Efficiency Advocates asserted is not representative of consumer use. (*Id.*) Additionally, the Joint Efficiency Advocates commented that while DOE's proposal to measure RMC on each energy test cycle using the default spin setting is an improvement upon the current RMC testing method, consumers may still select spin settings that are not the default setting, and that the proposed amended test procedure may not accurately reflect real-world energy usage. (*Id.*) The Joint Efficiency Advocates therefore concluded that DOE should pursue data regarding consumer behavior for spin setting selection at different temperature cycles. (*Id.*)

The CA IOUs recommended that DOE conduct exploratory research testing on cycle modifiers and consider future amendments to the test procedure to ensure that the energy conservation standards are representative of actual field energy and water use. (CA IOUs, No. 29 at p. 6) The CA IOUs also recommended that DOE invest in a national study to determine how consumers use additional cycle modifiers on a national scale. (*Id.*)

AHAM commented in support of DOE's proposal to maintain the current requirement to use the manufacturer default settings for optional cycle modifiers. (AHAM, No. 27 at p. 14) AHAM also commented that it agrees with DOE's proposal to remove ''spin speeds on wash cycles used to determine RMC'' from the list of cycle settings that are excluded from the requirement to use the manufacturer default settings. (*Id.*)

Regarding the Joint Efficiency Advocates' assertion that certain implementations of ''deep fill'' would be captured by the test procedure but that a separate deep fill button would be considered a cycle modifier and not be tested, the language of section 3.2.7 regarding use of default settings during testing does not apply to wash water fill levels.[43] Irrespective of how a deep fill feature is implemented on the control panel (*e.g.,* whether as a setting on the water level control or as separate ''deep fill'' button), the ''deep fill'' option would be tested if the feature meets the definition of a user-adjustable adaptive WFCS (see further discussion of this definition in section III.H.3.a of this document).

DOE recognizes, as discussed, that clothes washer control panels continue to become more complex. The plethora of cycle modifiers available—implemented differently by each manufacturer—creates a significant challenge in collecting data on consumer usage and in considering test procedures for these features that would be representative of an average use cycle or period of use without being unduly burdensome to conduct, as required by EPCA. DOE lacks data and information that could provide insights into average consumer use of cycle modifiers.

For the reasons stated above, DOE is finalizing its proposal, consistent with the September 2021 NOPR, to specify in section 3.2.4 of new appendix J the use of manufacturer default settings for optional cycle modifiers other than temperature selections and wash water fill levels, and to remove ''spin speeds on wash cycles used to determine RMC'' from the list of cycle settings that are excluded from the requirement to use the manufacturer default settings.

10. Clothes Washers With Connected Functionality

DOE is aware of several ''connected'' RCW models currently on the market, from at least six major manufacturers. As discussed in the September 2021 NOPR, these products offer optional wireless network connectivity to enable features such as remote monitoring and control via smartphone, as well as certain demand response features[44] available through partnerships with a small number of local electric utilities. 86 FR 49140, 49170. In addition, connected features are available via certain external communication modules for CCWs. *Id.* However, DOE is not aware of any CCW models currently on the market that incorporate connected features directly into the unit. *Id.*

As noted previously, section 3.2.7 of appendix J2 previously specified using the manufacturer default settings for any cycle selections except temperature selection, wash water fill level, or spin speed. Furthermore, section 3.9.1 of appendix J2 specifies performing the combined low-power mode testing without changing any control panel settings used for the active mode wash cycle.

As discussed in the September 2021 NOPR, if connected features on a clothes washer affect its inactive mode power consumption in the as-shipped configuration (*e.g.,* by energizing a wireless communication chip on the circuit board by default), such impact would be measured by the current test procedure provisions in section 3.9 of appendix J2 for measuring combined low-power mode power. *Id.* Whereas, if the inactive mode power consumption is not affected unless the consumer actively enables the connected functionality on the unit, any incremental inactive mode power consumption resulting from the connected features would not be measured by the current test procedure, because the test procedure does not include instructions for activating any such features before performing the low-power mode measurement. *Id.* Similarly, any incremental energy consumption in active mode, or any other modes of operation impacted by the product's connected features, would not be measured as part of the current DOE test procedure, because the test cycle requirements in section 3.2.7 of appendix J2 do not include instructions for activating any such features before performing the active mode test cycles. *Id.*

In the September 2021 NOPR, DOE recognized the potential benefits that could be provided by connected

[43] Section 3.2.7 of appendix J2 states that for clothes washers with electronic control systems, use the manufacturer default settings for any cycle selections, *except for* (1) the temperature selection, (2) *the wash water fill levels,* or (3) if necessary, the spin speeds on wash cycles used to determine remaining moisture content. (emphasis added)

[44] ''Demand response features'' refers to product functionality that can be controlled by the ''smart grid'' to improve the overall operation of the electrical grid, for example by reducing energy consumption during peak periods and/or shifting power consumption to off-peak periods.

capability, such as providing energy saving benefits to consumers, enabling peak load shifting on the electrical grid, and other consumer-related benefits. 86 FR 49140, 49171. While a number of connected clothes washers are currently on the market with varying implementations of connected features, DOE is not aware of any data available regarding the consumer use of connected features. *Id.*

DOE also noted that while the current test procedure does not specifically consider energy use of network features, the test procedure may result in the measurement of the energy use of connected features in inactive mode. 86 FR 49140, 49171. Specifically, as discussed, any energy use of connected features would be measured in section 3.9 of appendix J2 for measuring combined low-power mode power if the connected features are enabled in the ''as-shipped'' configuration. *Id.* If the consumer is required to actively enable the connected functionality, however, such energy consumption would not be measured. *Id.* Similarly, any incremental energy consumption in active mode, or any other modes of operation impacted by the product's connected features, would not be measured because the test cycle requirements in section 3.2.7 of appendix J2 do not include instructions for activating any such features before performing the active mode test cycles. *Id.*

Given the lack of data to establish a test configuration that would be representative of consumer use of connected features on clothes washers, DOE proposed to amend section 3.2.7 of appendix J2 and section 3.2.4 of the new appendix J to specify that network settings (on clothes washers with network capabilities) must be disabled during testing if such settings can be disabled by the end-user, and the product's user manual provides instructions on how to do so. *Id.*

If, however, connected functionality cannot be disabled by the end-user or the product's user manual does not provide instruction for disabling connected functionality that is enabled by default, DOE proposed that the unit must be tested with the network capability in the factory default setting as specified in the current test procedure. *Id.* DOE preliminarily determined that if connected functionality cannot be disabled, or the product's user manual does not provide instruction for disabling the function, it is more representative to include the energy consumption of the clothes washer in the default condition, including the enabled connected function, than to exclude the energy consumption associated with the connected feature. *Id.* As such, the energy consumption of a connected function that cannot be disabled would continue to be measured, as in the current test procedure. *Id.* This approach is consistent with the microwave ovens supplemental NOPR published on August 3, 2021, and with the consumer clothes dryer final rule published on October 8, 2021. 86 FR 41759 and 86 FR 56608.

DOE requested comment on its proposed amendment to appendix J2 and the proposed new appendix J to specify that network settings (on clothes washers with network capabilities) must be disabled during testing if such settings can be disabled by the end-user, and the product's user manual provides instructions on how to do so. 86 FR 49140, 49171. DOE also requested information and data regarding connected clothes washers that could inform future test procedure considerations. *Id.*

Whirlpool stated that it supports DOE's proposal to specify that network settings on clothes washers with connected functionality should be disabled during testing if such settings can be disabled by the end user, and if the product's user manual provides instructions on how to do so. (Whirlpool, No. 26 at p. 11)

AHAM commented that it does not oppose the intent behind DOE's proposal regarding network-connected clothes washers, but recommended that DOE refrain from using the term ''disabled'' and instead adopt terminology consistent with IEC Standard 62301, ''Household electrical appliances—Measurement of standby power,'' Edition 2.0, 2011–01. (AHAM, No. 27 at p. 14) Specifically, AHAM noted that the definition of ''low power mode'' in IEC 62301 has three conditions: Off, standby, and network. (*Id.*) AHAM added that the power consumption in standby and network modes are often negligible, but are not always zero. (*Id.*) AHAM expressed concern that DOE's use of the term ''disable'' could mean that power consumption must be zero, which may lead to confusion and inaccurate testing. (*Id.*) AHAM recommended that instead of calling for connected functionality to be disabled, DOE should adopt the use of ''low power mode'' as defined in IEC 62301 as a setting in which the testing of connected products may occur. (*Id.*) AHAM added that the approach in IEC 62301 is desirable because connected functionalities are still evolving, as are the use cases that connected devices employ, and the low power definition in IEC 62301 allows for more flexibility while offering the clarity DOE seeks when it comes to connected functionality testing for clothes washers. (*Id.*)

The Joint Efficiency Advocates recommended that DOE test clothes washers with network-connected functionality in their as-shipped setting for both the active cycle and low-power modes. (Joint Efficiency Advocates, No. 28 at p. 4) The Joint Efficiency Advocates commented that while they support clarifying the instructions for network-connected functionality testing, they are concerned that DOE's proposal to test clothes washers with the network-connected functions disabled if such settings can be disabled by the end-user via user manual instructions would allow many clothes washers to be tested with connected functionality disabled even though those functions may not be disabled in the field. (*Id.*) The Joint Efficiency Advocates asserted that if a clothes washer with connected functionality is shipped with those features enabled, it is unlikely that most consumers will take the necessary steps to disable those features. (*Id.*) The Joint Efficiency Advocates therefore concluded that DOE's proposal for testing network-connected functionality would not be representative of the model's standby power consumption. (*Id.*)

The CA IOUs commented that they support testing all products with connected functionality in their as-shipped configuration. (CA IOUs, No. 29 at p. 7) The CA IOUs added that there is existing precedent for testing network-connected functions in their as-shipped configurations that was established under the October 12, 2021 test procedure final rule for refrigeration products.[45] (*Id.*) The CA IOUs also commented that for clothes washers that have directions to disable network-connected functionality, there is no information available to confirm whether consumers disable these functions and at what rate they do so. (*Id.*) The CA IOUs further asserted that without specific consumer use information, it is reasonable to assume consumers will operate network-connected clothes washers in their as-shipped condition, and that anything to the contrary would imply a direct action by the consumer for which no supporting data exists. (*Id.*) The CA IOUs requested that if such data does exist, DOE should publish this

[45] The October 12, 2021 test procedure final rule for refrigeration products is available online at *www.regulations.gov/document/EERE-2017-BT-TP-0004-0029.*

information for all stakeholders to view. (*Id.*)

The Joint Commenters commented that they disagree with DOE's proposal to disable connected functionality during testing. (Joint Commenters, No. 31 at pp. 5–6) The Joint Commenters instead recommended that DOE require testing connected functionality for all clothes washers in the as-shipped configuration. (*Id.*) The Joint Commenters commented that their technical research shows that clothes washers with connected functionality may use varying amounts of energy on low power mode, and that data trends predict that connected functionality will likely be present in 25 percent of RCWs by 2023. (*Id.*) The Joint Commenters further commented that testing connected functionality for all clothes washers in the as-shipped condition would reduce test burden since the test technician would not need to disable connected functionality before low power mode testing. (*Id.*) The Joint Commenters also stated that testing connected functionality in the as-shipped configuration would be more representative of typical use, asserting that consumers are more likely to use the clothes washer as shipped, instead of making extra efforts to disable connected functionality, even if they choose not to use it. (*Id.*) The Joint Commenters also added that DOE's general approach in clothes washers and in other product categories is to use the default position for most features. (*Id.*)

Mutrux recommended that DOE implement a more nuanced tracking of the standby states of connected appliances since, according to the Electronics Device & Networks Annex (''EDNA''), network-connected clothes washers are expected to see a ''high rate of proliferation.'' (Mutrux, No. 19 at pp. 1–2) Mutrux cited EDNA data showing that smart appliances draw an average of 0.4 watts on standby mode, and that the worldwide energy consumption of standby power by smart appliances is predicted to be 7 terawatt-hours in 2025. (*Id.*) Mutrux recommended that DOE test the three standby configurations proposed by the Edison Electric Institute to amend energy conservation standards for appliances: Standby non-connected (for traditional clothes washers that do not have ''smart'' features and cannot connect to any external network or device); standby connected (for ''smart'' clothes washers that connect to smart home networks or smart devices); and standby disconnected (for ''smart'' clothes washers that have the ability to disconnect from smart home networks and smart devices based on user command or as a default mode if it detects problems with the communication network). (*Id.*) Mutrux suggested test procedure provisions that would address the configuration for network-connected functionality. (*Id.*) Mutrux's proposal specified that clothes washers should be tested either (1) without any connectivity if the washing machine does not have ''smart'' features and cannot connect to any external network or device, or (2) both (a) with network-connected settings disabled (if connected settings can be disabled by the end-user and the product's user manual provides instructions on how to do so) or on their ''default mode'' if the clothes washer detects problems with the communication network and (b) with their network-connected functions enabled. (*Id.*)

As discussed, DOE is aware of a number of clothes washers on the market with varying implementations of connected functionality. On such products, DOE has observed inconsistent implementations of these connected features across different brands, and that the design and operation of these features is continuously evolving as the nascent market continues to grow for these products.

DOE remains unaware of any data available, nor did interested parties provide any such data, regarding the consumer use of connected features. Therefore, DOE is unable to establish a representative test configuration for assessing the energy consumption of connected functionality for clothes washers during an average period of use.

Furthermore, as noted, while DOE's prior test procedure did not explicitly require the measurement of energy use associated with any connected features, the previous test procedure, in its required measurement of standby mode and off mode power, may have captured the energy used by features that provide connected functionality. Specifically, any energy use of such connected features may have been measured in section 3.9 of previous appendix J2 if manufacturers' instructions specify that the features be turned on, or if the connected functionality is enabled by default when the unit is powered on. If, however, a manufacturer does not provide such an instruction, and the product ships with connected features disabled, then such energy consumption would not have been measured under the prior test procedure because the test cycle requirements in section 3.2.7 of appendix J2 did not include instructions for activating any such features before performing the active mode test cycles.

Therefore, to ensure the repeatability and comparability of test results between models, especially those with connected functionality, DOE is finalizing its proposal, consistent with the September 2021 NOPR, to specify in section 3.2.7 of appendix J2 and section 3.2.4 of the new appendix J that network settings (on clothes washers with network capabilities) must be disabled during testing if such settings can be disabled by the end-user, and the product's user manual provides instructions on how to do so.

DOE has determined that if network functionality cannot be disabled by the consumer, or if the manufacturer's user manual does not provide instruction for disabling the function, including the energy consumption of the enabled network function is more representative than excluding the energy consumption associated with the network function. For such products, the energy consumption of a connected function that cannot be disabled will continue to be measured, as in the previous test procedure.

Regarding AHAM's comment on use of the term ''disabled,'' DOE does not agree that the term ''disable'' implies that the power consumption must be zero. The wording implemented in this final rule specifies that ''. . . the network settings must be disabled throughout testing if such settings can be disabled by the end-user . . .'' No implication regarding the resulting power consumption is intended by this instruction. DOE also notes that this wording maintains consistency with the clothes dryer test procedures as amended by the final rule published October 8, 2021 (''October 2021 clothes dryer Final Rule'').[46] 86 FR 56608.

Regarding consideration of alternate methodologies for categorizing and testing low power modes (*e.g.,* through further reference to IEC 62301 or to procedures developed by Edison Electric Institute, as suggested by commenters), DOE developed its low-power mode definitions and test provisions in the March 2012 Final Rule consistent with the requirements of EPCA to integrate measures of standby mode and off mode energy consumption into the overall energy efficiency, energy consumption, or other energy descriptor, while considering the most current version of IEC 62301; (42 U.S.C. 6295(gg)(2)(A)) while also considering EPCA requirements that any test procedures shall be reasonably designed

[46] The October 2021 consumer clothes dryers test procedure final rule is available online at: *www.regulations.gov/document/EERE-2014-BT-TP-0034-0039.*

to produce test results which measure energy efficiency, energy use or estimated annual operating cost of a covered product or equipment during a representative average use cycle or period of use and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3); 42 U.S.C. 6314(a)(2))

E. Metrics

1. Replacing Capacity With Weighted-Average Load Size

As discussed, the current energy efficiency standards for RCWs are based on the IMEF metric, measured in ft^3/kWh/cycle, as calculated in section 4.6 of appendix J2. IMEF is calculated as the capacity of the clothes container (in ft^3) divided by the total clothes washer energy consumption (in kWh) per cycle. The total clothes washer energy consumption per cycle is the sum of: (a) The machine electrical energy consumption; (b) the water heating energy consumption; (c) the energy required for removal of the remaining moisture in the wash load; and (d) the combined low-power mode energy consumption.

The current energy efficiency standards for CCWs are based on the MEF_{J2} metric, measured in ft^3/kWh/cycle, as determined in section 4.5 of appendix J2. The MEF_{J2} metric differs from the IMEF metric by not including the combined low-power mode energy consumption in the total clothes washer energy consumption per cycle.

The current water efficiency standards for both RCWs and CCWs are based on the IWF metric, measured in gal/cycle/ft^3, as calculated in section 4.2.13 of appendix J2. IWF is calculated as the total weighted per-cycle water consumption (in gallons) for all wash cycles divided by the capacity of the clothes container (in ft^3).

In the September 2021 NOPR, DOE noted that energy use (the denominator of the IMEF and MEF_{J2} equations) scales with weighted-average load size, whereas capacity (the numerator of the IMEF and MEF_{J2} equations) scales with maximum load size. 86 FR 49140, 49172. This provides an inherent numerical advantage to large-capacity clothes washers that is disproportionate to the efficiency advantage that can be achieved through ''economies of scale'' associated with washing larger loads. *Id.* This advantage means that a larger-capacity clothes washer consumes more energy to wash a pound of clothes than a smaller-capacity clothes washer with the same IMEF rating. *Id.* This relationship applies similarly to water efficiency through the IWF equation. *Id.* As noted in the comments summarized in the September 2021 NOPR, this disproportionate benefit increases as average clothes washer capacity increases over time. *Id.* To avoid providing bias for large-capacity clothes washers, DOE proposed to change the energy and water efficiency metrics in the new appendix J by replacing the capacity term with the weighted-average load size, in pounds. *Id.* Under this proposed change, energy and water use would scale proportionally with weighted-average load size in the IMEF, MEF_{J2}, and IWF formulas and thus eliminate the efficiency bias currently provided to large-capacity clothes washers. *Id.*

EPCA defines energy efficiency as ''the ratio of the useful output of services from a consumer product to the energy use of such product.'' (42 U.S.C. 6291(5); 42 U.S.C. 6311(3)) In the current efficiency metrics, clothes washer capacity is used to represent the measure of useful output. In the September 2021 NOPR, DOE tentatively determined that clothing load size (*i.e.,* the weight of clothes cleaned), expressed as the weighted-average load size, may better represent the ''useful output'' of a clothes washer. 86 FR 49140, 49172.

DOE clarified that were DOE to finalize the proposed metric change, changes to the energy conservation standards would be addressed in an energy conservation standards rulemaking. *Id.*

In the September 2021 NOPR, DOE requested comment on its proposal to replace the capacity term with weighted-average load size in the energy efficiency metrics and the water efficiency metric in the new appendix J. *Id.*

Samsung commented that it supports DOE's proposal to base the efficiency metrics on load size instead of clothes washer capacity. (Samsung, No. 30 at p. 3) Samsung added that this proposed change will be better understood by consumers and will result in only a numerical change since the clothes washer volume and weighted-average load size relationship is linear. (*Id.*)

The CA IOUs commented in support of DOE's proposal to define the efficiency metrics based on the weighted-average load size instead of clothes washer capacity, stating that it would help eliminate part of the inherent bias toward larger-capacity clothes washers. (CA IOUs, No. 29 at p. 2; CA IOUs, No. 18 at p. 16)

The Joint Commenters commented in support of DOE's proposal to replace the capacity term in the efficiency metrics with a weighted-average load size term in new appendix J. (Joint Commenters, No. 31 at p. 4) The Joint Commenters further commented that as the average basket volume has increased from 2.7 ft^3 when the test procedure was first developed to 4.4 ft^3 in 2019, aspects of the current test procedure and efficiency metrics created unintended advantages for larger capacity clothes washers. (*Id.*) The Joint Commenters specifically noted that larger capacity clothes washers could use more energy and water per pound of textile washed than smaller capacity clothes washers with the same IMEF ratings, without necessarily being more efficient than smaller clothes washers. (*Id.*) The Joint Commenters additionally commented in support of DOE's proposed new efficiency metrics due to the EER and WER metrics being similar to the appendix D2 efficiency metrics for clothes dryers, which also express efficiency in pounds of textile per kWh. (*Id.*)

The Joint Efficiency Advocates commented that DOE's proposal to base efficiency metrics on load size instead of capacity is an important step towards eliminating the current bias towards large-capacity washers and that it will alter the relative efficiency rankings of machines, will provide a more accurate representation of real-world efficiency across models, and will help consumers make more informed purchasing decisions. (Joint Efficiency Advocates, No. 28 at p. 1)

AHAM commented that DOE does not need to change the efficiency metrics. (AHAM, No. 27 at pp. 7–8) AHAM also commented that in order to provide fully formed comments to DOE on its proposal to introduce new efficiency metrics, AHAM needs to understand the impact of the proposed changes on products as well as on consumer understanding of the metrics. (*Id.*) Additionally, AHAM commented that since DOE will not be able to easily ''crosswalk'' current standards to account for the changes in measured efficiency use, DOE's proposals will require significant testing and data gathering, which AHAM is just beginning. (*Id.*) AHAM emphasized that the main reason AHAM opposes DOE's process of issuing the proposed test procedure and standards preliminary analysis concurrently is because it needs more time to understand the new metrics' impact on products, consumers and manufacturers. (*Id.*)

As discussed previously, the impacts to measured energy as a result of changing the metrics were accounted for in the crosswalk between the then-current appendix J2 and appendix J metrics developed for the September 2021 RCW Standards Preliminary

Analysis. As stated in the preliminary analysis, DOE plans to continue testing additional units to appendix J and will continue to refine its approach for determining appropriate crosswalk translations in future stages of the standards rulemaking. DOE also welcomes any additional data submitted by interested parties as part of the ongoing standards rulemaking process.

Considering the discussion presented in the September 2021 NOPR and comments received from interested parties, DOE has determined that clothing load size (*i.e.,* the weight of clothes cleaned), expressed as the weighted-average load size, better represent the ''useful output'' of a clothes washer. As stated, the current metrics provide an inherent numerical advantage to large-capacity clothes washers that is disproportionate to the efficiency advantage that can be achieved through ''economies of scale'' associated with washing larger loads. Also as stated, under the new metrics adopted in new appendix J, energy and water use scale proportionally with weighted-average load size in the EER, AEER, and WER formulas and thus eliminate the efficiency bias currently provided to large-capacity clothes washers.

For the reasons discussed, DOE is finalizing its proposal, consistent with the September 2021 NOPR, to change the energy and water efficiency metrics in the new appendix J by replacing the capacity term with the weighted-average load size, in pounds.

In the September 2021 NOPR, DOE proposed to rename the efficiency metrics in the new appendix J to avoid any confusion between the proposed new metrics and the existing metrics. *Id.* DOE proposed to designate EER as the energy efficiency metric for RCWs (replacing IMEF); AEER as the energy efficiency metric for CCWs (replacing MEF_{J2}) and WER as the water efficiency metric for both RCWs and CCWs (replacing IWF). As proposed, EER would be calculated as the quotient of the weighted-average load size (in lb) divided by the total clothes washer energy consumption (in kWh) per cycle; and AEER would be calculated as the quotient of the weighted-average load size (in lb) divided by the total clothes washer energy consumption (in kWh) per cycle not including the combined low-power mode energy consumption. *Id.* Section III.E.2 of this document describes how WER would be calculated.

DOE also proposed to establish provisions in 10 CFR 430.23(j) to specify the procedure for determining EER and WER for RCWs, and in 10 CFR 431.154 to specify the procedure for determining AEER and WER for CCWs. *Id.*

DOE requested comment on its proposed names for the proposed new efficiency metrics in new appendix J: Energy efficiency ratio (EER), active-mode energy efficiency ratio (AEER), and water efficiency ratio (WER).

The CA IOUs and the Joint Commenters supported DOE renaming the efficiency metrics to EER and WER. (CA IOUs, No. 29 at p. 2; Joint Commenters, No. 31 at p. 4) No other comments were received with regard to the name changes for the metrics.

For the reasons discussed above, DOE is finalizing its proposals, consistent with the September 2021 NOPR, to rename the efficiency metrics in new appendix J and to establish provisions in 10 CFR 430.23(j) to specify the procedure for determining EER and WER for RCWs, and in 10 CFR 431.154 to specify the procedure for determining AEER and WER for CCWs.

2. Inverting the Water Metric

As described previously, IWF is calculated in section 4.2.13 of appendix J2 as the total weighted per-cycle water consumption (in gallons) for all wash cycles divided by the capacity of the clothes container (in ft^3). Unlike the IMEF metric, in which a higher number indicates more efficient performance, a lower IWF value indicates more efficient performance.

In the September 2021 NOPR, DOE proposed to invert the water metric, in conjunction with replacing the capacity term with weighted-average load size, as described in the previous section. 86 FR 49140, 49173. By inverting the metric, a higher value would represent more efficient performance, consistent with the energy efficiency metrics. In addition, by inverting the metric, the proposed WER metric would represent the ratio of the useful output of services to the water use of the product, consistent with EPCA's definition of energy efficiency as described. *Id.*

DOE proposed to define WER in the new appendix J as the quotient of the weighted-average load size (in lb) divided by the total weighted per-cycle water consumption for all wash cycles (in gallons). *Id.*

DOE requested comment on its proposal to invert the water efficiency metric in new appendix J and calculate the newly defined WER metric as the quotient of the weighted-average load size divided by the total weighted per-cycle water consumption for all wash cycles. *Id.*

AHAM commented that upon initial review, inversion makes sense from a theoretical standpoint given the other proposed changes to the test procedure. (AHAM, No. 27 at p. 8)

The CA IOUs commented in support of DOE's proposal to invert the water metric so that it is aligns with the energy metric, for which higher values will equate to more efficient products. (CA IOUs, No. 29 at p. 1) The CA IOUs stated that they believe this will provide better clarity to consumer seeking efficient products. (*Id.*)

The Joint Commenters commented in support of DOE's proposal to invert the water efficiency metric so that a higher number signifies increased efficiency, stating that it is more intuitive to pair higher numbers with higher efficiency. (Joint Commenters, No. 31 at p. 11) The Joint Commenters also added that there is value in aligning the appendix J2 metrics so that higher is better for both metrics. (*Id.*)

For the reasons stated above, DOE is finalizing its proposal, consistent with the September 2021 NOPR, to invert the water metric in the new appendix J and thereby define WER as the quotient of the weighted-average load size (in lb) divided by the total weighted per-cycle water consumption for all wash cycles (in gallons).

DOE considered whether to invert to the IWF metric in appendix J2 to align with the MEF_{J2} and IMEF metrics such that a higher value would indicate higher efficiency. While doing so would provide the same benefits described previously as justification for inverting the water metric in new appendix J, changing the metric would require manufacturers to recertify every model, would require DOE to amend its standards according to the new metric, and would not provide information to the consumer that is any more representative than the current metric. Accordingly, DOE has determined that the burdens imposed by inverting the water metric in appendix J2 would outweigh the benefits; *i.e.,* such a change would be unduly burdensome. This final rule makes no change to the IWF water metric in appendix J2.

3. Representation Requirements

Representation requirements for RCWs and CCWs are codified at 10 CFR 429.20(a) and 10 CFR 429.46(a), respectively.

In the September 2021 NOPR, DOE proposed to specify that the sampling requirements for RCWs specified at 10 CFR 429.20(a)(2)(ii) would also apply to the new proposed EER and WER metrics when using the new appendix J. 86 FR 49140, 49174. DOE also proposed to clarify that the capacity specified in 10 CFR 429.20(a)(3) is the clothes *container capacity* (emphasis added). *Id.*

DOE further proposed to specify that the sampling requirements specified for CCWs at 10 CFR 429.46(a)(2)(ii) would also apply to the new proposed AEER and WER metrics when using the new appendix J. *Id.*

DOE requested comment on its proposed representation and sampling requirements for RCWs and CCWs when tested according to new appendix J and the proposed clarification. *Id.*

DOE did not receive any comments regarding is proposal regarding representation and sampling requirements for RCWs and CCWs.

DOE is finalizing its proposal, consistent with the September 2021 NOPR, to specify that the sampling requirements for RCWs specified at 10 CFR 429.20(a)(2)(ii) also apply to the new EER and WER metrics when using the new appendix J; to clarify that the capacity specified in 10 CFR 429.20(a)(3) is the clothes container capacity; and to specify that the sampling requirements specified for CCWs at 10 CFR 429.46(a)(2)(ii) also apply to the new AEER and WER metrics when using the new appendix J.

F. Cleaning Performance

EPCA requires DOE to consider any lessening of the utility or the performance of the covered products (and certain commercial equipment, including CCWs) likely to result from the imposition of potential new or amended standards. (42 U.S.C. 6295(o)(2)(B)(i)(IV); 42 U.S.C. 6316(a)) EPCA prohibits DOE from prescribing an amended or new standard if the Secretary finds that interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States at the time of the Secretary's finding. (42 U.S.C. 6295(o)(4)) [47]

EPCA authorizes DOE to design test procedures that measure energy efficiency, energy use, water use (in the case of showerheads, faucets, water closets and urinals), or estimated annual operating cost of a covered product during a representative average use cycle or period of use. (42 U.S.C. 6293(b)(3)) DOE regulates only the energy and water efficiency of clothes washers, and DOE's clothes washer test procedures do not prescribe a method for testing clothes washer cleaning performance.

In the September 2021 NOPR, DOE noted that, as indicated by stakeholder comments, multiple test procedures from industry and international organizations are available for measuring clothes washer cleaning performance (among other attributes). 86 FR 49140, 49175. DOE stated that it may conduct research and testing that uses these or other established test methods as part of an energy conservation standards rulemaking to evaluate any lessening of the utility or the performance of the covered products likely to result from the imposition of potential new or amended standards, as required by EPCA. *Id.* For example, in the most recent energy conservation standards final rule for CCWs, published on December 15, 2014 (''December 2014 Final Rule''), DOE conducted performance testing using AHAM's HLW–1–2010 test procedure to quantitatively evaluate potential impacts on cleaning performance, rinsing performance, and solid particle removal as a result of higher standard levels. 79 FR 74492, 74506.

In the September 2021 NOPR, DOE did not propose to add a cleaning performance test procedure to new appendix J or to appendix J2. 86 FR 49140, 49175.

Samsung suggested that DOE's test procedure should ensure a product performs its basic function. (Samsung, No. 30 at p. 2) Samsung commented that DOE has already established such a test procedure for ENERGY STAR called the ''Test Method for Determining Residential Clothes Washer Cleaning Performance'' [48] (''the ENERGY STAR cleaning performance test''). (*Id.*) Samsung added that the ENERGY STAR test method uses similar conditions to appendix J2 and could serve as a uniform test procedure for DOE, manufacturers, and other stakeholders to ensure that products perform their basic functionality while reaching new minimum efficiency thresholds. (*Id.*) Samsung suggested that DOE add the ENERGY STAR test method as an informative appendix to the clothes washer test procedure. (*Id.*)

Whirlpool commented in support of DOE's preliminary determination not to propose a cleaning performance test procedure to the proposed appendix J or updated appendix J2 test procedures. (Whirlpool, No. 26 at p. 11) Whirlpool recommended that DOE consider the performance impacts of any new or amended standards and test procedures, but specified that a cleaning performance test method does not need to be developed. (*Id.*)

AHAM commented that it agrees with DOE's proposal not to add a cleaning performance test procedure to appendix J2 and new appendix J, asserting that it is not within DOE's authority under EPCA to include a performance metric or test. (AHAM, No. 27 at p. 15) AHAM commented, however, that cleaning performance is a critical consideration in the development of energy conservation standards because, under EPCA, DOE must consider the impact of potential new or amended efficiency standards on performance and consumer utility. (*Id.*) AHAM therefore commented that it supports a robust analysis of the potential impact of proposed new or amended standards on product performance and utility. (*Id.*) AHAM specifically recommended test procedures, such as AHAM HLW–2–2020: ''Performance Evaluation Procedures for Household Clothes Washers'' [49] to evaluate cleaning performance, and recommended that DOE consider testing that would evaluate other performance concerns, consumer feedback, and other input. (*Id.*)

As discussed, EPCA requires DOE to establish test procedures that are reasonably designed to produce test results that measure energy efficiency, energy use, water use (for certain products), or estimated annual operating cost of a covered product during a representative average use cycle or period of use, as determined by the Secretary, and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) DOE's test procedure for clothes washers identifies the ''normal cycle'' as the cycle representative of consumer use, defines the term ''normal cycle,'' requires testing using the ''normal cycle,'' and compliance with the applicable standards is determined based on the measured energy and water use of the ''normal cycle.'' 10 CFR 430.23(j) and 10 CFR 430 subpart B appendix J2. The ''normal cycle'' is defined as the cycle recommended by the manufacturer (considering manufacturer instructions, control panel labeling, and other markings on the clothes washer) for normal, regular, or

[47] The unavailability provision is applicable to CCWs under 42 U.S.C. 6316(a).

[48] The ENERGY STAR ''Test Method for Determining Residential Clothes Washer Cleaning Performance'' is available online at: *www.energystar.gov/sites/default/files/asset/document/Test%20Method%20for%20Determining%20Residential%20Clothes%20Washer%20Cleaning%20Performance%20-%20July%202018_0.pdf.*

[49] AHAM HLW–2–2020: ''Performance Evaluation Procedures for Household Clothes Washers'' is available for purchase online at: *www.aham.org/ItemDetail?iProductCode=20002&Category=MADSTD.*

typical use for washing up to a full load of normally soiled cotton clothing.[50] Section 1.25 of appendix J2. As such, the existing test procedure does not define what constitutes ''washing'' up to a full load of normally soiled cotton clothing (*i.e.,* the cleaning performance).

For clothes washers, the cleaning performance at the completion of a cycle influences how a consumer uses the product. If the cleanliness of the clothing after completion of a wash cycle does not meet consumer expectations, consumers may alter their use of the clothes washer. For example, consumers may alter the use of the product by choosing cycle modifiers to enhance the performance of the selected cycle; selecting an alternate cycle that consumes more energy and water to provide a higher level of cleaning; operating the selected cycle multiple times; or pre-treating (*e.g.,* pre-soaking in water) clothing items before loading into the clothes washer to achieve an acceptable level of cleaning. As summarized in the September 2021 NOPR, DOE received comment from Samsung in response to the May 2020 RFI expressing concern that unless clothes washers perform at a minimum level of acceptable functionality on the Normal cycle, consumers may use other energy- or water-intensive modes and unknowingly sacrifice energy efficiency. (Samsung, No. 6 at p. 2) 86 FR 49140, 49174.

In general, a consumer-acceptable level of cleaning performance (*i.e.,* a representative average use cycle) can be easier to achieve through the use of higher amounts of energy and water use during the clothes washer cycle.[51] Conversely, maintaining acceptable cleaning performance can be more difficult as energy and water levels are reduced. Improving one aspect of clothes performance, such as reducing energy and/or water use as a result of energy conservation standards, may require a trade-off with one or more other aspects of performance, such as cleaning performance. DOE expects, however, that consumers maintain the same expectations of cleaning performance regardless of the efficiency of the clothes washer. As the clothes washer market continuously evolves to higher levels of efficiency—either as a result of mandatory minimum standards or in response to voluntary programs such as ENERGY STAR—it becomes increasingly more important that DOE ensures that its test procedure continues to reflect representative use. As such, the normal cycle that is used to test the clothes washer for energy and water performance must be one that provides a consumer-acceptable level of cleaning performance, even as efficiency increases.

DOE considered, in order to ensure that DOE's clothes washer test procedure accurately and fully tests clothes washers during a representative average use cycle, whether to propose amendments to the test procedure to define what constitutes ''washing up to a full load of normally soiled cotton clothing'' (*i.e.,* the cleaning performance) to better represent consumer use of the product. DOE notes that it proposed amendments in this regard to its dishwasher test procedure in a NOPR published December 21, 2021 (''December 2021 dishwasher NOPR''). 86 FR 72738. Specifically, in the December 2021 dishwasher NOPR, DOE proposed to include a methodology for calculating a per-cycle cleaning index metric—using a methodology defined in the relevant industry standard—and to establish a minimum cleaning index threshold as a condition for a test cycle to be valid. *Id.*

The ENERGY STAR cleaning performance test has been developed by DOE in partnership with U.S. Environmental Protection Agency (''EPA'') to determine cleaning performance for clothes washers that meet the ENERGY STAR Most Efficient criteria. Cleaning performance is determined on the same test units immediately following the energy and water consumption tests for ENERGY STAR qualification.

The ENERGY STAR cleaning performance test is based largely on the procedures specified in AHAM HLW–1–2013, but using DOE test cloth rather than the 100 percent cotton materials specified in AHAM HLW–1–2013. The test uses standardized soil/stain removal test strips specified in AHAM HLW–1–2013, which are attached to individual pieces of test cloth within the load. Testing is performed using the specific detergent formulation specified in AHAM HLW–1–2013. The test is performed three times on the hottest Warm/Cold temperature selection with the maximum load size. After each test, the test strips are separated from the cloth, allowed to dry, and the post-wash reflectance of each strip is measured to determine how much of each stain was removed. A total cleaning score is calculated based on the post-wash reflectance values. In order to qualify for ENERGY STAR Most Efficient, clothes washers must achieve a minimum total cleaning score of 85.0.

Since the ENERGY STAR cleaning performance test requires a separate set of tests conducted after the DOE energy and water consumption tests, it introduces additional test burden beyond the testing required to determine compliance with minimum standards. The use of soil/stain strips and detergent, and the instrumentation required to measure post-wash reflectance, also introduce additional material and equipment requirements beyond the requirements of the DOE test procedure.

As discussed, the AHAM HLW–2–2020 test procedure specifies use of a 100-percent cotton load for testing, which is inconsistent with the test load prescribed by the DOE test procedure. Requiring different load materials would increase test burden, and given the prevalence of adaptive water fill clothes washers (particularly among ENERGY STAR-qualified clothes washers), the energy and water use associated with the AHAM cleaning performance measurement would not be consistent with the energy and water use associated with the DOE test procedure. Test load composition is further discussed in section III.I.1 of this document.

As stated previously, EPCA requires DOE to establish test procedures that are reasonably designed to produce test results that measure energy efficiency, energy use, water use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use, and not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) DOE is unable to make a determination at this time as to whether the ENERGY STAR test procedure for determining cleaning performance or the AHAM HLW–2–2020 test procedure would produce results for DOE's purposes that are representative of an average use cycle, as required by EPCA. Furthermore, both test procedures would introduce additional test burden, and DOE is unable to assess whether the additional burden would be outweighed by the benefits of incorporating either test.

For these reasons, DOE is finalizing its proposal, consistent with the September 2021 NOPR, to not include a measure of cleaning performance in the new appendix J or appendix J2 at this time.

[50] The definition of ''normal cycle'' also specifies that for machines where multiple cycle settings are recommended by the manufacturer for normal, regular, or typical use for washing up to a full load of normally soiled cotton clothing, then the normal cycle is the cycle selection that results in the lowest IMEF or MEF_{J2} value.

[51] Higher energy use may provide increased thermal and mechanical action for removing soils. Similarly, higher water use may provide better rinsing performance by reducing the amount of soil re-deposition on the clothing.

G. Consumer Usage Assumptions

Discussion and consideration of consumer usage assumptions are provided in the following paragraphs.

1. Annual Number of Wash Cycles

Section 4.4 of appendix J2 provides the representative average number of annual clothes washer cycles to translate the annualized inactive and off mode energy consumption measurements into a per-cycle value applied to each active mode wash cycle. Separately, the number of annual wash cycles is also referenced in DOE's test procedure provisions at 10 CFR 430.23(j)(1)(i)(A) and (B), (j)(1)(ii)(A) and (B), and (j)(3)(i) and (ii) to calculate annual operating cost and annual water consumption of a clothes washer. This value was most recently updated in the March 2012 Final Rule, to 295 wash cycles per year based on an analysis of the 2005 RECS data. 77 FR 13888, 13909.

Based on the data from the 2015 RECS survey (the most recent data available), DOE proposed in the September 2021 NOPR to update the number of annual wash cycles to 234 in the new appendix J. 86 FR 49140, 49154. In proposing this update, DOE considered comments received from AHAM and NEEA in response to the May 2020 RFI. *Id.* The proposed updated value would impact the per-cycle low-power mode energy consumption value included in the calculation of IMEF and EER. *Id.* The per-cycle low-power mode energy consumption would be divided by a smaller number (*i.e.,* 234 instead of 295), and would therefore increase by around 25 percent. *Id.* See further discussion of the proposed changes to the calculation of low-power mode energy in section III.G.3 of this document.

In addition to other changes discussed in section III.H.6 of this document, DOE proposed to update 10 CFR 430.23(j)(1)(i) and (j)(3)(i) such that the annual operating cost and annual water consumption calculation would reflect the new proposed number of annual wash cycles when a clothes washer is tested using the new appendix J, if finalized. *Id.*

DOE requested comment on its proposal to update the number of annual wash cycles to 234 in the new appendix J and 10 CFR 430.23(j)(1)(i) and (j)(3)(i).

DOE did not receive any further comments in response to the September 2021 NOPR regarding its proposal to update the number of annual wash cycles.

For the reasons discussed, DOE is finalizing its proposal, consistent with the September 2021 NOPR, to update the number of annual wash cycles to 234 in the low-power mode formula in section 4.6.2 of the new appendix J, in 10 CFR 430.23(j)(1)(i), and in 10 CFR 430.23(j)(3)(i).

2. Drying Energy Assumptions

Section 4.3 of appendix J2 provides an equation for calculating total per-cycle energy consumption for removal of moisture from the clothes washer test load in a clothes dryer, *i.e.,* the ''drying energy.'' DOE first introduced the drying energy equation in appendix J1 as part of the August 1997 Final Rule. The drying energy calculation is based on the following three assumed values: (1) A clothes dryer final moisture content of 4 percent; (2) the nominal energy required for a clothes dryer to remove moisture from a pound of clothes (''DEF'') of 0.5 kWh/lb; and (3) a clothes dryer usage factor (''DUF'') of 0.91, representing the percentage of clothes washer loads dried in a clothes dryer.

DOE did not propose to make any changes to the values of DEF or DUF and received no comments in response to the September 2021 NOPR on its preliminary determination to maintain those values. DOE is maintaining these values in this final rule.

Regarding the dryer final moisture content, DOE's test procedure for clothes dryers, codified at 10 CFR part 430, subpart B, appendix D1 (''appendix D1''), prescribes a final moisture content between 2.5 and 5.0 percent, which is consistent with the 4-percent final moisture content value in the clothes washer test procedure for determining the drying energy.

However, DOE's alternate clothes dryer test procedure at appendix D2, prescribes a final moisture content between 1 and 2.5 percent for timer dryers, which are clothes dryers that can be preset to carry out at least one operation that is terminated by a timer, but may also be manually controlled without including any automatic termination function. For automatic termination control dryers, which can be preset to carry out at least one sequence of operations to be terminated by means of a system assessing, directly or indirectly, the moisture content of the load, the test cycle is deemed invalid if the clothes dryer terminates the cycle at a final moisture content greater than 2 percent. Section 3.3.2 of appendix D2. In the October 2021 clothes dryer Final Rile, DOE stated that the current 2-percent final moisture content requirement using the DOE test cloth was adopted as representative of approximately 5-percent final moisture content for ''real-world'' clothing, based on data submitted in a joint petition for rulemaking.[52] DOE determined that the specified 2-percent final moisture content using the DOE test load was representative of consumer expectations for dryness of clothing in field use. 86 FR 56608, 56626.

In both appendix D1 and appendix D2, timer dryers are allowed a range of final moisture contents during the test because DOE concluded that it would be unduly burdensome to require the tester to dry the test load to an exact final moisture content; however, the measured test cycle energy consumption for timer dryers is normalized to calculate the energy consumption required to dry the test load to a final moisture content of 4 percent in appendix D1 and 2-percent in appendix D2.

Manufacturers may elect to use appendix D2 to demonstrate compliance with the January 1, 2015, energy conservation standards; however, the procedures in appendix D2 need not be performed to determine compliance with energy conservation standards for clothes dryers at this time. See introductory paragraph to appendix D1. Use of appendix D2 is, however, required for ENERGY STAR certification.[53] Although clothes dryer manufacturers may optionally use appendix D2 to demonstrate compliance with the current energy conservation standards, appendix D1 provides the basis for the current clothes dryer energy conservation standard levels and is the test procedure used as the basis for certification for the majority of models on the market.

In the September 2021 NOPR, DOE did not propose to change the assumed final moisture content of 4 percent in the drying energy calculation. 86 FR 49140, 49176.

The Joint Efficiency Advocates recommended that DOE amend the final RMC value in the drying energy

[52] The petition was submitted by AHAM, Whirlpool Corporation, General Electric Company, Electrolux, LG Electronics, Inc., BSH, Alliance Laundry Systems, Viking Range, Sub-Zero Wolf, Friedrich A/C, U-Line, Samsung, Sharp Electronics, Miele, Heat Controller, AGA Marvel, Brown Stove, Haier, Fagor America, Airwell Group, Arcelik, Fisher & Paykel, Scotsman Ice, Indesit, Kuppersbusch, Kelon, DeLonghi, American Council for an Energy Efficient Economy, Appliance Standards Awareness Project, Natural Resources Defense Council, Alliance to Save Energy, Alliance for Water Efficiency, Northwest Power and Conservation Council, and Northeast Energy Efficiency Partnerships, Consumer Federation of America and the National Consumer Law Center. See Docket No. EERE–2011–BT–TP–0054, No. 3.

[53] The ENERGY STAR Specification of Clothes Dryer Requirements Version 1.1 requires the use of appendix D2 for clothes dryers to obtain ENERGY STAR certification.

calculation to align with the clothes dryer test procedure in appendix D2, asserting that this would improve the representativeness of the test procedure. (Joint Efficiency Advocates, No. 28 at pp. 5–6)

The CA IOUs commented that they recommend reducing the current final remaining moisture content from 4 percent to 2 percent to align with the clothes dryer final remaining moisture content specified in the appendix D2 test procedure. (CA IOUs, No. 29 at pp. 8–9; CA IOUs, No. 18 at pp. 28–29) The CA IOUs also commented that, as stated in the October 2021 clothes dryer Final Rule, a final remaining moisture content of 2 percent is representative of the ''consumer-acceptable'' dryness level for real-life clothing loads with varying weights, composition, and load size. (*Id.*)

On April 19, 2021, DOE published an energy conservation standards preliminary analysis for consumer clothes dryers (''April 2021 clothes dryer standards preliminary analysis'') and an accompanying TSD.[54] 86 FR 20327. In the April 2021 clothes dryer preliminary analysis, DOE relied on test data using appendix D2 to establish efficiency levels, indicating use of appendix D2 to define future amended standards for clothes dryers. *Id.* at 20333; *see also* chapter 5 of the accompanying TSD. Updating the final moisture content assumption in the drying energy formula in appendix J to 2 percent would ensure consistency between the clothes washer and clothes dryer test procedures to be used as the basis for future standards for clothes washers and clothes dryers, respectively.

For these reasons, in this final rule DOE is defining the final moisture content in section 4.4 of the new appendix J as 2 percent.

3. Low-Power Mode Assumptions

Section 4.4 of appendix J2 allocates 8,465 combined annual hours for inactive and off modes. The allocation of 8,465 hours to combined inactive and off modes is based on assumptions of 1 hour per cycle and 295 cycles per year, resulting in 295 active mode hours (for a total of 8,760 hours per year for all operating modes). As described in the September 2010 NOPR and confirmed in the March 2012 Final Rule, the estimate of 1 hour per cycle was based on a 2005 report from the EPA [55] that summarized test data from three issues of the Consumer Reports magazine, which showed top-loading clothes washers with ''normal'' cycle times of 37–55 minutes and frontloading clothes washers with ''normal'' cycle times of 51–105 minutes.[56]

For the new appendix J, DOE proposed in the September 2021 NOPR to update the number of hours spent in low-power mode from a fixed 8,465 total hours to a formula based on the clothes washer's measured cycle time, as discussed in section III.D.5 of this document, and the updated number of annual cycles, as discussed in section III.G.1 of this document. 86 FR 49140, 49177. This proposal would provide for a more representative allocation of hours between active mode and low-power mode. *Id.* DOE did not propose to make these changes to appendix J2 because doing so would likely change the measured efficiency, and DOE proposed to make such changes only in the new appendix J, which would be used for the evaluation and issuance of updated efficiency standards, and for determining compliance with those standards. *Id.*

DOE requested comment on its proposal to update the number of hours spent in low-power mode in the new appendix J from a fixed 8,465 total hours to a formula based on measured cycle time and an assumed number of annual cycles. *Id.*

AHAM commented that there is little or no benefit to consumers or energy savings associated with including the cycle time measurement in the test procedure since standby energy use is such a small component of overall measured efficiency. (AHAM, No. 27 at p. 12) AHAM also noted that the European Union does not calculate standby power for its energy label. (*Id.*)

DOE acknowledges that for most clothes washer models, the low-power mode energy consumption is the smallest of the four energy components that comprise the EER equation.[57] However, at higher efficiency levels, the low-power mode energy consumption represents a larger portion of the total energy consumption than at lower efficiency levels. Depending on the low-power mode energy use and its relation to the other three energy components, a difference in average cycle time of, for example, 30 minutes, 60 minutes, or 90 minutes can have a measurable impact on the calculated value of EER, which this final rule requires to be rounded to the nearest 0.01 pound per kilowatt-hour per cycle (as discussed in section III.E.3 of this document). Further, as discussed in section III.D.5.a of this document, DOE has determined that requiring test laboratories to measure cycle time will not increase test burden. As discussed previously in this section, basing the number of hours spent in low-power mode in part on cycle time would provide a more representative allocation of hours between active mode and low-power mode.

For these reasons, DOE is finalizing its proposal, consistent with the September 2021 NOPR, to update the number of hours spent in low-power mode in the new appendix J from a fixed 8,465 total hours to a formula based on measured cycle time and an assumed number of annual cycles.

4. Temperature Usage Factors

TUFs are weighting factors that represent the percentage of wash cycles for which consumers choose a particular wash/rinse temperature selection. The TUFs in Table 4.1.1 of appendix J2 are based on the TUFs established in appendix J1 as part of the August 1997 Final Rule. As described in the April 1996 SNOPR, DOE established the TUFs in appendix J1 based on an analysis of consumer usage data provided by P&G, AHAM, General Electric Company, and Whirlpool, as well as linear regression analyses performed by P&G and the National Institute of Standards and Technology (''NIST''). 61 FR 17589, 17593.

As noted in the September 2021 NOPR, DOE is not aware of any nationally representative consumer usage data that demonstrate a change in temperature setting usage; therefore, DOE did not propose any changes to the TUF values. 86 FR 49140, 49178.

DOE requested comment on maintaining the current TUF values. *Id.*

The Joint Commenters commented in support of DOE's proposal to maintain the current TUF values, stating that the current TUF values are similar to the TUF values found in the 2014 NEEA Field Study. (Joint Commenters, No. 31 at p. 11)

The CA IOUs commented that new appendix J does not adequately account for the impact of control panel designs and optional cycle modifiers that may

[54] The TSD for the April 2021 clothes dryer standards preliminary analysis is available at *www.regulations.gov/document/EERE-2014-BT-STD-0058-0016.*

[55] C. Wilkes *et al.* 2005. ''Quantification of Exposure-Related Water Uses for Various U.S. Subpopulations.'' U.S. Environmental Protection Agency, Office of Research and Development. Report No. EPA/600/R–06/003. Washington, DC. December 2005. Available at *www.wilkestech.com/205edrb06_Final_Water_Use_Report.pdf.*

[56] These studies appeared in the July 1998, July 1999, and August 2000 issues of Consumer Reports, as cited by EPA.

[57] See, for example, Tables 7.2.1 through 7.2.4 in chapter 7 of the RCW preliminary analysis TSD, which present the breakdown in energy consumption among the four energy components at each analyzed efficiency level. Available at *www.regulations.gov/document/EERE-2017-BT-STD-0014-0030.*

result in more energy-intensive wash settings. (CA IOUs, No. 29 at p. 6) The CA IOUs asserted that in cases where a clothes washer's cycle settings are continually reset when turned to the on position (*e.g.,* if a product always reverts to the default temperatures of Warm/Cold), it is likely that the existing TUFs are less representative since users are more likely to use the default settings. (*Id.*) The CA IOUs expressed concern that the prevalence of clothes washers with default settings today may be considerably different from the initial studies used to develop the TUFs in the August 1997 Final Rule, which was created when clothes washers more commonly used electromechanical controls for water temperature settings instead of using electronic controls that revert to defaults. (*Id.*) The CA IOUs additionally commented that, despite the increasing proliferation of additional cycle modifiers, DOE proposed not to require testing of any settings that are left ''off'' under the default as-shipped settings in new appendix J. (*Id.*)

DOE notes that the CA IOUs did not provide any data to support the assertion that consumers are more likely to use the default wash/rinse temperature setting in cases where a clothes washer's cycle settings are continually reset when turned to the on position. DOE's general understanding of consumer laundry habits, based on decades of conversations with manufacturers and evaluating consumer usage studies, is that cycle time (*e.g.,* Normal, Heavy Duty, *etc.*) and wash/rinse temperature are the two foundational decisions that consumers make for each wash cycle based on the composition of the load being washed. DOE notes, for example, that clothing items often include labels indicating the appropriate wash temperature to use. DOE further notes that as summarized by the Joint Commenters, the TUF values found in the 2014 NEEA Field Study are similar to the TUF values in appendix J2. (Joint Commenters, No. 31 at p. 11)

For these reasons, in this final rule DOE does not make any changes to the TUF values, consistent with the September 2021 NOPR.

5. Load Usage Factors

As described previously, LUFs are weighting factors that represent the percentage of wash cycles that consumers run with a given load size. Table 4.1.3 of appendix J2 provides two sets of LUFs based on whether the clothes washer has a manual WFCS or automatic WFCS.

For a clothes washer with a manual WFCS, the two LUFs represent the percentage of wash cycles for which consumers choose the maximum water fill level and minimum water fill level in conjunction with the maximum and minimum load sizes, respectively. For a clothes washer with an automatic WFCS, the three LUFs represent the percentage of cycles for which the consumer washes a minimum-size, average-size, and maximum-size load (for which the clothes washer determines the water fill level). As discussed in section III.D.1.b of this document, the values of these LUFs are intended to approximate a normal distribution that is slightly skewed towards the minimum load size.

As previously discussed in section III.D.1.b of this document, DOE proposed in the September 2021 NOPR to replace the minimum, maximum, and average load sizes with the small and large load sizes in the new appendix J. DOE has defined the small and large load sizes such that the small and large load sizes each have an equal (50–50) weighting. As such, DOE proposed to update the LUFs in the new appendix J to 0.5 for both the small and the large load size. 86 FR 49140, 49178. Because this proposal simplified the LUF definitions by using the same LUFs regardless of clothes washer WFCS, a separate LUF table would no longer be needed. *Id.* DOE therefore proposed to remove the LUF Table 4.1.3 and to define the LUFs as 0.5 in the equations where the LUFs are first used in section 4.1.3 of the new appendix J. *Id.*

DOE requested comment on its proposal to update the LUFs for the small and large load sizes to be equal to 0.5, consistent with the proposed load size definitions in the new appendix J. *Id.*

DOE received no comments on the updated LUFs for the new appendix J.

For the reasons stated above, DOE is finalizing its proposal, consistent with the September 2021 NOPR, to update the LUFs for the small and large load sizes to be equal to 0.5 in the new appendix J and to remove the LUF table and instead define the LUFs as 0.5 in the equations where the LUFs are first used.

6. Water Heater Assumptions

Section 4.1.2 of appendix J2 provides equations for calculating total per-cycle water heating energy consumption for all water fill levels tested. The water heating energy consumption is calculated by multiplying the measured volume of hot water by a constant fixed temperature rise of 75 °F and by the specific heat of water, defined as 0.00240 kilowatt-hours per gallon per degree Fahrenheit (''kWh/gal-°F''). No efficiency or loss factor is included in this calculation, which implies an electric water heater efficiency of 100 percent. Similarly, section 4.1.4 of appendix J2 provides an equation for calculating total per-cycle water heating energy consumption using gas-heated or oil-heated water, for product labeling requirements.[58] This equation includes a multiplication factor ''e,'' representing the nominal gas or oil water heater efficiency, defined as 0.75. These water-heating energy equations estimate the energy required by the household water heater to heat the hot water used by the clothes washer. Per-cycle water heating energy consumption is one of the four energy components in the IMEF metric.

As stated in the September 2021 NOPR, DOE is unaware of any nationally representative data regarding heat losses in residential water distribution systems. 86 FR 49140, 49179. In the absence of such data, DOE did not propose any changes to the assumed water heater efficiency factors in the clothes washer test procedure. *Id.*

DOE requested comment on maintaining the current water heater efficiency assumptions. *Id.*

The Joint Efficiency Advocates recommended that DOE use what they described as more realistic assumptions about water heater efficiencies. (Joint Efficiency Advocates, No. 28 at p. 3) The Joint Efficiency Advocates commented that while the current test procedure uses a 100 percent efficiency for electric heaters and a 75 percent efficiency for gas water heaters, the Joint Efficiency Advocates estimated that, based on shipment data from the last water heaters rulemaking and current models in the CCMS database,[59] the shipment-weighted efficiencies for new water heaters are about 92 percent for electric water heaters and 64 percent for gas water heaters. (*Id.*) The Joint Efficiency Advocates asserted that making this change would improve representativeness and would more accurately reflect the relative contribution of water heating energy use to total clothes washer energy use. (*Id.*)

Based on the values presented, DOE interprets the Joint Efficiency Advocates' comments as referring to a value of uniform energy factor (''UEF''). DOE notes that the UEF is a measure of efficiency based in part on a 24-hour simulated use test that measures both energy use associated with recovery periods (*i.e.,* the energy embedded

[58] The Federal Trade Commission's EnergyGuide label for RCWs includes the estimated annual operating cost using natural gas water heating.

[59] The Joint Efficiency Advocates noted that their analysis excluded tankless and heat pump water heaters.

within each water draw) and energy losses during the time in which water is not being withdrawn from the water heater (*i.e.,* standby energy losses), and incorporates simulated household water draw patterns. In a residential household, numerous appliances draw hot water from the water heater, including showers, faucets, and dishwashers, in addition to clothes washers. Given the number of factors not directly related to clothes washer usage that factor into the current UEF metric, DOE has determined that it would not be appropriate to use UEF as the basis for determining an estimate of water heating energy in the clothes washer test procedure.

Instead, the appropriate efficiency value to use in the clothes washer test procedure would be the recovery efficiency, which represents the ratio of energy delivered to the water to the energy content of the fuel consumed by the water heater. DOE is not aware of any data regarding the efficiency distribution of installed water heaters on the basis of recovery efficiency. Recover efficiency is, however, a reported value in DOE's CCMS database. DOE assessed the representativeness of the currently defined efficiency values qualitatively as follows. For electric water heaters, the majority of the market has a recovery efficiency of 98 percent. Heat pump models have recovery efficiencies greater than 100 percent; however, these products represent a small market share and an even smaller share of the installed stock of water heaters. For gas water heaters, CCMS lists a range of recovery efficiencies from 72 to 92 percent, with the vast majority within the range of 72 to 80 percent. Given these ranges, DOE determines that the current clothes washer test procedure assumptions of 100 percent efficiency for electric water heaters and 75 percent efficiency for gas water heaters are representative of the current water heater market. This final rule maintains the currently specified values.

For these reasons, in this final rule DOE does not make any changes to the water heater efficiency assumptions, consistent with the September 2021 NOPR.

7. Commercial Clothes Washer Usage

As mentioned in section I of this document, CCWs are 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)(H)) EPCA requires the test procedures for CCWs to be the same as those established for RCWs. (42 U.S.C. 6314(a)(8))

In response to the May 2020 RFI, several stakeholders requested that DOE develop separate usage factors for CCWs, and that DOE require standby/low power mode testing for CCWs and that low-power mode energy consumption should be incorporated into the energy efficiency metric for CCWs. (CA IOUs, No. 8 at pp. 8–14; NEEA, No. 12 at p. 18; Joint Commenters, No. 10 at p. 2)

As part of its market assessment and engineering analysis for the December 2014 Final Rule, DOE performed an in-depth evaluation of the standby and off mode power characteristics of a representative sample of CCWs spanning a wide range of display types, payment systems, and communication features. 79 FR 74492, 74501. DOE observed that manufacturers offer a variety of display and payment functionalities that can be selected independently from the basic model. The standby power associated with these different display and payment functionalities varies from 0.88 to 11.77 watts.

In the December 2014 Final Rule, DOE determined not to include low-power mode energy in the CCW energy efficiency metric. *Id.* DOE determined that promulgating an amended standard that included low-power mode energy could enable backsliding and that the IMEF metric would not provide a useful means for differentiating the active mode characteristics of different CCW models. *Id.* Because of the wide variations in standby power, CCWs with significantly different active mode ratings could have similar IMEF ratings depending on their control panel functionalities, and vice versa. This would diminish the usefulness of the IMEF metric as a means for differentiating the active mode characteristics of different CCW models. *Id.*

Moreover, as noted, EPCA requires the test procedures for CCWs to be the same as those established for RCWs. (42 U.S.C. 6314(a)(8)) Creating load, temperature, or dryer usage factors specific to CCWs within the RCW test procedure would effectively create a separate test procedure for CCWs because the LUF, TUF, DUF, and DEF values are integral to the calculations of per-cycle energy and water use, on which the regulated metrics for RCWs and CCWs are based.

DOE did not propose any changes to CCW usage factors or to the CCW energy efficiency metric in the September 2021 NOPR. 86 FR 49140, 49180.

The Joint Efficiency Advocates, the CA IOUs, and the Joint Commenters recommended that DOE consider capturing low-power energy consumption in the energy efficiency metric for CCWs. (Joint Efficiency Advocates, No. 28 at p. 6; CA IOUs, No. 29 at pp. 7–8; Joint Commenters, No. 31 at p. 6) The Joint Efficiency Advocates commented that they understand that no further change to the test procedure would be necessary to include low-power energy use in the efficiency standards for CCWs. (Joint Efficiency Advocates, No. 28 at p. 6) The Joint Commenters commented that they understand that DOE will determine whether low power mode should be measured on CCWs in the CCW energy conservation standards rulemaking. (Joint Commenters, No. 31 at p. 6) The Joint Commenters added that, according to EPCA, test procedures for CCWs must be the same as those established for RCWs and therefore encouraged DOE to also make the low power mode energy use approach identical for CCWs and RCWs. (*Id.*)

The Joint Efficiency Advocates and the CA IOUs commented that they understand DOE's stated concerns in the December 2014 Final Rule regarding the potential for backsliding that could result from incorporating standby mode power consumption into the overall efficiency metric for CCWs. (Joint Efficiency Advocates, No. 28 at p. 6; CA IOUs, No. 29 at p. 8) The Joint Efficiency Advocates commented that strengthening the existing standards for CCWs would likely alleviate the backsliding concern. (Joint Efficiency Advocates, No. 28 at p. 6) The CA IOUs commented that the incorporation of a minimum standard level for discrete system functions, such as previously established for consumer refrigerated products with automatic icemakers or for varying payment mechanisms in refrigerated vending machines, would limit the risk of backsliding. (CA IOUs, No. 29 at p. 8) The CA IOUs commented that they would strongly prefer to have these functions measured as part of a standby power test, rather than with default adders, to encourage cost-effective designs to reduce energy consumption. (*Id.*)

DOE reiterates that any decision regarding the inclusion or exclusion of low-power mode energy consumption in the CCW energy metric—including reconsideration whether promulgating an amended standard that includes low-power mode energy could enable backsliding, and whether an integrated metric would provide a useful means for differentiating the active mode characteristics of different CCW

models—would be made as part of an energy conservation standards rulemaking for CCWs. 86 FR 49140, 49180. This final rule does not implement any changes specific to CCWs in either appendix J2 or the new appendix J in this regard.

H. Clarifications

1. Water Inlet Hose Length

As noted in the September 2021 NOPR, DOE has observed an increasing trend of water inlet hoses not being included with the purchase of a new clothes washer. 86 FR 49140, 49180. DOE has received questions from test laboratories asking how to install a clothes washer that does not include water inlet hoses among the installation hardware. *Id.*

Multiple styles of water inlet hoses (different materials, lengths, durability, etc.) are commercially available from appliance and hardware retailers. *Id.* While most such products intended for consumer use would be appropriate for installing a clothes washer, DOE seeks to provide additional direction to avoid the use of a hose designed for niche purposes (*i.e.,* to ensure representativeness) as well as to ensure reproducible results among different laboratories. *Id.* Specifically, DOE observes a wide range of hose lengths available on the market, and recognizes that using an excessively long hose could result in the water temperature or pressure at the clothes washer inlet deviating significantly from the temperature and pressure at the test fixture. *Id.* Based on a review of water inlet hoses available at major retailers, the most common lengths for clothes washer hoses range from 3–6 feet (''ft''). In the September 2021 NOPR, DOE proposed to specify the use of hoses that do not exceed 72 inches in length (6 ft) in section 2.10.1 of the new appendix J. *Id.*

DOE requested comment on its proposal to specify the use of hoses not to exceed 72 inches in length in the new appendix J. *Id.* DOE also requested comment on the length of inlet hose typically used for testing. *Id.*

The Joint Commenters commented in support of DOE's proposal to standardize water inlet hose length, stating that it would increase reproducibility of the test procedure. (Joint Commenters, No 31 at p. 11)

AHAM recommended that DOE specify that its water hose length proposal is intended for third-party testing only. (AHAM, No. 27 at p. 15) AHAM also recommended a more reasonable hose length of 48 inches, stating that a 72-inch long hose would still retain a significant amount of water. (*Id.*)

In response to AHAM's suggestion to shorten the proposed maximum hose length from 72 to 48 inches, DOE notes that the difference in retained water between a 72-inch hose and a 48-inch hose is around 0.01 gal, which would have a negligible, if any impact on measured results.[60] As discussed above, representative consumer clothes washer hoses range from 36 to 72 inches in length. Any length longer than this would not be representative of a consumer clothes washer hose; and any length shorter than this would not be practical for installing a clothes washer to the inlet water supply.

Regarding AHAM's recommendation that DOE specify hose length only for third-party testing only, DOE reiterates that the hose specifications would only apply in instances in which a clothes washer is shipped without inlet hoses. In such instances, the justification for specifying a hose length is applicable regardless of whether a clothes washer is tested at a third-party laboratory or a manufacturer laboratory.

For these reasons, DOE is finalizing its proposal, consistent with the September 2021 NOPR, to specify the use of hoses not to exceed 72 inches in length in the new appendix J.

2. Water Fill Selection Availability

Table 2.8 within section 2.8 of appendix J2 requires that, for clothes washers with manual WFCS, each temperature selection that is part of the energy test cycle be tested using both the minimum and maximum water fill levels, using the minimum and maximum load sizes, respectively. Section 3.2.6 of appendix J2 describes these water fill levels as the minimum and maximum water levels available for the wash cycle under test. DOE has observed one RCW model with electronic controls in which the maximum water fill level on the unit cannot be selected with all of the temperature selections required for testing.; *i.e.,* on at least one temperature setting, the maximum water fill that can be selected is one of the intermediate fill levels on the unit. In such cases generally, the ''reduced maximum'' water fill level for a particular temperature setting may not be appropriate for use with the maximum load size required for that particular cycle under test. Using a maximum load size with a reduced maximum water fill level may not provide results that measure energy efficiency and water use during a representative average use cycle or period of use, since the unavailability of the ''full maximum'' water fill level for that particular cycle under test would suggest that the particular temperature selection is not intended to be used with a maximum load size.

The RCW model with this characteristic is no longer available on the market, and DOE is not aware of any other clothes washer models currently on the market with this characteristic. DOE did not propose, in the September 2021 NOPR, any amendments to address the potential for the maximum load size required by the test procedure to conflict with the maximum load size intended or able to be washed on such a cycle. 86 FR 49140, 49181.

DOE requested comment on whether it should amend the test procedure to accommodate potential future clothes washer models for which the maximum load size required by the test procedure conflicts with the maximum load size intended or able to be washed with the cycle required for testing. *Id.* If so, DOE sought additional comment on the approaches it has considered, or on any other approaches that could be considered, that would address this issue in the test procedure. *Id.*

AHAM commented that it is not necessary to amend the test procedure to include directions for testing clothes washers with water fill levels that are only available at certain temperature settings. (AHAM, No. 27 at pp. 15–16) AHAM added that while consumers have options available for other needs, the Normal cycle remains the most representative of consumer use, and there have not been any data to prove otherwise. (*Id.*)

The Joint Commenters recommended that DOE specify in new appendix J that for possible future clothes washer models where the maximum load size conflicts with the cycle required for testing, DOE should not allow an alternate test load size. (Joint Commenters, No. 31 at p. 10) The Joint Commenters commented that an alternate, smaller test load would lower the clothes washer's measured water and drying energy use to the extent that test results would no longer be comparable to test results from other clothes washers of the same load size. (*Id.*) Instead, the Joint Commenters recommended that DOE specify that such a clothes washer should be tested with the next most similar program that enables the required load size. (*Id.*)

As noted, the RCW model for which the maximum water fill level cannot be

[60] Calculated as the internal volume of 24 inches of hose with an inner diameter of 0.375 inches, which based on DOE research is a typical inner diameter for a clothes washer hose. $24 \times \pi \times (0.375 \div 2)^2 = 2.65$ cubic inches = 0.01 gal.

selected with all of the temperature selections required for testing is no longer available on the market, and DOE is not aware of any other clothes washer models currently on the market with this characteristic. To the extent that models with this characteristic were to be reintroduced the market, more research would be needed to address any potential concerns regarding representative use. DOE also notes that the amended load sizes defined for new appendix J (in which the ''large'' load size is smaller than the ''maximum'' load size currently defined by appendix J2) would obviate the need for any changes to the test procedure for the one RCW model of concern.

For these reasons, DOE makes no changes to the test procedure to accommodate this potential characteristic, consistent with the September 2021 NOPR.

3. Water Fill Control Systems

a. Definitions

Section 1.5 of appendix J2 previously defined ''automatic water fill control system'' as a clothes washer WFCS that does not allow or require the user to determine or select the water fill level, and includes adaptive WFCS and fixed WFCS. Section 1.4 of appendix J2 previously defined ''adaptive water fill control system'' as a clothes washer automatic WFCS that is capable of automatically adjusting the water fill level based on the size or weight of the clothes load placed in the clothes container. Section 1.14 of appendix J2 previously defined ''fixed water fill control system'' as a clothes washer automatic WFCS that automatically terminates the fill when the water reaches an appropriate level in the clothes container. Section 3.2.6.2.2 of appendix J2 previously provided testing instructions for a ''user-adjustable'' automatic WFCS, which were described in that section as an automatic water fill control that affects the relative wash water levels.

To provide additional specificity to both appendix J2 and the new appendix J, in the September 2021 NOPR DOE proposed revisions to some of the WFCS definitions, as follows. 86 FR 49140, 49181.

DOE proposed to amend the definition of ''fixed water fill control system'' to mean ''a clothes washer automatic water fill control system that automatically terminates the fill when the water reaches a pre-defined level that is not based on the size or weight of the clothes load placed in the clothes container, without allowing or requiring the user to determine or select the water fill level.'' *Id.* This proposed amendment to the definition would specify that the water fill level for this type of WFCS is pre-defined (*i.e.,* fixed) and does not vary based on the size or weight of the load. *Id.* The proposal would incorporate the same terminology used in the other WFCS definitions so as to more clearly articulate how a fixed WFCS relates to the other defined WFCS. *Id.* This amended definition was proposed for inclusion in the new appendix J as well. *Id.*

To provide greater specificity regarding user-adjustable automatic WFCS, DOE proposed to add a definition of a ''user-adjustable automatic water fill control system'' to section 1 of both appendix J2 and the new appendix J. *Id.* DOE proposed to define a user-adjustable automatic WFCS as ''an automatic clothes washer fill control system that allows the user to adjust the amount of water that the machine provides, which is based on the size or weight of the clothes load placed in the clothes container.'' *Id.* Given DOE's proposal to create a definition of user-adjustable automatic WFCS, DOE proposed to simplify the wording of section 3.2.6.2.2 of appendix J2 from ''[c]onduct four tests on clothes washers with user adjustable automatic water fill controls that affect the relative wash water levels'' to ''[c]onduct four tests on clothes washers with user-adjustable automatic water fill controls.'' *Id.* For the new appendix J, section 3.2.3.2.2 would state ''For the large test load size, set the water fill selector to the setting that uses the most water. *Id.* For the small test load size, set the water fill selector to the setting that uses the least water.'' *Id.*

DOE requested comment on its proposed changes to the definition of ''fixed water fill control system'' and on its proposal to add a definition for ''user-adjustable automatic water fill control system.'' *Id.*

AHAM commented that it agrees that a better definition for a ''user-adjustable automatic water fill control system'' is needed since there is no specific definition for it in appendix J2. (AHAM, No. 27 at pp. 5–6) However, AHAM opposed DOE's proposed definition for ''user-adjustable automatic water fill control system.'' (*Id.*) AHAM commented that the wording used in DOE's proposed definition uses the language in the current definition of an ''adaptive water fill control system.'' (*Id.*) AHAM stated that a definition that implies that a ''user-adjustable adaptive water fill control system'' represents all ''user-adjustable automatic water fill control systems'' would narrow the current scope so that they no longer include ''user-adjustable fixed water fill control systems.'' (*Id.*) AHAM added that DOE's proposed definition would also leave a ''user-adjustable fixed water fill control system'' undefined. (*Id.*) AHAM therefore proposed the following definition for ''user-adjustable automatic water fill control system'': ''User-adjustable automatic water fill control system means an automatic clothes washer fill control system that allows the user to adjust the relative amount of water that the machine provides.'' (*Id.*) AHAM stated that its proposed definition would reduce redundancy by removing the last clause of DOE's proposed definition, which duplicates the definition of ''adaptive water fill control system,'' and would add the word ''relative.'' (*Id.*) AHAM commentated that it believes that its proposed definition is consistent with DOE's intent and urged DOE to adopt it. (*Id.*)

DOE notes that at the creation of the user-adjustable distinction in the August 1997 Final Rule, section 3.2.3.2.2 of appendix J2 [61] referred to clothes washers with ''adaptive'' WFCS that were user-adjustable. 62 FR 45484, 45510. In the August 2015 Final Rule, DOE added a new definition for ''automatic water fill control system,'' which included both fixed WFCS and adaptive WFCS, both of which do not require user action to determine the water fill level. In creating the new definition for automatic WFCS, DOE replaced all instances of ''adaptive'' WFCS with ''automatic'' WFCS to indicate that such testing provisions apply to both adaptive water fill control systems and fixed water fill control systems. 80 FR 46730, 46749. As part of these changes, reference to ''user adjustable adaptive water fill controls that affect the relative wash water level'' in section 3.2.6.2.2 of appendix J2 (''User adjustable'') was amended to refer instead to ''user adjustable *automatic* water fill controls that affect the relative wash water level'' (emphasis added). AHAM's comment has prompted DOE to re-evaluate this wording change. *Id.* Reference to user-adjustable *automatic* WFCS implies that the term encompasses both user-adjustable *adaptive* and user-adjustable *fixed* WFCS. However, DOE asserts that a WFCS that provides user-adjustable fixed fill water levels is essentially a manual WFCS, in the sense that a manual fill WFCS automatically terminates the fill when the water reaches the level in the clothes container corresponding to the level select by the user (*i.e.,* a ''fixed'' water

[61] Which has since been renumbered as 3.2.6.2.2.

level that is not automatically determined based on the size or weight of the clothes load and is selectable (*i.e.,* adjustable) by the user). Furthermore, DOE notes that the phrase ''controls that affect the *relative* wash water levels'' (emphasis added) in section 3.2.6.2.2 of appendix J2 necessarily applies only to a clothes washer with relative wash water levels (*i.e.,* wash water levels that are determined based on the size or weight of the clothes load). A fixed WFCS does not provide *relative* wash water levels. For these reasons, DOE asserts that the word ''automatic'' was incorrectly applied in section 3.2.6.2.2, and that section 3.2.6.2.2 pertaining to user-adjustable WFCSs applies only to clothes washer with user-adjustable *adaptive* WFCS.

In this final rule, DOE corrects this error and amends section 3.2.6.2.2 of appendix J2 to revert each instance of ''automatic'' to ''adaptive.'' Accordingly, in both appendix J2 and new appendix J, DOE finalizes the definition of the term ''user-adjustable adaptive water fill control system'' consistent with the definition DOE had proposed for ''user-adjustable automatic water fill control system'' in the September 2021 NOPR, except to replace the word ''automatic'' with ''adaptive.''

In reviewing this matter, DOE has further determined that the grouping of fixed WFCS and adaptive WFCS into the single term ''automatic'' WFCS for the sake of simplicity has potentially created ambiguity with certain WFCS types, as evidence by the previous example in this discussion. In order to provide greater clarity regarding the identification of WFCS type and the corresponding test provisions that apply, DOE is removing the ''automatic WFCS'' distinction from appendix J and creating a new table that distinguishes WFCS based on how the user interacts with the controls (*i.e.,* whether the settings are adjustable by the user) and whether the size or weight of the clothing load affects the water level, as shown in Table III.2 (implemented as Table 3.2.3 in new appendix J).

TABLE III.2—WATER FILL CONTROL SYSTEMS

	Settings are user-adjustable	Settings are not user-adjustable
Water fill level unaffected by the size or weight of the clothing load	Manual water fill	Fixed water fill.
Water fill level is determined automatically by the clothes washer based on the size and weight of the clothing load.	User-adjustable adaptive water fill	Non-user-adjustable adaptive water fill.

With these clarifications, DOE is not changing how any WFCS is classified or tested in appendix J in comparison to the proposed version of appendix J presented in the September 2021 NOPR. Rather, DOE expects that these changes will help more easily distinguish the different types of WFCSs and thus better ensure reproducibility of test results.

As part of this clarification, DOE is removing the definition for automatic water fill control system from appendix J, and is removing the term ''automatic'' from the definitions for adaptive water fill control system, fixed water fill control system, and user-adjustable adaptive water fill control system. DOE is also relabeling the definition of adaptive water fill control system as non-user-adjustable adaptive water fill control system to match how this WFCS is presented in new table 3.2.3 of appendix J.

Further, DOE is establishing subsections within section 3.2.3 of appendix J to provide water fill level instructions that align more directly with the terminology presented in new table 3.2.3 of appendix J, as follows:

- Section 3.2.3.1 ''Clothes washers with a manual water fill control system'' (consistent with the September 2021 NOPR);
- Section 3.2.3.2 ''Clothes washers with a fixed water fill control system'' (as compared to the proposed section 3.2.3.2.1 from the September 2021 NOPR titled ''Not user-adjustable'' within section 3.2.3.2 titled ''Clothes washers with automatic water fill control system'');
- Section 3.2.3.3 ''Clothes washers with a user-adjustable adaptive water fill control system'' (as compared to the proposed section 3.2.3.2.2 from the September 2021 NOPR titled ''User-adjustable'' within section 3.2.3.2 titled ''Clothes washers with automatic water fill control system'');
- Section 3.2.3.4 ''Clothes washers with a non-user-adjustable adaptive water fill control system'' (as compared to the proposed section 3.2.3.2.1 from the September 2021 NOPR titled ''Not user-adjustable'' within section 3.2.3.2 titled ''Clothes washers with automatic water fill control system''); and
- Section 3.2.3.5 ''Clothes washers with multiple water fill control systems'' (as compared to the proposed section 3.2.3.3 from the September 2021 NOPR titled ''Clothes washers with automatic water fill controls system and alternate manual water fill control system''). DOE is further establishing new section 3.2.3.5 to read ''If a clothes washer allows user selection among multiple water fill control systems, test all water fill control systems and, for each one, calculate the energy consumption (HE_T, ME_T, and DE_T) and water consumption (Q_T) values as set forth in section 4 of this appendix. Then, calculate the average of the tested values (one from each water fill control system) for each variable (HE_T, ME_T, DE_T, and Q_T) and use the average value for each variable in the final calculations in section 4 of this appendix.''

b. ''Most Energy Intensive'' Wording for User-Adjustable Automatic Water Fill Control Systems.

As discussed, section 3.2.6.2.2 of appendix J2 previously specified how to test clothes washers with user-adjustable automatic WFCS. Four tests were required:

- A test using the maximum test load size and with the WFCS set in the setting that will give the most energy intensive result;
- a test using the minimum test load size and with the WFCS set in the setting that will give the least energy intensive result;
- a test using the average test load size and with the WFCS set in the setting that will give the most energy intensive result; and
- a test using the average test load size and with the WFCS set in the setting that will give the least energy intensive result.

The provisions requiring testing the most and least energy intensive settings were initially adopted in the August 1997 Final Rule. 62 FR 45484, 45487. As evident throughout the discussions in the August 1997 Final Rule, absent the consideration of drying energy and water efficiency,[62] DOE used the terms

[62] At the time of the August 1997 Final Rule, the applicable energy efficiency metric did not include the drying energy component, and the energy conservation standards at the time did not regulate the water efficiency of clothes washers.

''most energy intensive'' and ''least energy intensive'' synonymously with discussing the water fill amounts.[63] The terms ''most energy intensive'' and ''least energy intensive'' were originally employed to provide direction of the water fill amounts required for testing of the adaptive WFCS.

As the test procedures and energy conservation standards have been amended, the measured energy use accounts for more than just that which correlates to the water fill level. However, use of the energy intensity terminology remained in the user-adjustable automatic WFCS provisions. Given the evolution of clothes washer control systems and operation since the August 1997 Final Rule, more precise language is needed to avoid an unnecessary determination of whether the highest (or lowest) water fill amount on a user-adjustable automatic WFCS corresponds to the most (or least) energy intensive setting. Therefore, in the September 2021 NOPR, DOE proposed to change the wording in section 3.2.6.2.2 of appendix J2 to update the phrase ''the setting that will give the most energy intensive result'' to ''the setting that uses the most water'' to reflect the original intent of this provision and to use the same updated language in section 3.2.3.2.2 of the new appendix J. 86 FR 49140, 49182. Similarly, DOE proposed to update the phrase ''the setting that will give the least energy intensive result'' to ''the setting that uses the least water.''

DOE requested comment on its proposal to update the wording of section 3.2.6.2.2 of appendix J2 and section 3.2.3.2.2 of the new appendix J from ''the setting that will give the most energy intensive result'' to ''the setting that uses the most water;'' and from ''the setting that will give the least energy intensive result'' to ''the setting that uses the least water.'' *Id.*

AHAM commented that it supports DOE's proposal to update the wording in section 3.2.6.2.2 of appendix J2 and section 3.2.3.2.2 of new appendix J from ''the setting that will give the most energy intensive result'' to ''the setting that uses the most water,'' and from ''the setting that will give the least energy intensive result'' to ''the setting that uses the least water,'' stating that using the most and least ''energy-intensive result'' conflates an energy metric with a water use metric, which may lead to confusion. (AHAM, No. 27 at p. 5)

Based on the reasons discussed in the preceding paragraphs, DOE is finalizing its proposal, consistent with the September 2021 NOPR, to update the wording of section 3.2.6.2.2 of appendix J2 and section 3.2.3.2.2 of the new appendix J from ''the setting that will give the most energy intensive result'' to ''the setting that uses the most water;'' and from ''the setting that will give the least energy intensive result'' to ''the setting that uses the least water.''

4. Energy Test Cycle Flowcharts

In the August 2015 Final Rule, DOE implemented a series of flowcharts to determine the wash/rinse temperature selections required for testing in section 2.12 of appendix J2. 80 FR 46730, 46744.

a. Clarification of Load Size To Be Used for Temperature Comparisons

Figure 2.12.5 of appendix J2, which is the flow chart used for the determination of the Extra-Hot Wash/Cold Rinse temperature selection, asks if the wash/rinse temperature selection has a wash temperature greater than 135 °F. DOE is aware that for some clothes washers on the market, the answer to that question could differ depending on what load size is used, *i.e.,* the wash temperature may exceed 135 °F only on certain load sizes, meaning that the determination of whether the temperature selection is classified as Hot Wash/Cold Rinse or Extra-Hot Wash/Cold Rinse would depend on the load size used for making the determination. More generally, all of the flowcharts in section 2.12 require comparing wash and rinse water temperatures across different temperature selections, without specifying a load size to be used for making these comparisons.

In the September 2021 NOPR, DOE proposed to specify using the maximum load size to evaluate the flow chart for clothes washers tested to appendix J2, and the large load size for the new appendix J.[64] 86 FR 49140, 49182. The maximum/large load size is the load size expected to use the most water (compared to the other load sizes) under each appendix, and in DOE's experience, larger quantities of water (particularly hot water) provide a more reliable determination of the relative differences in water temperature among the various temperature settings. *Id.* Therefore, the maximum/large load size is likely to provide the most repeatable and reproducible end result for each flowchart. *Id.*

DOE notes that Figure 2.12.1 of appendix J2, which is the flow chart used for the determination of the Cold/Cold temperature selection, provides direction for cases where multiple wash temperature selections in the Normal cycle do not use any hot water for any of the water fill levels or test load sizes required for testing. *Id.* For appendix J2, DOE proposed that the new clarifying language would not apply to the Cold/Cold temperature settings in order to avoid the potential need for retesting under appendix J2 if a clothes washer was tested in a manner inconsistent with this proposed change. *Id.* For the new appendix J, DOE proposed to delete from the Cold/Cold flowchart (Figure 2.12.1) the clause applying it to all tested load sizes, and to instead require the use of the large size, consistent with all the other wash/rinse temperature selection flowcharts. 86 FR 49140, 49182–49183.

DOE requested comment on its proposal to require that the energy test cycle flow charts be evaluated using the large load size for all wash/rinse temperature settings in the new appendix J. 86 FR 49140, 49183. DOE also requested comment on its proposal to require that the energy test cycle flow charts be evaluated using the maximum load size, except for the Cold/Cold flow chart, in appendix J2. *Id.*

DOE received no comments on its proposal to require that the energy test cycle flow charts be evaluated using the large load size for all wash/rinse temperature settings in the new appendix J and using the maximum load size, except for the Cold/Cold flow chart, in appendix J2.

For the reasons discussed in the preceding paragraphs and in the September 2021 NOPR, DOE is finalizing its proposal, consistent with the September 2021 NOPR, to require that the energy test cycle flow charts be evaluated using the large load size for all wash/rinse temperature settings in the new appendix J and using the maximum load size, except for the Cold/Cold flow chart, in appendix J2.

P.R. China noted an inconsistency between section 2.12.1 of the proposed new appendix J (which P.R. China characterized as prescribing that test evaluations be completed using only a large load) and Table 3.3 of the proposed new appendix J (which prescribes the use of both a large and small load), and recommended that DOE fix the inconsistency. (P.R. China, No. 25 at p. 3)

[63] For example, in an interim waiver granted to GEA on April 24, 1996, DOE stated the following: However, the ''sensitivity'' or relative fill amounts of the automatic water fill mode can be reprogrammed in the secondary programming mode, thus resulting in an increase in energy consumption above the manual mode result. 61 FR 18125, 18127.

[64] See section III.D.1.b of this document for a discussion of the definition of the new ''large'' test load size.

With regard to the comment from P.R. China that the proposed test procedure contains an inconsistency, DOE further explains here the intended difference between *evaluating* the flow charts and conducting *testing* of each wash-rinse temperature selection determined to be available on the unit under test. Section 2.12.1 of new appendix J specifies that the large load is to be used to *evaluate* each flow chart (*i.e.,* to answer the questions presented in each flow chart) to determine which wash/rinse temperatures are present on the unit under test. Although only the large load size is used to evaluate the flow charts, both the small and large load sizes must be used to *test* each wash/rinse temperature selection. For example, in Figure 2.12.1.5 (Determination of Extra-Hot Wash/Cold Rinse), the question ''Does the Normal cycle contain any wash/rinse temperature selections that [have a] wash temperature greater than or equal to 140 °F?'' must be evaluated. As discussed in the previous paragraphs, the answer to that question could differ for each load size (*e.g.,* using the small load size could yield an answer of ''No'', whereas using the large load size could yield an answer if ''Yes.'') By specifying that the flow charts are *evaluated* using the large load size, in this example, the answer to the question would be the answer ''Yes'' associated with the large load size (*i.e.,* the unit under test has an Extra-Hot Wash/Cold Rinse). Having made this determination, both the small and large load sizes would be tested to the Extra-Hot Wash/Cold Rinse temperature selection.

b. Clothes Washers That Generate All Hot Water Internally

As described in section III.C.2 of this document, DOE is aware of single-inlet clothes washers on the market that intake only cold water and internally generate all hot water required for a cycle by means of an internal heating element. As observed on the market, these clothes washers offer Cold, Warm, Hot, and/or Extra-Hot temperature selections. As part of determining the Cold/Cold temperature selection, the instruction box in the flowchart in Figure 2.12.1 of appendix J2 referred to ''. . . multiple wash temperature selections in the Normal cycle [that] do not use any hot water for any of the water fill levels or test load sizes required for testing[.]''

In the September 2021 NOPR, DOE proposed the text in Figure 2.12.1 of both appendix J2 and the new appendix J to state ''. . . use *or internally generate* any heated water . . .'' (emphasis added) so that the wording of the Cold/Cold flowchart in both appendices explicitly addresses clothes washers that internally generate hot water. 85 FR 31065, 31074. This change would be consistent with DOE's interpretation of the current Cold/Cold flowchart and subsequent flowcharts for the Warm Wash and Hot Wash temperature selections for this type of clothes washer. *Id.* DOE further proposed to phrase the description of Warm/Warm in Figure 2.12.4 of both appendix J2 and the new appendix J to state ''. . . rinse temperature selections that add *or internally generate* hot water . . .'' (emphasis added), for the same reasons. 86 FR 49140, 49183.

DOE requested comments on its proposal to update the flowcharts for Cold/Cold and Warm/Warm in both appendix J2 and the new appendix J to explicitly address clothes washers that internally generate hot water. *Id.*

In the September 2021 NOPR, DOE summarized comments from Underwriters Laboratories (''UL'') and AHAM supporting this change. DOE received no additional comments in response to the September 2021 NOPR on its proposal to update the flowcharts to explicitly address clothes washers that internally generate hot water. *Id.*

For the reasons discussed in the preceding paragraphs and in the September 2021 NOPR, DOE is finalizing its proposal, consistent with the September 2021 NOPR, to update the flowcharts to explicitly address clothes washers that internally generate hot water.

5. Wash Time Setting

Section 3.2.5 of appendix J2 defines how to select the wash time setting on a clothes washer. If no one wash time is prescribed for the wash cycle under test, the wash time setting is the higher of either the minimum or 70 percent of the maximum wash time available, regardless of the labeling of suggested dial locations. Hereafter in this document, DOE refers to this provision as the ''70-percent test.''

a. Electronic vs. Electromechanical Dials

DOE has observed on the market clothes washers that have an electronic cycle selection dial designed to visually simulate a conventional electromechanical dial.[65] *Id.* Although the electronic dial simulates the visual appearance of an electromechanical dial, the electronic dial is programmed with a pre-established set of wash cycle parameters, including wash time, for each of the discrete cycle selections presented on the machine. *Id.* For this type of cycle selection dial, each of the discrete cycle selection options represents a selectable ''wash cycle'' as referred to in section 3.2.5 of appendix J2, and a wash time is prescribed for each available wash cycle. *Id.* Therefore, for clothes washers with this type of electronic dial, the wash cycle selected for testing must correspond to the wash cycle that meets the definition of Normal cycle in section 1.25 of appendix J2. The wash time setting thus would be the prescribed wash time for the selected wash cycle; *i.e.,* the 70-percent test would not apply to this type of dial. *Id.*

In the September 2021 NOPR, DOE proposed to include in section 3.2.5.3 of both appendix J2 and the new appendix J the words ''or timer'' after the words ''electromechanical dial'' in order to clarify the application of the instructions to electronic cycle selection dials. *Id.*

DOE further proposed in section 3.2.5 of appendix J2 and section 3.2.2 of the new appendix J[66] that the first sentence of the section would read, ''*If the cycle under test offers a range of wash time settings,* the wash time setting shall be the higher of either the minimum or 70 percent of the maximum wash time available for the wash cycle under test, regardless of the labeling of suggested dial locations'' (emphasis added). 86 FR 49140, 49183–49184. DOE also proposed to separate section 3.2.5 of appendix J2 and section 3.2.2 of the new appendix J into two subsections: section 3.2.5.1 (in appendix J2) and section 3.2.2.1 (in the new appendix J), which specifies the wash time setting for a clothes washer cycle with a range of wash time settings; and section 3.2.5.2 (in appendix J2) and 3.2.2.2 (in the new appendix J), which specifies the dial rotation procedure for a clothes washer equipped with an electromechanical dial or timer that rotates in both directions. 86 FR 49140, 49184.

DOE requested comment on its proposal to clarify the wording of the wash time setting specifications in section 3.2.5 of appendix J2 and section 3.2.2 of the new appendix J. *Id.*

AHAM commented in support of DOE's proposed changes concerning

[65] On most electromechanical dials, the rotational position of the dial corresponds to the desired wash time. The user rotates the dial from the initial ''off'' position to the desired wash time position, and after starting the wash cycle, the dial rotates throughout the progression of the wash cycle until it reaches the ''off'' position at the end of the cycle. In contrast, an electronic dial contains a fixed number of selectable positions, and the dial remains in the selected position for the duration of the wash cycle.

[66] See section III.H.7 of this document for a discussion of the structure of section 3 of the new appendix J.

electromechanical dials. (AHAM, No. 27 at p. 16)

For the reasons discussed in the preceding paragraphs and in the September 2021 NOPR, DOE is finalizing its proposal, consistent with the September 2021 NOPR, to include in section 3.2.5.3 of both appendix J2 and the new appendix J the words ''or timer'' after the words ''electromechanical dial'' in order to clarify the application of the instructions to electronic cycle selection dials. DOE is also finalizing its proposal, consistent with the September 2021 NOPR, that in section 3.2.5 of appendix J2 and section 3.2.2 of the new appendix J the first sentence of the section reads, ''If the cycle under test offers a range of wash time settings, the wash time setting shall be the higher of either the minimum or 70 percent of the maximum wash time available for the wash cycle under test, regardless of the labeling of suggested dial locations.'' DOE is also finalizing its proposal, consistent with the September 2021 NOPR, to separate section 3.2.5 of appendix J2 and section 3.2.2 of the new appendix J into two subsections each.

b. Direction of Dial Rotation

Section 3.2.5 of appendix J2 states that, for clothes washers with electromechanical dials controlling wash time, the dial must be turned in the direction of increasing wash time to reach the appropriate wash time setting. DOE is aware that not all electromechanical dials currently on the market can be turned in the direction of increasing wash time. 86 FR 49140, 49184. On such models, the dial can only be turned in the direction of decreasing wash time. Accordingly, DOE asserted that the direction of rotation need only be prescribed on a clothes washer with an electromechanical dial that can rotate in both directions. *Id.*

In the September 2021 NOPR, DOE proposed to add in section 3.2.5.2 of appendix J2 and include in section 3.2.2.2 of the new appendix J a clause that would specify that the requirement to rotate the dial in the direction of increasing wash time would only apply to dials that can rotate in both directions. *Id.*

DOE requested comment on its proposal to include a clause in section 3.2.5.2 of appendix J2 and section 3.2.2.2 of the new appendix J stating that the requirement to rotate the dial in the direction of increasing wash time would apply only to dials that can rotate in both directions. *Id.*

In the September 2021 NOPR, DOE summarized comments from UL and AHAM supporting this change. DOE received no additional comments in response to the September 2021 NOPR on its proposal to state that the requirement to rotate the dial in the direction of increasing wash time would apply only to dials that can rotate in both directions.

For the reasons discussed in the preceding paragraphs and in the September 2021 NOPR, DOE is finalizing its proposal, consistent with the September 2021 NOPR, to include a clause in section 3.2.5.2 of appendix J2 and section 3.2.2.2 of the new appendix J that specifies that the requirement to rotate the dial in the direction of increasing wash time applies only to dials that can rotate in both directions.

c. ''Wash Time'' Definition

The 70-percent test described above does not explicitly define how to calculate ''wash time.'' In the May 2020 RFI, DOE considered whether to state that the phrase ''wash time'' in section 3.2.5 of appendix J2 refers to the period of agitation or tumble. 85 FR 31065, 31975. This clarification would be consistent with the historical context of this section of the test procedure. In the August 1997 Final Rule, DOE specified that section 2.10 of appendix J *Clothes washer setting* refers to ''actual wash time'' as the ''period of agitation.'' In the 2001 Final Rule, DOE renamed section 2.10 of appendix J *Wash time (period of agitation or tumble) setting.*[67] 66 FR 3313, 3330. When establishing appendix J1 in the August 1997 Final Rule, DOE did not include reference to ''period of agitation or tumble'' in section 2.10 of appendix J1. 62 FR 45484, 45510. DOE did not address this difference from the 1977 version of appendix J in the preamble of the August 1997 Final Rule or the NOPRs that preceded that final rule, but given the continued reference to ''wash time'' in appendix J1, did not intend to change the general understanding that wash time refers to the wash portion of the cycle, which includes agitation or tumble time. 86 FR 49140, 49184. DOE has since further amended section 2.10 of both appendix J1 and appendix J2 as part of the March 2012 Final Rule and August 2015 Final Rule (in which section 2.10 was renumbered as section 3.2.5), with no discussion in these final rules of the statement that remained in the 2001 version of appendix J, where wash time was referred to in the title of section 2.10 as the period of agitation or tumble time. *Id.* DOE further noted in the September 2021 NOPR that in current RCW models on the market, agitation or tumble may be periodic or continuous during the wash portion of the cycle. *Id.*

In order to provide further clarity in evaluating the wash time setting requirements of section 3.2.5 of appendix J2 and section 3.2.2 of the new appendix J, DOE proposed in the September 2021 NOPR to define the term ''wash time'' in section 1 of both appendix J2 and the new appendix J as ''the wash portion of the cycle, which begins when the cycle is initiated and includes the agitation or tumble time, which may be periodic or continuous during the wash portion of the cycle.'' 86 FR 49140, 49184.

DOE requested comment on its proposal to add a definition of ''wash time'' to section 1 of both appendix J2 and the new appendix J. *Id.*

AHAM commented in support of DOE's proposed definition of ''wash time.'' (AHAM, No. 27 at p. 16)

For the reasons discussed in the preceding paragraphs and in the September 2021 NOPR, DOE is finalizing its proposal to add a definition of ''wash time'' to section 1 of both appendix J2 and the new appendix J in order to add more clarity in evaluating the wash time setting requirements. To provide greater specificity by referencing other defined terms, this final rule changes the wording ''wash portion of *the cycle*'' as proposed in the September 2021 NOPR to ''wash portion of *active washing mode.*'' This change does not affect the substance of the September 2021 NOPR proposal.

6. Annual Operating Cost Calculation

DOE provides in 10 CFR 430.23(j)(1)(ii) the method for calculating the estimated annual operating cost for automatic and semiautomatic clothes washers, when using appendix J2. In the March 2012 Final Rule, DOE assigned the symbol ''E_{TLP}'' to represent combined low-power mode energy consumption. However, in that rule, DOE used a different symbol (''E_{TSO}'') in updating section 10 CFR 430.23(j)(1)(ii) to represent the same value. 77 FR 12888, 13937–13948. In the September 2021 NOPR, DOE proposed to update the symbol nomenclature in 10 CFR 430.23(j)(1)(ii) to match the symbol nomenclature in appendix J2. 86 FR 49140, 49184.

In addition, to differentiate between values determined using appendix J2 from values determined using the new appendix J throughout 10 CFR 430.23(j), DOE proposed to add a number ''2'' to

[67] In this context, ''agitation'' refers to the wash action of a top-loading clothes washer, whereas ''tumble'' refers to the wash action of a front-loading clothes washer.

each of the symbols representing values derived from appendix J2 (*e.g.,* E_{TLP2}) that are not already designated accordingly. *Id.*

DOE further noted that the formula for calculating the estimated annual operating cost for automatic and semiautomatic clothes washers when gas-heated or oil-heated water is used, provided in 10 CFR 430.23(j)(1)(ii)(B), was missing a pair of parentheses. 86 FR 49140, 49185. The ''N_2'' multiplier is intended to apply to all of the other factors in the equation, but the lack of parentheses around the ''ME_{T2}'' through ''C_{BTU}'' terms erroneously applied it to only the first term of the sum. DOE proposed to correct this error in the September 2021 NOPR. *Id.*

Since DOE proposed to remove appendix J1 as part of the September 2021 NOPR, DOE also proposed to update 10 CFR 430.23(j)(1)(i), which specified the formulas for calculating the estimated annual operating cost for automatic and semiautomatic clothes washers when using appendix J1, with the formulas for calculating the estimated annual operating cost for automatic and semiautomatic clothes washers when using the new appendix J. *Id.* These proposed formulas were analogous to the formulas in 10 CFR 430.23(j)(1)(ii). *Id.* As discussed further in section III.H.7 of this document, the new appendix J does not include a separate calculation for ''E_{TE}'' (the sum of machine electrical energy (''ME_T'') and water heating energy (''HE_T''), as defined in section 4.1.7 of appendix J2). Therefore, DOE's proposed revisions to 10 CFR 430.23(j)(1)(i) would replace E_{TE} with the individual components ME_T + HE_T. *Id.*

DOE requested comment on its proposed updates to the annual operating cost calculations in 10 CFR 430.23(j)(1). *Id.*

DOE received no comments on its proposal to update the annual operating cost.

For the reasons discussed in the preceding paragraphs and in the September 2021 NOPR, DOE is finalizing its proposal, consistent with the September 2021 NOPR, to update the annual operating cost calculations in 10 CFR 430.23(j)(1).

7. Structure of the New Appendix J

DOE proposed a number of changes to the structure of the test procedure as part of the creation of the new appendix J to improve readability. 86 FR 49140, 49185.

In the September 2021 NOPR, DOE proposed to better organize section 2.8 of the proposed new appendix J, as compared to the parallel section in appendix J2. *Id.* Section 2.8 of appendix J2 cross-references the load size table to determine the three load sizes, specifies the allowable composition of energy test cloths and energy stuffer cloths in each load,[68] and provides a table showing required test load sizes and water fill settings for each type of WFCS. *Id.* DOE proposed that, in new appendix J, section 2.8.1 would contain the specifications for determining the load sizes; section 2.8.2 would contain the specifications describing the allowable composition of energy test cloths and energy stuffer cloths in each load; and the table specifying the required test load sizes and water fill settings for each type of WFCS would not be included. *Id.* This table would be no longer needed in new appendix J because the same two load sizes (small and large) would be used for all WFCS types. *Id.*

Section 2.9 of appendix J2 is named ''Use of test loads'' and provides specifications for drying each load to bone-dry prior to use and instructions for loading the test cloth into the clothes washer. In the 2021 NOPR, DOE proposed to title section 2.9 of the proposed new appendix J ''Preparation and loading of test loads'' and to include a statement that the procedures described in section 2.9 to prepare and load each test load are applicable when performing the testing procedures in section 3 of the appendix. *Id.*

Section 3.2 of appendix J2 is titled ''Procedure for measuring water and energy consumption values on all automatic and semi-automatic washers'' and specifies conducting testing under the energy test cycle (3.2.1); provides a table that cross-references to each relevant test section in section 3 of the appendix (3.2.2); and provides specifications for: Configuring the hot and cold water faucets (3.2.3); selecting the wash/rinse temperature selection (3.2.4); selecting the wash time setting (3.2.5); selecting water fill levels for each type of WFCS (3.2.6); using manufacturer default settings (3.2.7); testing active washing mode only (3.2.8); and discarding anomalous data (3.2.9).

In the 2021 NOPR, DOE proposed to title section 3.2 of the new appendix J as simply ''Cycle settings'' and to organize the section as follows: The contents in section 3.2.1 of appendix J2 would be instead included within the instructions of a new section 3.3 (as described below); the contents of section 3.2 of appendix J2, including the table, would not be included as the contents would be redundant with the proposed sections 3.3 and 3.4; the contents of section 3.2.3 of appendix J2 would not be included, as the hot and cold water faucet instructions would no longer be necessary given the proposed changes described in section III.C.2 of this document regarding the installation of single-inlet clothes washers; and sections 3.2.4 through 3.2.9 of appendix J2 would be included as sections 3.2.1 through 3.2.6, respectively, and include any relevant edits as discussed throughout this document. *Id.*

Sections 3.3 through 3.7 of appendix J2 contain detailed instructions for testing each wash/rinse temperature available in the energy test cycle: Extra-Hot/Cold (3.3); Hot/Cold (3.4); Warm/Cold (3.5); Warm/Warm (3.6); and Cold/Cold (3.7). The content and structure of each of these sections is nearly identical, except for two caveats: (1) Describing the use of temperature indicator labels in section 3.3 of appendix J2 to verify the presence of an Extra-Hot wash; and (2) describing the 25/50/75 test, described in section III.D.3 of this document, for clothes washers that offer four or more Warm/Cold or Warm/Warm selections. To significantly simplify this part of test procedure, and because the use of temperature indicator labels would be moved to section 2.5.4 of the proposed new appendix J and the 25/50/75 test would no longer be applicable under the proposals outlined in section III.D.3 of this document, DOE proposed to combine the common language from sections 3.3 through 3.7 in appendix J2 into a single section 3.3 in the new appendix J for automatic clothes washers and an analogous section 3.4 in the new appendix J for semi-automatic clothes washers. *Id.* Section 3.3 of the proposed new appendix J would also provide a table designating the symbol definitions of each required measured value for each wash/rinse temperature selection and load size. *Id.* As discussed in section III.D.8.c of this document, section 3.4 of the proposed new appendix J would provide the same information for semi-automatic clothes washers. *Id.*

Section 3.8 of appendix J2 specifies the procedure for measuring and calculating RMC. As described in section III.D.4 of this document, DOE proposed in the new appendix J to require measuring the RMC of each tested cycle within the energy test cycle, and to calculate final RMC using TUFs and LUFs, consistent with how water heating energy, electrical energy, and water usage are calculated. *Id.* Under this proposed change, the RMC values would be calculated in section 4

[68] Test loads must consist of energy test cloths and no more than five energy stuffer clothes per load to achieve the proper weight.

(''Calculation of Derived Results From Test Measurements'') of the proposed new appendix J. *Id.* Given these proposed changes, the current specifications in section 3.8 of appendix J2 would not apply to the proposed new appendix J. *Id.* In the September 2021 NOPR, DOE therefore proposed not to include the RMC provisions from section 3 in appendix J2 in the new appendix J. *Id.*

In the September 2021 NOPR, DOE proposed to include sections 3.9 and 3.10 of appendix J2 in the proposed new appendix J as sections 3.5 and 3.6, respectively, and to provide the appropriate cross-references. *Id.*

Section 3.10 of appendix J2 (section 3.6 in the proposed new appendix J) is titled ''Energy consumption for the purpose of determining the cycle selection(s) to be included in the energy test cycle'' and specifies the following: Establishing the test conditions and setting the cycle selections (3.10.1); using the maximum test load size (3.10.2); using the maximum water fill level available (3.10.3); including only the active washing mode (3.10.4); and calculating ''total energy consumption'' using a defined equation (3.10.5). In the September 2021 NOPR, DOE proposed to simplify section 3.6 in the proposed new appendix J by condensing the specifications of sections 3.10.1 through 3.10.4 in appendix J2 into a single statement in section 3.6.1 of the new appendix J to use the cycle settings as described in section 3.2 of the proposed new appendix J. 86 FR 49140, 49186. Section 3.10.5 of appendix J2 would be included in the proposed new appendix J as section 3.6.2. *Id.*

Sections 3 and 4 of appendix J2 assign various different subscripts to each symbol definition to denote load size and wash/rinse temperature selection, among other attributes. Appendix J2 uses the subscript ''x'' to denote the maximum load size and the subscript ''m'' to denote the Extra-Hot/Cold temperature selection. In the September 2021 NOPR, DOE proposed to use new subscripts to represent the large load size (''L'') and the small load size (''S'') in the new appendix J. *Id.* Because the maximum load size would no longer apply in the proposed new appendix J, DOE proposed to update the subscript for Extra-Hot/Cold temperature selection from ''m'' to ''x'' (since ''x'' is more intuitive in representing ''Extra''). *Id.* These changes would apply to sections 3.3, 3.4, 3.6 and 4 in the proposed new appendix J. *Id.* Additionally, throughout section 4 of appendix J2, the symbol ''F'' is used to refer to load usage factors. For greater clarity in the new appendix J, DOE proposed to use the symbol ''LUF'' throughout section 4 to represent the load usage factors, rather than the symbol ''F.''

Section 4.1.7 of appendix J2 specifies calculating ''Total per-cycle energy consumption when electrically heated water is used,'' assigned as symbol ''E_{TE},'' as the sum of machine electrical energy and water heating energy. *Id.* E_{TE} was originally defined in the 1977 Final Rule in section 4.6 of appendix J and at the time represented the total measured energy consumption, since the drying energy (''$D_E{}^{++}$) and E_{TLP} were not yet included as part of the clothes washer test procedure. Currently, however, the total measured energy consumption would be more accurately represented by the sum of H_{ET}, M_{ET}, D_E, and E_{TLP}. Because the calculation of E_{TE} as an intermediate step is now obsolete, DOE proposed to not include the definition of E_{TE} from section 4.1.7 of new appendix J, as well as to edit all cross-references to E_{TE} (within sections 4.5 and 4.6 of the proposed new appendix J and 10 CFR 430.23(j)(1)(i)(A) as proposed). *Id.* In these instances, DOE proposed to replace E_{TE} with its component parts: HE_T and ME_T. *Id.*

Section 4.2 of appendix J2 provides the calculation of water consumption and is structured with multiple subsections. Sections 4.2.1 through 4.2.5 of appendix J2 provide for the calculation of total water consumption for each load size within each wash/rinse temperature selection by summing the measured values of hot water and cold water: Extra-Hot/Cold (4.2.1); Hot/Cold (4.2.2); Warm/Cold (4.2.3); Warm/Warm (4.2.4); and Cold/Cold (4.2.5). In sections 4.2.6 through 4.2.10 of appendix J2, the total weighted water consumption for each wash/rinse temperature selection is calculated by combining the water consumption values for each load size as calculated in sections 4.2.1 through 4.2.5 using the LUFs. In section 4.2.11 of appendix J2, the total weighted water consumption for all wash cycles is calculated by combining the values calculated in sections 4.2.6 through 4.2.10 (representing each wash/rinse temperature) using the TUFs. In the September 2021 NOPR, DOE noted that this order of calculations (which combines the measured values from the individual cycles first using LUFs, then combines the resulting values using TUFs) is the reverse order used for the machine electrical and water heating energy calculations in section 4.1 of appendix J2 (which combines the measured values from the individual cycles first using TUFs, then combines the resulting values using LUFs). *Id.* In the new appendix J, DOE proposed to organize section 4.2 to simplify the calculations and to provide consistency between the water consumption calculations and the energy calculations (*i.e.,* to combine the measured values from the individual cycles first using TUFs, then combine the resulting values using LUFs). *Id.* Accordingly, section 4.2.1 of the proposed new appendix J would define the per-cycle total water consumption for each large load size tested (summing the hot and cold water consumption for each load size and temperature setting), and section 4.2.2 would similarly define the per-cycle total water consumption for each large and small size tested. *Id.* Section 4.2.3 of the proposed new appendix J would provide for the calculation of the per-cycle total water consumption for all load sizes, using the TUFs to calculate the weighted average of all temperature settings for each load size. *Id.* Finally, section 4.2.4 of the proposed new appendix J would calculate the total weighted per-cycle water consumption, using the LUFs to calculate the weighted average over the two load sizes. *Id.*

In the September 2021 NOPR, DOE requested comment on its proposed structure of the new appendix J to simplify and improve readability as compared to appendix J2. *Id.*

DOE received no comments on its proposed structure for the new appendix J.

DOE is finalizing its proposal, consistent with the September 2021 NOPR, to restructure the new appendix J to simplify and improve readability as compared to appendix J2.

8. Proposed Deletions and Simplifications

In the September 2021 NOPR, DOE proposed to remove appendix J1 to subpart B of 10 CFR part 430 along with all references to appendix J1 in 10 CFR parts 429, 430, and 431. 86 FR 49140, 49186. Appendix J1 applied only to RCWs manufactured before March 7, 2015, and CCWs manufactured before January 1, 2018, and is therefore not applicable to models manufactured on or after those dates. *Id.* Use of appendix J2 to subpart B of 10 CFR part 430 is currently required for any representations of energy or water consumption of both RCWs and CCWs, including demonstrating compliance with the currently applicable energy conservation standards. *Id.* As discussed, DOE proposed to maintain the current naming of appendix J2, and to establish a new test procedure at appendix J, which would be used for the evaluation and issuance of updated

efficiency standards, and for determining compliance with those standards. *Id.*

DOE requested comment on its proposal to remove appendix J1 to subpart B of 10 CFR part 430 along with all references to appendix J1 in 10 CFR parts 429, 430, and 431. *Id.*

The Joint Commenters commented in support of deleting appendix J1 and all references to it in 10 CFR parts 429, 430, and 431. (Joint Commenters, No. 31 at p. 11)

DOE is finalizing its proposal, consistent with the September 2021 NOPR, to remove appendix J1 to subpart B of 10 CFR part 430 along with all references to appendix J1 in 10 CFR parts 429, 430, and 431.

Given DOE's proposal to update the energy and water metrics in the new appendix J, as described in section III.E of this document, DOE proposed to include references to the proposed new metrics EER, AEER, and WER in place of references to the WF, IWF, MEF_{J2}, and IMEF metrics, as appropriate, in the new appendix J. 86 FR 49140, 49186. Given that the WF metric is no longer the basis for energy conservation standards for either RCWs or CCWs, DOE proposed to remove the calculation of WF from section 4.2.12 of appendix J2, as well as any references to WF in 10 CFR parts 429, 430, and 431. *Id.* Similarly, given that MEF_{J2} is no longer the basis for energy conservation standards for RCWs, DOE proposed to remove references to ''MEF'' from 10 CFR 429.20 and 10 CFR 430.23. *Id.*

DOE requested comment on its proposal to remove obsolete metric definitions. 86 FR 49140, 49187.

DOE received no comments in response to its proposal to remove obsolete metric definitions.

DOE is finalizing its proposal, consistent with the September 2021 NOPR, to remove obsolete metric definitions.

DOE proposed to delete the following definitions from section 1 of appendix J2 because they were either no longer used within the then-current appendix, or would no longer be used given DOE's proposed amendments in the September 2021 NOPR: ''adaptive control system,'' ''compact,'' ''manual control system,'' ''standard,'' and ''thermostatically controlled water valves.'' 86 FR 49140, 49187.

Section 1.13 of appendix J2 defined the energy test cycle as follows: energy test cycle means the complete set of wash/rinse temperature selections required for testing, as determined according to section 2.12 [of appendix J2]. Within the energy test cycle, the following definitions applied:

(a) Cold Wash/Cold Rinse is the wash/rinse temperature selection determined by evaluating the flowchart in Figure 2.12.1 of this appendix.

(b) Hot Wash/Cold Rinse is the wash/rinse temperature selection determined by evaluating the flowchart in Figure 2.12.2 of this appendix.

(c) Warm Wash/Cold Rinse is the wash/rinse temperature selection determined by evaluating the flowchart in Figure 2.12.3 of this appendix.

(d) Warm Wash/Warm Rinse is the wash/rinse temperature selection determined by evaluating the flowchart in Figure 2.12.4 of this appendix.

(e) Extra-Hot Wash/Cold Rinse is the wash/rinse temperature selection determined by evaluating the flowchart in Figure 2.12.5 of this appendix.

Parts (a) through (e) of this definition were redundant with the flowchart definitions provided in section 2.12 of appendix J2. Therefore, DOE proposed to simplify the definition of energy test cycle in both appendix J2 and the new appendix J by keeping only the first sentence of the current definition: energy test cycle means the complete set of wash/rinse temperature selections required for testing, as determined according to section 2.12. *Id.*

DOE also proposed to remove section 1.30 of appendix J2, ''Symbol usage,'' to rename section 1 of appendix J2 (previously ''Definitions and Symbols'') ''Definitions,'' and name section 1 of the new appendix J ''Definitions'' accordingly. *Id.* Throughout the appendices, each symbol is defined at each usage, making this section unnecessary for executing the test procedure. DOE noted that most other test procedures in subpart B to part 430 do not include a symbol usage section. *Id.*

DOE also proposed to remove the numbering of all definitions in section 1 of appendix J2, and in section 2 of appendix J3, and instead list the definitions in alphabetical order, to simplify cross-references to defined terms and allow for easier editing in the future by avoiding the need to renumber all the definitions (and associated cross-references) any time a definition is added or deleted. *Id.*

DOE requested comment on its proposal to delete the following definitions from section 1 of appendix J2: ''adaptive control system,'' ''compact,'' ''manual control system,'' ''standard,'' and ''thermostatically controlled water valves.'' *Id.* DOE also requested comment on its proposal to simplify the definition of ''energy test cycle.'' *Id.* DOE also requested comment on its proposal to remove section 1.30 ''Symbol usage'' from appendix J2. *Id.* Lastly, DOE requested comment on its proposal to remove the numbering of all definitions in section 1 of appendix J2 and section 2 of appendix J3, and to instead list the definitions in alphabetical order. *Id.*

P.R. China commented that DOE should not delete the definitions of ''compact'' and ''standard.'' (P.R. China, No. 25 at p. 4) P.R. China specifically requested that DOE re-define the ''compact'' product class to include units with capacity less than 45 liters, and re-define the ''standard'' product class to include clothes washers with a capacity above 45 liters. (*Id.*) P.R. China further stated that large-capacity machines have inherent advantages in energy efficiency performance over smaller-capacity machines. (*Id.*) P.R. China concluded that it is therefore unfair to compare compact and standard clothes washers using the same criteria. (*Id.*)

In response to P.R. China, DOE notes that its deletion of the ''compact'' and ''standard'' product class definitions from appendix J2 does not affect the definition of RCW product classes, which are defined in 10 CFR 430.32(g) and include: top-loading compact, top-loading standard, front-loading compact, and front-loading standard. The product class definitions in 10 CFR 430.32(g) include capacity thresholds at 1.6 ft^3, or 45 liters, and are not being amended in this final rule.[69] In this final rule, DOE is removing the definitions of the terms ''compact'' and ''standard'' only from appendix J2 because they are no longer used within the appendix itself.

For these reasons, DOE is finalizing its proposal, consistent with the September 2021 NOPR, to delete the following definitions from section 1 of appendix J2: ''adaptive control system,'' ''compact,'' ''manual control system,'' ''standard,'' and ''thermostatically controlled water valves.'' DOE is also finalizing its proposals, consistent with the September 2021 NOPR, to simplify the definition of ''energy test cycle,'' and remove section 1.30 ''Symbol usage'' from appendix J2. DOE is further finalizing its proposal, consistent with the September 2021 NOPR to remove the numbering of all definitions in section 1 of appendix J2 and section 2 of appendix J3, and to instead list the definitions in alphabetical order.

DOE further proposed to remove section 6, Waivers and Field Testing,

[69] In the RCW Standards Preliminary Analysis, DOE analyzed an updated capacity threshold of 3.0 ft^3 (85 liters) between the front-loading compact and front-loading standard product classes. Any new definitions of product classes would be finalized in the standards rulemaking.

from appendix J2 and not include a parallel section in the new appendix J. 86 FR 49140, 49187. The language of section 6 of appendix J2 was first introduced as section 7 in the 1997 version of appendix J and has been maintained through successive amendments of the test procedures. DOE noted in the September 2021 NOPR, however, that none of the waivers sought by manufacturers to date have made use of these provisions. *Id.* Instead, the provisions of 10 CFR 430.27 (Petitions for waiver and interim waiver) provide comprehensive instructions regarding DOE's waiver process. *Id.* DOE tentatively concluded that the information presented in section 6 of appendix J2 was unnecessary given the regulatory language of 10 CFR 430.27. *Id.*

DOE requested comment on its proposal to remove section 6, Waivers and Field Testing, of appendix J2 and proposal not to include a parallel section in the new appendix J. *Id.*

DOE received no comments on its proposal to remove section 6, Waivers and Field Testing, of appendix J2.

DOE is finalizing its proposal, consistent with the September 2021 NOPR, to remove section 6, Waivers and Field Testing, of appendix J2 and to not include a parallel section in the new appendix J.

9. Typographical Errors

In an effort to improve the readability of the text in certain sections of 10 CFR 430.23 and appendix J2, DOE proposed to make minor typographical corrections and formatting modifications as follows. 86 FR 49140, 49187. These minor proposed modifications were not intended to change the substance of the test methods or descriptions provided in these sections. *Id.* The language of the proposed new appendix J reflects these corrections. *Id.*

The test procedure provisions at 10 CFR 430.23(j)(1)(ii)(B) contain a definition for ''C_{KWH},'' which is duplicative with the same definition provided in 10 CFR 430.23(j)(1)(ii)(A). In the September 2021 NOPR, DOE proposed to remove the duplicate definition of C_{KWH} from 10 CFR 430.23(j)(1)(ii)(B). *Id.*

DOE proposed to correct two misspellings in section 2.8 of appendix J2 referring to energy stuffer cloths (previously ''clothes'') and test load sizes (previously ''siszes''). *Id.* DOE also proposed to correct the spelling of ''discrete'' in section 3.2.5 of appendix J2 (previously ''discreet'') and of ''test cycle'' in section 3.6 of appendix J2 (previously ''testy cycle''). *Id.* DOE also proposed to spell out the word ''percent'' in the paragraph in section 3.2.5 of appendix J2. *Id.*

Currently in appendix J2, the drying energy abbreviation is D_E. This notation is inconsistent with the notation used for machine electrical energy and water heating energy (ME_T and HE_T, respectively). DOE proposed to standardize the notation used for drying energy throughout sections 3 and 4 of new appendix J, such that it is listed as DE_T. *Id.* DOE stated in the September 2021 NOPR that it could consider also making this change in appendix J2, but that it understood that changing the symbol definition could require test laboratories to update test templates that use the D_E symbol as currently defined in appendix J2. *Id.*

DOE also proposed to rename section 2 in appendix J2 from ''Testing Conditions'' to ''Testing Conditions and Instrumentation'' to more fully reflect the contents of this section. *Id.*

In several instances throughout appendix J2, the qualifier ''of this appendix'' was missing in section cross-references. DOE proposed to rectify these omissions. *Id.* DOE also proposed to clarify references to appendix J3 in appendix J2, and *vice-versa,* by using ''to this subpart.'' *Id.* Finally, DOE proposed to update all cross-references as needed, following the edits proposed in the September 2021 NOPR. *Id.*

DOE received no comments in response to its proposed corrections.

For the reasons discussed in the preceding paragraphs and in the September 2021 NOPR, DOE is finalizing its proposal, consistent with the September 2021 NOPR, to make the minor typographical corrections and formatting modifications described previously to improve the readability of the text in certain sections of 10 CFR 430.23 and appendix J2.

10. Symbology

As discussed in section I.B of this document, in the CCW test procedure regulations at 10 CFR 431.152, DOE defines the term ''MEF_{J2}'' to mean modified energy factor as determined in section 4.5 of appendix J2. Since the calculated value of modified energy factor in appendix J2 is not equivalent to the calculated value of modified energy factor in appendix J1, DOE added the ''J2'' subscript to the appendix J2 MEF descriptor to avoid any potential ambiguity that would result from using the same energy descriptor for both test procedures. 79 FR 71624, 71626. To maintain consistency with this approach, this final rule adds the ''J2'' subscript to the MEF metric defined in section 4.5 of appendix J2.

I. Test Cloth Provisions

Appendix J2 requires using specialized test cloth as the material comprising each tested load. The final specifications for the energy test cloth were developed to be representative of the range of fabrics comprising consumer wash loads: a 50-percent cotton/50-percent polyester blended material was specified to approximate the typical mix of cotton, cotton/polyester blend, and synthetic articles that are machine-washed by consumers. In developing the test cloth specifications, DOE also considered:

- Manufacturability: A 50/50 cotton-polyester momie weave was specified because at the time, such cloth was produced in high volume, had been produced to a consistent specification for many years, and was expected to be produced on this basis for the foreseeable future. 66 FR 3314, 3331.
- Consistency in test cloth production: The cloth material properties were specified in detail, including fiber content, thread count, and fabric weight; as well as requirements to verify that water repellent finishes are not applied to the cloth. *Id.*
- Consistency of the RMC measurement among different lots: A procedure was developed to generate correction factors for each new ''lot'' (*i.e.,* batch) of test cloth to normalize test results and ensure consistent RMC measurements regardless of which lot is used for testing. *Id.*

1. Test Cloth Specification

In the September 2021 NOPR, DOE did not propose any changes to the test cloth specification.

The Joint Commenters recommended that DOE mathematically adjust clothes washer RMC in the proposed new appendix J to more realistically account for drying energy use associated with 100-percent cotton loads. (Joint Commenters, No. 31 at pp. 7–8) The Joint Commenters referenced the 2020 NEEA Report, which developed a linear mathematical relationship between the RMCs of two different types of textiles: The 50-percent cotton/50-percent polyester DOE test cloth defined in appendix J2, and the 100-percent cotton textiles defined in AHAM HLW–1–2013 and IEC 60456 (2010). The 2020 NEEA Report analyzed the RMC values of both types of textiles across a broad range of clothes washer efficiency levels and technology types. (*Id.*) The Joint Commenters commented that NEEA's study found what the Joint Commenters characterized as excellent R-squared values that could be used to adjust the

RMC of DOE test cloth to the RMC that would be expected by using AHAM-specified 100-percent cotton textiles. (*Id.*) The Joint Commenters commented that adjusting RMC to account for drying energy use associated with 100-percent cotton loads would more realistically account for RCW and CCW impacts on drying energy use because, according to the Joint Commenters, most typical laundry loads have a cotton content higher than 50 percent. (*Id.*) The Joint Commenters also commented that adjusting RMC would increase alignment between the proposed new appendix J clothes washer procedure and the appendix D2 clothes dryer test procedure, asserting that the drying energy currently calculated in appendix J2 is much lower than the energy consumed by a typical clothes dryer. (*Id.*) The Joint Commenters further explained that using NEEA's mathematical adjustment to increase RMC before calculating drying energy would make the drying energy estimated in the clothes washer test procedure more similar to the measured drying energy in the clothes dryer test procedure, since the RMC calculated in new appendix J would be closer to the initial moisture content of 57.5 percent specified in appendix D2. (*Id.*) The Joint Commenters also added that their proposed RMC adjustment calculation would not add any test burden since the calculation would only affect the post-processing of the data, which could be automated. (*Id.*)

The Joint Efficiency Advocates similarly recommended that DOE include RMC adjustment factors to account for the difference in RMCs between DOE test cloth load and ''real-world'' clothing. (Joint Efficiency Advocates, No. 28 at p. 5) The Joint Efficiency Advocates cited findings from the 2020 NEEA Report that clothes washers removed substantially more water from the DOE test cloth loads (36 percent RMC, on average) than the AHAM cotton test loads (65 percent RMC, on average). (*Id.*) The Joint Efficiency Advocates therefore concluded that RMC and the resulting drying energy are likely being underestimated in the current test procedure. (*Id.*) The Joint Efficiency Advocates commented that it is important for each of the components of clothes washer energy use (drying energy, water heating energy, *etc.*) to be correctly weighted. (*Id.*) The Joint Efficiency Advocates further explained that if two clothes washers have the same efficiency rating, but one optimizes hot water usage and the other optimizes spin speed or duration to lower the RMC, then the models that optimize spin speed/duration may have different real-world efficiencies if RMC is underestimated. (*Id.*) The Joint Efficiency Advocates recommended implementing an RMC adjustment factor similar to the one presented in the 2020 NEEA Report. (*Id.*)

In response to the Joint Commenters' and Joint Efficiency Advocates' recommendations that DOE include RMC adjustment factors to account for the difference in RMC values between DOE test cloth load and what the commenters described as ''real-world'' clothing, DOE reiterates that the current test cloth was developed to be representative of the range of fabrics comprising consumer wash loads, including 100-percent cotton, cotton/polyester blend, and 100-percent synthetic articles. As such, DOE intends for the specified test load to be nationally and seasonally representative of clothing used across all regions of the United States. DOE recognizes that consumer clothing (including fabric composition) likely differs between warmer and colder climates, between urban and rural households, between regions that do and do not experience seasonal changes, and among population demographics (*e.g.,* household size, age of household members, *etc.*). While DOE acknowledges that 100-percent cotton clothing may be more common among certain regions or demographics, the commenters have not presented any data—nor is DOE aware of any data—indicating that 100-percent cotton clothing is nationally, seasonally, or demographically representative across the United States. DOE asserts that the 50-percent cotton/50-percent polyester material currently specified represents the middle of the spectrum between 100-percent cotton and 100-percent synthetic fabric types and therefore is representative of an average use cycle or period of use.

For these reasons, DOE is not implementing an RMC adjustment factor to account for the difference in RMC between the DOE test cloth and a 100-percent cotton load. However, in light of the feedback received regarding test cloth specifications, DOE will continue to evaluate the representativeness of test results obtained through the use of the current test cloth requirements in the DOE test procedures. DOE will also continue to monitor the development of industry standards and other efforts related to test cloth and test load composition.

2. Consolidation to Appendix J3

Appendix J3 specifies a qualification procedure that must be conducted on all new lots of energy test cloth prior to the use of such test cloths in any clothes washer test procedure. This qualification procedure provides a set of correction factors that correlate the measured RMC values of the new test cloth lot with a set of standard RMC values established as the historical reference point. These correction factors are applied to the RMC test results in section 3.8.2.6 of appendix J2 to ensure the repeatability and reproducibility of test results performed using different lots of test cloth. The measured RMC of each clothes washer has a significant impact on the final IMEF value.

In the September 2021 NOPR, DOE proposed several structural changes to appendix J3 to consolidate all of the test cloth specifications and procedures (some of which were previously located in appendix J2) that must be evaluated on each new lot of test cloth. 86 FR 49140, 49188. Consolidating into a single test procedure would improve the overall logical flow of both test procedures and clarify that the test cloth procedures need not be conducted for each clothes washer under test. *Id.* As described further, the proposed changes would remove from appendix J2 those specifications and procedures that were not intended to be completed for every clothes washer test. *Id.* The proposed edits also would formally codify additional qualification procedures that are currently conducted for every new lot of test cloth. *Id.*

a. Test Cloth Requirements in Appendix J2

Section 2.7 of appendix J2 (''Test cloths'') previously contained specifications and procedures regarding the test cloth. Sections 2.7.1 and 2.7.2 specified the unfinished and finished dimensions, maximum lifetime, and marking requirements for energy test cloth and energy stuffer cloths, respectively. These sections also specified that mixed lots of material must not be used for testing. Section 2.7.3 specified a procedure for preconditioning new test cloth, which requires performing a series of five wash cycles on all new (unused) test cloths before the cloth can be used for clothes washer tests. Section 2.7.4 provided the material specifications (fabric type, fabric weight, thread count, and fiber content) for the energy test cloths and energy stuffer cloths, as well as three industry test methods that must be performed to confirm the absence of any water-repellent finishes and to measure

the cloth shrinkage after preconditioning. Section 2.7.5 referenced appendix J3 for performing the standard extractor procedure to measure the moisture absorption and retention characteristic of each new lot of cloth.

Several of these provisions previously contained within section 2.7 of appendix J2 are not intended to be conducted as part of each individual clothes washer test performed under appendix J2. Based on discussions with the AHAM Test Cloth Task Force, DOE is aware that some of the test cloth provisions previously in section 2.7 of appendix J2 are performed by a third-party laboratory on each new lot of test cloth, avoiding the need for manufacturers and test laboratories to perform the same procedures for each individual clothes washer test. 85 FR 31065, 31071.

In the September 2021 NOPR, DOE proposed to move most of the specifications from section 2.7 of appendix J2 to appendix J3. 86 FR 49140, 49188. Section 2.7 of appendix J2 would retain the following specifications, which are relevant to the conduct of individual clothes washer tests: The maximum lifetime specification, marking requirements, and the requirement that mixed lots of material must not be used for testing. 86 FR 49140, 49188–49189. All other specifications from section 2.7 of appendix J2 would be moved to appendix J3. 86 FR 49140, 49189. DOE proposed to add a general statement in section 2.7 of appendix J2 that the test cloth material and dimensions must conform to the specifications in appendix J3. *Id.* These proposed changes would also be reflected in the proposed new appendix J. *Id.*

In the September 2021 NOPR, DOE requested comment on its proposal to consolidate into appendix J3 the test cloth specifications and procedures from section 2.7 of appendix J2 that are not intended to be conducted as part of each individual clothes washer test performed under appendix J2. *Id.*

The Joint Commenters commented in support of consolidating test cloth instructions into appendix J3, stating that it would increase clarity of the test procedure. (Joint Commenters, No. 31 at p. 11)

For the reasons discussed in the preceding paragraphs and in the September 2021 NOPR, DOE is finalizing its proposal, consistent with the September 2021 NOPR, to consolidate into appendix J3 the test cloth specifications and procedures from section 2.7 of appendix J2 that are not intended to be conducted as part of each individual clothes washer test performed under appendix J2.

b. Test Cloth Requirements in Appendix J3

Industry has developed a process by which the qualification procedure described above is performed by a third-party laboratory, and the results are reviewed and approved by the AHAM Test Cloth Task Force, after which the new lot of test cloth is made available for purchase by manufacturers and test laboratories. 85 FR 31065, 31071.

As noted in the September 2021 NOPR, DOE received a request from members of the AHAM Test Cloth Task Force to add to appendix J3 additional steps to the qualification procedure that have historically been performed on each new lot of test cloth to ensure uniformity of RMC test results on test cloths from the beginning, middle, and end of each new lot. *Id.* Industry practice is to perform this ''uniformity check'' before conducting the procedure to develop the RMC correction factors currently specified in the DOE test procedure, as described previously. *Id.* Specifically, the uniformity check involves performing an RMC measurement on nine bundles of sample cloth representing the beginning, middle, and end locations of the first, middle, and last rolls of cloth in a new lot. *Id.* The coefficient of variation across the nine RMC values must be less than or equal to 1 percent for the test cloth lot to be considered acceptable for use. *Id.*

In the September 2021 NOPR, DOE proposed to codify in appendix J3 this ''uniformity check'' and to restructure appendix J3 to improve the overall logical flow of the procedure. 86 FR 49140, 49189.

The sections of appendix J3 were previously structured as follows: (1) Objective; (2) Definitions; (3) Testing Conditions; (4) Test Loads; (5) Test Measurements; (6) Calculation of RMC Correction Curve; and (7) Application of the RMC Correction Curve.

In the September 2021 NOPR, DOE proposed to update the objectives included in section 1 to specify that appendix J3 now includes: (1) Specifications for the energy test cloth to be used for testing clothes washers; (2) procedures for verifying that new lots of energy test cloth meet the defined material specifications; and (3) procedures for developing the RMC correction coefficients. *Id.*

In section 2 of appendix J3, DOE proposed to add a definition for the term ''roll,'' which refers to a subset of a lot, and to remove the definition of roll from appendix J2. *Id.*

DOE proposed to create a new section 3, ''Energy Test Cloth Specifications,'' that would specify the test cloth material, dimensions, and use requirements as previously specified in section 2.7 of appendix J2. *Id.*

DOE proposed to change the title of previous section 3 of appendix J3, newly renumbered as section 4, from ''Testing Conditions'' to ''Equipment Specifications.'' *Id.* This section would contain the specifications for the extractor (previously specified in section 3.2) and the bone-dryer (previously specified in section 3.3). *Id.* DOE proposed to merge the previous specification in section 3.1 of appendix J3 (which specified the extractor spin conditions to be used) with the proposed edits to newly renumbered section 8 (''RMC Correction Curve Procedure''), as described below. *Id.*

DOE proposed to create a new section 5, ''Pre-Conditioning Instructions,'' in appendix J3 that would specify the instructions for preconditioning test cloth, as previously specified in section 4.1 of appendix J3, with a clarifying wording change. *Id.* The second paragraph of section 4.1 in appendix J3 previously specified ''Perform five complete wash-rinse-spin cycles, the first two with current AHAM Standard detergent Formula 3 and the last three without detergent.'' The last sentence of that paragraph specified: ''Repeat the cycle with detergent and then repeat the cycle three additional times without detergent, bone drying the load between cycles (for a total of five complete wash-rinse-spin cycles).'' In the September 2021 NOPR, DOE expressed concern that the wording of the last sentence could be misconstrued as requiring the repeating of the entire sequence of five wash-rinse-spin cycles specified in the first sentence. *Id.* To avoid this potential misinterpretation, DOE proposed to replace the last sentence with the following: ''Dry the load to bone-dry between each of the five wash/rinse-spin cycles.'' *Id.*

DOE proposed to create a new section 6, ''Extractor Run Instructions,'' in appendix J3 that would specify the instructions for testing test cloth in the extractor at specific spin speed and time conditions, as previously listed in sections 5.1 through 5.10 of appendix J3, with some minor organizational changes. *Id.*

DOE proposed to create a new section 7, ''Test Cloth Material Verification Procedure,'' in appendix J3 that codifies the ''uniformity check'' procedure described above. *Id.*

DOE proposed to add a new section 8, ''RMC Correction Curve Procedure,'' in appendix J3, which would

consolidate the provisions previously specified in sections 5 and 6 of appendix J3. 86 FR 49140, 49189–49190.

DOE proposed to renumber section 7 to section 9 in appendix J3 and to update any applicable cross references. 86 FR 49140, 49190.

Finally, given the broader scope of appendix J3 as proposed by these amendments, DOE proposed to rename appendix J3 from ''Uniform Test Method for Measuring the Moisture Absorption and Retention Characteristics of New Energy Test Cloth Lots'' to ''Energy Test Cloth Specifications and Procedures for Determining Correction Coefficients of New Energy Test Cloth Lots.'' *Id.*

DOE requested comment on its proposed edits to appendix J3 to codify the ''uniformity check'' procedure and to restructure appendix J3 to improve the overall logical flow of the procedure. *Id.*

AHAM commented in support of DOE's proposed structural changes to appendix J3, and added that DOE's proposed changes are consistent with AHAM's work on this topic. (AHAM, No. 27 at p. 16)

For the reasons discussed in the preceding paragraphs and in the September 2021 NOPR, DOE is finalizing its proposal, consistent with the September 2021 NOPR, to codify the ''uniformity check'' procedure and to restructure appendix J3 to improve the overall logical flow of the procedure.

J. Product-Specific RMC Enforcement Provisions

DOE provides product-specific enforcement provisions for all clothes washers at 10 CFR 429.134(c), which specify provisions for determining RMC. 10 CFR 429.134(c)(1)(i) specifies that the measured RMC value of a tested unit will be considered the tested unit's final RMC value if the measured RMC value is within two RMC percentage points of the certified RMC value of the basic model (expressed as a percentage), or is lower than the certified RMC value. 10 CFR 429.134(c)(1)(ii) specifies that if the measured RMC value of a tested unit is more than two RMC percentage points higher than the certified RMC value of the basic model, DOE will perform two additional replications of the RMC measurement procedure, each pursuant to the provisions of section 3.8.5 of appendix J2, for a total of three independent RMC measurements of the tested unit. The average of the three RMC measurements will be the tested unit's final RMC value and will be used as the basis for the calculation of per-cycle energy consumption for removal of moisture from the test load for that unit.

As described in sections I.B and III.I of this document, DOE uses the procedures specified in appendix J3 to evaluate the moisture absorption and retention characteristics of each new lot of test cloth. The results are used to develop a unique correction curve for each new lot of test cloth, which helps ensure that a consistent RMC measurement is obtained for any test cloth lot used during testing. The correction factors developed for each new cloth lot are used to adjust the ''uncorrected'' RMC measurements obtained when performing an appendix J2 test on an individual clothes washer model.[70] Without the application of correction factors, the uncorrected RMC values for a given spin setting can vary by more than 10 RMC percentage points. The application of correction factors is intended to significantly reduce this lot-to-lot variation in RMC results.

In the September 2021 NOPR, DOE noted that multiple interested parties have presented confidential data to DOE suggesting that despite the application of correction factors, the ''corrected'' RMC values can vary by up to three RMC percentage points among different test cloth lots. 86 FR 49140, 49190. A variation of three RMC percentage points can lead to over a 5-percent variation in IMEF rating.[71] DOE conducted an internal analysis of the confidential data, in which DOE investigated three potential sources of the observed variation in corrected RMC values: (1) Test-to-test variation masking as lot-to-lot variation; (2) spin cycle anomalies masking as lot-to-lot variation; and (3) choice of Lot 3 as the reference lot.[72] *Id.* Based on DOE's investigations, none of these three hypotheses explained the observed lot-to-lot variation in corrected RMC values in the data presented by the interested parties. *Id.*

Based on these investigations, DOE preliminarily concluded in the September 2021 NOPR that although the application of correction factors for each test cloth lot significantly reduces the lot-to-lot variation in RMC (from over 10 percentage points uncorrected), the current methodology may be limited to reducing lot-to-lot variation in corrected RMC to around three RMC percentage points. *Id.*

Recognizing this potential for lot-to-lot variation of up to three RMC percentage points (corrected), DOE proposed to extend its product-specific enforcement provisions for clothes washers to accommodate up to a 3-percentage point variation in the corrected RMC measurement based on the test cloth lot used for testing. *Id.* The following paragraphs describe the approach proposed by DOE in the September 2021 NOPR.

DOE proposed to modify the text of 10 CFR 429.134(c)(1) to state that its provisions address anomalous RMC results that are not representative of a basic model's performance, as well as differences in RMC values that may result from DOE using a different test cloth lot than was used by the manufacturer for testing and certifying the basic model. *Id.*

DOE proposed to specify the enforcement provisions when testing according to the proposed new appendix J at 10 CFR 429.134(c)(1)(i), and when testing according to appendix J2 at 10 CFR 429.134(c)(1)(ii). *Id.*

Under the provisions for appendix J2, DOE proposed new paragraph (ii)(A), which would specify that the procedure for determining RMC will be performed once in its entirety, pursuant to the test requirements of section 3.8 of appendix J2, for each unit tested (as currently specified at 10 CFR 429.134(c)(1)). *Id.*

DOE proposed new paragraph (ii)(B), which would specify that if the measured RMC value of a tested unit is equal to or lower than the certified RMC value of the basic model (expressed as a percentage), the measured RMC value will be considered the tested unit's final RMC value and will be used as the basis for the calculation of per-cycle energy consumption for removal of moisture from the test load for that unit (consistent with the current specifications at 10 CFR 429.134(c)(1)(i)). *Id.*

DOE proposed new paragraph (ii)(C), which would specify that if the difference between the measured RMC value and the certified RMC value of the basic model is less than or equal to two RMC percentage points, the measured RMC value of a tested unit will be considered the tested unit's final RMC value unless DOE used a different test cloth lot than was used by the manufacturer for testing and certifying the basic model; in which case, DOE

[70] DOE maintains an historical record of the standard extractor test data and final correction curve coefficients for each approved lot of energy test cloth. These are available through DOE's web page for standards and test procedures for residential clothes washers at *www.energy.gov/eere/buildings/downloads/clothes-washer-test-clothcorrection-factor-information.*

[71] See discussion in the August 2015 Final Rule in which DOE described that limiting RMC variation to 2 RMC percentage points would limit the variation in the overall MEF_{J2} or IMEF calculation to roughly 5 percent. 80 FR 46730, 46756.

[72] The RMC characteristics of historical Lot 3 represent the ''standard RMC values'' defined in Table 6.1 of appendix J3.

may apply the proposed new paragraph (c)(1)(ii)(E) of the same section if the difference between the measured and certified RMC values would affect the unit's compliance with the applicable standards. *Id.*

DOE proposed new paragraph (ii)(D)—which would address anomalous RMC results that are not representative of a basic model's performance—specifying that if the measured RMC value of a tested unit is more than two RMC percentage points higher than the certified RMC value of the basic model, DOE will perform two replications of the RMC measurement procedure, each pursuant to the provisions of section 3.8.5 of appendix J2, for a total of three independent RMC measurements of the tested unit; and that average of the three RMC measurements will be calculated (as currently specified at 10 CFR 429.134(c)(1)(ii)). 86 FR 49140, 49190–49191. Within this section, DOE proposed a new paragraph (ii)(D)(1) that would specify that if the average of the three RMC measurements is equal to or lower than the certified RMC value of the basic model, the average RMC value will be considered the tested unit's final RMC value. 86 FR 49140, 49191. A new proposed paragraph (ii)(D)(2) would specify that if the average of the three RMC measurements is higher than the certified RMC value of the basic model, the average RMC value will be considered the tested unit's final RMC value unless DOE used a different test cloth lot than was used by the manufacturer for testing and certifying the basic model; in which case, DOE may apply a new proposed paragraph (c)(1)(ii)(E) of the same section if the difference between the average and certified RMC values would affect the unit's compliance with the applicable standards. *Id.*

The proposed new paragraph (ii)(E)—which would address differences in RMC values that may result from DOE using a different test cloth lot—would specify two potential courses of action if DOE uses a different test cloth lot than was used by the manufacturer for testing and certifying the basic model. *Id.* New paragraph (ii)(E)(1) would specify that if the difference between the tested unit's measured RMC value (or average RMC value pursuant to the new proposed paragraph (c)(1)(ii)(D) of the same section) and the certified RMC value of the basic model is less than or equal to three RMC percentage points, then the certified RMC value of the basic model may be considered the tested unit's final RMC value. *Id.* New proposed paragraph (ii)(E)(2) would specify that if the tested unit's measured RMC value (or average RMC value pursuant to paragraph (c)(1)(ii)(D) of the same section) is more than three RMC percentage points higher than the certified RMC value of the basic model, then a value three RMC percentage points less than the measured RMC value may be considered the tested unit's final RMC value. *Id.*

For testing conducted according to the proposed new appendix J, several modifications would be made to the procedures described for appendix J2 due to the revised methodology for measuring RMC in the proposed new appendix J, as described in section III.D.4 of this document (specifically, that in the proposed new appendix J, RMC would be measured for each individual test cycle as opposed to measured using a separate set of additional test cycles, as is required by appendix J2). *Id.* The provisions for the proposed new appendix J would not include the specifications for 10 CFR 429.134(c)(1)(ii)(A) or 10 CFR 429.134(c)(1)(ii)(D) as described previously. *Id.*

In the September 2021 NOPR, DOE requested comment on its proposal to extend its product-specific enforcement provisions for clothes washers to accommodate up to a 3-percentage point variation in the corrected RMC measurement based on the test cloth lot used for testing. *Id.* DOE also requested comment on alternate enforcement approaches that could be implemented. *Id.*

The CA IOUs recommended that DOE consider obtaining samples from each test cloth lot and use the applicable lot when conducting compliance testing to reduce the need to use the three percent tolerance for the RMC enforcement provisions, as was proposed in new appendix J. (CA IOUs, No. 29 at p. 7) The CA IOUs also recommended that DOE add the test cloth lot number to the certification data collection sheets for RCWs and CCWs to aid in DOE's compliance efforts. (*Id.*)

Whirlpool recommended that DOE use decision tree flow charts for the product-specific RMC enforcement provisions, similar to the charts used in Figures 2.12.1–2.12.5 in section 2.12 of appendix J2. (Whirlpool, No. 26 at pp. 11–13) Whirlpool commented that a flowchart would help provide further clarity for stakeholders. (*Id.*) Whirlpool also attached drafts of the two suggested flow charts for initial consideration by DOE. (*Id.*)

Whirlpool also suggested edits to the wording of the proposed product-specific enforcement provisions found in 10 CFR 429.134(c) in order to add clarity. (Whirlpool, No. 26 at pp. 13–14) In 10 CFR 429.134(c)(i)(C)(1), Whirlpool suggested that instead of, ''If the difference between the tested unit's measured RMC value and the certified RMC value of the basic model is less than or equal to three RMC percentage points, then the certified RMC value of the basic model may be considered the tested unit's final RMC value,'' DOE should use the following wording, ''If the tested unit's measured RMC value is more than the certified RMC value of the basic model and is less than or equal to three RMC percentage points higher than the certified RMC value, then the certified RMC value of the basic model may be considered the tested unit's final RMC value.'' (*Id.*) Whirlpool suggested similar wording changes to increase the parallelism of the language for 10 CFR 429.134(c)(ii)(C) and 10 CFR 429.134(c)(ii)(E)(1). (*Id.*)

Whirlpool also suggested that instead of using the word ''may'' in 10 CFR 429.134(c)(i)(B), 10 CFR 429.134(c)(i)(C)(1), 10 CFR 429.134(c)(i)(C)(2), 10 CFR 429.134(c)(ii)(C), 10 CFR 429.134(c)(ii)(E)(1) and 10 CFR 429.134(c)(ii)(E)(2), DOE should use the word ''will.'' (*Id.*) Whirlpool stated that using ''may'' is troublesome because of its ambiguous nature in particular due to its use in an enforcement provision. (*Id.*)

DOE notes it is not amending the certification or reporting requirements for clothes washers in this final rule to require reporting of test cloth lot. Instead, DOE may consider proposals to amend the certification requirements and reporting for RCWs and CCWs under a separate rulemaking regarding appliance and equipment certification.

In response to the CA IOUs' suggestion that DOE obtain samples from each test cloth lot and use the applicable lot when conducting compliance testing, DOE notes that this approach would not be feasible due to the nature of how test laboratories acquire and use test cloth. Test cloth is produced in large batches (*i.e.,* lots) by a single textile manufacturer. A new test cloth lot is produced roughly every year. Test laboratories typically purchase in bulk whichever test cloth lot is available at the time of purchase. Depending on a laboratory's testing throughput, each bulk purchase of a particular lot may provide enough material for several years of testing. As a result, in DOE's experience, test laboratories typically do not have test cloth available from every test cloth lot, and will typically only have a few lots available at a time. DOE conducts enforcement testing using certified third-party test laboratories, and therefore during such testing only

has access to that test laboratory's supply of any given test cloth lot.

DOE appreciates Whirlpool's detailed suggested edits the wording of the product-specific RMC enforcement provisions, has reviewed Whirlpool's proposals, and is making some clarifying changes to the wording to 10 CFR 429.134(c)(1) consistent with the intent of the wording as presented in the September 2021 NOPR.

In the September 2021 NOPR, DOE proposed to use the phrase ''may apply,'' as opposed to ''will apply'' (or ''shall apply'') to allow for appropriate discretion by DOE and allow DOE to not need to seek the test cloth lot information from the manufacturer in every such case, since lot number is not a reported value. 86 FR 49140, 49190. In this final rule, DOE has determined that the wording of 10 CFR 429.134 would require DOE to seek test cloth lot information from the manufacturer only for cases in which the difference between the measured and certified RMC values would affect the unit's compliance with the applicable standards. DOE agrees that use of the word ''will'' instead of ''may'' would provide greater certainty to describe DOE's course of action during enforcement testing. Therefore, DOE is revising the wording of the language in proposed 10 CFR 429.134(c)(i)(B), 10 CFR 429.134(c)(i)(C)(1), 10 CFR 429.134(c)(i)(C)(2), 10 CFR 429.134(c)(ii)(C), 10 CFR 429.134(c)(ii)(E)(1) and 10 CFR 429.134(c)(ii)(E)(2) to use the phrase ''will'' instead of ''may.''

In this final rule, DOE is also re-ordering the RMC enforcement provisions within 10 CFR 429.134(c)(1) to improve the logical flow of the revised enforcement provisions. Furthermore, to aid in understanding these product-specific RMC enforcement provisions via visual representation, DOE is providing informative flow charts in the docket for this rulemaking, available at *www.regulations.gov/docket/EERE-2016-BT-TP-0011/document.* The logical flow through the finalized RMC enforcement provisions matches the logical flow through the flow chart.

In reviewing the language in 10 CFR 429.134, DOE determined an incompatibility in the language, which it is removing in this final rule. In the language as proposed in the September 2021 NOPR, paragraph (ii)(C)—which applied if the difference between the measured and certified RMC values is less than or equal to two RMC percentage points—cross-referenced proposed paragraph (ii)(E) if DOE used a different test cloth lot than was used by the manufacturer for testing and certifying the basic model and the difference between the measured and certified RMC values would affect the unit's compliance with the applicable standards. Within paragraph (ii)(E), paragraph (ii)(E)(*2*) as proposed applied to cases in which the measured RMC value is more than three RMC percentage points higher than the certified RMC value. DOE notes that it would be impossible for a situation to arise in which the difference between the measured and certified RMC values is less than or equal to two RMC percentage points and in which the measured RMC value is more than three RMC percentage points higher than the certified RMC value (*i.e.,* it would be impossible for the provisions at proposed paragraph (ii)(C) to lead to proposed paragraph (ii)(E)(*2*)). DOE removes this incompatibility in this final rule.

This final rule also implements non-substantive wording changes to use more consistent language among each paragraph within 10 CFR 429.134(c)(1).

K. Test Procedure Costs, Harmonization

1. Test Procedure Costs and Impact

EPCA requires that test procedures proposed by DOE not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The following sections discuss DOE's evaluation of estimated costs and savings associated with the amendments in this final rule.

a. Appendix J2 and Appendix J3 Amendments

In this document, DOE amends the existing test procedure for clothes washers by:

(1) Further specifying supply water temperature test conditions and water meter resolution requirements;

(2) Adding specifications for measuring wash water temperature using submersible data loggers;

(3) Expanding the load size table to accommodate clothes container capacities up to 8.0 ft^3;

(4) Defining user-adjustable adaptive WFCS;

(5) Specifying the applicability of the wash time setting for clothes washers with a range of wash time settings;

(6) Specifying how the energy test cycle flow charts apply to clothes washers that internally generate hot water;

(7) Specifying that the energy test cycle flow charts be evaluated using the Maximum load size;

(8) Specifying that testing is to be conducted with any network settings disabled if instructions are available to the user to disable these functions;

(9) Further specifying the conditions under which data from a test cycle would be discarded;

(10) Adding a product-specific enforcement provision to accommodate the potential for test cloth lot-to-lot variation in RMC;

(11) Deleting obsolete definitions, metrics, and the clothes washer-specific waiver section;

(12) Consolidating all test cloth-related specifications in appendix J3;

(13) Reorganizing sections of appendix J3 for improved readability; and

(14) Codifying the test cloth material verification procedure as used by industry.

In the September 2021 NOPR, DOE tentatively determined that the proposed amendments to appendix J2 and appendix J3 would not be unduly burdensome for manufacturers to conduct and would not result in the need for any re-testing. 86 FR 49140, 49191.

DOE requested comment on its characterization of the expected costs of the proposed amendments to appendix J2 and appendix J3 and on DOE's preliminary determination that the proposed amendments would not be unduly burdensome. *Id.* DOE received no comments on its characterization of the expected costs of the proposed amendments to appendix J2 and appendix J3. DOE has addressed in the preceding sections of this document comments regarding the related test procedure burdens associated with the amendments adopted in this final rule.

DOE has determined that the amendment to change the target inlet water temperatures to the midpoint of each defined range may reduce test burden by reducing the potential for invalid cycles to occur due to a deviation in water temperatures outside the specified range.

DOE has determined that the amendment to require more precise hot water meters for clothes washers with hot water usage less than 0.1 gallons in any of the energy test cycles would require additional cost to upgrade existing water meters if a manufacturer or test laboratory expects to test such clothes washers but does not already have a water meter with the proposed more precise resolution. Based on a market survey of water meters, DOE determined the cost of a water meter that provides the proposed resolution, including associated hardware, to be around $600 for each device. DOE recognizes that laboratories may have multiple test stands, and that each test stand would likely be upgraded with the more precise hot water meter (if such an

upgrade is required). As an example, for a laboratory with 10 test stands, the material cost associated with installing a more precise hot water meter would total approximately $6,000. However, as discussed, at least one manufacturer already uses water meters with the proposed more precise resolution, and DOE's experience working with third-party laboratories indicates that most, if not all, third-party laboratories already use water meters with this resolution. DOE has not included the potential costs associated with this amendment based on stakeholders' comments and DOE's knowledge of third-party laboratory capabilities that suggest that laboratories that test clothes washers with hot water usage less than 0.1 gallons already use water meters with the proposed more precise resolution.

The amendment to explicitly allow for the use of submersible temperature loggers specifies an additional means for determining wash water temperatures to confirm whether a wash temperature greater than 135 °F (defined as an Extra-Hot Wash) has been achieved during the wash cycle. As discussed, other methods for measuring wash water temperatures may provide inconclusive results, thus requiring retesting of cycles or additional ''exploratory'' testing to accurately determine the wash water temperature. Explicitly providing for the use of submersible temperature loggers may avoid the need for such additional testing. Based on a market survey of submersible data loggers, the cost of a submersible data logger is around $230 for each device. As discussed, laboratories may have multiple test stands, and DOE expects that a laboratory would purchase a separate data logger for each test stand. As an example, for a laboratory with 10 test stands, the material cost associated with purchasing submersible data loggers for each test stand would total around $2,300. DOE expects that the recurring cost savings enabled by the use of submersible temperature loggers (due to reducing the need for re-testing certain cycles or performing additional exploratory testing) would substantially outweigh the one-time purchase cost associated with each device and therefore has not included this cost in its summary of costs associated with this final rule.

The amendment to extend the load size table applies only to clothes washers with capacities exceeding 6.0 ft^3. Any such clothes washers currently on the market have already been granted a test procedure waiver from DOE, which specifies the same extended capacity table.

The amendment to more explicitly define user-adjustable adaptive WFCS provides greater specification of DOE's existing definitions and could potentially alleviate test burden resulting from an incorrect application of the existing language. The amendments specifying updated language regarding cycle selection for clothes washers with a range of wash time settings are expected to improve repeatability and reproducibility without imposing any additional test burden. The amendment to specify how the energy test cycle flow charts apply to clothes washers that internally generate hot water reflects DOE's interpretation of the current Cold/Cold flowchart and subsequent flowcharts for the Warm Rinse temperature selections for this type of clothes washer; in addition, comments from interested parties suggest that this interpretation is generally consistent with that of manufacturers and third-party laboratories. The amendment to specify that the energy test cycle flow charts be evaluated using the Maximum load size are expected to improve repeatability and reproducibility without imposing any additional test burden.

The amendment to specify that network settings must be disabled for testing under appendix J2 will impact only clothes washers with network settings that are enabled by default. DOE is not aware of any clothes washers currently on the market that meet these characteristics, and as such DOE does not expect this proposal to change how any current models are tested.

The amendment to add product-specific enforcement provisions to accommodate the potential for lot-to-lot variation in RMC will extend current product-specific enforcement provisions for clothes washers to accommodate up to a 3-percentage point variation in the corrected RMC measurement based on the test cloth lot used for testing, and will not impact manufacturers' testing costs.

The amendments to delete obsolete definitions, metrics, and the waiver section will not impact manufacturers' testing costs because these sections of the test procedure are no longer in use.

The amendment to move all test cloth-related sections of the test procedures into appendix J3 will simplify appendix J2 without any changes to the test conduct or cost to manufacturers. The amendment to add additional test cloth qualification procedures to appendix J3 will not affect manufacturer cost because the proposal would codify existing industry-standard practices.

For the reasons discussed in the preceding paragraphs and in the September 2021 NOPR, DOE has determined that the amendments to appendix J2 and appendix J3 adopted in this final rule are not unduly burdensome. Moreover, DOE has determined that the amendments to appendix J2 and appendix J3 would not alter the measure energy and water efficiency of currently certified clothes washers and therefore would not require retesting or recertification.

b. Appendix J Test Procedure

In this document, DOE is creating a new appendix J that includes, in addition to the amendments discussed previously for appendix J2, significant additional changes that will affect the measured efficiency of a clothes washer. Because DOE will use the new appendix J for the evaluation and issuance of any updated efficiency standards, and for determining compliance with those standards, the use of the new appendix J will not be required until such a time as compliance with any amended energy conservation standards that are developed with consideration of new appendix J are required. The differences between appendix J2 and new appendix J are the following:

(1) Modifying the hot water supply temperature range;

(2) Modifying the clothes washer preconditioning requirements;

(3) Modifying the Extra-Hot Wash threshold temperature;

(4) Adding a measurement and calculation of average cycle time;

(5) Requiring the testing of no more than two Warm Wash/Cold Rinse cycles, and no more than two Warm Wash/Warm Rinse cycles;

(6) Measuring RMC on each cycle within the energy test cycle, rather than on cycles specifically dedicated to measuring RMC;

(7) Reducing the number of load sizes from three to two for units currently tested with three load sizes;

(8) Modifying the load size definitions consistent with two, rather than three, load sizes;

(9) Updating the water fill levels to be used for testing to reflect the modified load size definitions;

(10) Specifying the installation of single-inlet clothes washers, and simplifying the test procedure for semi-automatic clothes washers;

(11) Defining new performance metrics that are based on the weighted-average load size rather than clothes container capacity;

(12) Updating the final moisture content assumption in the drying energy formula;

(13) Updating the number of annual clothes washer cycles from 295 to 234; and

(14) Updating the number of hours assigned to low-power mode to be based on the clothes washer's average measured cycle time rather than an assumed fixed value.

In the September 2021 NOPR, DOE preliminarily concluded that the proposal to require measurement of cycle time is unlikely to result in an increase in test burden. 86 FR 49140, 49193. The proposal to require the measurement of cycle time could result in an increase in test burden if a laboratory is not currently measuring cycle time. However, although cycle time is not currently required to be measured, it is DOE's understanding that test laboratories already measure cycle time or use a data acquisition system to record electronic logs of each test cycle, from which average cycle time can be readily determined such that any increase in test burden would be *de minimis*.

DOE further tentatively concluded in the September 2021 NOPR that none of the other proposed changes for appendix J would result in an increase in test burden. 86 FR 49140, 49193. In the September 2021 NOPR, DOE tentatively determined that several of the proposed changes would result in a substantial decrease in test burden, an average savings of $348 per basic model of RCW and $153 per basic model of CCW. 86 FR 49140, 49193–49194.

DOE did not receive any comments regarding the test burden, average costs or savings of the proposed appendix J. In this final rule, DOE determines, consistent with the September 2021 NOPR, that the new appendix J will not result in any increase in test burden, as compared to appendix J2, and that it will result in a decrease in test burden. DOE based its determination on the following.

To determine the potential savings to manufacturers, DOE first estimated the number of RCW and CCW models that are currently certified, using data from DOE's publicly available CCMS database.[73] DOE identified approximately 25 manufacturers selling an estimated 718 basic models of RCWs and 43 basic models of CCWs.

To enable an estimate of cost savings associated with specific features, as described in the paragraphs that follow, DOE developed representative market samples consisting of 100 basic models of RCWs and 10 basic models of CCWs (representing approximately 15 percent of the total basic models for each) that capture the range of available functionalities and options available to consumers. To develop these market samples, DOE selected a sample of basic models for which detailed product features could be determined from product brochures and other marketing materials, representing all major manufacturers and product designs currently on the market, and spanning all available efficiency levels.

Reducing the number of load sizes from three to two for units with an automatic WFCS will reduce test burden for all clothes washers with an automatic WFCS. DOE's representative market sample suggests that 11 percent of RCWs have a manual WFCS and therefore will experience no change in test burden as a result of this change. This being the case, 89 percent of RCWs on the market will experience a reduction in test burden as follows: 20 percent of RCWs will experience a reduction in test burden of 2 to 4 cycles; 54 percent of RCWs will experience a reduction in test burden of 5 to 8 cycles; and 15 percent of RCWs will experience a reduction in test burden of more than 9 cycles. DOE's representative market sample suggests that all CCWs have an automatic WFCS and therefore DOE estimates that 70 percent of CCWs will experience a reduction in test burden of 3 or 4 cycles and that 30 percent of CCWs will experience a reduction in test burden of 5 cycles. *Id.* Based on these estimates, DOE estimates a weighted-average test burden reduction of 5.1 cycles per RCW, and 3.7 cycles per CCW.

Reducing the number of required test cycles by requiring the use of no more than two Warm/Cold cycles, and no more than two Warm/Warm cycles, will reduce the number of tested cycles for any clothes washer offering more than two Warm Wash temperatures. Based on DOE's representative market sample, DOE estimates that 49 percent of RCWs offer two or fewer Warm Wash temperature options and therefore will experience no change; 44 percent of RCWs will experience a reduction in test burden of 2 cycles; and 7 percent of RCWs will experience a reduction in test burden of 4 cycles. *Id.* DOE estimates that 70 percent of CCWs will experience no change and that 30 percent of CCWs will experience a reduction in test burden of 4 cycles. *Id.* Based on these estimates, DOE estimates a weighted-average additional test burden reduction of 1.2 cycles per RCW, and 0.6 cycles per CCW.[74]

Reducing the number of required test cycles by measuring RMC on each tested cycle instead of measuring it on dedicated RMC cycles will remove the need for one or more cycles used for measuring RMC for any clothes washer offering more than one spin speed selectable on the Normal cycle. Based on DOE's representative market sample, DOE estimates that 45 percent of RCWs will experience no change; 27 percent of RCWs will experience a reduction in test burden of 1 cycle; 27 percent of RCWs will experience a reduction in test burden of 2 cycles; and 1 percent of RCWs will experience a reduction in test burden of 4 cycles. DOE estimates that no CCWs will experience a reduction in test burden from this change. Based on these estimates, DOE estimates a weighted-average additional test burden reduction of 0.9 cycles per RCW.[75]

Simplifying the test procedure for semi-automatic clothes washers will reduce test burden for all semi-automatic clothes washers by 10 cycles. DOE has determined that approximately 2 percent of RCW basic models in the CCMS database are semi-automatic and is not aware of any semi-automatic CCWs. DOE therefore estimates a weighted-average additional test burden reduction of 0.2 cycles per RCW.

To estimate the cost savings associated with the changes that are expected to reduce the number of cycles required for testing, DOE estimated each RCW cycle to have a duration of 1 hour, and each CCW cycle to have a duration of 45 minutes. Based on data from the Bureau of Labor Statistics' (''BLS's'') Occupational Employment and Wage Statistics, the mean hourly wage for mechanical engineering technologists and technicians is $29.27.[76] Additionally, DOE used data from BLS's Employer Costs for Employee Compensation to estimate the percent that wages comprise the total compensation for an employee. DOE estimates that wages make up 70.8 percent of the total compensation for

[73] *www.regulations.doe.gov/certification-data.* Last accessed on January 12, 2022.

[74] These savings assume the savings from reducing the number of load sizes have already been implemented.

[75] These savings assume the savings from reducing the number of load sizes and from reducing the number of Warm Wash temperature selections under test have already been implemented.

[76] DOE used the mean hourly wage of the ''17–3027 Mechanical Engineering Technologists and Technicians'' from the most recent BLS Occupational Employment and Wage Statistics (May 2020) to estimate the hourly wage rate of a technician assumed to perform this testing. See *www.bls.gov/oes/current/oes173027.htm.* Last accessed on January 11, 2022.

private industry employees.[77] Therefore, DOE estimated that the total hourly compensation (including all fringe benefits) of a technician performing the testing is $41.34.[78]

Based on a January 2022 price list from the test cloth manufacturer, the cost of the test cloth required for performing testing is $7.16 per cloth.[79] Based on an average RCW capacity of 4.14 ft^3,[80] the load sizes associated with testing an average-capacity RCW,[81] and the maximum allowable usage of 60 test cycles per cloth,[82] DOE estimates a total material cost of $5.13 per wash cycle on average across all RCWs on the market. 86 FR 49140, 49193–49194. Using these material costs, labor rates and time estimates, DOE estimates that the reduction in burden of a single test cycle on an RCW will provide $46.47 in costs savings [83] for tests conducted at an in-house test facility. Based on discussions with manufacturers over the course of multiple rulemakings, DOE understands that the majority of manufacturer testing is conducted at in-house test facilities.

Based on an average CCW capacity of 3.17 ft^3,[84] the load sizes associated with testing an average-capacity CCW,[85] and the maximum allowable usage of 60 test cycles per cloth, DOE estimates a total material cost of $4.18 per wash cycle on average across all CCWs on the market. Using these material costs, labor rates and time estimates, DOE estimates that the reduction in burden of a single test cycle on a CCW will provide $35.19 in costs savings [86] for tests conducted at an in-house test facility.

Based on these estimates, DOE has determined that the use of new appendix J will result in a total burden reduction of 7.4 cycles per RCW on average, which results in an average saving of $344 per basic model of RCW.[87] For CCWs, use of new appendix J will result in a total burden reduction of 4.3 cycles per CCW on average, which results in an average saving of $151 per basic model of CCW.[88]

Based on these estimates, DOE determines that the new test procedure at appendix J is not unduly burdensome for manufacturers to conduct.

2. Harmonization With Industry Standards

DOE's established practice is to adopt relevant industry standards as DOE test procedures unless such methodology would be unduly burdensome to conduct or would not produce test results that reflect the energy efficiency, energy use, water use (as specified in EPCA) or estimated operating costs of that product during a representative average use cycle or period of use. Section 8(c) of appendix A of 10 CFR part 430 subpart C; 10 CFR 431.4. In cases where the industry standard does not meet EPCA statutory criteria for test procedures, DOE will make modifications through the rulemaking process to these standards as the DOE test procedures.

The test procedures for clothes washers at the new appendix J and appendix J2 and appendix J3 incorporate by reference certain provisions of IEC Standard 62301 that provide test conditions, testing equipment, and methods for measuring standby mode and off mode power consumption. These appendices also reference AATCC test methods for qualifying new batches of test cloth, and AHAM Standard Test Detergent Formula 3 for preconditioning new test cloths. DOE is not aware of any existing industry test procedures for clothes washers that measure energy and water efficiency.

DOE is aware of two clothes washer test procedures established by industry: AHAM HLW–2–2020 and IEC 60456. AHAM's existing clothes washer procedure, AHAM HLW–2–2020, does not include a procedure for measuring energy and water. IEC 60456 includes tests for water and energy use, water extraction (*i.e.,* RMC), washing performance, rinsing performance, and wool shrinkage. DOE noted several key differences between IEC 60456 and DOE's test procedure, including:

(1) IEC 60456 uses manufacturer-declared capacity or, in the absence of a declared capacity, specifies two alternative capacity measurement procedures: A table tennis ball method (in which the drum is filled with table tennis balls) and a water fill method, which more closely resembles DOE's capacity measurement method. However, the water fill method for top-loading clothes washers corresponds to ''Fill Level 1,'' as defined in the March 2012 Final Rule, in contrast to DOE's currently specified ''Fill Level 2.''

(2) IEC 60456 defines two types of load materials that can be used: A 100-percent cotton load, consisting of sheets, pillowcases, and towels; or a synthetics/blends load (65-percent polyester, 35-percent cotton), consistent of men's shirt and pillowcases. IEC 60456 requires a distribution in age (*i.e.,* number of cycles that have been performed) for each different item type comprising the load.

(3) The procedure for determining water and energy consumption (Section 8.6 of IEC 60456) specifies that the test load shall be subjected to ''performance'' testing, which requires operating a reference clothes washer in parallel with the unit under test; using a test load that includes stain strips used to evaluate cleaning performance; and using detergent as specified.

(4) IEC 60456 does not define the ''Normal'' cycle or energy test cycle; rather, the procedures in IEC 60456 are generic and can be applied to any wash program or cycle selections defined by the tester.

In the September 2021 NOPR, DOE tentatively concluded that IEC 60456 does not meet EPCA statutory criteria, in that IEC 60456 would be unduly burdensome to conduct and would not produce test results that reflect the energy efficiency, energy use, water use, or estimated operating costs of a clothes washer during a representative average use cycle or period of use for a U.S. consumer. 86 FR 49140, 49194.

The Joint Commenters commented in disagreement with DOE's assessment that the industry-developed IEC 60456 test procedure is significantly more burdensome to conduct and less representative than DOE's own test procedure. (Joint Commenters, No. 31 at pp. 9–10) The Joint Commenters commented that IEC 60456 has the benefit of industry familiarity, asserting that U.S. and European manufacturers

[77] DOE used the September 2021 ''Employer Costs for Employee Compensation'' to estimate that for ''Private Industry Workers,'' ''Wages and Salaries'' are 70.8 percent of the total employee compensation. See *www.bls.gov/news.release/pdf/ecec.pdf.* Last accessed on January 11, 2022.

[78] $29.27 ÷ 0.708 = $41.34.

[79] *testgewebe.de/en/products/ballast-loads-base-load-textiles/doe-energy-test-cloth/.* Last accessed and converted to U.S. dollars on January 11, 2022.

[80] AHAM Trends in Energy Efficiency, 2018.

[81] The load sizes associated with a 4.14 ft^3 clothes washer are 3.0 lb (minimum), 10.0 lb (average), and 17.0 lb (maximum) under appendix J2; and 6.1 lb (small) and 13.65 lb (large) under new appendix J, resulting in an average load size of 10.0 lb under appendix J2 or 9.9 lb under appendix J. For the purpose of the calculations in this analysis, DOE used 10.0 lb to represent the average load size.

[82] Section 2.7.1 of appendix J2 specifies that each energy test cloth must not be used for more than 60 test runs (after preconditioning).

[83] 1 × $41.34 + $5.13 = $46.47.

[84] DOE calculated the average CCW capacity based on the average capacity of the representative sample of CCWs presented in chapter 5 of the technical support document accompanying the December 2014 Final Rule. Available at *www.regulations.gov/document/EERE-2012-BTSTD-0020-0036.*

[85] The load sizes associated with a 3.17 ft^3 clothes washer are 3.0 lb (minimum), 7.95 lb (average), and 12.9 lb (maximum) under appendix J2; and 5.2 lb (small) and 10.55 lb (large) under new appendix J, resulting in an average load size of 7.95 lb under appendix J2 or 7.9 lb under appendix J. For the purpose of the calculations in this analysis, DOE used 7.95 lb to represent the average load size.

[86] 0.75 × $41.34 + $4.18 = $35.19.

[87] 7.4 × $46.47 = $344.

[88] 4.3 × $35.19 = $151.

use this test procedure to verify that their European models meet European energy standards. (*Id.*) The Joint Commenters also commented that IEC 60456 can represent U.S.-specific test conditions, including use of the Normal cycle and specific load sizes. (*Id.*) The Joint Commenters added that IEC 60456 uses a more representative 100 percent cotton test cloth, which the Joint Commenters asserted is more representative of real textiles. (*Id.*) The Joint Commenters also commented that using IEC 60456 could possibly increase the availability of European models in the U.S. market, since reducing the U.S.-specific testing burden may enable manufacturers to build models for U.S. markets. (*Id.*) Lastly, the Joint Commenters commented that because the IEC 60456 test procedure is updated by industry, DOE could expend less effort on maintaining repeatability and reproducibility, and instead focus updates on additional instructions needed to ensure representation of U.S. consumer use. (*Id.*)

In response to the Joint Commenters' comments, DOE continues to assert that a test load that is 100 percent cotton is not more representative of consumer usage (as discussed in section III.I.1 of this document). For the reasons discussed, DOE maintains its conclusion from the September 2021 NOPR that IEC 60456 would be unduly burdensome to conduct and would not produce test results that reflect the energy efficiency, energy use, water use, or estimated operating costs of a clothes washer during a representative average use cycle or period of use for a U.S. consumer.

L. Effective and Compliance Dates

The effective date for the adopted test procedure amendments is 30 days after publication of this final rule in the **Federal Register**. EPCA prescribes that all representations of energy efficiency and energy use, including those made on marketing materials and product labels, must be made in accordance with an amended test procedure, beginning 180 days after publication of the final rule in the **Federal Register**. (42 U.S.C. 6293(c)(2); 42 U.S.C. 6314(d)(1)) EPCA provides an allowance for individual manufacturers to petition DOE for an extension of the 180-day period if the manufacturer may experience undue hardship in meeting the deadline. (42 U.S.C. 6293(c)(3); 42 U.S.C. 6314(d)(2)) To receive such an extension, petitions must be filed with DOE no later than 60 days before the end of the 180-day period and must detail how the manufacturer will experience undue hardship. (*Id.*) To the extent the modified test procedure adopted in this final rule is required only for the evaluation and issuance of updated efficiency standards, compliance with the amended test procedure does not require use of such modified test procedure provisions until the compliance date of updated standards.

Upon the compliance date of test procedure provisions in this final rule, any waivers that had been previously issued and are in effect that pertain to issues addressed by such provisions are terminated. 10 CFR 430.27(h)(3); 10 CFR 431.401(h)(3). Recipients of any such waivers are required to test the products subject to the waiver according to the amended test procedure as of the compliance date of the amended test procedure. The amendments adopted in this document pertain to issues addressed by waivers granted to Whirlpool and Samsung on May 2, 2016, and April 10, 2017, respectively. 81 FR 26215 (Case No. CW–026); 82 FR 17229 (Case No. CW–027). Specifically, both waivers specified load sizes for basic models with capacity larger than 6.0 ft^3. As discussed in section III.D.1.a of this document, this final rule expands Table 5.1 in both appendix J2 and the new appendix J to accommodate clothes washers with capacities up to 8.0 ft^3. Per 10 CFR 430.27(*l*), the publication of this final rule eliminates the need for the continuation of granted waivers. The publication of this final rule terminates these waivers consistent with 10 CFR 430.27(h)(3) and 10 CFR 430.27(*l*). Under 10 CFR 430.27(h)(3), the waivers automatically terminate on the date on which use of the amended appendix J2 test procedure is required to demonstrate compliance (*i.e.,* 180 days after publication of the final rule in the **Federal Register**).

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866 and 13563

Executive Order (''E.O.'') 12866, ''Regulatory Planning and Review,'' as supplemented and reaffirmed by E.O. 13563, ''Improving Regulation and Regulatory Review, 76 FR 3821 (Jan. 21, 2011), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (''OIRA'') in the Office of Management and Budget (''OMB'') has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this final regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 also requires agencies to submit ''significant regulatory actions'' to OIRA for review. OIRA has determined that this final regulatory action does not constitute a ''significant regulatory action'' under section 3(f) of E.O. 12866. Accordingly, this action was not submitted to OIRA for review under E.O. 12866.

B. Review Under the Regulatory Flexibility Act

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

DOE reviewed this final rule under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. DOE has concluded that the rule would not have a significant impact on a substantial number of small entities. The factual basis for this certification is as follows.

DOE uses the Small Business Administration's (''SBA'') small business size standards to determine whether manufacturers qualify as small businesses, which are listed by the North American Industry Classification System (''NAICS''). The SBA considers a business entity to be a small business if, together with its affiliates, it employs less than a threshold number of workers specified in 13 CFR part 121. The NAICS code for clothes washers is 335220, ''Major Household Appliance Manufacturing.'' The threshold number for NAICS code 335220 is 1,500 employees.[89] This employee threshold includes all employees in a business's parent company and any other subsidiaries.

DOE reviewed its CCMS database and other publicly available data to identify original equipment manufacturers (''OEMs'') of the products and equipment covered by this rulemaking. DOE then consulted individual company websites and subscription-based market research tools (*e.g.,* reports from Dun & Bradstreet [90]), to determine whether they meet the SBA's definition of a small business manufacturer. DOE screened out companies that do not offer products or equipment covered by this rulemaking, do not meet the definition of a ''small business,'' or are foreign-owned and operated.

DOE identified 25 companies that import, private label, produce, or manufacture clothes washers. Of those 25 companies, DOE determined 15 are OEMs of the covered products and equipment. Of those 15 companies, one is a small domestic OEM that offers a single model of RCWs. DOE determined no small domestic OEMs manufacture CCWs.

In this final rule, DOE amends appendix J2 by (1) Further specifying supply water temperature test conditions and water meter resolution requirements; (2) Adding specifications for measuring wash water temperature using submersible data loggers; (3) Expanding the load size table to accommodate clothes container capacities up to 8.0 ft^3; (4) Defining ''user-adjustable adaptive water fill control;'' (5) Specifying the applicability of the wash time setting for clothes washers with a range of wash time settings; (6) Specifying how the energy test cycle flow charts apply to clothes washers that internally generate hot water; (7) Specifying that the energy test cycle flow charts are to be evaluated using the Maximum load size; (8) Specifying that testing is to be conducted with any network settings disabled if instructions are available to the user to disable these functions; (9) Further specifying the conditions under which data from a test cycle would be discarded; (10) Adding product-specific enforcement provisions to accommodate the potential for test cloth lot-to-lot variation in remaining moisture content (''RMC''); (11) Deleting obsolete definitions, metrics, and the clothes washer-specific waiver section; and (12) Moving additional test cloth related specifications to appendix J3.

In this final rule, DOE also updates 10 CFR part 430, subpart B, appendix J3, ''Uniform Test Method for Measuring the Moisture Absorption and Retention Characteristics,'' by: (1) Consolidating all test cloth-related provisions, including those proposed to be moved from appendix J2; (2) Reorganizing sections for improved readability; and (3) Codifying the test cloth material verification procedure as used by industry.

DOE has determined that these amendments to appendix J2 and appendix J3 would not result in manufacturers needing to re-rate clothes washers. The amendment (1) to appendix J2 (*i.e.,* further specifying water meter resolution requirements) may require more precise hot water meters for clothes washers with hot water usage less than 0.1 gallons in any of the energy test cycles. However, DOE's analysis of the small manufacturer's product offering indicates that the amendment will not apply and no capital expenditures would be necessary for the business.

In this final rule, DOE also adds appendix J to 10 CFR part 430, subpart B, ''Uniform Test Method for Measuring the Energy Consumption of Automatic and Semi-Automatic Clothes Washers,'' which will be used for the evaluation and issuance of any updated efficiency standards, as well as to determine compliance with the updated standards, should DOE determine that amended standards are warranted based on the criteria established by EPCA.[91] The new appendix J will include the following additional provisions beyond the amendments to appendix J2 that: (1) Modify the hot water supply temperature range; (2) Modify the clothes washer pre-conditioning requirements; (3) Modify the Extra-Hot Wash threshold temperature; (4) Add measurement and calculation of average cycle time; (5) Reduce the number of required test cycles by requiring the use of no more than two Warm Wash/Cold Rinse cycles, and no more than two Warm Wash/Warm Rinse cycles; (6) Reduce the number of required test cycles by removing the need for one or more cycles used for measuring RMC; (7) Reduce the number of load sizes from three to two for units currently tested with three load sizes; (8) Modify the load size definitions consistent with two, rather than three, load sizes; (9) Update the water fill levels to be used for testing to reflect the modified load size definitions; (10) Specify the installation of single-inlet clothes washers, and simplify the test procedure for semi-automatic clothes washers; (11) Define new performance metrics that are based on the weighted-average load size rather than clothes container capacity: ''energy efficiency ratio,'' ''active-mode energy efficiency ratio,'' and ''water efficiency ratio;'' (12) Update the final moisture content assumption in the drying energy formula; (13) Update the number of annual clothes washer cycles from 295 to 234; and (14) Update the number of hours assigned to low-power mode to be based on the clothes washer's measured cycle time rather than an assumed fixed value.

Due to the reduction in number of loads and number of wash cycles, the proposed new appendix J would be less burdensome than appendix J2 for industry. However, the small manufacturer would need to re-rate its one model when any future amended energy conservation standard requires the use of the proposed new appendix J. Taking into account the fully-burdened wage of a technician ($41.34/hour), the estimated time per wash cycle (1 hour for a RCW), the average cost of test cloth per RCW wash cycle ($5.13 of cloth), the estimated number of test cycles for the small entity's basic model (6 cycles), and the number of test units (2 units tested), DOE estimates the cost of re-rating one model would be less than $1,000.[92] Using subscription-based market research tools, DOE found the

[89] Available online at: *www.sba.gov/document/support--table-size-standards.*

[90] The Dun & Bradstreet Hoovers subscription login is available at *app.dnbhoovers.com/.*

[91] Information regarding the ongoing RCW and CCW energy conservation standards rulemakings can be found at docket numbers EERE–2017–BT–STD–0014 and EERE–2019–BT–STD–0044, respectively.

[92] Additional detail can be found in section III.K.1.b ''Test Procedure Costs and Impacts'' of the test procedure Final Rule notice.

small business annual revenue to be approximately $6 million. DOE calculates the cost of re-rating one model to Appendix J to be less than 0.1 percent of revenue for the small manufacturer.

DOE identified 15 OEMs affected by this final rule. One OEM is a small entity that certifies a single basic model of RCW, in an industry with 718 basic models of RCWs. As discussed previously, the amendments to appendix J2 will result in zero costs to the small manufacturer and the proposed new appendix J would be less burdensome to conduct than appendix J2 for all manufacturers. Additionally, the new appendix J will have no impact before an amended energy conservation standard is adopted.

If and when amended energy conservation standards are adopted, DOE expects the new appendix J to have de minimis cost impacts on the small manufacturer. DOE estimated the cost to re-test the small entity's basic model to appendix J would be less than $1,000. DOE calculates this potential cost to be less than 0.1 percent of revenue for the one small manufacturer. Based on this analysis, DOE certifies that this final rule does not have a ''significant economic impact on a substantial number of small entities,'' and determined that the preparation of a FRFA is not warranted. DOE will transmit a certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of RCWs and CCWs must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including RCWs and CCWs. (See generally 10 CFR part 429.) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (''PRA''). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

DOE is not amending the certification or reporting requirements for RCWs or CCWs in this final rule. Instead, DOE may consider proposals to amend the certification requirements and reporting for RCWs and CCWs under a separate rulemaking regarding appliance and equipment certification. DOE will address changes to OMB Control Number 1910–1400 at that time, as necessary.

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

D. Review Under the National Environmental Policy Act of 1969

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

E. Review Under Executive Order 13132

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

F. Review Under Executive Order 12988

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

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action resulting in a rule that

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

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

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

I. Review Under Executive Order 12630

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

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

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at *www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf.* DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

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

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

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

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

The modifications to the test procedure for clothes washers adopted in this final rule incorporates testing methods contained in certain sections of the following commercial standards: AATCC Test Method 79–2010, AATCC Test Method 118–2007, AATCC Test Method 135–2010, and IEC 62031. DOE has evaluated these standards and is unable to conclude whether it fully complies with the requirements of section 32(b) of the FEAA (*i.e.,* whether it was developed in a manner that fully provides for public participation, comment, and review.) DOE has consulted with both the Attorney General and the Chairman of the FTC about the impact on competition of using the methods contained in these standards and has received no comments objecting to their use.

M. Congressional Notification

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

N. Description of Materials Incorporated by Reference

In this final rule, DOE incorporates by reference the test standard published by AATCC, titled ''Absorbency of Textiles,'' AATCC Test Method 79–2010. DOE also incorporates by reference the test standard published by AATCC, titled ''Oil Repellency: Hydrocarbon Resistance Test,'' AATCC Test Method 118–2007. AATCC 79–2010 and AATCC 118–2007 are industry-accepted test procedure that verify the presence or absence of water repellent finishes on fabric by measuring the water absorbency and oil repellency of the fabric, respectively.

In this final rule, DOE incorporates by reference the test standard published by AATCC, titled ''Dimensional Changes of Fabrics after Home Laundering,'' AATCC Test Method 135–2010. AATCC 135–2010 is an industry-accepted test procedure for measuring dimensional changes in fabric (*i.e.,* ''shrinkage'') due to laundering.

All three of these AATCC test methods are currently incorporated by reference for use in appendix J2. This

final rule transfers the references to these test methods to appendix J3. Copies of AATCC test methods can be obtained from AATCC, P.O. Box 12215, Research Triangle Park, NC 27709, (919) 549–3526, or by going to *www.aatcc.org.*

In this final rule, DOE incorporates by reference the test standard published by IEC, titled ''Household electrical appliances—Measurement of standby power,'' (Edition 2.0, 2011–01), IEC 62301. IEC 62301 is an industry-accepted test procedure for measuring standby energy consumption. IEC 62301 is currently incorporated by reference for use in appendix J2, which references specific provisions of the industry standard. See 10 CFR 430.3(o)(6). This final rule includes the same references in the new appendix J.

Copies of IEC 62301 available from the American National Standards Institute, 25 W 43rd Street, 4th Floor, New York, NY 10036, (212) 642–4900, or by going to *webstore.ansi.org.*

In this final rule, DOE adds a new section 0 (Incorporation by Reference) to appendix J2 listing the applicable sections of the incorporated test standard and specifying that in cases in which there is a conflict, the language of the DOE test procedure takes precedence over the referenced test standards. DOE also includes a similar section 0 in appendix J. This approach is consistent with the approach taken by DOE in other recent consumer product test procedure amendments (see, for example, test procedure final rules for consumer clothes dryers (October 8, 2021; 86 FR 56608) and water closets and urinals (March 23, 2022; 87 FR 16375)).

V. Approval of the Office of the Secretary

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

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Reporting and recordkeeping requirements, Small businesses.

10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

10 CFR Part 431

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

Signing Authority

This document of the Department of Energy was signed on May 13, 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 13, 2022.

Treena V. Garrett,

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

For the reasons stated in the preamble, DOE amends parts 429, 430, and 431 of Chapter II of Title 10, Code of Federal Regulations as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

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

■ 2. Section 429.20 is amended by revising paragraphs (a)(2)(i) introductory text, (a)(2)(ii) introductory text, and (a)(3) to read as follows:

§ 429.20 Residential clothes washers.

(a) * * *

(2) * * *

(i) Any represented value of the integrated water factor, the estimated annual operating cost, the energy or water consumption, or other measure of energy or water consumption of a basic model for which consumers would favor lower values shall be greater than or equal to the higher of:

* * * * *

(ii) Any represented value of the integrated modified energy factor, energy efficiency ratio, water efficiency ratio, or other measure of energy or water consumption of a basic model for which consumers would favor higher values shall be less than or equal to the lower of:

* * * * *

(3) The clothes container capacity of a basic model reported in accordance with paragraph (b)(2) of this section shall be the mean of the measured clothes container capacity, C, of all tested units of the basic model.

* * * * *

■ 3. Section 429.46 is amended by revising paragraph (a)(2)(ii) introductory text to read as follows:

§ 429.46 Commercial clothes washers.

(a) * * *

(2) * * *

(ii) Any represented value of the modified energy factor, active-mode energy efficiency ratio, water efficiency ratio, or other measure of energy or water consumption of a basic model for which consumers would favor higher values shall be greater than or equal to the higher of:

* * * * *

■ 4. Section 429.134 is amended by revising paragraph (c)(1) to read as follows:

§ 429.134 Product-specific enforcement provisions.

* * * * *

(c) *Clothes washers*—(1) *Determination of Remaining Moisture Content.* These provisions address anomalous remaining moisture content (RMC) results that are not representative of a basic model's performance, as well as differences in RMC values that may result from DOE using a different test cloth lot than was used by the manufacturer for testing and certifying the basic model.

(i) When testing according to appendix J to subpart B of part 430:

(A) If the measured RMC value of a tested unit is equal to or lower than the certified RMC value of the basic model (expressed as a percentage), then the measured RMC value will be considered the tested unit's final RMC value and will be used as the basis for the calculation of per-cycle energy consumption for removal of moisture from the test load for that unit.

(B) If the measured RMC value of a tested unit is higher than the certified RMC value of the basic model but the difference between the measured and certified RMC values would not affect the unit's compliance with the applicable standards, then the measured RMC value will be considered the tested unit's final RMC value.

(C) If the measured RMC value of a tested unit is higher than the certified RMC value of the basic model and the difference between the measured and certified RMC values would affect the unit's compliance with the applicable standards, then:

(*1*) If DOE used the same test cloth lot that was used by the manufacturer for testing and certifying the basic model, then the measured RMC value will be considered the tested unit's final RMC value.

(*2*) If DOE used a different test cloth lot than was used by the manufacturer for testing and certifying the basic model, then:

(*i*) If the measured RMC value of a tested unit is higher than the certified RMC value of the basic model by more than three RMC percentage points, then a value three RMC percentage points less than the measured RMC value will be considered the tested unit's final RMC value.

(*ii*) If the measured RMC value of a tested unit is higher than the certified RMC value of the basic model, but by no more than three RMC percentage points, then the certified RMC value of the basic model will be considered the tested unit's final RMC value.

(ii) When testing according to appendix J2 to subpart B of part 430:

(A) The procedure for determining remaining moisture content (RMC) will be performed once in its entirety, pursuant to the test requirements of section 3.8 of appendix J2 to subpart B of part 430, for each unit tested.

(B) If the measured RMC value of a tested unit is equal to or lower than the certified RMC value of the basic model (expressed as a percentage), then the measured RMC value will be considered the tested unit's final RMC value and will be used as the basis for the calculation of per-cycle energy consumption for removal of moisture from the test load for that unit.

(C) If the measured RMC value of a tested unit is higher than the certified RMC value of the basic model but by no more than two RMC percentage points and the difference between the measured and certified RMC values would not affect the unit's compliance with the applicable standards, then the measured RMC value will be considered the tested unit's final RMC value.

(D) If the measured RMC value of a tested unit is higher than the certified RMC value of the basic model but by no more than two RMC percentage points and the difference between the measured and certified RMC values would affect the unit's compliance with the applicable standards, then:

(*1*) If DOE used the same test cloth lot that was used by the manufacturer for testing and certifying the basic model, then the measured RMC value will be considered the tested unit's final RMC value.

(*2*) If DOE used a different test cloth lot than was used by the manufacturer for testing and certifying the basic model, then the certified RMC value of the basic model would be considered the tested unit's final RMC value.

(E) If the measured RMC value of a tested unit is higher than the certified RMC value of the basic model by more than two RMC percentage points, then DOE will perform two replications of the RMC measurement procedure, each pursuant to the provisions of section 3.8.5 of appendix J2 to subpart B of part 430, for a total of three independent RMC measurements of the tested unit. The average of the three RMC measurements will be calculated.

(*1*) If the average of the three RMC measurements is equal to or lower than the certified RMC value of the basic model, then the average RMC value will be considered the tested unit's final RMC value.

(*2*) If the average of the three RMC measurements is higher than the certified RMC value of the basic model but the difference between the measured and certified RMC values would not affect the unit's compliance with the applicable standards, then the average RMC value will be considered the tested unit's final RMC value.

(*3*) If the average of the three RMC measurements is higher than the certified RMC value of the basic model and the difference between the measured and certified RMC values would affect the unit's compliance with the applicable standards, then DOE will apply paragraph (c)(1)(ii)(F) of this section.

(F) If the average of the three RMC measurements is higher than the certified RMC value of the basic model and the difference between the measured and certified RMC values would affect the unit's compliance with the applicable standards, then:

(*1*) If DOE used the same test cloth lot that was used by the manufacturer for testing and certifying the basic model, then the average RMC pursuant to paragraph (c)(1)(ii)(E) of this section will be considered the tested unit's final RMC value.

(*2*) If DOE used a different test cloth lot than was used by the manufacturer for testing and certifying the basic model, then:

(*i*) If the average RMC value pursuant to paragraph (c)(1)(ii)(D) of this section is higher than the certified valued of the basic model by more than three RMC percentage points, then a value three RMC percentage points less than the average RMC value will be considered the tested unit's final RMC value.

(*ii*) If the average RMC value pursuant to paragraph (c)(1)(ii)(D) of this section is higher than the certified RMC value of the basic model, but by no more than three RMC percentage points, then the certified RMC value of the basic model will be considered the tested unit's final RMC value.

* * * * *

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 5. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

§ 430.3 [Amended]

■ 6. Section 430.3 is amended as follows:

■ a. In paragraphs (d)(1) through (3), remove the text ''J2'' and add, in its place, the text ''J3'' wherever it appears; and

■ b. In paragraph (o)(6), remove the text ''J2'' and add, in its place, the text ''J, J2''.

■ 7. Section 430.23 is amended by:

■ a. Revising paragraphs (j)(1)(i) and (ii);

■ b. Removing paragraph (j)(2)(i);

■ c. Redesignating paragraph (j)(2)(ii) as (j)(2)(i);

■ d. Adding a new paragraph (j)(2)(ii);

■ e. Revising paragraph (j)(3)(i);

■ f. Removing paragraph (j)(4)(i);

■ g. Redesignating paragraph (j)(4)(ii) as (j)(4)(i);

■ h. Revising newly redesignated paragraph (j)(4)(i);

■ i. Adding a new paragraph (j)(4)(ii); and

■ j. Revising paragraph (j)(5).

The additions and revisions read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(j) * * *

(1) * * *

(i) When using appendix J (see the note at the beginning of appendix J),

(A) When electrically heated water is used,

$$(N \times (ME_T + HE_T + E_{TLP}) \times C_{KWH})$$

Where:

N = the representative average residential clothes washer use of 234 cycles per year according to appendix J,

ME_T = the total weighted per-cycle machine electrical energy consumption, in

kilowatt-hours per cycle, determined according to section 4.1.6 of appendix J,

HE_T = the total weighted per-cycle hot water energy consumption using an electrical water heater, in kilowatt-hours per cycle, determined according to section 4.1.3 of appendix J,

E_{TLP} = the per-cycle combined low-power mode energy consumption, in kilowatt-hours per cycle, determined according to section 4.6.2 of appendix J, and

C_{KWH} = the representative average unit cost, in dollars per kilowatt-hour, as provided by the Secretary.

(B) When gas-heated or oil-heated water is used,

$(N \times (((ME_T + E_{TLP}) \times C_{KWH}) + (HE_{TG} \times C_{BTU})))$

Where:

N, ME_T, E_{TLP}, and C_{KWH} are defined in paragraph (j)(1)(i)(A) of this section,

HE_{TG} = the total per-cycle hot water energy consumption using gas-heated or oil-heated water, in Btu per cycle, determined according to section 4.1.4 of appendix J, and

C_{BTU} = the representative average unit cost, in dollars per Btu for oil or gas, as appropriate, as provided by the Secretary.

(ii) When using appendix J2 (see the note at the beginning of appendix J2),

(A) When electrically heated water is used

$(N_2 \times (E_{TE2} + E_{TLP2}) \times C_{KWH})$

Where:

N_2 = the representative average residential clothes washer use of 295 cycles per year according to appendix J2,

E_{TE2} = the total per-cycle energy consumption when electrically heated water is used, in kilowatt-hours per cycle, determined according to section 4.1.7 of appendix J2,

E_{TLP2} = the per-cycle combined low-power mode energy consumption, in kilowatt-hours per cycle, determined according to section 4.4 of appendix J2, and

C_{KWH} = the representative average unit cost, in dollars per kilowatt-hour, as provided by the Secretary

(B) When gas-heated or oil-heated water is used,

$(N_2 \times (((ME_{T2} + E_{TLP2}) \times C_{KWH}) + (HE_{TG2} \times C_{BTU})))$

Where:

N_2, E_{TLP2}, and C_{KWH} are defined in paragraph (j)(1)(ii)(A) of this section,

ME_{T2} = the total weighted per-cycle machine electrical energy consumption, in kilowatt-hours per cycle, determined according to section 4.1.6 of appendix J2,

HE_{TG2} = the total per-cycle hot water energy consumption using gas-heated or oil-heated water, in Btu per cycle, determined according to section 4.1.4 of appendix J2, and

C_{BTU} = the representative average unit cost, in dollars per Btu for oil or gas, as appropriate, as provided by the Secretary.

(2) * * *

(ii) The energy efficiency ratio for automatic and semi-automatic clothes washers is determined according to section 4.9 of appendix J (when using appendix J). The result shall be rounded to the nearest 0.01 pound per kilowatt-hour per cycle.

(3) * * *

(i) When using appendix J, the product of the representative average-use of 234 cycles per year and the total weighted per-cycle water consumption in gallons per cycle determined according to section 4.2.4 of appendix J.

* * * * *

(4)(i) The integrated water factor must be determined according to section 4.2.12 of appendix J2, with the result rounded to the nearest 0.1 gallons per cycle per cubic foot.

(ii) The water efficiency ratio for automatic and semi-automatic clothes washers is determined according to section 4.7 of appendix J (when using appendix J). The result shall be rounded to the nearest 0.01 pound per gallon per cycle.

(5) Other useful measures of energy consumption for automatic or semi-automatic clothes washers shall be those measures of energy consumption that the Secretary determines are likely to assist consumers in making purchasing decisions and that are derived from the application of appendix J or appendix J2, as appropriate.

* * * * *

■ 8. Add Appendix J to subpart B of part 430 to read as follows:

Appendix J to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Automatic and Semi-Automatic Clothes Washers

Note: Manufacturers must use the results of testing under Appendix J2 to determine compliance with the relevant standards for clothes washers from § 430.32(g)(4) and from § 431.156(b) as they appeared in January 1, 2022 edition of 10 CFR parts 200–499. Specifically, before November 28, 2022 representations must be based upon results generated either under Appendix J2 as codified on July 1, 2022 or under Appendix J2 as it appeared in the 10 CFR parts 200–499 edition revised as of January 1, 2022. Any representations made on or after November 28, 2022 but before the compliance date of any amended standards for clothes washers must be made based upon results generated using Appendix J2 as codified on July 1, 2022.

Manufacturers must use the results of testing under this appendix to determine compliance with any amended standards for clothes washers provided in § 430.32(g) and in § 431.156 that are published after January 1, 2022. Any representations related to energy or water consumption of residential or commercial clothes washers must be made in accordance with the appropriate appendix that applies (*i.e.,* this appendix or Appendix J2) when determining compliance with the relevant standard. Manufacturers may also use this appendix to certify compliance with any amended standards prior to the applicable compliance date for those standards.

0. Incorporation by Reference

DOE incorporated by reference in § 430.3, the entire test standard for IEC 62301. However, only enumerated provisions of this standard are applicable to this appendix, as follows. In cases in which there is a conflict, the language of the test procedure in this appendix takes precedence over the referenced test standard.

0.1 IEC 62301:

(a) Section 4.2 as referenced in section 2.4 of this appendix;

(b) Section 4.3.2 as referenced in section 2.1.2 of this appendix;

(c) Section 4.4 as referenced in section 2.5.3 of this appendix;

(d) Section 5.1 as referenced in section 3.5.2 of this appendix;

(e) Section 5.2 as referenced in section 2.10.2 of this appendix; and

(f) Section 5.3.2 as referenced in section 3.5.3 of this appendix.

0.2 [Reserved]

1. Definitions

Active mode means a mode in which the clothes washer is connected to a mains power source, has been activated, and is performing one or more of the main functions of washing, soaking, tumbling, agitating, rinsing, and/or removing water from the clothing, or is involved in functions necessary for these main functions, such as admitting water into the washer or pumping water out of the washer. Active mode also includes delay start and cycle finished modes.

Active-mode energy efficiency ratio means the quotient of the weighted-average load size divided by the total clothes washer energy consumption per cycle, with such energy consumption expressed as the sum of the machine electrical energy consumption, the hot water energy consumption, and the energy required for removal of the remaining moisture in the wash load.

Active washing mode means a mode in which the clothes washer is performing any of the operations included in a complete cycle intended for washing a clothing load, including the main functions of washing, soaking, tumbling, agitating, rinsing, and/or removing water from the clothing.

Bone-dry means a condition of a load of test cloth that has been dried in a dryer at maximum temperature for a minimum of 10 minutes, removed and weighed before cool down, and then dried again for 10 minute periods until the final weight change of the load is 1 percent or less.

Clothes container means the compartment within the clothes washer that holds the clothes during the operation of the machine.

Cold rinse means the coldest rinse temperature available on the machine, as indicated to the user on the clothes washer control panel.

Combined low-power mode means the aggregate of available modes other than active washing mode, including inactive mode, off mode, delay start mode, and cycle finished mode.

Cycle finished mode means an active mode that provides continuous status display, intermittent tumbling, or air circulation following operation in active washing mode.

Delay start mode means an active mode in which activation of active washing mode is facilitated by a timer.

Energy efficiency ratio means the quotient of the weighted-average load size divided by the total clothes washer energy consumption per cycle, with such energy consumption expressed as the sum of:

(a) The machine electrical energy consumption;

(b) The hot water energy consumption;

(c) The energy required for removal of the remaining moisture in the wash load; and

(d) The combined low-power mode energy consumption.

Energy test cycle means the complete set of wash/rinse temperature selections required for testing, as determined according to section 2.12 of this appendix.

Fixed water fill control system means a clothes washer water fill control system that automatically terminates the fill when the water reaches a pre-defined level that is not based on the size or weight of the clothes load placed in the clothes container, without allowing or requiring the user to determine or select the water fill level.

Inactive mode means a standby mode that facilitates the activation of active mode by remote switch (including remote control), internal sensor, or timer, or that provides continuous status display.

Load usage factor means the percentage of the total number of wash loads that a user would wash a particular size (weight) load.

Lot means a quantity of cloth that has been manufactured with the same batches of cotton and polyester during one continuous process.

Manual water fill control system means a clothes washer water fill control system that requires the user to determine or select the water fill level.

Non-user-adjustable adaptive water fill control system means a clothes washer water fill control system that is capable of automatically adjusting the water fill level based on the size or weight of the clothes load placed in the clothes container.

Normal cycle means the cycle recommended by the manufacturer (considering manufacturer instructions, control panel labeling, and other markings on the clothes washer) for normal, regular, or typical use for washing up to a full load of normally soiled cotton clothing. For machines where multiple cycle settings are recommended by the manufacturer for normal, regular, or typical use for washing up to a full load of normally soiled cotton clothing, then the Normal cycle is the cycle selection that results in the lowest EER or AEER value.

Off mode means a mode in which the clothes washer is connected to a mains power source and is not providing any active or standby mode function, and where the mode may persist for an indefinite time.

Standby mode means any mode in which the clothes washer is connected to a mains power source and offers one or more of the following user oriented or protective functions that may persist for an indefinite time:

(a) Facilitating the activation of other modes (including activation or deactivation of active mode) by remote switch (including remote control), internal sensor, or timer;

(b) Continuous functions, including information or status displays (including clocks) or sensor-based functions.

A timer is a continuous clock function (which may or may not be associated with a display) that provides regular scheduled tasks (*e.g.,* switching) and that operates on a continuous basis.

Temperature use factor means, for a particular wash/rinse temperature setting, the percentage of the total number of wash loads that an average user would wash with that setting.

User-adjustable adaptive water fill control system means a clothes washer fill control system that allows the user to adjust the amount of water that the machine provides, which is based on the size or weight of the clothes load placed in the clothes container.

Wash time means the wash portion of active washing mode, which begins when the cycle is initiated and includes the agitation or tumble time, which may be periodic or continuous during the wash portion of active washing mode.

Water efficiency ratio means the quotient of the weighted-average load size divided by the total weighted per-cycle water consumption for all wash cycles in gallons.

2. Testing Conditions and Instrumentation

2.1 *Electrical energy supply.*

2.1.1 *Supply voltage and frequency.* Maintain the electrical supply at the clothes washer terminal block within 2 percent of 120, 120/240, or 120/208Y volts as applicable to the particular terminal block wiring system and within 2 percent of the nameplate frequency as specified by the manufacturer. If the clothes washer has a dual voltage conversion capability, conduct test at the highest voltage specified by the manufacturer.

2.1.2 *Supply voltage waveform.* For the combined low-power mode testing, maintain the electrical supply voltage waveform indicated in Section 4, Paragraph 4.3.2 of IEC 62301. If the power measuring instrument used for testing is unable to measure and record the total harmonic content during the test measurement period, total harmonic content may be measured and recorded immediately before and after the test measurement period.

2.2 *Supply water.* Maintain the temperature of the hot water supply at the water inlets between 120 °F (48.9 °C) and 125 °F (51.7 °C), targeting the midpoint of the range. Maintain the temperature of the cold water supply at the water inlets between 55 °F (12.8 °C) and 60 °F (15.6 °C), targeting the midpoint of the range.

2.3 *Water pressure.* Maintain the static water pressure at the hot and cold water inlet connection of the clothes washer at 35 pounds per square inch gauge (psig) ± 2.5 psig (241.3 kPa ± 17.2 kPa) when the water is flowing.

2.4 *Test room temperature.* For all clothes washers, maintain the test room ambient air temperature at 75 ± 5 °F (23.9 ± 2.8 °C) for active mode testing and combined low-power mode testing. Do not use the test room ambient air temperature conditions specified in Section 4, Paragraph 4.2 of IEC 62301 for combined low-power mode testing.

2.5 *Instrumentation.* Perform all test measurements using the following instruments, as appropriate:

2.5.1 *Weighing scales.*

2.5.1.1 *Weighing scale for test cloth.* The scale used for weighing test cloth must have a resolution of no larger than 0.2 oz (5.7 g) and a maximum error no greater than 0.3 percent of the measured value.

2.5.1.2 *Weighing scale for clothes container capacity measurement.* The scale used for performing the clothes container capacity measurement must have a resolution no larger than 0.50 lbs (0.23 kg) and a maximum error no greater than 0.5 percent of the measured value.

2.5.2 *Watt-hour meter.* The watt-hour meter used to measure electrical energy consumption must have a resolution no larger than 1 Wh (3.6 kJ) and a maximum error no greater than 2 percent of the measured value for any demand greater than 50 Wh (180.0 kJ).

2.5.3 *Watt meter.* The watt meter used to measure combined low-power mode power consumption must comply with the requirements specified in Section 4, Paragraph 4.4 of IEC 62301. If the power measuring instrument used for testing is unable to measure and record the crest factor, power factor, or maximum current ratio during the test measurement period, the crest factor, power factor, and maximum current ratio may be measured and recorded immediately before and after the test measurement period.

2.5.4 *Water and air temperature measuring devices.* The temperature devices used to measure water and air temperature must have an error no greater than ±1 °F (±0.6 °C) over the range being measured.

2.5.4.1 Non-reversible temperature indicator labels, adhered to the inside of the clothes container, may be used to confirm that an extra-hot wash temperature greater than or equal to 140 °F has been achieved during the wash cycle, under the following conditions. The label must remain waterproof, intact, and adhered to the wash drum throughout an entire wash cycle; provide consistent maximum temperature readings; and provide repeatable temperature indications sufficient to demonstrate that a wash temperature of greater than or equal to 140 °F has been achieved. The label must have been verified to consistently indicate temperature measurements with an accuracy of ±1 °F. If using a temperature indicator label to test a front-loading clothes washer, adhere the label along the interior surface of the clothes container drum, midway between the front and the back of the drum, adjacent to one of the baffles. If using a temperature indicator label to test a top-loading clothes washer, adhere the label along the interior surface of the clothes container drum, on the

vertical portion of the sidewall, as close to the bottom of the container as possible.

2.5.4.2 Submersible temperature loggers placed inside the wash drum may be used to confirm that an extra-hot wash temperature greater than or equal to 140 °F has been achieved during the wash cycle, under the following conditions. The submersible temperature logger must have a time resolution of at least 1 data point every 5 seconds and a temperature measurement accuracy of ±1 °F. Due to the potential for a waterproof capsule to provide a thermal insulating effect, failure to measure a temperature of 140 °F does not necessarily indicate the lack of an extra-hot wash temperature. However, such a result would not be conclusive due to the lack of verification of the water temperature requirement, in which case an alternative method must be used to confirm that an extra-hot wash temperature greater than or equal to 140 °F has been achieved during the wash cycle.

2.5.5 *Water meter.* A water meter must be installed in both the hot and cold water lines to measure water flow and/or water consumption. The water meters must have a resolution no larger than 0.1 gallons (0.4 liters) and a maximum error no greater than 2 percent for the water flow rates being measured. If the volume of hot water for any individual cycle within the energy test cycle is less than 0.1 gallons (0.4 liters), the hot water meter must have a resolution no larger than 0.01 gallons (0.04 liters).

2.5.6 *Water pressure gauge.* A water pressure gauge must be installed in both the hot and cold water lines to measure water pressure. The water pressure gauges must have a resolution of 1 pound per square inch gauge (psig) (6.9 kPa) and a maximum error no greater than 5 percent of any measured value.

2.6 *Bone-dryer.* The dryer used for drying the cloth to bone-dry must heat the test cloth load above 210 °F (99 °C).

2.7 *Test cloths.* The test cloth material and dimensions must conform to the specifications in appendix J3 to this subpart. The energy test cloth and the energy stuffer cloths must be clean and must not be used for more than 60 test runs (after preconditioning as specified in section 5 of appendix J3 to this subpart). All energy test cloth must be permanently marked identifying the lot number of the material. Mixed lots of material must not be used for testing a clothes washer. The moisture absorption and retention must be evaluated for each new lot of test cloth using the standard extractor Remaining Moisture Content (RMC) procedure specified in appendix J3 to this subpart.

2.8 *Test Loads.*

2.8.1 *Test load sizes.* Create small and large test loads as defined in Table 5.1 of this appendix based on the clothes container capacity as measured in section 3.1 of this appendix. Record the bone-dry weight for each test load.

2.8.2 *Test load composition.* Test loads must consist primarily of energy test cloths and no more than five energy stuffer cloths per load to achieve the proper weight.

2.9 *Preparation and loading of test loads.* Use the following procedures to prepare and load each test load for testing in section 3 of this appendix.

2.9.1 Test loads for energy and water consumption measurements must be bone-dry prior to the first cycle of the test, and dried to a maximum of 104 percent of bone-dry weight for subsequent testing.

2.9.2 Prepare the energy test cloths for loading by grasping them in the center, lifting, and shaking them to hang loosely, as illustrated in Figure 2.9.2 of this appendix.

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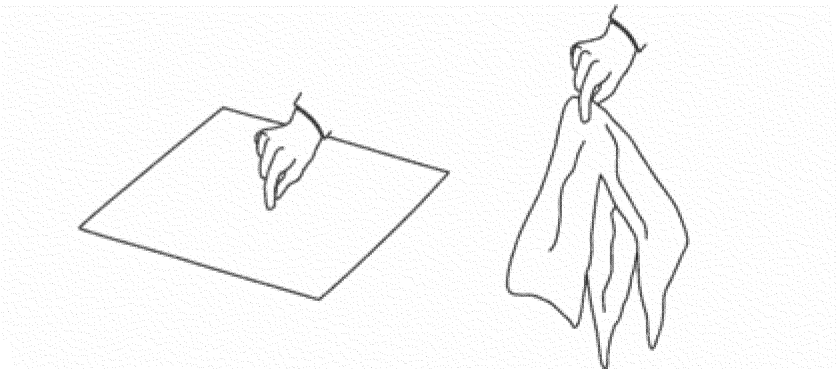
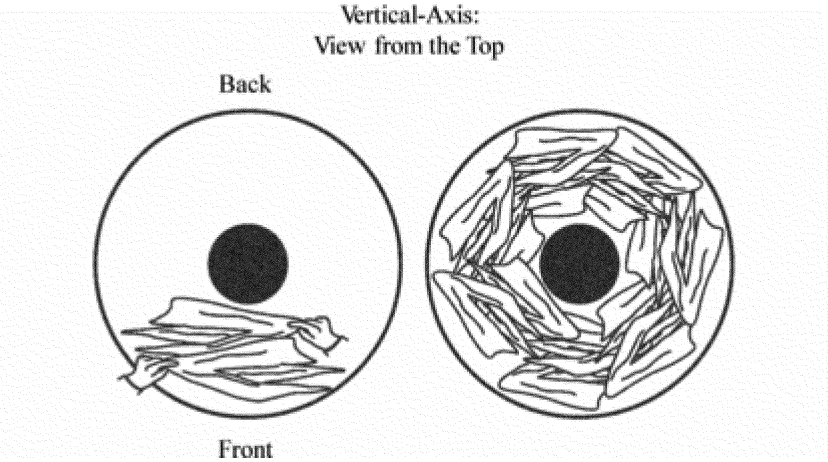
Figure 2.9.2—Grasping Energy Test Cloths in the Center, Lifting, and Shaking to Hang Loosely



For all clothes washers, follow any manufacturer loading instructions provided to the user regarding the placement of clothing within the clothes container. In the absence of any manufacturer instructions regarding the placement of clothing within the clothes container, the following loading instructions apply.

2.9.2.1 To load the energy test cloths in a top-loading clothes washer, arrange the cloths circumferentially around the axis of rotation of the clothes container, using alternating lengthwise orientations for adjacent pieces of cloth. Complete each cloth layer across its horizontal plane within the clothes container before adding a new layer. Figure 2.9.2.1 of this appendix illustrates the correct loading technique for a vertical-axis clothes washer.

Figure 2.9.2.1—Loading Energy Test Cloths into a Top-Loading Clothes Washer



2.9.2.2 To load the energy test cloths in a front-loading clothes washer, grasp each test cloth in the center as indicted in section 2.9.2 of this appendix, and then place each cloth into the clothes container prior to activating the clothes washer.

2.10 *Clothes washer installation.* Install the clothes washer in accordance with manufacturer's instructions.

2.10.1 *Water inlet connections.* If the clothes washer has 2 water inlets, connect the inlets to the hot water and cold water supplies, in accordance with the manufacturer's instructions. If the clothes washer has only 1 water inlet, connect the inlet to the cold water supply, in accordance with the manufacturer's instructions. Use the water inlet hoses provided with the clothes washer; otherwise use commercially available water inlet hoses, not to exceed 72 inches in length, in accordance with manufacturer's instructions.

2.10.2 *Low-power mode testing.* For combined low-power mode testing, install the clothes washer in accordance with Section 5, Paragraph 5.2 of IEC 62301, disregarding the provisions regarding batteries and the determination, classification, and testing of relevant modes.

2.11 *Clothes washer pre-conditioning.* If the clothes washer has not been filled with water in the preceding 96 hours, or if it has not been in the test room at the specified ambient conditions for 8 hours, pre-condition it by running it through a cold rinse cycle and then draining it to ensure that the hose, pump, and sump are filled with water.

2.12 *Determining the energy test cycle.*

2.12.1 *Automatic clothes washers.* To determine the energy test cycle, evaluate the wash/rinse temperature selection flowcharts in the order in which they are presented in this section. Use the large load size to evaluate each flowchart. The determination of the energy test cycle must take into consideration all cycle settings available to the end user, including any cycle selections or cycle modifications provided by the manufacturer via software or firmware updates to the product, for the basic model under test. The energy test cycle does not include any cycle that is recommended by the manufacturer exclusively for cleaning, deodorizing, or sanitizing the clothes washer.

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Figure 2.12.1.1—Determination of Cold Wash/Cold Rinse

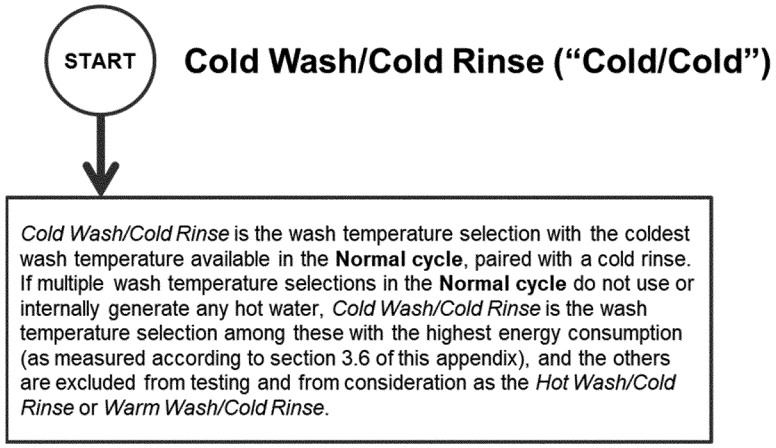


Figure 2.12.1.2—Determination of Hot Wash/Cold Rinse

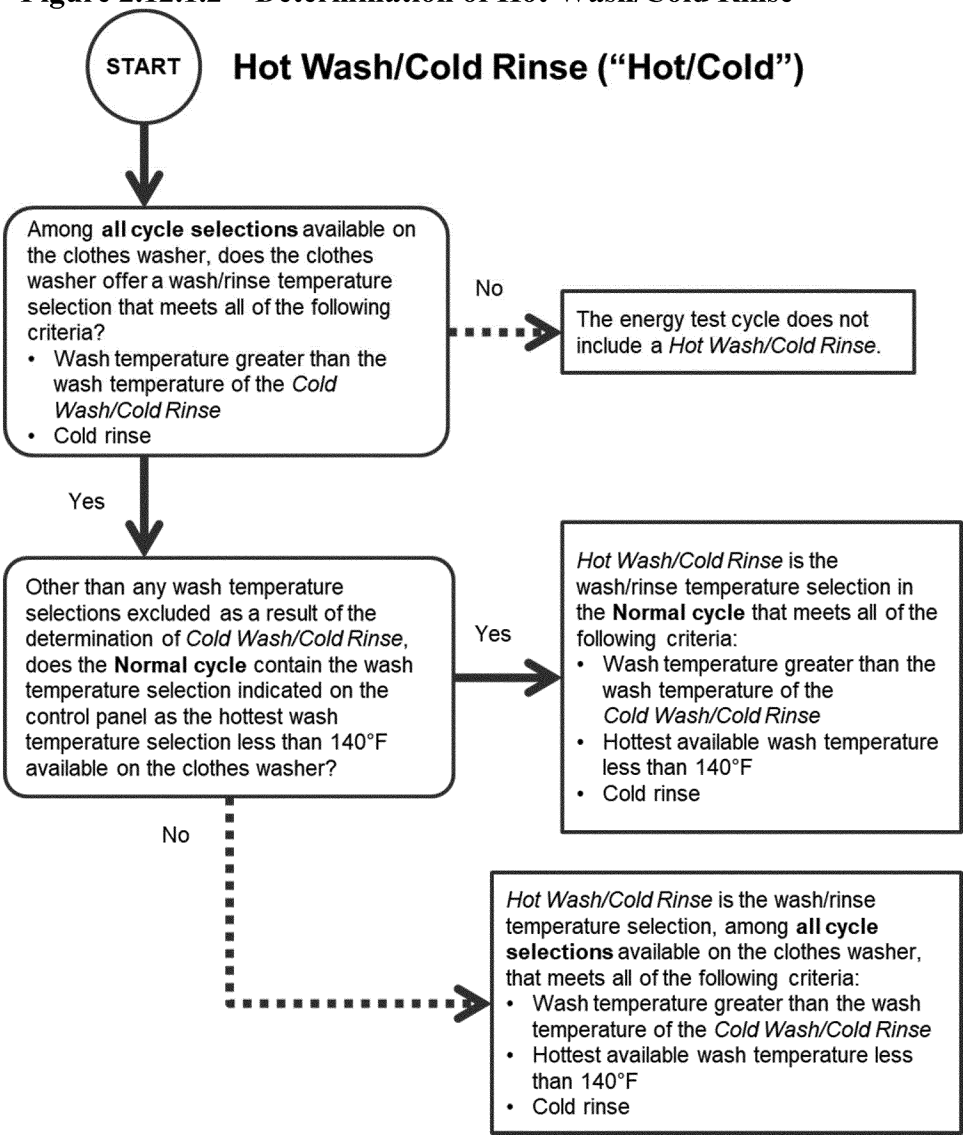


Figure 2.12.1.3—Determination of Warm Wash/Cold Rinse

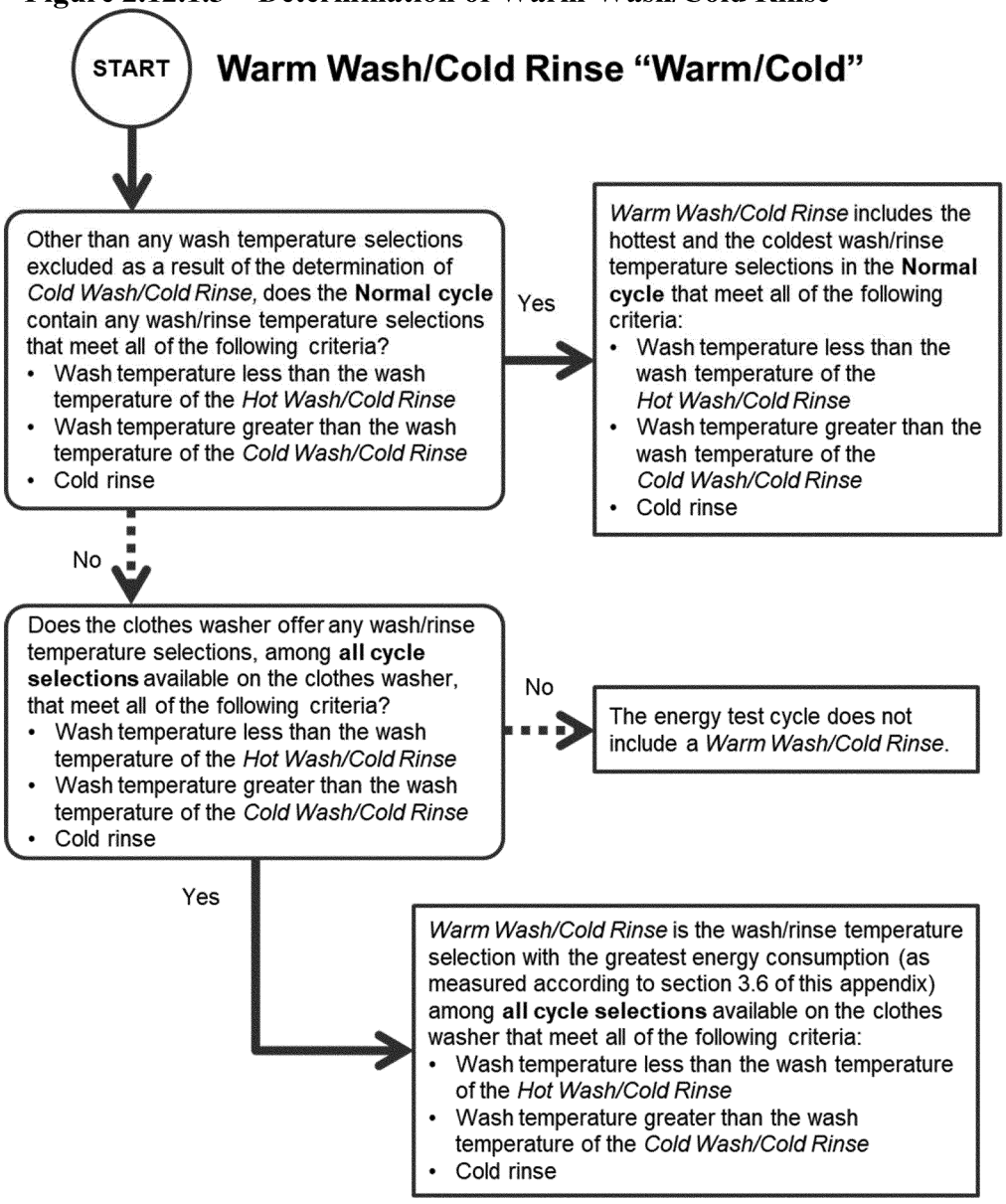


Figure 2.12.1.4—Determination of Warm Wash/Warm Rinse

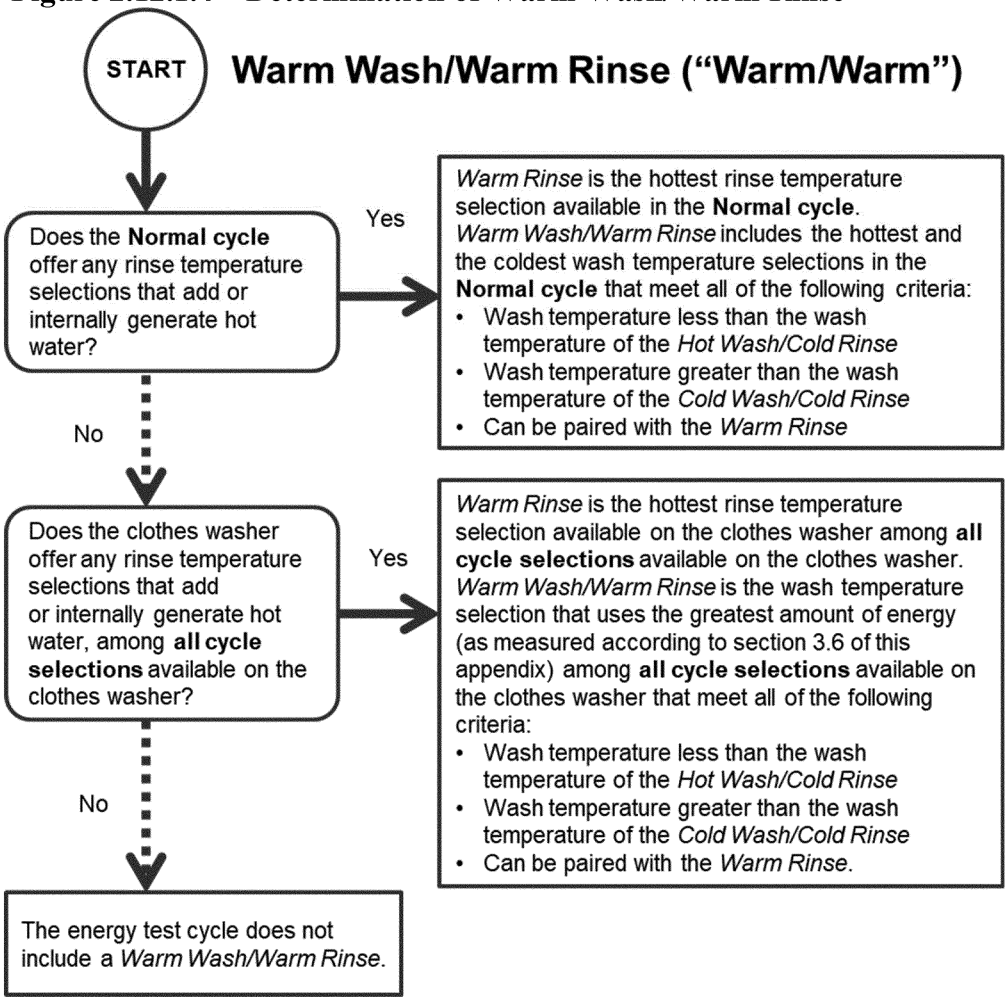
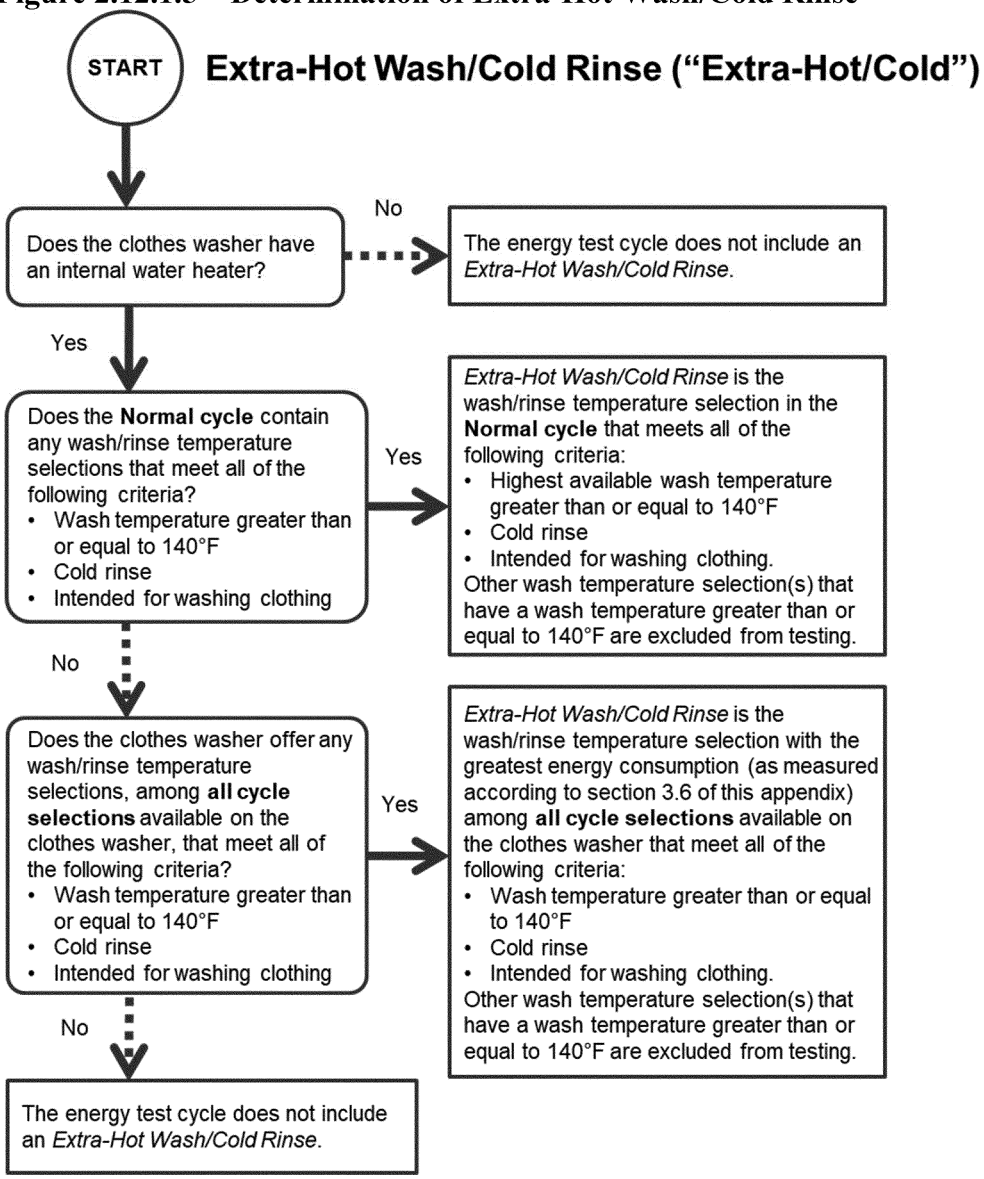


Figure 2.12.1.5—Determination of Extra-Hot Wash/Cold Rinse



2.12.2. *Semi-automatic clothes washers.* The energy test cycle for semi-automatic clothes washers includes only the Cold Wash/Cold Rinse (''Cold'') test cycle. Energy and water use for all other wash/rinse temperature combinations are calculated numerically in section 3.4.2 of this appendix.

3. Test Measurements

3.1 *Clothes container capacity.* Measure the entire volume that a clothes load could occupy within the clothes container during active mode washer operation according to the following procedures:

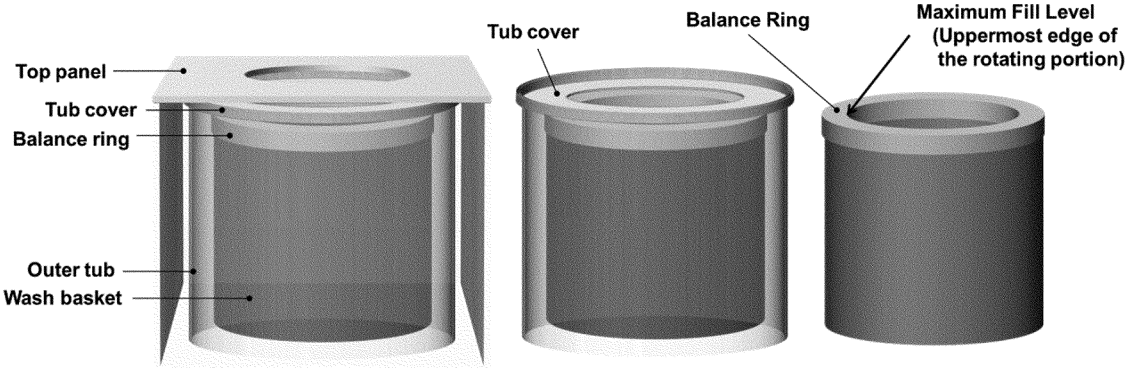
3.1.1 Place the clothes washer in such a position that the uppermost edge of the clothes container opening is leveled horizontally, so that the container will hold the maximum amount of water. For front-loading clothes washers, the door seal and shipping bolts or other forms of bracing hardware to support the wash drum during shipping must remain in place during the capacity measurement. If the design of a front-loading clothes washer does not include shipping bolts or other forms of bracing hardware to support the wash drum during shipping, a laboratory may support the wash drum by other means, including temporary bracing or support beams. Any temporary bracing or support beams must keep the wash drum in a fixed position, relative to the geometry of the door and door seal components, that is representative of the position of the wash drum during normal operation. The method used must avoid damage to the unit that would affect the results of the energy and water testing. For a front-loading clothes washer that does not include shipping bolts or other forms of bracing hardware to support the wash drum during shipping, the laboratory must fully document the alternative method used to support the wash drum during capacity measurement, include such documentation in the final test report, and pursuant to § 429.71 of this chapter, the manufacturer must retain such documentation as part its test records.

3.1.2 Line the inside of the clothes container with a 2 mil thickness (0.051 mm) plastic bag. All clothes washer components that occupy space within the clothes container and that are recommended for use during a wash cycle must be in place and must be lined with a 2 mil thickness (0.051 mm) plastic bag to prevent water from entering any void space.

3.1.3 Record the total weight of the machine before adding water.

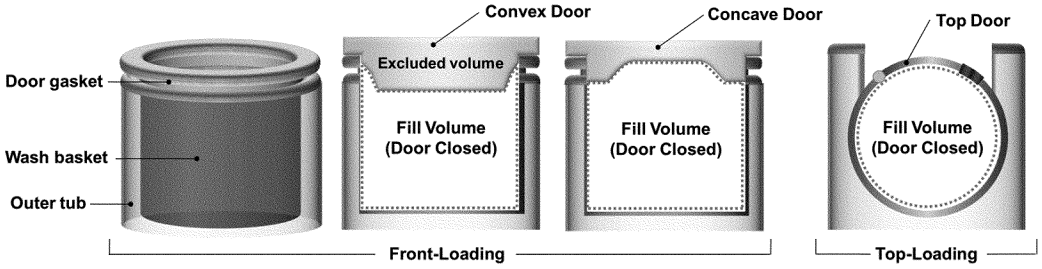
3.1.4 Fill the clothes container manually with either 60 °F ± 5 °F (15.6 °C ± 2.8 °C) or 100 °F ± 10 °F (37.8 °C ± 5.5 °C) water, with the door open. For a top-loading vertical-axis clothes washer, fill the clothes container to the uppermost edge of the rotating portion, including any balance ring. Figure 3.1.4.1 of this appendix illustrates the maximum fill level for top-loading clothes washers.

Figure 3.1.4.1—Maximum Fill Level for the Clothes Container Capacity Measurement of Top-Loading Vertical-Axis Clothes Washers



For a front-loading horizontal-axis clothes washer, fill the clothes container to the highest point of contact between the door and the door gasket. If any portion of the door or gasket would occupy the measured volume space when the door is closed, exclude from the measurement the volume that the door or gasket portion would occupy. For a front-loading horizontal-axis clothes washer with a concave door shape, include any additional volume above the plane defined by the highest point of contact between the door and the door gasket, if that area can be occupied by clothing during washer operation. For a top-loading horizontal-axis clothes washer, include any additional volume above the plane of the door hinge that clothing could occupy during washer operation. Figure 3.1.4.2 of this appendix illustrates the maximum fill volumes for all horizontal-axis clothes washer types.

Figure 3.1.4.2—Maximum Fill Level for the Clothes Container Capacity Measurement of Horizontal-Axis Clothes Washers



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For all clothes washers, exclude any volume that cannot be occupied by the clothing load during operation.

3.1.5 Measure and record the weight of water, W, in pounds.

3.1.6 Calculate the clothes container capacity as follows:

$C = W/d$

Where:

C = Capacity in cubic feet (liters).
W = Mass of water in pounds (kilograms).
d = Density of water (62.0 lbs/ft^3 for 100 °F (993 kg/m^3 for 37.8 °C) or 62.3 lbs/ft^3 for 60 °F (998 kg/m^3 for 15.6 °C)).

3.1.7 Calculate the clothes container capacity, C, to the nearest 0.01 cubic foot for the purpose of determining test load sizes per Table 5.1 of this appendix and for all subsequent calculations that include the clothes container capacity.

3.2 *Cycle settings.*

3.2.1 *Wash/rinse temperature selection.* For automatic clothes washers, set the wash/rinse temperature selection control to obtain the desired wash/rinse temperature selection within the energy test cycle.

3.2.2 *Wash time setting.*

3.2.2.1 If the cycle under test offers a range of wash time settings, the wash time setting shall be the higher of either the minimum or 70 percent of the maximum wash time available for the wash cycle under test, regardless of the labeling of suggested dial locations. If 70 percent of the maximum wash time is not available on a dial with a discrete number of wash time settings, choose the next-highest setting greater than 70 percent.

3.2.2.2 If the clothes washer is equipped with an electromechanical dial or timer controlling wash time that rotates in both directions, reset the dial to the minimum wash time and then turn it in the direction of increasing wash time to reach the appropriate setting. If the appropriate setting is passed, return the dial to the minimum wash time and then turn in the direction of increasing wash time until the appropriate setting is reached.

3.2.3 *Water fill level settings.* The water fill level settings depend on the clothes washer's water fill control system, as determined in Table 3.2.3.

TABLE 3.2.3—CLOTHES WASHER WATER FILL CONTROL SETTINGS

	Settings are user-adjustable	Settings are not user-adjustable
Water fill level unaffected by the size or weight of the clothing load	Manual water fill	Fixed water fill.
Water fill level is determined automatically by the clothes washer based on the size and weight of the clothing load.	User-adjustable adaptive water fill	Non-user-adjustable adaptive water fill.

3.2.3.1 *Clothes washers with a manual water fill control system.* For the large test load size, set the water fill level selector to the maximum water fill level setting available for the wash cycle under test. If the water fill level selector has two settings available for the wash cycle under test, for the small test load size, select the minimum water fill level setting available for the wash cycle under test.

If the water fill level selector has more than two settings available for the wash cycle under test, for the small test load size, select the second-lowest water fill level setting.

3.2.3.2 *Clothes washers with a fixed water fill control system.* The water level is automatically determined by the water fill control system.

3.2.3.3 *Clothes washers with a user-adjustable adaptive water fill control system.* For the large test load size, set the water fill selector to the setting that uses the most water. For the small test load size, set the water fill selector to the setting that uses the least water.

3.2.3.4 *Clothes washers with a non-user-adjustable adaptive water fill control system.* The water level is automatically determined by the water fill control system.

3.2.3.5 *Clothes washers with multiple water fill control systems.* If a clothes washer allows user selection among multiple water fill control systems, test all water fill control systems and, for each one, calculate the energy consumption (HE_T, ME_T, and DE_T) and water consumption (Q_T) values as set forth in section 4 of this appendix. Then, calculate the average of the tested values (one from each water fill control system) for each variable (HE_T, ME_T, DE_T, and Q_T) and use the average value for each variable in the final calculations in section 4 of this appendix.

3.2.4 *Manufacturer default settings.* For clothes washers with electronic control systems, use the manufacturer default settings for any cycle selections, except for (1) the temperature selection, (2) the wash water fill levels, or (3) network settings. If the clothes washer has network capabilities, the network settings must be disabled throughout testing if such settings can be disabled by the end-user and the product's user manual provides instructions on how to do so. For all other cycle selections, the manufacturer default settings must be used for wash conditions such as agitation/tumble operation, soil level, spin speed, wash times, rinse times, optional rinse settings, water heating time for water heating clothes washers, and all other wash parameters or optional features applicable to that wash cycle. Any optional wash cycle feature or setting (other than wash/rinse temperature, water fill level selection, or network settings on clothes washers with network capabilities) that is activated by default on the wash cycle under test must be included for testing unless the manufacturer instructions recommend not selecting this option, or recommend selecting a different option, for washing normally soiled cotton clothing. For clothes washers with control panels containing mechanical switches or dials, any optional settings, except for the temperature selection or the wash water fill levels, must be in the position recommended by the manufacturer for washing normally soiled cotton clothing. If the manufacturer instructions do not recommend a particular switch or dial position to be used for washing normally soiled cotton clothing, the setting switch or dial must remain in its as-shipped position.

3.2.5 For each wash cycle tested, include the entire active washing mode and exclude any delay start or cycle finished modes.

3.2.6 *Anomalous Test Cycles.* If during a wash cycle the clothes washer: (a) Signals to the user by means of a visual or audio alert that an out-of-balance condition has been detected; or (b) terminates prematurely and thus does not include the agitation/tumble operation, spin speed(s), wash times, and rinse times applicable to the wash cycle under test, discard the test data and repeat the wash cycle. Document in the test report the rejection of data from any wash cycle during testing and the reason for the rejection.

3.3 *Test cycles for automatic clothes washers.* Perform testing on each wash/rinse temperature selection available in the energy test cycle was defined in section 2.12.1 of this appendix. Test each load size as defined in section 2.8 of this appendix with its associated water fill level defined in section 3.2.3 of this appendix. Assign the bone-dry weight according to the value measured in section 2.8 of this appendix. Place the test load in the clothes washer and initiate the cycle under test. Measure the values for hot water consumption, cold water consumption, electrical energy consumption, and cycle time for the complete cycle. Record the weight of the test load immediately after completion of the cycle. Table 3.3 of this appendix provides the symbol definitions for each measured value.

TABLE 3.3—SYMBOL DEFINITIONS OF MEASURED VALUES FOR AUTOMATIC CLOTHES WASHER TEST CYCLES

Wash/rinse temperature selection	Load size	Bone-dry weight	Hot water	Cold water	Electrical energy	Cycle time	Cycle complete weight
Extra-Hot/Cold	Large	WIx_L	Hx_L	Cx_L	Ex_L	Tx_L	WCx_L
	Small	WIx_S	Hx_S	Cx_S	Ex_S	Tx_S	WCx_S
Hot/Cold	Large	WIh_L	Hh_L	Ch_L	Eh_L	Th_L	WCh_L
	Small	WIh_S	Hh_S	Ch_S	Eh_S	Th_S	WCh_S
Warm/Cold *	Large	WIw_L	Hw_L	Cw_L	Ew_L	Tw_L	WCw_L
	Small	WIw_S	Hw_S	Cw_S	Ew_S	Tw_S	WCw_S
Warm/Warm *	Large	$WIww_L$	Hww_L	Cww_L	Eww_L	Tww_L	$WCww_L$
	Small	$WIww_S$	Hww_S	Cww_S	Eww_S	Tww_S	$WCww_S$
Cold/Cold	Large	WIc_L	Hc_L	Cc_L	Ec_L	Tc_L	WCc_L
	Small	WIc_S	Hc_S	Cc_S	Ec_S	Tc_S	WCc_S

* If two cycles are tested to represent the Warm/Cold selection or the Warm/Warm selection, calculate the average of the two tested cycles and use that value for all further calculations.

3.4 *Test cycles for semi-automatic clothes washers.*

3.4.1 *Test Measurements.* Perform testing on each wash/rinse temperature selection available in the energy test cycle as defined in section 2.12.2 of this appendix. Test each load size as defined in section 2.8 of this appendix with the associated water fill level defined in section 3.2.3 of this appendix. Assign the bone-dry weight according to the value measured in section 2.8 of this appendix. Place the test load in the clothes washer and initiate the cycle under test. Measure the values for cold water consumption, electrical energy consumption, and cycle time for the complete cycle. Record the weight of the test load immediately after completion of the cycle. Table 3.4.1 of this appendix provides symbol definitions for each measured value for the Cold temperature selection.

TABLE 3.4.1—SYMBOL DEFINITIONS OF MEASURED VALUES FOR SEMI-AUTOMATIC CLOTHES WASHER TEST CYCLES

Temperature selection	Load size	Bone-dry weight	Hot water	Cold water	Electrical energy	Cycle time	Cycle complete weight
Cold	Large	WIc_L	not measured	Cc_L	Ec_L	Tc_L	WCc_L

TABLE 3.4.1—SYMBOL DEFINITIONS OF MEASURED VALUES FOR SEMI-AUTOMATIC CLOTHES WASHER TEST CYCLES—Continued

Temperature selection	Load size	Bone-dry weight	Hot water	Cold water	Electrical energy	Cycle time	Cycle complete weight
	Small	WIc_S	not measured	Cc_S	Ec_S	Tc_S	WCc_S

3.4.2 *Calculation of Hot and Warm measured values.* In lieu of testing, the measured values for the Hot and Warm cycles are calculated based on the measured values for the Cold cycle, as defined in section 3.4.1 of this appendix. Table 3.4.2 of this appendix provides the symbol definitions and calculations for each value for the Hot and Warm temperature selections.

TABLE 3.4.2—SYMBOL DEFINITIONS AND CALCULATION OF MEASURED VALUES FOR SEMI-AUTOMATIC CLOTHES WASHER TEST CYCLES

Temperature selection	Load Size	Bone-Dry weight	Hot water	Cold water	Electrical energy	Cycle time	Cycle complete weight
Hot	Large	$WIh_L = WIc_L$	$Hh_L = Cc_L$		$Eh_L = Ec_L$	$Th_L = Tc_L$	$WCh_L = WCc_L$
	Small	$WIh_S = WIc_S$	$Hh_S = Cc_S$		$Eh_S = Ec_S$	$Th_S = Tc_S$	$WCh_S = WCc_S$
Warm	Large	$WIw_L = WIc_L$	$Hw_L = Cc_L \div 2$	$Cw_L = Cc_L \div 2$	$Ew_L = Ec_L$	$Tw_L = Tc_L$	$WCw_L = WCc_L$
	Small	$WIw_S = WIc_S$	$Hw_S = Cc_S \div 2$	$Cw_S = Cc_S \div 2$	$Ew_S = Ec_S$	$Tw_S = Tc_S$	$WCw_S = WCc_S$

3.5 *Combined low-power mode power.* Connect the clothes washer to a watt meter as specified in section 2.5.3 of this appendix. Establish the testing conditions set forth in sections 2.1, 2.4, and 2.10.2 of this appendix.

3.5.1 Perform combined low-power mode testing after completion of an active mode wash cycle included as part of the energy test cycle; after removing the test load; without changing the control panel settings used for the active mode wash cycle; with the door closed; and without disconnecting the electrical energy supply to the clothes washer between completion of the active mode wash cycle and the start of combined low-power mode testing.

3.5.2 For a clothes washer that takes some time to automatically enter a stable inactive mode or off mode state from a higher power state as discussed in Section 5, Paragraph 5.1, note 1 of IEC 62301, allow sufficient time for the clothes washer to automatically reach the default inactive/off mode state before proceeding with the test measurement.

3.5.3 Once the stable inactive/off mode state has been reached, measure and record the default inactive/off mode power, $P_{default}$, in watts, following the test procedure for the sampling method specified in Section 5, Paragraph 5.3.2 of IEC 62301.

3.5.4 For a clothes washer with a switch, dial, or button that can be optionally selected by the end user to achieve a lower-power inactive/off mode state than the default inactive/off mode state measured in section 3.5.3 of this appendix, after performing the measurement in section 3.5.3 of this appendix, activate the switch, dial, or button to the position resulting in the lowest power consumption and repeat the measurement procedure described in section 3.5.3 of this appendix. Measure and record the lowest-power inactive/off mode power, P_{lowest}, in Watts.

3.6 *Energy consumption for the purpose of determining the cycle selection(s) to be included in the energy test cycle.* This section is implemented only in cases where the energy test cycle flowcharts in section 2.12.1 of this appendix require the determination of the wash/rinse temperature selection with the highest energy consumption.

3.6.1 For the wash/rinse temperature selection being considered under this section, establish the testing conditions set forth in section 2 of this appendix. Select the applicable cycle selection and wash/rinse temperature selection. For all wash/rinse temperature selections, select the cycle settings as described in section 3.2 of this appendix.

3.6.2 Measure each wash cycle's electrical energy consumption (E_L) and hot water consumption (H_L). Calculate the total energy consumption for each cycle selection (E_{TL}), as follows:

$E_{TL} = E_L + (H_L \times T \times K)$

Where:

E_L is the electrical energy consumption, expressed in kilowatt-hours per cycle.

H_L is the hot water consumption, expressed in gallons per cycle.

T = nominal temperature rise = 65 °F (36.1 °C).

K = Water specific heat in kilowatt-hours per gallon per degree F = 0.00240 kWh/gal − °F (0.00114 kWh/L − °C).

4. Calculation of Derived Results From Test Measurements

4.1 *Hot water and machine electrical energy consumption of clothes washers.*

4.1.1 *Per-cycle temperature-weighted hot water consumption for all load sizes tested.* Calculate the per-cycle temperature-weighted hot water consumption for the large test load size, Vh_L, and the small test load size, Vh_S, expressed in gallons per cycle (or liters per cycle) and defined as:

(a) $Vh_L = [Hx_L \times TUF_x] + [Hh_L \times TUF_h] + [Hw_L \times TUF_w] + [Hww_L \times TUF_{ww}] + [Hc_L \times TUF_c]$

(b) $Vh_S = [Hx_S \times TUF_x] + [Hh_S \times TUF_h] + [Hw_S \times TUF_w] + [Hww_S \times TUF_{ww}] + [Hc_S \times TUF_c]$

Where:

Hx_L, Hh_L, Hw_L, Hww_L, Hc_L, Hx_S, Hh_S, Hw_S, Hww_S, and Hc_S are the hot water consumption values, in gallons per-cycle (or liters per cycle) as measured in section 3.3 of this appendix for automatic clothes washers or section 3.4 of this appendix for semi-automatic clothes washers.

TUF_x, TUF_h, TUF_w, TUF_{ww}, and TUF_c are temperature use factors for Extra-Hot Wash/Cold Rinse, Hot Wash/Cold Rinse, Warm Wash/Cold Rinse, Warm Wash/Warm Rinse, and Cold Wash/Cold Rinse temperature selections, respectively, as defined in Table 4.1.1 of this appendix.

TABLE 4.1.1—TEMPERATURE USE FACTORS

Wash/rinse temperature selections available in the energy test cycle	Clothes washers with cold rinse only					Clothes washers with both cold and warm rinse		
	C/C	H/C C/C	H/C W/C C/C *	XH/C H/C C/C	XH/C H/C W/C C/C	H/C W/C W/W C/C	XH/C H/C W/W C/C	XH/C H/C W/C W/W C/C
TUFx (Extra-Hot/Cold)	.....	.....	.....	0.14	0.05	.....	0.14	0.05
TUFh (Hot/Cold)	.....	0.63	0.14	**0.49	0.09	0.14	**0.22	0.09
TUFw (Warm/Cold)	.....	.....	0.49	.....	0.49	0.22	.....	0.22
TUFww (Warm/Warm)	.....	.....	.....	.....	.....	0.27	0.27	0.27
TUFc (Cold/Cold)	1.00	0.37	0.37	0.37	0.37	0.37	0.37	0.37

*This column applies to all semi-automatic clothes washers.
**On clothes washers with only two wash temperature selections <140 °F, the higher of the two wash temperatures is classified as a Hot Wash/Cold Rinse, in accordance with the wash/rinse temperature definitions within the energy test cycle.

4.1.2 *Total per-cycle hot water energy consumption for all load sizes tested.* Calculate the total per-cycle hot water energy consumption for the large test load size, HE_L, and the small test load size, HE_S, expressed in kilowatt-hours per cycle and defined as:

(a) $HE_L = [Vh_L \times T \times K]$ = Total energy when the large test load is tested.

(b) $HE_S = [Vh_S \times T \times K]$ = Total energy when the small test load is tested.

Where:

Vh_L and Vh_S are defined in section 4.1.1 of this appendix.

T = Temperature rise = 65 °F (36.1 °C).

K = Water specific heat in kilowatt-hours per gallon per degree F = 0.00240 kWh/gal − °F (0.00114 kWh/L − °C).

4.1.3 *Total weighted per-cycle hot water energy consumption.* Calculate the total weighted per-cycle hot water energy consumption, HE_T, expressed in kilowatt-hours per cycle and defined as:

$HE_T = [HE_L \times LUF_L] + [HE_S \times LUF_S]$

Where:

HE_L and HE_S are defined in section 4.1.2 of this appendix.

LUF_L = Load usage factor for the large test load = 0.5.

LUF_S = Load usage factor for the small test load = 0.5.

4.1.4 *Total per-cycle hot water energy consumption using gas-heated or oil-heated water, for product labeling requirements.* Calculate for the energy test cycle the per-cycle hot water consumption, HE_{TG}, using gas-heated or oil-heated water, expressed in Btu per cycle (or megajoules per cycle) and defined as:

$HE_{TG} = HE_T \times 1/e \times 3412$ Btu/kWh or $HE_{TG} = HE_T \times 1/e \times 3.6$ MJ/kWh.

Where:

e = Nominal gas or oil water heater efficiency = 0.75.

HE_T = As defined in section 4.1.3 of this appendix.

4.1.5 *Per-cycle machine electrical energy consumption for all load sizes tested.* Calculate the total per-cycle machine electrical energy consumption for the large test load size, ME_L, and the small test load size, ME_S, expressed in kilowatt-hours per cycle and defined as:

(a) $ME_L = [Ex_L \times TUF_x] + [Eh_L \times TUF_h] + [Ew_L \times TUF_w] + [Eww_L \times TUF_{ww}] + [Ec_L \times TUF_c]$

(b) $ME_S = [Ex_S \times TUF_x] + [Eh_S \times TUF_h] + [Ew_S \times TUF_w] + [Eww_S \times TUF_{ww}] + [Ec_S \times TUF_c]$

Where:

Ex_L, Eh_L, Ew_L, Eww_L, Ec_L, Ex_S, Eh_S, Ew_S, Eww_S, and Ec_S are the electrical energy consumption values, in kilowatt-hours per cycle as measured in section 3.3 of this appendix for automatic clothes washers or section 3.4 of this appendix for semi-automatic clothes washers.

TUF_x, TUF_h, TUF_w, TUF_{ww}, and TUF_c are defined in Table 4.1.1 of this appendix.

4.1.6 *Total weighted per-cycle machine electrical energy consumption.* Calculate the total weighted per-cycle machine electrical energy consumption, ME_T, expressed in kilowatt-hours per cycle and defined as:

$ME_T = [ME_L \times LUF_L] + [ME_S \times LUF_S]$

Where:

ME_L and ME_S are defined in section 4.1.5 of this appendix.

LUF_L and LUF_S are defined in section 4.1.3 of this appendix.

4.2 *Water consumption of clothes washers.*

4.2.1 *Per cycle total water consumption for each large load size tested.* Calculate the per-cycle total water consumption of the large test load for the Extra-Hot Wash/Cold Rinse cycle, Qx_L, Hot Wash/Cold Rinse cycle, Qh_L, Warm Wash/Cold Rinse cycle, Qw_L, Warm Wash/Warm Rinse cycle, Qww_L, and Cold Wash/Cold Rinse cycle, Qc_L, defined as:

(a) $Qx_L = Hx_L + Cx_L$

(b) $Qh_L = Hh_L + Ch_L$

(c) $Qw_L = Hw_L + Cw_L$

(d) $Qww_L = Hww_L + Cww_L$

(e) $Qc_L = Hc_L + Cc_L$

Where:

Hx_L, Hh_L, Hw_L, Hww_L, Hc_L, Cx_L, Ch_L, Cw_L, Cww_L, and Cc_L are defined in section 3.3 of this appendix for automatic clothes washers or section 3.4 of this appendix for semi-automatic clothes washers.

4.2.2 *Per cycle total water consumption for each small load size tested.* Calculate the per-cycle total water consumption of the small test load for the Extra-Hot Wash/Cold Rinse cycle, Qx_S, Hot Wash/Cold Rinse cycle, Qh_S, Warm Wash/Cold Rinse cycle, Qw_S, Warm Wash/Warm Rinse cycle, Qww_S, and Cold Wash/Cold Rinse cycle, Qc_S, defined as:

(a) $Qx_S = Hx_S + Cx_S$

(b) $Qh_S = Hh_S + Ch_S$

(c) $Qw_S = Hw_S + Cw_S$

(d) $Qww_S = Hww_S + Cww_S$

(e) $Qc_S = Hc_S + Cc_S$

Where:

Hx_S, Hh_S, Hw_S, Hww_S, Hc_S, Cx_S, Ch_S, Cw_S, Cww_S, and Cc_S are defined in section 3.3 of this appendix for automatic clothes washers or section 3.4 of this appendix for semi-automatic clothes washers.

4.2.3 *Per-cycle total water consumption for all load sizes tested.* Calculate the total per-cycle water consumption for the large test load size, Q_L, and the small test load size, Q_S, expressed in gallons per cycle (or liters per cycle) and defined as:

(a) $Q_L = [Qx_L \times TUFx] + [Qh_L \times TUFh] + [Qw_L \times TUFw] + [Qww_L \times TUFww] + [Qc_L \times TUFc]$

(b) $Q_S = [Qx_S \times TUFx] + [Qh_S \times TUFh] + [Qw_S \times TUFw] + [Qww_S \times TUFww] + [Qc_S \times TUFc]$

Where:

Qx_L, Qh_L, Qw_L, Qww_L, and Qc_L are defined in section 4.2.1 of this appendix.

Qx_S, Qh_S, Qw_S, Qww_S, and Qc_S are defined in section 4.2.2 of this appendix.

TUFx, TUFh, TUFw, TUFww, and TUFc are defined in Table 4.1.1 of this appendix.

4.2.4 *Total weighted per-cycle water consumption.* Calculate the total per-cycle water consumption, Q_T, expressed in gallons per cycle (or liters per cycle) and defined as:

$Q_T = [Q_L \times LUF_L] + [Q_S \times LUF_S]$

Where:

Q_L and Q_S are defined in section 4.2.3 of this appendix.

LUF_L and LUF_S are defined in section 4.1.3 of this appendix.

4.3 *Remaining moisture content (RMC).*

4.3.1 *Per cycle remaining moisture content for each large load size tested.* Calculate the per-cycle remaining moisture content of the large test load for the Extra-Hot Wash/Cold Rinse cycle, $RMCx_L$, Hot Wash/Cold Rinse cycle, $RMCh_L$, Warm Wash/Cold Rinse cycle, $RMCw_L$, Warm Wash/Warm Rinse cycle, $RMCww_L$, and Cold Wash/Cold Rinse cycle, $RMCc_L$, defined as:

(a) $RMCx_L = (WCx_L - WIx_L)/WIx_L$

(b) $RMCh_L = (WCh_L - WIh_L)/WIh_L$

(c) $RMCw_L = (WCw_L - WIw_L)/WIw_L$

(d) $RMCww_L = (WCww_L - WIww_L)/WIww_L$

(e) $RMCc_L = (WCc_L - WIc_L)/WIc_L$

Where:

WCx_L, WCh_L, WCw_L, $WCww_L$, WCc_L, WIx_L, WIh_L, WIw_L, $WIww_L$, and WIc_L are the bone-dry weights and cycle completion weights as measured in section 3.3 of this appendix for automatic clothes washers or section 3.4 of this appendix for semi-automatic clothes washers.

4.3.2 *Per cycle remaining moisture content for each small load size tested.* Calculate the per-cycle remaining moisture content of the small test load for the Extra-Hot Wash/Cold Rinse cycle, $RMCx_S$, Hot Wash/Cold Rinse cycle, $RMCh_S$, Warm Wash/Cold Rinse cycle, $RMCw_S$, Warm Wash/Warm Rinse cycle, $RMCww_S$, and Cold Wash/Cold Rinse cycle, $RMCc_S$, defined as:

(a) $RMCx_S = (WCx_S—WIx_S)/WIx_S$
(b) $RMCh_S = (WCh_S—WIh_S)/WIh_S$
(c) $RMCw_S = (WCw_S—WIw_S)/WIw_S$
(d) $RMCww_S = (WCww_S—WIww_S)/WIww_S$
(e) $RMCc_S = (WCc_S—WIc_S)/WIc_S$

Where:

WCx_S, WCh_S, WCw_S, $WCww_S$, WCc_S, WIx_S, WIh_S, WIw_S, $WIww_S$, and WIc_S are the bone-dry weights and cycle completion weights as measured in section 3.3 of this appendix for automatic clothes washers or section 3.4 of this appendix for semi-automatic clothes washers.

4.3.3 *Per-cycle remaining moisture content for all load sizes tested.* Calculate the per-cycle temperature-weighted remaining moisture content for the large test load size, RMC_L, and the small test load size, RMC_S, defined as:

(a) $RMC_L = [RMCx_L \times TUF_x] + [RMCh_L \times TUF_h] + [RMCw_L \times TUF_w] + [RMCww_L \times TUF_{ww}] + [RMCc_L \times TUF_c]$
(b) $RMC_S = [RMCx_S \times TUF_x] + [RMCh_S \times TUF_h] + [RMCw_S \times TUF_w] + [RMCww_S \times TUF_{ww}] + [RMCc_S \times TUF_c]$

Where:

$RMCx_L$, $RMCh_L$, $RMCw_L$, $RMCww_L$, and $RMCc_L$ are defined in section 4.3.1 of this appendix.

$RMCx_S$, $RMCh_S$, $RMCw_S$, $RMCww_S$, and $RMCc_S$ are defined in section 4.3.2 of this appendix.

TUF_x, TUF_h, TUF_w, TUF_{ww}, and TUF_c are defined in Table 4.1.1 of this appendix.

4.3.4 *Weighted per-cycle remaining moisture content.* Calculate the weighted per-cycle remaining moisture content, RMC_T, defined as:

$RMC_T = [RMC_L \times LUF_L] + [RMC_S \times LUF_S]$

Where:

RMC_L and RMC_S are defined in section 4.3.3 of this appendix.

LUF_L and LUF_S are defined in section 4.1.3 of this appendix.

4.3.5 Apply the RMC correction curve as described in section 9 of appendix J3 to this subpart to calculate the corrected remaining moisture content, RMC_{corr}, expressed as a percentage as follows:

$RMC_{corr} = (A \times RMC_T + B) \times 100\%$

Where:

A and B are the coefficients of the RMC correction curve as defined in section 8.7 of appendix J3 to this subpart.

RMC_T = As defined in section 4.3.4 of this appendix.

4.4 *Per-cycle energy consumption for removal of moisture from test load.* Calculate the per-cycle energy required to remove the remaining moisture of the test load, DE_T, expressed in kilowatt-hours per cycle and defined as:

$DE_T = [(LUF_L \times \text{Large test load weight}) + (LUF_S \times \text{Small test load weight})] \times (RMC_{corr} - 2\%) \times (DEF) \times (DUF)$

Where:

LUF_L and LUF_S are defined in section 4.1.3 of this appendix.

Large and small test load weights are defined in Table 5.1 of this appendix.

RMC_{corr} = As defined in section 4.3.5 of this appendix.

DEF = Nominal energy required for a clothes dryer to remove moisture from clothes = 0.5 kWh/lb (1.1 kWh/kg).

DUF = Dryer usage factor, percentage of washer loads dried in a clothes dryer = 0.91.

4.5 *Cycle time.*

4.5.1 *Per-cycle temperature-weighted cycle time for all load sizes tested.* Calculate the per-cycle temperature-weighted cycle time for the large test load size, T_L, and the small test load size, T_S, expressed in minutes, and defined as:

(a) $T_L = [Tx_L \times TUF_x] + [Th_L \times TUF_h] + [Tw_L \times TUF_w] + [Tww_L \times TUF_{ww}] + [Tc_L \times TUF_c]$
(b) $T_S = [Tx_S \times TUF_x] + [Th_S \times TUF_h] + [Tw_S \times TUF_w] + [Tww_S \times TUF_{ww}] + [Tc_S \times TUF_c]$

Where:

Tx_L, Th_L, Tw_L, Tww_L, Tc_L, Tx_S, Th_S, Tw_S, Tww_S, and Tc_S are the cycle time values, in minutes as measured in section 3.3 of this appendix for automatic clothes washers or section 3.4 of this appendix for semi-automatic clothes washers.

TUF_x, TUF_h, TUF_w, TUF_{ww}, and TUF_c are temperature use factors for Extra-Hot Wash/Cold Rinse, Hot Wash/Cold Rinse, Warm Wash/Cold Rinse, Warm Wash/Warm Rinse, and Cold Wash/Cold Rinse temperature selections, respectively, as defined in Table 4.1.1 of this appendix.

4.5.2 *Total weighted per-cycle cycle time.* Calculate the total weighted per-cycle cycle time, T_T, expressed in minutes, rounded to the nearest minute, and defined as:

$T_T = [T_L \times LUF_L] + [T_S \times LUF_S]$

Where:

T_L and T_S are defined in section 4.5.1 of this appendix.

LUF_L and LUF_S are defined in section 4.1.3 of this appendix.

4.6 Combined low-power mode energy consumption.

4.6.1 *Annual hours in default inactive/off mode.* Calculate the annual hours spent in default inactive/off mode, $S_{default}$, expressed in hours and defined as:

$S_{default} = [8{,}760 - (234 \times T_T/60)]/N$

Where:

T_T = As defined in section 4.5.2 of this appendix, in minutes.

N = Number of inactive/off modes, defined as 1 if no optional lowest-power inactive/off mode is available; otherwise 2.

8,760 = Total number of hours in a year.

234 = Representative average number of clothes washer cycles in a year.

60 = Conversion from minutes to hours.

4.6.2 *Per-cycle combined low-power mode energy consumption.* Calculate the per-cycle combined low-power mode energy consumption, E_{TLP}, expressed in kilowatt-hours per cycle and defined as:

$E_{TLP} = [(P_{default} \times S_{default}) + (P_{lowest} \times S_{lowest})] \times K_p/234$

Where:

$P_{default}$ = Default inactive/off mode power, in watts, as measured in section 3.5.3 of this appendix.

P_{lowest} = Lowest-power inactive/off mode power, in watts, as measured in section 3.5.4 of this appendix for clothes washers with a switch, dial, or button that can be optionally selected by the end user to achieve a lower-power inactive/off mode than the default inactive/off mode; otherwise, $P_{lowest} = 0$.

$S_{default}$ = Annual hours in default inactive/off mode, as calculated in section 4.6.1 of this appendix.

S_{lowest} = Annual hours in lowest-power inactive/off mode, defined as 0 if no optional lowest-power inactive/off mode is available; otherwise equal to $S_{default}$, as calculated in section 4.6.1 of this appendix.

K_p = Conversion factor of watt-hours to kilowatt-hours = 0.001.

234 = Representative average number of clothes washer cycles in a year.

4.7 *Water efficiency ratio.* Calculate the water efficiency ratio, WER, expressed in pounds per gallon per cycle (or kilograms per liter per cycle), as:

$WER = [(LUF_L \times \text{Large test load weight}) + (LUF_S \times \text{Small test load weight})]/Q_T$

Where:

LUF_L and LUF_S are defined in section 4.1.3 of this appendix.

Large and small test load weights are defined in Table 5.1 of this appendix.

Q_T = As defined in section 4.2.4 of this appendix.

4.8 *Active-mode energy efficiency ratio.* Calculate the active-mode energy efficiency ratio, AEER, expressed in pounds per kilowatt-hour per cycle (or kilograms per kilowatt-hour per cycle) and defined as:

$AEER = [(LUF_L \times \text{Large test load weight}) + (LUF_S \times \text{Small test load weight})]/(ME_T + HE_T + DE_T)$

Where:

LUF_L and LUF_S are defined in section 4.1.3 of this appendix.

Large and small test load weights are defined in Table 5.1 of this appendix.

ME_T = As defined in section 4.1.6 of this appendix.

HE_T = As defined in section 4.1.3 of this appendix.

DE_T = As defined in section 4.4 of this appendix.

4.9 *Energy efficiency ratio.* Calculate the energy efficiency ratio, EER, expressed in pounds per kilowatt-hour per cycle (or kilograms per kilowatt-hour per cycle) and defined as:

$EER = [(LUF_L \times \text{Large test load weight}) + (LUF_S \times \text{Small test load weight})]/(ME_T + HE_T + DE_T + E_{TLP})$

Where:

LUF_L and LUF_S are defined in section 4.1.3 of this appendix.

Large and small test load weights are defined in Table 5.1 of this appendix.

ME_T = As defined in section 4.1.6 of this appendix.

HE_T = As defined in section 4.1.3 of this appendix.

DE_T = As defined in section 4.4 of this appendix.

E_{TLP} = As defined in section 4.6.2 of this appendix.

5. Test Loads

TABLE 5.1—TEST LOAD SIZES

Container volume		Small load		Large load	
cu. ft.	liter	lb	kg	lb	kg
≥ <	≥ <				
0.00–0.80	0.00–22.7	3.00	1.36	3.00	1.36
0.80–0.90	22.7–25.5	3.10	1.41	3.35	1.52
0.90–1.00	25.5–28.3	3.20	1.45	3.70	1.68
1.00–1.10	28.3–31.1	3.30	1.50	4.00	1.81
1.10–1.20	31.1–34.0	3.40	1.54	4.30	1.95
1.20–1.30	34.0–36.8	3.45	1.56	4.60	2.09
1.30–1.40	36.8–39.6	3.55	1.61	4.95	2.25
1.40–1.50	39.6–42.5	3.65	1.66	5.25	2.38
1.50–1.60	42.5–45.3	3.75	1.70	5.55	2.52
1.60–1.70	45.3–48.1	3.80	1.72	5.85	2.65
1.70–1.80	48.1–51.0	3.90	1.77	6.20	2.81
1.80–1.90	51.0–53.8	4.00	1.81	6.50	2.95
1.90–2.00	53.8–56.6	4.10	1.86	6.80	3.08
2.00–2.10	56.6–59.5	4.20	1.91	7.10	3.22
2.10–2.20	59.5–62.3	4.30	1.95	7.45	3.38
2.20–2.30	62.3–65.1	4.35	1.97	7.75	3.52
2.30–2.40	65.1–68.0	4.45	2.02	8.05	3.65
2.40–2.50	68.0–70.8	4.55	2.06	8.35	3.79
2.50–2.60	70.8–73.6	4.65	2.11	8.70	3.95
2.60–2.70	73.6–76.5	4.70	2.13	9.00	4.08
2.70–2.80	76.5–79.3	4.80	2.18	9.30	4.22
2.80–2.90	79.3–82.1	4.90	2.22	9.60	4.35
2.90–3.00	82.1–85.0	5.00	2.27	9.90	4.49
3.00–3.10	85.0–87.8	5.10	2.31	10.25	4.65
3.10–3.20	87.8–90.6	5.20	2.36	10.55	4.79
3.20–3.30	90.6–93.4	5.25	2.38	10.85	4.92
3.30–3.40	93.4–96.3	5.35	2.43	11.15	5.06
3.40–3.50	96.3–99.1	5.45	2.47	11.50	5.22
3.50–3.60	99.1–101.9	5.55	2.52	11.80	5.35
3.60–3.70	101.9–104.8	5.65	2.56	12.10	5.49
3.70–3.80	104.8–107.6	5.70	2.59	12.40	5.62
3.80–3.90	107.6–110.4	5.80	2.63	12.75	5.78
3.90–4.00	110.4–113.3	5.90	2.68	13.05	5.92
4.00–4.10	113.3–116.1	6.00	2.72	13.35	6.06
4.10–4.20	116.1–118.9	6.10	2.77	13.65	6.19
4.20–4.30	118.9–121.8	6.15	2.79	14.00	6.35
4.30–4.40	121.8–124.6	6.25	2.83	14.30	6.49
4.40–4.50	124.6–127.4	6.35	2.88	14.60	6.62
4.50–4.60	127.4–130.3	6.45	2.93	14.90	6.76
4.60–4.70	130.3–133.1	6.55	2.97	15.25	6.92
4.70–4.80	133.1–135.9	6.60	2.99	15.55	7.05
4.80–4.90	135.9–138.8	6.70	3.04	15.85	7.19
4.90–5.00	138.8–141.6	6.80	3.08	16.15	7.33
5.00–5.10	141.6–144.4	6.90	3.13	16.50	7.48
5.10–5.20	144.4–147.2	7.00	3.18	16.80	7.62
5.20–5.30	147.2–150.1	7.05	3.20	17.10	7.76
5.30–5.40	150.1–152.9	7.15	3.24	17.40	7.89
5.40–5.50	152.9–155.7	7.25	3.29	17.70	8.03
5.50–5.60	155.7–158.6	7.35	3.33	18.05	8.19
5.60–5.70	158.6–161.4	7.45	3.38	18.35	8.32
5.70–5.80	161.4–164.2	7.50	3.40	18.65	8.46
5.80–5.90	164.2–167.1	7.60	3.45	18.95	8.60
5.90–6.00	167.1–169.9	7.70	3.49	19.30	8.75
6.00–6.10	169.9–172.7	7.80	3.54	19.60	8.89
6.10–6.20	172.7–175.6	7.90	3.58	19.90	9.03
6.20–6.30	175.6–178.4	7.95	3.61	20.20	9.16
6.30–6.40	178.4–181.2	8.05	3.65	20.55	9.32
6.40–6.50	181.2–184.1	8.15	3.70	20.85	9.46
6.50–6.60	184.1–186.9	8.25	3.74	21.15	9.59
6.60–6.70	186.9–189.7	8.30	3.76	21.45	9.73
6.70–6.80	189.7–192.6	8.40	3.81	21.80	9.89
6.80–6.90	192.6–195.4	8.50	3.86	22.10	10.02

TABLE 5.1—TEST LOAD SIZES—Continued

Container volume		Small load		Large load	
cu. ft.	liter	lb	kg	lb	kg
≥ <	≥ <				
6.90–7.00	195.4–198.2	8.60	3.90	22.40	10.16
7.00–7.10	198.2–201.0	8.70	3.95	22.70	10.30
7.10–7.20	201.0–203.9	8.80	3.99	23.05	10.46
7.20–7.30	203.9–206.7	8.85	4.01	23.35	10.59
7.30–7.40	206.7–209.5	8.95	4.06	23.65	10.73
7.40–7.50	209.5–212.4	9.05	4.11	23.95	10.86
7.50–7.60	212.4–215.2	9.15	4.15	24.30	11.02
7.60–7.70	215.2–218.0	9.25	4.20	24.60	11.16
7.70–7.80	218.0–220.9	9.30	4.22	24.90	11.29
7.80–7.90	220.9–223.7	9.40	4.26	25.20	11.43
7.90–8.00	223.7–226.5	9.50	4.31	25.50	11.57

Notes: (1) All test load weights are bone-dry weights.
(2) Allowable tolerance on the test load weights is ±0.10 lbs (0.05 kg).

Appendix J1 [Removed and Reserved]

■ 9. Remove and reserve Appendix J1 to subpart B of part 430.

■ 10. Appendix J2 to subpart B of part 430 is amended by:
■ a. Revising the introductory note;
■ b. Adding section 0;
■ c. Revising section 1;
■ d. Revising the heading for section 2;
■ e. Revising section 2.2;
■ f. Adding sections 2.5.4.1 and 2.5.4.2;
■ g. Revising sections 2.5.5, 2.7 and 2.12;
■ h. Removing sections 2.7.1, 2.7.2, 2.7.3, 2.7.4, 2.7.4.1, 2.7.4.2, 2.7.4.3, 2.7.4.4, 2.7.4.5, 2.7.4.6, 2.7.4.6.1, 2.7.4.6.2, 2.7.4.7, and 2.7.5;
■ i. Removing ''energy stuffer clothes'' and adding in its place, ''energy stuffer cloths'' in section 2.8;
■ j. Revising section 3.2.5;
■ k. Adding sections 3.2.5.1 and 3.2.5.2;
■ l. Revising sections 3.2.6.2.2, 3.2.7 and 3.2.9;
■ m. Revising sections 3.3 and 3.6;
■ n. In sections 3.8.2.6, 3.8.3.2, and 3.8.3.4 removing ''section 7 of appendix J3'' and adding in its place, ''section 9 of appendix J3'', and removing ''section 6.1 of appendix J3'' and adding in its place, ''section 8.7 of appendix J3'';
■ o. Removing section 4.2.12;
■ p. Redesignating section 4.2.13 as 4.2.12;
■ q. Removing ''MEF'' and adding in its place ''MEF_{J2}'' in all instances in section 4.5;
■ r. Revising Table 5.1; and
■ s. Removing section 6.

The additions and revisions read as follows:

Appendix J2 to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Automatic and Semi-Automatic Clothes Washers

Note: Manufacturers must use the results of testing under this appendix to determine compliance with the relevant standards for clothes washers from § 430.32(g)(4) and from § 431.156(b) as they appeared in January 1, 2022 edition of 10 CFR parts 200–499. Specifically, before November 28, 2022 representations must be based upon results generated either under this appendix as codified on July 1, 2022 or under this appendix as it appeared in the 10 CFR parts 200–499 edition revised as of January 1, 2022. Any representations made on or after November 28, 2022 but before the compliance date of any amended standards for clothes washers must be made based upon results generated using this appendix as codified on July 1, 2022. Manufacturers must use the results of testing under Appendix J to determine compliance with any amended standards for clothes washers provided in 10 CFR 430.32(g) and in § 431.156 that are published after January 1, 2022. Any representations related to energy or water consumption of residential or commercial clothes washers must be made in accordance with the appropriate appendix that applies (*i.e.,* Appendix J or this appendix) when determining compliance with the relevant standard. Manufacturers may also use Appendix J to certify compliance with any amended standards prior to the applicable compliance date for those standards.

0. Incorporation by Reference

DOE incorporated by reference in § 430.3, the entire test standard for IEC 62301. However, only enumerated provisions of this standard are applicable to this appendix, as follows. In cases in which there is a conflict, the language of the test procedure in this appendix takes precedence over the referenced test standard.

0.1 IEC 62301:

(a) Section 4.2 as referenced in section 2.4 of this appendix;

(b) Section 4.3.2 as referenced in section 2.1.2 of this appendix;

(c) Section 4.4 as referenced in section 2.5.3 of this appendix;

(d) Section 5.1 as referenced in section 3.9.2 of this appendix;

(e) Section 5.2 as referenced in section 2.10 of this appendix; and

(f) Section 5.3.2 as referenced in section 3.9.3 of this appendix.

0.2 [Reserved]

1. Definitions

Active mode means a mode in which the clothes washer is connected to a mains power source, has been activated, and is performing one or more of the main functions of washing, soaking, tumbling, agitating, rinsing, and/or removing water from the clothing, or is involved in functions necessary for these main functions, such as admitting water into the washer or pumping water out of the washer. Active mode also includes delay start and cycle finished modes.

Active washing mode means a mode in which the clothes washer is performing any of the operations included in a complete cycle intended for washing a clothing load, including the main functions of washing, soaking, tumbling, agitating, rinsing, and/or removing water from the clothing.

Adaptive water fill control system means a clothes washer automatic water fill control system that is capable of automatically adjusting the water fill level based on the size or weight of the clothes load placed in the clothes container.

Automatic water fill control system means a clothes washer water fill control system that does not allow or require the user to determine or select the water fill level, and includes adaptive water fill control systems and fixed water fill control systems.

Bone-dry means a condition of a load of test cloth that has been dried in a dryer at maximum temperature for a minimum of 10 minutes, removed and weighed before cool down, and then dried again for 10 minute periods until the final weight change of the load is 1 percent or less.

Clothes container means the compartment within the clothes washer that holds the clothes during the operation of the machine.

Cold rinse means the coldest rinse temperature available on the machine, as indicated to the user on the clothes washer control panel.

Combined low-power mode means the aggregate of available modes other than active washing mode, including inactive

mode, off mode, delay start mode, and cycle finished mode.

Cycle finished mode means an active mode that provides continuous status display, intermittent tumbling, or air circulation following operation in active washing mode.

Delay start mode means an active mode in which activation of active washing mode is facilitated by a timer.

Energy test cycle means the complete set of wash/rinse temperature selections required for testing, as determined according to section 2.12 of this appendix.

Fixed water fill control system means a clothes washer automatic water fill control system that automatically terminates the fill when the water reaches a pre-defined level that is not based on the size or weight of the clothes load placed in the clothes container, without allowing or requiring the user to determine or select the water fill level.

Inactive mode means a standby mode that facilitates the activation of active mode by remote switch (including remote control), internal sensor, or timer, or that provides continuous status display.

Integrated modified energy factor means the quotient of the cubic foot (or liter) capacity of the clothes container divided by the total clothes washer energy consumption per cycle, with such energy consumption expressed as the sum of:

(a) The machine electrical energy consumption;

(b) The hot water energy consumption;

(c) The energy required for removal of the remaining moisture in the wash load; and

(d) The combined low-power mode energy consumption.

Integrated water factor means the quotient of the total weighted per-cycle water consumption for all wash cycles in gallons divided by the cubic foot (or liter) capacity of the clothes washer.

Load usage factor means the percentage of the total number of wash loads that a user would wash a particular size (weight) load.

Lot means a quantity of cloth that has been manufactured with the same batches of cotton and polyester during one continuous process.

Manual water fill control system means a clothes washer water fill control system that requires the user to determine or select the water fill level.

Modified energy factor means the quotient of the cubic foot (or liter) capacity of the clothes container divided by the total clothes washer energy consumption per cycle, with such energy consumption expressed as the sum of the machine electrical energy consumption, the hot water energy consumption, and the energy required for removal of the remaining moisture in the wash load.

Non-water-heating clothes washer means a clothes washer that does not have an internal water heating device to generate hot water.

Normal cycle means the cycle recommended by the manufacturer (considering manufacturer instructions, control panel labeling, and other markings on the clothes washer) for normal, regular, or typical use for washing up to a full load of normally soiled cotton clothing. For machines where multiple cycle settings are recommended by the manufacturer for normal, regular, or typical use for washing up to a full load of normally soiled cotton clothing, then the Normal cycle is the cycle selection that results in the lowest IMEF or MEF_{J2} value.

Off mode means a mode in which the clothes washer is connected to a mains power source and is not providing any active or standby mode function, and where the mode may persist for an indefinite time.

Standby mode means any mode in which the clothes washer is connected to a mains power source and offers one or more of the following user oriented or protective functions that may persist for an indefinite time:

(a) Facilitating the activation of other modes (including activation or deactivation of active mode) by remote switch (including remote control), internal sensor, or timer;

(b) Continuous functions, including information or status displays (including clocks) or sensor-based functions.

(c) A timer is a continuous clock function (which may or may not be associated with a display) that provides regular scheduled tasks (*e.g.,* switching) and that operates on a continuous basis.

Temperature use factor means, for a particular wash/rinse temperature setting, the percentage of the total number of wash loads that an average user would wash with that setting.

User-adjustable adaptive water fill control system means a clothes washer fill control system that allows the user to adjust the amount of water that the machine provides, which is based on the size or weight of the clothes load placed in the clothes container.

Wash time means the wash portion of active washing mode, which begins when the cycle is initiated and includes the agitation or tumble time, which may be periodic or continuous during the wash portion of active washing mode.

Water factor means the quotient of the total weighted per-cycle water consumption for cold wash divided by the cubic foot (or liter) capacity of the clothes washer.

Water-heating clothes washer means a clothes washer where some or all of the hot water for clothes washing is generated by a water heating device internal to the clothes washer.

2. Testing Conditions and Instrumentation

* * * * *

2.2 *Supply water.* Maintain the temperature of the hot water supply at the water inlets between 130 °F (54.4 °C) and 135 °F (57.2 °C), targeting the midpoint of the range. Maintain the temperature of the cold water supply at the water inlets between 55 °F (12.8 °C) and 60 °F (15.6 °C), targeting the midpoint of the range.

* * * * *

2.5.4 * * *

2.5.4.1 Non-reversible temperature indicator labels, adhered to the inside of the clothes container, may be used to confirm that an extra-hot wash temperature greater than 135 °F has been achieved during the wash cycle, under the following conditions. The label must remain waterproof, intact, and adhered to the wash drum throughout an entire wash cycle; provide consistent maximum temperature readings; and provide repeatable temperature indications sufficient to demonstrate that a wash temperature of greater than 135 °F has been achieved. The label must have been verified to consistently indicate temperature measurements with an accuracy of ±1 °F if the label provides a temperature indicator at 135 °F. If the label does not provide a temperature indicator at 135 °F, the label must have been verified to consistently indicate temperature measurements with an accuracy of ±1 °F if the next-highest temperature indicator is greater than 135 °F and less than 140 °F, or ±3 °F if the next-highest temperature indicator is 140 °F or greater. If the label does not provide a temperature indicator at 135 °F, failure to activate the next-highest temperature indicator does not necessarily indicate the lack of an extra-hot wash temperature. However, such a result would not be conclusive due to the lack of verification of the water temperature requirement, in which case an alternative method must be used to confirm that an extra-hot wash temperature greater than 135 °F has been achieved during the wash cycle. If using a temperature indicator label to test a front-loading clothes washer, adhere the label along the interior surface of the clothes container drum, midway between the front and the back of the drum, adjacent to one of the baffles. If using a temperature indicator label to test a top-loading clothes washer, adhere the label along the interior surface of the clothes container drum, on the vertical portion of the sidewall, as close to the bottom of the container as possible.

2.5.4.2 Submersible temperature loggers placed inside the wash drum may be used to confirm that an extra-hot wash temperature greater than 135 °F has been achieved during the wash cycle, under the following conditions. The submersible temperature logger must have a time resolution of at least 1 data point every 5 seconds and a temperature measurement accuracy of ±1 °F. Due to the potential for a waterproof capsule to provide a thermal insulating effect, failure to measure a temperature of 135 °F does not necessarily indicate the lack of an extra-hot wash temperature. However, such a result would not be conclusive due to the lack of verification of the water temperature requirement, in which case an alternative method must be used to confirm that an extra-hot wash temperature greater than 135 °F has been achieved during the wash cycle.

2.5.5 *Water meter.* A water meter must be installed in both the hot and cold water lines to measure water flow and/or water consumption. The water meters must have a resolution no larger than 0.1 gallons (0.4 liters) and a maximum error no greater than 2 percent for the water flow rates being measured. If the volume of hot water for any individual cycle within the energy test cycle is less than 0.1 gallons (0.4 liters), the hot water meter must have a resolution no larger than 0.01 gallons (0.04 liters).

* * * * *

2.7 *Test cloths.* The test cloth material and dimensions must conform to the specifications in appendix J3 to this subpart.

The energy test cloth and the energy stuffer cloths must be clean and must not be used for more than 60 test runs (after preconditioning as specified in section 5 of appendix J3 to this subpart). All energy test cloth must be permanently marked identifying the lot number of the material. Mixed lots of material must not be used for testing a clothes washer. The moisture absorption and retention must be evaluated for each new lot of test cloth using the standard extractor Remaining Moisture Content (RMC) procedure specified in appendix J3 to this subpart.

* * * * *

2.12 *Determining the energy test cycle.* To determine the energy test cycle, evaluate the wash/rinse temperature selection flowcharts in the order in which they are presented in this section. Except for Cold Wash/Cold Rinse, use the maximum load size to evaluate each flowchart. The determination of the energy test cycle must take into consideration all cycle settings available to the end user, including any cycle selections or cycle modifications provided by the manufacturer via software or firmware updates to the product, for the basic model under test. The energy test cycle does not include any cycle that is recommended by the manufacturer exclusively for cleaning, deodorizing, or sanitizing the clothes washer.

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Figure 2.12.1—Determination of Cold Wash/Cold Rinse

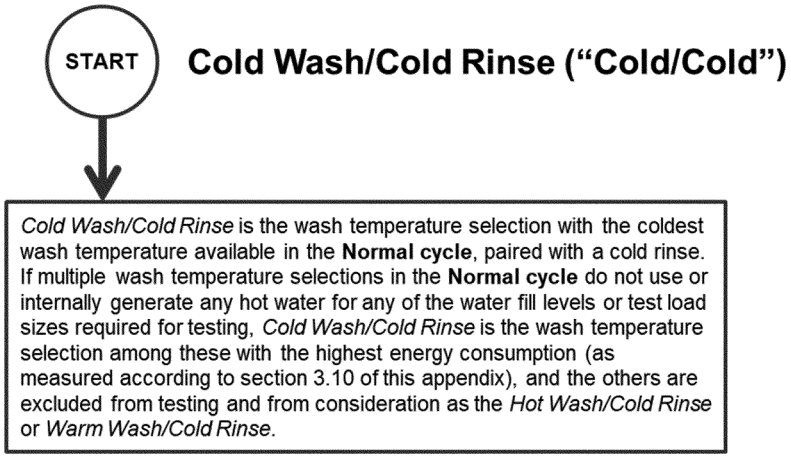


Figure 2.12.2—Determination of Hot Wash/Cold Rinse

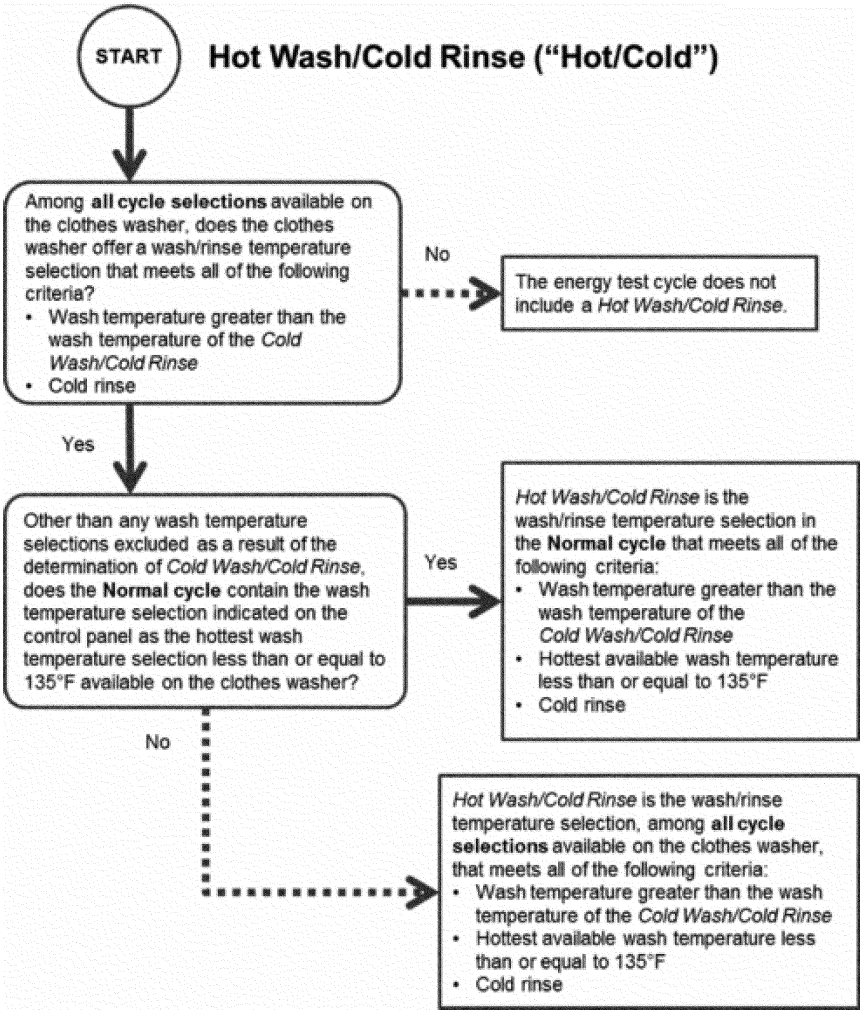


Figure 2.12.3—Determination of Warm Wash/Cold Rinse

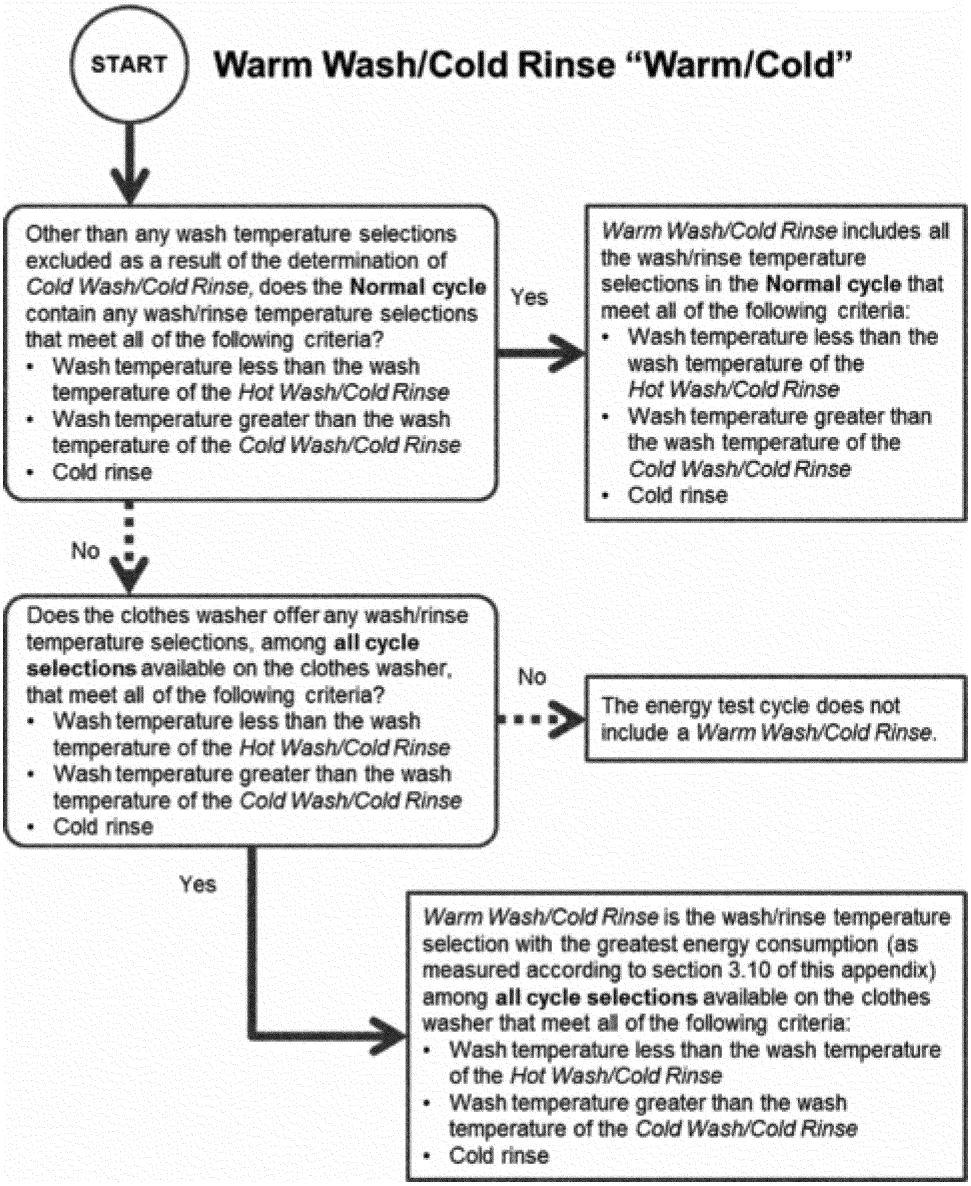


Figure 2.12.4—Determination of Warm Wash/Warm Rinse

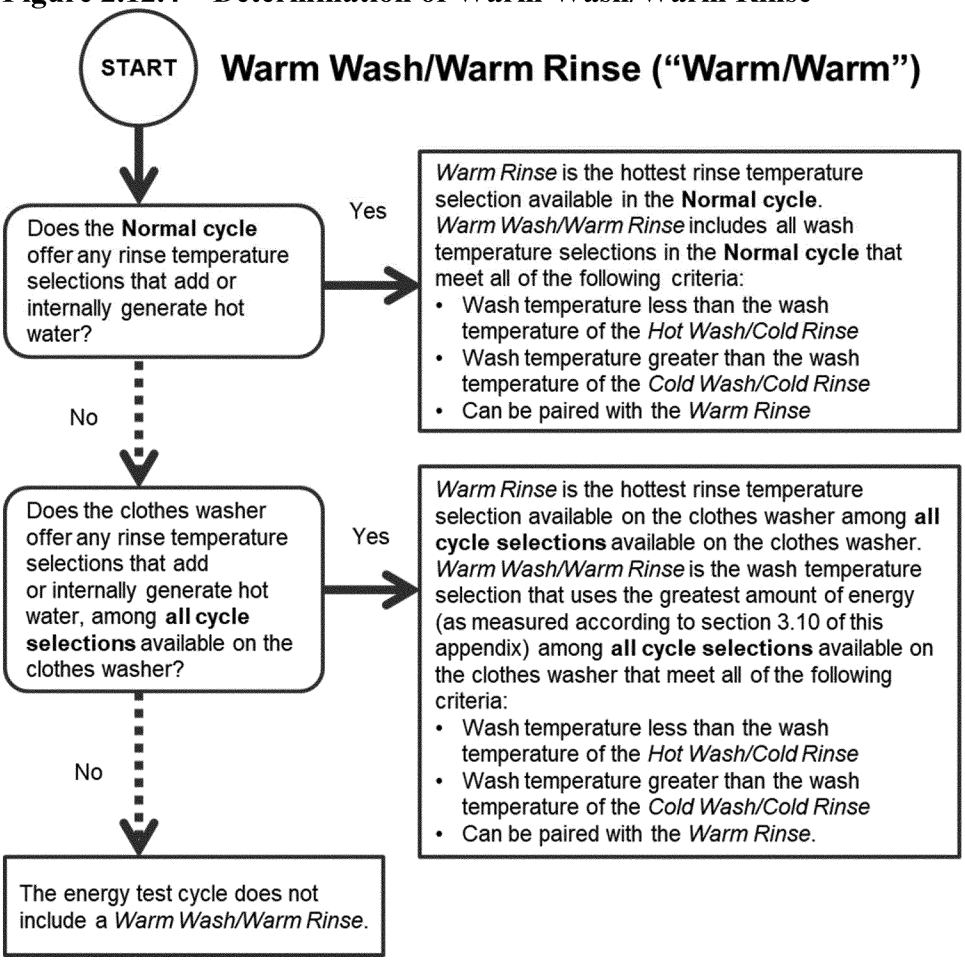
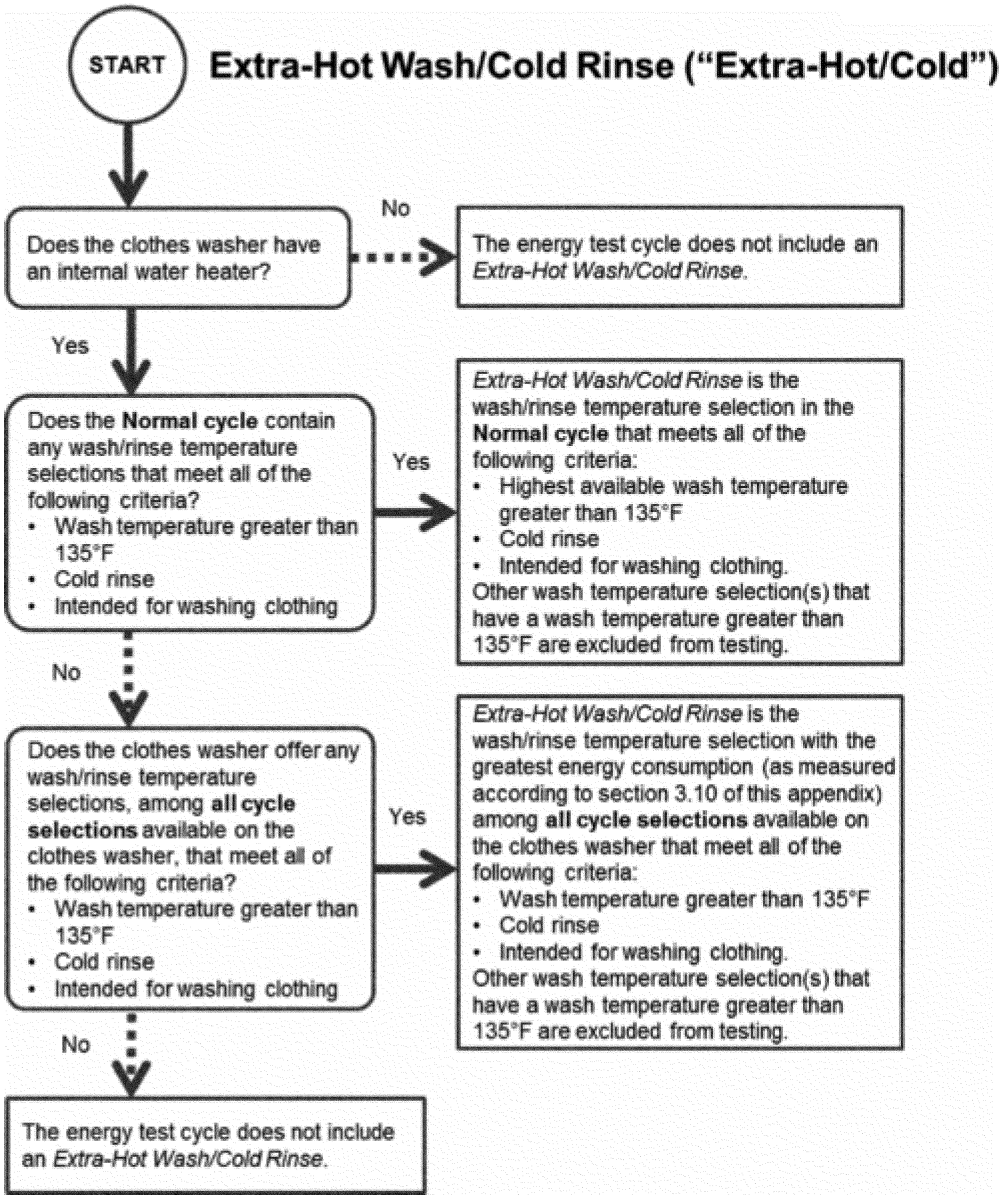


Figure 2.12.5—Determination of Extra-Hot Wash/Cold Rinse



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3. Test Measurements

* * * * *

3.2.5 *Wash time setting.*

3.2.5.1 If the cycle under test offers a range of wash time settings, the wash time setting shall be the higher of either the minimum or 70 percent of the maximum wash time available for the wash cycle under test, regardless of the labeling of suggested dial locations. If 70 percent of the maximum wash time is not available on a dial with a discrete number of wash time settings, choose the next-highest setting greater than 70 percent.

3.2.5.2 If the clothes washer is equipped with an electromechanical dial or timer controlling wash time that rotates in both directions, reset the dial to the minimum wash time and then turn it in the direction of increasing wash time to reach the appropriate setting. If the appropriate setting is passed, return the dial to the minimum wash time and then turn in the direction of increasing wash time until the appropriate setting is reached.

* * * * *

3.2.6 * * *

* * * * *

3.2.6.2.2 *User-adjustable adaptive.* Conduct four tests on clothes washers with user-adjustable adaptive water fill controls. Conduct the first test using the maximum test load and with the adaptive water fill control system set in the setting that uses the most water. Conduct the second test using the minimum test load and with the adaptive water fill control system set in the setting that uses the least water. Conduct the third test using the average test load and with the adaptive water fill control system set in the setting that uses the most water. Conduct the fourth test using the average test load and with the adaptive water fill control system set in the setting that uses the least water. Average the results of the third and fourth tests to obtain the energy and water consumption values for the average test load size.

* * * * *

3.2.7 *Manufacturer default settings.* For clothes washers with electronic control systems, use the manufacturer default settings for any cycle selections, except for (1) the temperature selection, (2) the wash water fill levels, (3) if necessary, the spin speeds on wash cycles used to determine remaining moisture content, or (4) network settings. If the clothes washer has network capabilities, the network settings must be disabled throughout testing if such settings can be disabled by the end-user and the product's user manual provides instructions on how to do so. For all other cycle selections, the manufacturer default settings must be used for wash conditions such as

agitation/tumble operation, soil level, spin speed on wash cycles used to determine energy and water consumption, wash times, rinse times, optional rinse settings, water heating time for water heating clothes washers, and all other wash parameters or optional features applicable to that wash cycle. Any optional wash cycle feature or setting (other than wash/rinse temperature, water fill level selection, spin speed on wash cycles used to determine remaining moisture content, or network settings on clothes washers with network capabilities) that is activated by default on the wash cycle under test must be included for testing unless the manufacturer instructions recommend not selecting this option, or recommend selecting a different option, for washing normally soiled cotton clothing. For clothes washers with control panels containing mechanical switches or dials, any optional settings, except for (1) the temperature selection, (2) the wash water fill levels, or (3) if necessary, the spin speeds on wash cycles used to determine remaining moisture content, must be in the position recommended by the manufacturer for washing normally soiled cotton clothing. If the manufacturer instructions do not recommend a particular switch or dial position to be used for washing normally soiled cotton clothing, the setting switch or dial must remain in its as-shipped position.

* * * * *

3.2.9 *Anomalous Test Cycles.* If during a wash cycle the clothes washer: (a) Signals to the user by means of a visual or audio alert that an out-of-balance condition has been detected; or (b) terminates prematurely and thus does not include the agitation/tumble operation, spin speed(s), wash times, and rinse times applicable to the wash cycle under test, discard the test data and repeat the wash cycle. Document in the test report the rejection of data from any wash cycle during testing and the reason for the rejection.

3.3 *Extra-Hot Wash/Cold Rinse.* Measure the water and electrical energy consumption for each water fill level and test load size as specified in sections 3.3.1 through 3.3.3 of this appendix for the Extra-Hot Wash/Cold Rinse as defined within the energy test cycle.

* * * * *

3.6 *Warm Wash/Warm Rinse.* Measure the water and electrical energy consumption for each water fill level and/or test load size as specified in sections 3.6.1 through 3.6.3 of this appendix for the applicable Warm Wash/Warm Rinse temperature selection(s), as defined within the energy test cycle. For a clothes washer with fewer than four discrete Warm Wash/Warm Rinse temperature selections, test all Warm Wash/Warm Rinse selections. For a clothes washer that offers four or more Warm Wash/Warm Rinse selections, test at all discrete selections, or test at 25 percent, 50 percent, and 75 percent positions of the temperature selection device between the hottest hot (≤ 135 °F (57.2 °C)) wash and the coldest cold wash. If a selection is not available at the 25, 50 or 75 percent position, in place of each such unavailable selection use the next warmer setting. For each reportable value to be used for the Warm Wash/Warm Rinse temperature selection, calculate the average of all Warm Wash/Warm Rinse temperature selections tested pursuant to this section.

* * * * *

5. Test Loads

TABLE 5.1—TEST LOAD SIZES

Container volume		Minimum load		Maximum load		Average load	
cu. ft.	liter	lb	kg	lb	kg	lb	kg
≥ <	≥ <						
0.00–0.80	0.00–22.7	3.00	1.36	3.00	1.36	3.00	1.36
0.80–0.90	22.7–25.5	3.00	1.36	3.50	1.59	3.25	1.47
0.90–1.00	25.5–28.3	3.00	1.36	3.90	1.77	3.45	1.56
1.00–1.10	28.3–31.1	3.00	1.36	4.30	1.95	3.65	1.66
1.10–1.20	31.1–34.0	3.00	1.36	4.70	2.13	3.85	1.75
1.20–1.30	34.0–36.8	3.00	1.36	5.10	2.31	4.05	1.84
1.30–1.40	36.8–39.6	3.00	1.36	5.50	2.49	4.25	1.93
1.40–1.50	39.6–42.5	3.00	1.36	5.90	2.68	4.45	2.02
1.50–1.60	42.5–45.3	3.00	1.36	6.40	2.90	4.70	2.13
1.60–1.70	45.3–48.1	3.00	1.36	6.80	3.08	4.90	2.22
1.70–1.80	48.1–51.0	3.00	1.36	7.20	3.27	5.10	2.31
1.80–1.90	51.0–53.8	3.00	1.36	7.60	3.45	5.30	2.40
1.90–2.00	53.8–56.6	3.00	1.36	8.00	3.63	5.50	2.49
2.00–2.10	56.6–59.5	3.00	1.36	8.40	3.81	5.70	2.59
2.10–2.20	59.5–62.3	3.00	1.36	8.80	3.99	5.90	2.68
2.20–2.30	62.3–65.1	3.00	1.36	9.20	4.17	6.10	2.77
2.30–2.40	65.1–68.0	3.00	1.36	9.60	4.35	6.30	2.86
2.40–2.50	68.0–70.8	3.00	1.36	10.00	4.54	6.50	2.95
2.50–2.60	70.8–73.6	3.00	1.36	10.50	4.76	6.75	3.06
2.60–2.70	73.6–76.5	3.00	1.36	10.90	4.94	6.95	3.15
2.70–2.80	76.5–79.3	3.00	1.36	11.30	5.13	7.15	3.24
2.80–2.90	79.3–82.1	3.00	1.36	11.70	5.31	7.35	3.33
2.90–3.00	82.1–85.0	3.00	1.36	12.10	5.49	7.55	3.42
3.00–3.10	85.0–87.8	3.00	1.36	12.50	5.67	7.75	3.52
3.10–3.20	87.8–90.6	3.00	1.36	12.90	5.85	7.95	3.61
3.20–3.30	90.6–93.4	3.00	1.36	13.30	6.03	8.15	3.70
3.30–3.40	93.4–96.3	3.00	1.36	13.70	6.21	8.35	3.79
3.40–3.50	96.3–99.1	3.00	1.36	14.10	6.40	8.55	3.88
3.50–3.60	99.1–101.9	3.00	1.36	14.60	6.62	8.80	3.99
3.60–3.70	101.9–104.8	3.00	1.36	15.00	6.80	9.00	4.08
3.70–3.80	104.8–107.6	3.00	1.36	15.40	6.99	9.20	4.17
3.80–3.90	107.6–110.4	3.00	1.36	15.80	7.16	9.40	4.26
3.90–4.00	110.4–113.3	3.00	1.36	16.20	7.34	9.60	4.35
4.00–4.10	113.3–116.1	3.00	1.36	16.60	7.53	9.80	4.45
4.10–4.20	116.1–118.9	3.00	1.36	17.00	7.72	10.00	4.54
4.20–4.30	118.9–121.8	3.00	1.36	17.40	7.90	10.20	4.63
4.30–4.40	121.8–124.6	3.00	1.36	17.80	8.09	10.40	4.72
4.40–4.50	124.6–127.4	3.00	1.36	18.20	8.27	10.60	4.82
4.50–4.60	127.4–130.3	3.00	1.36	18.70	8.46	10.85	4.91
4.60–4.70	130.3–133.1	3.00	1.36	19.10	8.65	11.05	5.00

TABLE 5.1—TEST LOAD SIZES—Continued

Container volume		Minimum load		Maximum load		Average load	
cu. ft.	liter	lb	kg	lb	kg	lb	kg
≥ <	≥ <						
4.70–4.80	133.1–135.9	3.00	1.36	19.50	8.83	11.25	5.10
4.80–4.90	135.9–138.8	3.00	1.36	19.90	9.02	11.45	5.19
4.90–5.00	138.8–141.6	3.00	1.36	20.30	9.20	11.65	5.28
5.00–5.10	141.6–144.4	3.00	1.36	20.70	9.39	11.85	5.38
5.10–5.20	144.4–147.2	3.00	1.36	21.10	9.58	12.05	5.47
5.20–5.30	147.2–150.1	3.00	1.36	21.50	9.76	12.25	5.56
5.30–5.40	150.1–152.9	3.00	1.36	21.90	9.95	12.45	5.65
5.40–5.50	152.9–155.7	3.00	1.36	22.30	10.13	12.65	5.75
5.50–5.60	155.7–158.6	3.00	1.36	22.80	10.32	12.90	5.84
5.60–5.70	158.6–161.4	3.00	1.36	23.20	10.51	13.10	5.93
5.70–5.80	161.4–164.2	3.00	1.36	23.60	10.69	13.30	6.03
5.80–5.90	164.2–167.1	3.00	1.36	24.00	10.88	13.50	6.12
5.90–6.00	167.1–169.9	3.00	1.36	24.40	11.06	13.70	6.21
6.00–6.10	169.9–172.7	3.00	1.36	24.80	11.25	13.90	6.30
6.10–6.20	172.7–175.6	3.00	1.36	25.20	11.43	14.10	6.40
6.20–6.30	175.6–178.4	3.00	1.36	25.60	11.61	14.30	6.49
6.30–6.40	178.4–181.2	3.00	1.36	26.00	11.79	14.50	6.58
6.40–6.50	181.2–184.1	3.00	1.36	26.40	11.97	14.70	6.67
6.50–6.60	184.1–186.9	3.00	1.36	26.90	12.20	14.95	6.78
6.60–6.70	186.9–189.7	3.00	1.36	27.30	12.38	15.15	6.87
6.70–6.80	189.7–192.6	3.00	1.36	27.70	12.56	15.35	6.96
6.80–6.90	192.6–195.4	3.00	1.36	28.10	12.75	15.55	7.05
6.90–7.00	195.4–198.2	3.00	1.36	28.50	12.93	15.75	7.14
7.00–7.10	198.2–201.0	3.00	1.36	28.90	13.11	15.95	7.23
7.10–7.20	201.0–203.9	3.00	1.36	29.30	13.29	16.15	7.33
7.20–7.30	203.9–206.7	3.00	1.36	29.70	13.47	16.35	7.42
7.30–7.40	206.7–209.5	3.00	1.36	30.10	13.65	16.55	7.51
7.40–7.50	209.5–212.4	3.00	1.36	30.50	13.83	16.75	7.60
7.50–7.60	212.4–215.2	3.00	1.36	31.00	14.06	17.00	7.71
7.60–7.70	215.2–218.0	3.00	1.36	31.40	14.24	17.20	7.80
7.70–7.80	218.0–220.9	3.00	1.36	31.80	14.42	17.40	7.89
7.80–7.90	220.9–223.7	3.00	1.36	32.20	14.61	17.60	7.98
7.90–8.00	223.7–226.5	3.00	1.36	32.60	14.79	17.80	8.07

■ 11. Appendix J3 to subpart B of part 430 is revised to read as follows:

Appendix J3 to Subpart B of Part 430—Energy Test Cloth Specifications and Procedures for Determining Correction Coefficients of New Energy Test Cloth Lots

Note: DOE maintains an historical record of the standard extractor test data and final correction curve coefficients for each approved lot of energy test cloth. These can be accessed through DOE's web page for standards and test procedures for residential clothes washers at DOE's Building Technologies Office Appliance and Equipment Standards website.

1. Objective

This appendix includes the following: (1) Specifications for the energy test cloth to be used for testing clothes washers; (2) procedures for verifying that new lots of energy test cloth meet the defined material specifications; and (3) procedures for developing a set of correction coefficients that correlate the measured remaining moisture content (RMC) values of each new test cloth lot with a set of standard RMC values established as an historical reference point. These correction coefficients are applied to the RMC measurements performed during testing according to appendix J or appendix J2 to this subpart, ensuring that the final corrected RMC measurement for a clothes washer remains independent of the test cloth lot used for testing.

2. Definitions

AHAM means the Association of Home Appliance Manufacturers.

Bone-dry means a condition of a load of test cloth that has been dried in a dryer at maximum temperature for a minimum of 10 minutes, removed and weighed before cool down, and then dried again for 10 minute periods until the final weight change of the load is 1 percent or less.

Lot means a quantity of cloth that has been manufactured with the same batches of cotton and polyester during one continuous process.

Roll means a subset of a lot.

3. Energy Test Cloth Specifications

The energy test cloths and energy stuffer cloths must meet the following specifications:

3.1 The test cloth material should come from a roll of material with a width of approximately 63 inches and approximately 500 yards per roll. However, other sizes may be used if the test cloth material meets the specifications listed in sections 3.2 through 3.6 of this appendix.

3.2 *Nominal fabric type.* Pure finished bleached cloth made with a momie or granite weave, which is nominally 50 percent cotton and 50 percent polyester.

3.3 *Fabric weight.* 5.60 ± 0.25 ounces per square yard (190.0 ± 8.4 g/m2).

3.4 *Thread count.* 65 x 57 per inch (warp × fill), ±2 percent.

3.5 *Fiber content of warp and filling yarn.* 50 percent ±4 percent cotton, with the balance being polyester, open end spun, 15/1 ±5 percent cotton count blended yarn.

3.6 Water repellent finishes, such as fluoropolymer stain resistant finishes, must not be applied to the test cloth.

3.7. *Test cloth dimensions.*

3.7.1 *Energy test cloth.* The energy test cloth must be made from energy test cloth material, as specified in section 3.1 of this appendix, that is 24 ± ½ inches by 36 ± ½ inches (61.0 ± 1.3 cm by 91.4 ± 1.3 cm) and has been hemmed to 22 ± ½ inches by 34 ± ½ inches (55.9 ± 1.3 cm by 86.4 ± 1.3 cm) before washing.

3.7.2 *Energy stuffer cloth.* The energy stuffer cloth must be made from energy test cloth material, as specified in section 3.1 of this appendix, that is 12 ± ¼ inches by 12 ± ¼ inches (30.5 ± 0.6 cm by 30.5 ± 0.6 cm) and has been hemmed to 10 ± ¼ inches by

10 ± ¼ inches (25.4 ± 0.6 cm by 25.4 ± 0.6 cm) before washing.

3.8 The test cloth must be clean and must not be used for more than 60 test runs (after pre-conditioning as specified in section 5 of this appendix). All test cloth must be permanently marked identifying the lot number of the material. Mixed lots of material must not be used for testing a clothes washer according to appendix J or appendix J2 to this subpart.

4. Equipment Specifications

4.1 *Extractor.* Use a North Star Engineered Products Inc. (formerly Bock) Model 215 extractor (having a basket diameter of 20 inches, height of 11.5 inches, and volume of 2.09 ft^3), with a variable speed drive (North Star Engineered Products, P.O. Box 5127, Toledo, OH 43611) or an equivalent extractor with same basket design (*i.e.,* diameter, height, volume, and hole configuration) and variable speed drive. Table 4.1 of this appendix shows the extractor spin speed, in revolutions per minute (RPM), that must be used to attain each required g-force level.

TABLE 4.1—EXTRACTOR SPIN SPEEDS FOR EACH TEST CONDITION

"g Force"	RPM
100	594 ± 1
200	840 ± 1
350	1,111 ± 1
500	1,328 ± 1
650	1,514 ± 1

4.2 *Bone-dryer.* The dryer used for drying the cloth to bone-dry must heat the test cloth and energy stuffer cloths above 210 °F (99 °C).

5. Test Cloth Pre-Conditioning Instructions

Use the following instructions for performing pre-conditioning of new energy test cloths and energy stuffer cloths as specified throughout section 7 and section 8 of this appendix, and before any clothes washer testing using appendix J or appendix J2 to this subpart: Perform five complete wash-rinse-spin cycles, the first two with current AHAM Standard detergent Formula 3 and the last three without detergent. Place the test cloth in a clothes washer set at the maximum water level. Wash the load for ten minutes in soft water (17 ppm hardness or less) using 27.0 grams + 4.0 grams per pound of cloth load of AHAM Standard detergent Formula 3. The wash temperature is to be controlled to 135 °F ± 5 °F (57.2 °C ± 2.8 °C) and the rinse temperature is to be controlled to 60 °F ± 5 °F (15.6 °C ± 2.8 °C). Dry the load to bone-dry between each of the five wash-rinse-spin cycles. The maximum shrinkage after preconditioning must not be more than 5 percent of the length and width. Measure per AATCC Test Method 135–2010 (incorporated by reference; see § 430.3).

6. Extractor Run Instructions

Use the following instructions for performing each of the extractor runs specified throughout section 7 and section 8 of this appendix:

6.1 *Test load size.* Use a test load size of 8.4 lbs.

6.2 Measure the average RMC for each sample loads as follows:

6.2.1 Dry the test cloth until it is bone-dry according to the definition in section 2 of this appendix. Record the bone-dry weight of the test load (WI).

6.2.2 Prepare the test load for soak by grouping four test cloths into loose bundles. Create the bundles by hanging four cloths vertically from one corner and loosely wrapping the test cloth onto itself to form the bundle. Bundles should be wrapped loosely to ensure consistency of water extraction. Then place the bundles into the water to soak. Eight to nine bundles will be formed depending on the test load. The ninth bundle may not equal four cloths but can incorporate energy stuffer cloths to help offset the size difference.

6.2.3 Soak the test load for 20 minutes in 10 gallons of soft (<17 ppm) water. The entire test load must be submerged. Maintain a water temperature of 100 °F ± 5 °F (37.8 °C ± 2.8 °C) at all times between the start and end of the soak.

6.2.4 Remove the test load and allow each of the test cloth bundles to drain over the water bath for a maximum of 5 seconds.

6.2.5 Manually place the test cloth bundles in the basket of the extractor, distributing them evenly by eye. The draining and loading process must take no longer than 1 minute. Spin the load at a fixed speed corresponding to the intended centripetal acceleration level (measured in units of the acceleration of gravity, g) ± 1g for the intended time period ± 5 seconds. Begin the timer when the extractor meets the required spin speed for each test.

6.2.6 Record the weight of the test load immediately after the completion of the extractor spin cycle (WC).

6.2.7 Calculate the remaining moisture content of the test load as (WC–WI)/WI.

6.2.8 Draining the soak tub is not necessary if the water bath is corrected for water level and temperature before the next extraction.

6.2.9 Drying the test load in between extraction runs is not necessary. However, the bone-dry weight must be checked after every 12 extraction runs to make sure the bone-dry weight is within tolerance (8.4 ± 0.1 lbs). Following this, the test load must be soaked and extracted once before continuing with the remaining extraction runs. Perform this extraction at the same spin speed used for the extraction run prior to checking the bone-dry weight, for a time period of 4 minutes. Either warm or cold soak temperature may be used.

7. Test Cloth Material Verification Procedure

7.1 *Material Properties Verification.* The test cloth manufacturer must supply a certificate of conformance to ensure that the energy test cloth and stuffer cloth samples used for prequalification testing meet the specifications in section 3 of this appendix. The material properties of one energy test cloth from each of the first, middle, and last rolls must be evaluated as follows, prior to pre-conditioning:

7.1.1 *Dimensions.* Each hemmed energy test cloth must meet the size specifications in section 3.7.1 of this appendix. Each hemmed stuffer cloth must meet the size specifications in section 3.7.2 of this appendix.

7.1.2 *Oil repellency.* Perform AATCC Test Method 118–2007, Oil Repellency: Hydrocarbon Resistance Test, (incorporated by reference, see § 430.3), to confirm the absence of Scotchguard™ or other water-repellent finish. An Oil Repellency Grade of 0 (Fails Kaydol) is required.

7.1.3 *Absorbency.* Perform AATCC Test Method 79–2010, Absorbency of Textiles, (incorporated by reference, see § 430.3), to confirm the absence of Scotchguard™ or other water-repellent finish. The time to absorb one drop must be on the order of 1 second.

7.2 *Uniformity Verification.* The uniformity of each test cloth lot must be evaluated as follows.

7.2.1 *Pre-conditioning.* Pre-condition the energy test cloths and energy stuffer cloths used for uniformity verification, as specified in section 5 of this appendix.

7.2.2 *Distribution of samples.* Test loads must be comprised of cloth from three different rolls from the sample lot. Each roll from a lot must be marked in the run order that it was made. The three rolls are selected based on the run order such that the first, middle, and last rolls are used. As the rolls are cut into cloth, fabric must be selected from the beginning, middle, and end of the roll to create separate loads from each location, for a total of nine sample loads according to Table 7.2.2.

TABLE 7.2.2—DISTRIBUTION OF SAMPLE LOADS FOR PREQUALIFICATION TESTING

Roll No.	Roll location
First	Beginning.
	Middle.
	End.
Middle	Beginning.
	Middle.
	End.
Last	Beginning.
	Middle.
	End.

7.2.3 Measure the remaining moisture content of each of the nine sample test loads, as specified in section 6 of this appendix, using a centripetal acceleration of 350g (corresponding to 1111 ± 1 RPM) and a spin duration of 15 minutes ± 5 seconds.

7.2.4 Repeat section 7.2.3 of this appendix an additional two times and calculate the arithmetic average of the three RMC values to determine the average RMC value for each sample load. It is not necessary to dry the load to bone-dry the load before the second and third replications.

7.2.5 Calculate the coefficient of variation (CV) of the nine average RMC values from each sample load. The CV must be less than or equal to 1 percent for the test cloth lot to be considered acceptable and to perform the standard extractor RMC testing.

8. RMC Correction Curve Procedure

8.1 *Pre-conditioning.* Pre-condition the energy test cloths and energy stuffer cloths

used for RMC correction curve measurements, as specified in section 5 of this appendix.

8.2 *Distribution of samples.* Test loads must be comprised of randomly selected cloth at the beginning, middle and end of a lot. Two test loads may be used, with each load used for half of the total number of required tests. Separate test loads must be used from the loads used for uniformity verification.

8.3 Measure the remaining moisture content of the test load, as specified in section 6 of this appendix at five g-force levels: 100 g, 200 g, 350 g, 500 g, and 650 g, using two different spin times at each g level: 4 minutes and 15 minutes. Table 4.1 of this appendix provides the corresponding spin speeds for each g-force level.

8.4 Repeat section 8.3 of this appendix using soft (<17 ppm) water at 60 °F ± 5 °F (15.6 °C ± 2.8 °C).

8.5 Repeat sections 8.3.3 and 8.3.4 of this appendix an additional two times, so that three replications at each extractor condition are performed. When this procedure is performed in its entirety, a total of 60 extractor RMC test runs are required.

8.6 Average the values of the 3 replications performed for each extractor condition specified in section 8.3 of this appendix.

8.7 Perform a linear least-squares fit to determine coefficients A and B such that the standard RMC values shown in Table 8.7 of this appendix ($RMC_{standard}$) are linearly related to the average RMC values calculated in section 8.6 of this appendix (RMC_{cloth}):

$RMC_{standard} \sim A \times RMC_{cloth} + B$

where A and B are coefficients of the linear least-squares fit.

TABLE 8.7—STANDARD RMC VALUES

[$RMC_{standard}$]

"g Force"	RMC percentage			
	Warm soak		Cold soak	
	4 min. spin (percent)	4 min. spin (percent)	15 min. spin (percent)	15 min. spin (percent)
100	45.9	49.9	49.7	52.8
200	35.7	40.4	37.9	43.1
350	29.6	33.1	30.7	35.8
500	24.2	28.7	25.5	30.0
650	23.0	26.4	24.1	28.0

8.8 Perform an analysis of variance with replication test using two factors, spin speed and lot, to check the interaction of speed and lot. Use the values from section 8.6 of this appendix and Table 8.7 of this appendix in the calculation. The ''P'' value of the F-statistic for interaction between spin speed and lot in the variance analysis must be greater than or equal to 0.1. If the ''P'' value is less than 0.1, the test cloth is unacceptable. ''P'' is a theoretically based measure of interaction based on an analysis of variance.

9. Application of the RMC Correction Curve

9.1 Using the coefficients A and B calculated in section 8.7 of this appendix:

$RMC_{corr} = A \times RMC + B$

9.2 Apply this RMC correction curve to measured RMC values in appendix J and appendix J2 to this subpart.

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

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

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

■ 13. Section 431.152 is revised to read as follows:

§ 431.152 Definitions concerning commercial clothes washers.

AEER means active-mode energy efficiency ratio, in pounds per kilowatt-hour per cycle (lbs/kWh/cycle), as determined in section 4.8 of appendix J to subpart B of part 430 (when using appendix J).

Basic model means all units of a given type of covered product (or class thereof) manufactured by one manufacturer, having the same primary energy source, and which have essentially identical electrical, physical, and functional (or hydraulic) characteristics that affect energy consumption, energy efficiency, water consumption, or water efficiency.

Commercial clothes washer means a soft-mounted front-loading or soft-mounted top-loading clothes washer that—

(1) Has a clothes container compartment that—

(i) For horizontal-axis clothes washers, is not more than 3.5 cubic feet; and

(ii) For vertical-axis clothes washers, is not more than 4.0 cubic feet; and

(2) Is designed for use in—

(i) Applications in which the occupants of more than one household will be using the clothes washer, such as multi-family housing common areas and coin laundries; or

(ii) Other commercial applications.

IWF means integrated water factor, in gallons per cubic feet per cycle (gal/cu ft/cycle), as determined in section 4.2.12 of appendix J2 to subpart B of part 430 (when using appendix J2).

MEF_{J2} means modified energy factor, in cu ft/kWh/cycle, as determined in section 4.5 of appendix J2 to subpart B of part 430 (when using appendix J2).

WER means water efficiency ratio, in pounds per gallon per cycle (lbs/gal/cycle), as determined in section 4.7 of appendix J to subpart B of part 430 (when using appendix J).

■ 14. Section 431.154 is revised to read as follows:

§ 431.154 Test procedures.

The test procedures for clothes washers in appendix J2 to subpart B of part 430 must be used to determine compliance with the energy conservation standards at § 431.156(b).

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